DRN-2880247

The complaint

Ms L complains about the advice given by Prydis Wealth Limited when she transferred the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP') it recommended.

What happened

I understand Ms L began working for her employer in 1980. She had a workplace pension stemming from that employment. The pension was in three parts – the DB scheme, another part providing a guaranteed lump sum when she reached a set age and a pension both she and her employer contributed to which was investments linked – effectively a defined contribution scheme. The DB scheme was the largest part of her overall workplace pension. In September 2016, it had a cash equivalent transfer value ('CETV') of £550,012.02.

Ms L has said she was introduced to Prydis by a colleague. In February 2016, a fact find document was filled out by Ms L. This noted her primary goals for contacting Prydis were 'raising money' and 'retirement planning'. It was recorded that she was 51, divorced, employed full time and in good health. She had three children, two of which were noted as still being dependent as they were students. The fact find noted that her intended retirement age was 65 and that Ms L was looking to purchase a house. And in a section where Ms L was asked to summarise her objectives, goals and aspirations she said *"Following my divorce I am looking to purchase a new house. I would like to know from age 55 how much am I able to withdraw from my pension tax-free to reduce my mortgage and what is my monthly pension income likely to be when I retire if I make a withdrawal."*

A risk tolerance assessment questionnaire was completed at the same time. This recorded Ms L's attitude to risk ('ATR'). And this was recorded as being 'low' or a two on a scale of one to ten.

I've seen copies of emails between Prydis and Ms L from July 2016. In an email on 10 July 2016 Prydis summarised that Ms L was keen to buy a house and see any borrowing paid off at retirement. It also said she hoped to target an income of £50,000 per year in retirement and was likely to retire at age 60. The email said, *"the answer is probably to borrow enough so you leave your pension to mature"* and went on to say that *"as you have no spouse or dependents to provide for, which your final salary schemes cost in, you might, at age 59, assess whether you would prefer to liquidate these final salary benefits in to a fund you can control in retirement also to possibly even provide your children with a legacy".* The email suggested, alternatively, a mortgage could be taken on an interest only basis and then repaid from pension benefits. But it said this would be clarified after Prydis carried out some analysis and explained the analysis would be undertaken by a specific adviser.

There were further emails exchanged in the days following this where a mortgage specialist was mentioned as also having been introduced. The adviser also set out a fee structure should Prydis be asked to review and provide advice on transferring a pension.

In an email on 21 July 2016, Ms L said *"I am not looking to transfer my pension so I think it will be best to complete the review at a later stage. The value of my pension is sufficient* *information…"*

Prydis replied the same day, explaining that a review of transferring may be worthwhile as it seemed unlikely the level of income Ms L was hoping to achieve in retirement could be achieved by her existing provisions. And after this, Ms L agreed to proceed with a review.

On 2 September 2016, sent Ms L a suitability report and a covering letter. And in summary these documents set out that Prydis advised Ms L to transfer her pension benefits from the DB scheme portion of her workplace pension into a SIPP. And it recommended she invest in a bespoke portfolio, with Prydis acting as discretionary fund manager ('DFM'). It did not recommend that Ms L make any changes to the other parts of her workplace pension.

The suitability report reiterated Ms L's circumstances, noting she was now 52. It noted that she was in the process of buying a property, which required a mortgage of approximately £340,000. No other liabilities were recorded, and Ms L was said to have other savings and investments totalling approximately £61,000.

The suitability report noted that Ms L's ATR was 'low' and said people in this category *"have a low tolerance for risk, and are likely to be concerned about the possibility of losing money. You would probably prefer your investment to fluctuate less and make more modest returns than risk losing money for higher returns. This means you should not expect the value of your investments to rise much more than if you had kept your money in a bank account or other low risk investment."* It also recorded, in respect of capacity for loss, that *"a significant loss incurred by your pension* <u>would</u> (Prydis' emphasis) *impact on your standard of living."*

The report noted that Ms L's objectives were to retire at age 60 and again that she'd like to target an income of £50,000 per year in retirement. It estimated that at age 60, Ms L would still have an outstanding mortgage of approximately £230,000 – although I understand this was based on interest rates being unchanged and payments being up to date. Under her existing pension arrangements, as 60 was the normal retirement age of the scheme, Ms L would be entitled to either an estimated full annual income of £30,807 (£20,940 from the DB scheme and the rest from annuities purchased using the value of the other two parts of her workplace pension) or tax free cash ('TFC') of approximately £146,315, from across the three parts of her pension, and a reduced pension of £22,452 (£15,053 of which coming from the DB scheme). In both scenarios the annual pension would continue to increase in retirement.

The suitability report referred to a transfer value analysis ('TVAS') having been arranged. And said that this estimated the critical yield ('CY') – the growth rate required of a new pension to allow Ms L to purchase equivalent benefits that would match the guaranteed benefits of her DB scheme – was 6.5% if taking the full pension. Or 3.82% if Ms L took the maximum TFC and a reduced pension at age 60. It compared this with the performance of the "Mixed Investment 0% - 35% shares sector average" – which Prydis said was a reasonable indicator of investment returns that had been achieved by a low risk investor – suggesting the required growth was potentially achievable based on these averages. But the report also went on to say that the CY had limitations and if Ms L was not intending to purchase an annuity was somewhat irrelevant.

The report then went on to explain the reason Prydis was recommending that Ms L transfer her benefits. It said this was *"primarily because you will not be able to achieve your retirement goals if you leave your pension as it is"*. And it went on to say "*I am more concerned that you mortgage will become unaffordable in the future as a result of increasing interest rates, than the risk that the cash equivalent transfer value of your [DB scheme] will not provide you with as much income as remaining within the scheme."* It said assuming Ms L transferred and the new pension grew by 4% per annum, she'd have enough TFC at age 60 to clear her mortgage and could purchase an annuity with the remaining provisions paying a higher net income than the DB scheme. Or Ms L could leave the funds invested and drawdown an income, which the report again indicated would be higher than she would receive under the DB scheme.

The report went on to talk about the impact inflation and investment performance could have on this outcome. And it explained that the risk presented by inflation was manageable *"if your pension funds remain actively invested in line with at least a low to moderate attitude to investment risk".* The report noted this was slightly higher than the Ms L's ATR based on the risk questionnaire she'd completed. And said this should therefore be discussed in further detail if Ms L agreed to proceed with the recommendation.

The covering letter accompanying the report also mentioned ATR. It said *"Whilst I would not normally recommend transferring away from a guaranteed, inflation-linked retirement income to a cautious investor, I am very conscious that you are about to take on a large mortgage to enable you to purchase a home".* It reiterated the advisers concerns that the mortgage may be unaffordable and that these concerns were greater than the transfer providing a lower income that the DB scheme. So, said that a further discussion about risk should take place to *"review whether your answers to the risk questionnaire accurately reflect your requirements."*

The suitability report itself concluded by recommending a specific SIPP provider, summarising fees and saying that as part of the arrangement Prydis would continue to provide ongoing annual financial advice.

I understand a meeting between Ms L and the adviser took place shortly after this report was issued. Prydis says, at that meeting, it was agreed that Ms L's ATR should in fact be considered 'low-moderate' or a four on a scale of one to ten. So Prydis felt a transfer was appropriate. And the transfer was subsequently carried out in line with the recommendation made.

In 2019, Ms L raised concerns with Prydis about a couple of the funds part of her pension portfolio was invested in – one in particular which had been suspended. She didn't think that investment in this fund was appropriate for her given her ATR.

Prydis didn't think it had been wrong to include this fund as part of her portfolio, noting that while some funds had a higher risk profile than others, the diversification of Ms L's portfolio meant the overall risk was appropriate for her

Ms L then referred her complaint to our service. When doing so she said she had concerns in general about how her funds had been invested. She noted she'd completed a risk profile at the time of the advice that had shown her ATR to be low and she believed the investments were not in line with this.

She also said one of the reasons Prydis had suggested for returns being low was that her ATR was low and charges negated most of the profit. And Ms L questioned why therefore she was advised to invest into this type of portfolio in the first place, as she had made her ATR clear. Ms L has said she was not considering transferring her pension before speaking to Prydis. But was persuaded to do so because it indicated it could grow the fund substantially. She also said that she had not gone into the discussions targeting an income of £50,000 per year and this was only discussed because of how much Prydis indicated it could grow the fund to.

Our Investigator considered the suitability of the advice to transfer as a whole. Having done so, she didn't think the advice was suitable and recommended that the complaint be upheld and that Prydis pay compensation in line with the methodology set out by the regulator for addressing unsuitable DB transfer advice. In summary, she didn't think the transfer was in Ms L's best interests as she didn't think it was reasonably likely that Ms L would've been better off as a result – particularly bearing in mind Ms L's attitude to risk.

Prydis did not agree. It said Ms L's complaint had been about the investment of the benefits, rather than the advice as a whole. In any event though, it said it still felt the advice was suitable as Ms L could not have met her objectives by remaining in her DB scheme and the transfer meant she was better off.

Our Investigator said they weren't minded to change their opinion. So, as agreement could not be reached, the matter was passed to me to decide.

I informed Prydis that I was satisfied that it was appropriate to consider the advice to transfer given the concerns Ms L raised as part of the complaint being referred to our service. And I was satisfied that Prydis had been given sufficient opportunity to respond to this.

Prydis reiterated that only through transferring was Ms L able to achieve the flexibility she needed to meet her objectives.

Ms L also added, in addition to being unhappy about the advice to transfer, she was still concerned with how the funds had been invested.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Prydis' actions here.

PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.16 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Prydis should have only considered a transfer if it could clearly demonstrate that the transfer was in Ms L's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

Prydis said when advising Ms L it was more concerned about the ongoing affordability of her mortgage than whether the CETV would provide as much income as she'd have received by remaining in the DB scheme. But whether or not Ms L was likely to receive greater retirement benefits as a result of transferring is in my view an important consideration when looking at whether the transfer was in her best interests. Particularly so where, as was the case here, Ms L's DB scheme benefits made up the majority of her retirement provisions.

The suitability report also clearly recorded that the objectives Prydis was considering were that Ms L wanted to retire at age 60 and target an income of £50,000. And that the recommendations were *"designed to meet your objectives as detailed"*.

Ms L says that the figure of £50,000 per year was not initially one of her objectives. And it was only after Prydis indicated it believed it could achieve significant growth, that this figure was first discussed. Looking at the summary of objectives Ms L wrote when completing a fact find in February 2016 an income of this level doesn't appear to have been an initial objective. Her objectives were instead purchasing a new property and understanding how much she could take from her pension to help fund this. By the point of the emails in July 2016, the objective of achieving a certain level of income seems to have been added. And Ms L doesn't appear to have disputed being interested in this, after that point. But I'm inclined to agree, on balance, that this wasn't one of her initial objectives. And so, I don't think this was necessarily a legitimate objective of hers – rather it was something that would be nice to have. But regardless, Prydis said its advice was designed to meet this objective.

Ms L's DB scheme had a normal scheme retirement age of 60. So, she could take full benefits at that time. Her provisions weren't though projected to achieve an income of £50,000. So, the purpose of the advice seems to in fact have been achieving better benefits – if it was to meet the recorded objectives. And so, this reinforces that the likelihood of doing so was an important consideration as to whether a transfer was in Ms L's best interests.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Ms L was 52 at the time of the advice. The suitability report indicated Ms L hoped to retire at age 60. And it said that the critical yield required to match Ms L's benefits at age 60 was 6.5% if she took a full pension and 3.82% if she took TFC and a reduced pension.

This compares with the discount rate of 3.4% per year for seven years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Ms L's 'low' attitude to risk and also the term to retirement. There would be little point in Ms L giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was greater than the discount rate, I think Ms L was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with her recorded attitude to risk. And the DB scheme benefits already failed to meet the income objective Prydis said it intended to.

As I've mentioned, Prydis said in its covering letter, that accompanied the suitability report, it wouldn't usually recommend a DB transfer to a cautious investor such as Ms L. But because it had concerns about the size of the mortgage she was about to take on, a further discussion would be appropriate to see if this truly reflected Ms L's ATR. And it has said that Ms L agreed, at a meeting after the suitability report was issued, that her attitude to risk should in fact be recorded as 'low-moderate'.

I haven't seen anything to suggest that the answers Ms L gave in her risk tolerance assessment didn't accurately reflect her opinion. And these supported that she had a low ATR. I can also see that in August 2016, Ms L completed a client agreement. This included some further questions about her circumstances and experience. And it included a question asking if Ms L wanted to impose any restrictions on the type of investments that might be recommended. Ms L wrote, in response to this "*"I wish to 'protect' my capital sum – i.e. minimal risk"*. Which I think further reinforced that Ms L's ATR was low.

So, I think Prydis had already arguably gathered sound information about her attitude to risk. And if, as Prydis has suggested, it wouldn't usually recommend a DB transfer to someone with the ATR Ms L had, I find it concerning that it gave a positive recommendation to transfer – certainly before any further discussion took place or was documented. And I'm not sure suggesting the ATR may not be correct and should be revisited shows regard for Ms L's actual circumstances. Rather, looking at it now, it appears like an attempt to make Ms L's circumstances fit the narrative of the recommendation rather than that the recommendation was based on her circumstances and in her best interests.

In any event though, even if Ms L did actually have a 'low-moderate' ATR, taking into account the critical yield, discount rate and regulator's projection rates, I still don't think she'd have received greater benefits by transferring. At best she might've achieved similar benefits. But there was little point taking a risk to do so. And again, I think it was more likely Ms L would receive benefits of a lower overall value than the DB scheme.

In the suitability report Prydis downplayed the critical yield and said it had limitations. It indicated it felt the true critical yield was likely to be lower. And it said that if a growth rate of 4% was achieved, it estimated that Ms L would be able to access enough TFC to pay off her mortgage and take a greater net monthly income than she'd receive under the DB scheme. And it provided cash flow modelling to support this.

However, this income it referred to was not at the level of £50,000 – the objective the advice was apparently intended to achieve. Cash flow modelling showed that, if 4% growth was achieved and Ms L took an income at that level, her pension funds would be entirely depleted by age 76. Which was several years below her average life expectancy - particularly given she was recorded as being in good health. So, this objective wouldn't have been achieved at that level of growth.

And the 4% figure Prydis used doesn't appear to have accounted for the fees payable under the new arrangement – 0.25% to the pension provider and 1% to Prydis for ongoing advice and management. So, the true figure of growth required under the scenario Prydis highlighted was higher. And again, this wasn't to achieve the income objective, rather just to better the existing DB scheme benefits. And, based on the discount rate and regulator's projection rates, I don't think this was realistically achievable given Ms L's ATR (even before accounting for these fees).

Prydis provided a comparison in the suitability report to the returns achieved by the *'Mixed investment 0% - 35% shares sector'* over the previous 1,3,5 and 10 years to support that it believed the growth Ms L needed was achievable. It said that it felt this was a reasonable indicator of investment returns that could be achieved by a low risk investor. Notwithstanding the fact that Prydis said it wouldn't usually recommend a transfer to someone with a low ATR like Ms L was documented as having at the point of the suitability report, as Prydis will know, past performance is no guarantee for future performance. And so, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

So, from a financial viability perspective I don't think the transfer was in Ms L's best interests. The information suggests it was unlikely to meet the apparent income objective. And that it was also likely Ms L would end up with a lower income than her DB scheme would provide, as the growth required to better this is unlikely to have been achievable given her ATR.

Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

Again, the suitability report says that Ms L's objectives were that she wanted to retire at 60 and target an income of £50,000.

The DB scheme normal retirement age was 60. So, she didn't require alternative more flexible arrangements to be able to take her benefits at that time.

And, as I've explained, I'm not sure the target income referred to was a genuine objective of Ms L's. But in any event, for the reason I've already explained, I don't think this seems to have been achievable and accessing her benefits flexibly to meet this goal would've resulted in the pension fund likely being depleted entirely within Ms L's lifetime. So, I don't think flexibility in order to do this was appropriate or in her best interests.

Prydis said it was concerned that the mortgage Ms L was about to take may become unaffordable for her. And this was a greater concern than potentially ending up with lower benefits. So, the indication was that it felt flexibility in how Ms L could access her pension and future access to TFC to clear the mortgage was important to address this.

When Ms L contacted Prydis, she said she was interested in understanding how much she could draw from her pension benefits to pay towards her mortgage in the future and how much income this would leave her. Suggesting she was thinking about this. And I can see Prydis' email to Ms L on 10 July 2016, summarising its understanding of what she was looking into, said she'd indicated she might look at cashing in her DB scheme benefits at age 59 – just before retiring. But she doesn't seem to have been considering transferring or making a decision in respect of this with her mortgage in mind, before taking advice. Indeed, she confirmed in an email to Prydis on 21 July 2016, she wasn't looking to transfer her pension benefits at that time. And I think it's interesting that this wasn't listed as an objective in the suitability report.

In any event though, Ms L was only 52 at the time of the advice. So could not access any benefits from her pension for at least three years. So, the pension couldn't have been used to address any affordability issues during that time. And so, given it was an irreversible decision, I think it was too soon to make any kind of decision about transferring out of the DB scheme.

And while Prydis had said it had concerns, at the time of the advice I don't think Ms L had a genuine need to access TFC or her pension earlier than the scheme retirement age of 60. Ms L had confirmed she was intending to continue to work until age 60. And her income appears to have been sufficient to meet her commitments (including the new mortgage). Prydis said that it was concerned this may've become unaffordable if interest rates changed. But the ongoing affordability of the mortgage ought to have been assessed as part of any mortgage advice – as was required by the regulator.

And in terms of addressing the balance through TFC at retirement, Prydis' solution was not guaranteed and was dependent on achieving growth which involved investment risk, something Ms L was concerned about. And, as I've said previously, I'm not sure the level of growth this was based on was realistically achievable.

I'm also conscious that in the suitability report, Prydis put forward a scenario to potentially address the mortgage balance while allowing Ms L to remain in the DB scheme. This involved keeping her benefits where they were until the scheme retirement age and then taking the maximum TFC from across all of her private pension arrangements. This would then be used to reduce the mortgage balance. The other parts of her private pension, outside of the DB scheme, could then be drawn flexibly to clear the mortgage balance within five years and support Ms L's income until she began to receive state benefits. And these, coupled with the guaranteed pension of the DB scheme, would then provide her an income in retirement. There were variables that would impact this scenario – including how the mortgage was maintained in the meantime. But there were variables involved with transferring too – not least investment risk. So, I think, this indicates that flexibility in arrangements wasn't the only option. And while Ms L's ongoing income would not be at the apparent target level, neither was the income provided by Prydis' recommendation. And under the DB scheme the income was guaranteed and escalated.

So, taking all of this into account, I don't think Ms L had a genuine need for flexibility at the time of the advice and this could've been considered at a later date, if it had become necessary.

Death benefits

Prydis' summary from its email on 10 July 2016 included the mention that, if Ms L looked to transfer at age 59, one of the reasons might be to leave a lasting legacy for her children. But this wasn't listed in the suitability report as being a reason for the advice.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. And the lump sum death benefits on offer through a personal pension might've been an attractive feature to Ms L. But whilst I appreciate death benefits are important to consumers, the priority here was what was best for Ms L's retirement provisions. A pension is primarily designed to provide income in retirement.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Ms L drew in her lifetime. Ms L was recorded as being in good health, so its reasonable to think she was likely to draw benefits for a significant number of years. The cashflow analysis indicated that if 4% growth was achieved and Ms L drew a pension starting at around £35,000 per year, the fund was likely to last her for a significant amount of time and retain a high value. But this was dependent on achieving that growth rate (which again doesn't seem to have accounted for charges). And that growth rate appears unrealistic based on Ms L's ATR.

Furthermore, if Ms L genuinely wanted to leave a legacy for her children, which didn't depend on investment returns or how much of her pension fund remained on her death, I think Prydis could've instead explored life insurance. So overall, I don't think different death benefits available through a transfer justified the recommendation to transfer.

Suitability of investments

Ms L has said she is concerned with some of the investments that Prydis, in its capacity as discretionary fund manager, recommended she invest in. Indeed this, and the performance of those investments, was the starting point of her original unhappiness. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Ms L, it follows that I don't need to consider the suitability of the investment recommendation in detail. This is because I think Ms L should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given. And the recommendation I'm making to put matters right, addresses this.

Summary

Ultimately, I don't think the advice given to Ms L was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Ms L was likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. As I've explained, the DB scheme provided full retirement benefits at Ms L's intended retirement date. The retirement benefits were unlikely to be improved by transferring – and the target income certainly is highly unlikely to have been achieved for the time it would be required. And I don't think flexibility was needed at the time of the advice and a decision on this could've been taken at a later date – if it was necessary at all, given Prydis' suitability report set out a scenario where the repayment of the mortgage could potentially have been achieved without transferring.

So, I think Prydis should've advised Ms L to remain in her DB scheme.

Of course, I have to consider whether Ms L would've gone ahead anyway, against Prydis' advice.

I've considered this carefully, but I'm not persuaded that Ms L would've insisted on transferring out of the DB scheme, against Prydis' advice. Ms L was clear in her email of 21 July 2016 that transferring her benefits wasn't something she was considering. It was only based on Prydis' suggestion that this was subsequently considered. While Ms L held shares in her employers business, these seem to have been an employee benefit and I've seen nothing to suggest she had significant experience as an investor. Ms L had a low attitude to risk and this pension accounted for the majority of her retirement provision. So, if Prydis, a professional adviser whose expertise she had sought out, had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

In light of the above, I think Prydis should compensate Ms L for the unsuitable advice.

Putting things right

A fair and reasonable outcome would be for the business to put Ms L, as far as possible, into the position she would now be in but for Prydis' unsuitable advice. I consider Ms L would have most likely remained in her DB scheme if suitable advice had been given.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/19 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Ms L whether she preferred any redress to be calculated now in line with current guidance or to wait for the any new guidance / rules to be published.

Ms L has chosen not to wait for any new guidance to come into effect to settle her complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Ms L. Prydis must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, I understand Ms L has not yet retired. So, compensation should be based on the normal scheme retirement age of 60.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Ms L's acceptance of the decision.

Prydis may wish to contact the Department for Work and Pensions (DWP) to obtain Ms L's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Ms L's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Ms L's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms L as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Ms L within 90 days of the date Prydis receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Prydis to pay Ms L.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Prydis to carry out a calculation in line with the updated rules and/or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Prydis Wealth Limited to pay Ms L the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Prydis Wealth Limited to pay Ms L any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Prydis Wealth Limited to pay Ms L any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Prydis Wealth Limited pays Ms L the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Ms L.

If Ms L accepts this decision, the money award becomes binding on Prydis Wealth Limited.

My recommendation would not be binding. Further, it’s unlikely that Ms L can accept my decision and go to court to ask for the balance. Ms L may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms L to accept or reject my decision before 15 November 2022.

Ben Stoker
Ombudsman