

The complaint

Mr R complains about the advice given by Principal & Prosper Holdings Limited (P&P) to transfer the benefits from his defined-benefit (DB) occupational pension scheme (OPS) to a self-invested personal pension (SIPP). He says P&P gave a misleading and incomplete picture of the benefits of transferring versus the benefits of his existing scheme. He said P&P overpromised the benefits of the SIPP and underplayed those of the DB scheme. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr R has also complained about the delays he experienced when he tried to transfer some of his funds following a fall in their value. He says this delay led to him suffering significant losses.

What happened

Mr R approached P&P in 2017 to discuss his pension and retirement needs. P&P say that a colleague of Mr R's had made a similar transfer and recommended that he consider using the same advising business. P&P say Mr R wanted to consider retiring early, that is before his OPS' normal retirement date, and so he wanted to access his deferred DB scheme benefits.

Mr R initially met with P&P in early 2017 and it obtained some details about Mr R's circumstances. And P&P also obtained a transfer value from his DB scheme. An 'initial discussion document' was then prepared which essentially compared the DB scheme benefits with the transfer value, and potential benefits from, a SIPP.

After these initial discussions, in May 2017, Mr R left his DB scheme in anticipation of the transfer proceeding. Mr R says that he thought these initial discussions were advice. P&P say that in these first meetings it provided factual information only as part of a 'triage' process.

Following this, as part of a fact finding process, P&P asked Mr R to provide more information about his circumstances and objectives (by post and telephone). This information showed that:

- He was aged 55, married and employed. He had two children that were both working, one was regarded as still dependent.
- He was a current member of his employers defined contribution scheme which he had recently joined. He had deferred benefits in his employers DB scheme, as above he had left this to facilitate the transfer.
- Mr and Mrs R held around £45,000 in cash. They held a small number of shares obtained through Mr R's employers share save scheme.

P&P also carried out an assessment of Mr R's attitude to risk, which it said was 'adventurous'. This was because Mr R had the capacity to take some risk and he had experience of investments, in part through his work. That said, Mr R was clear that he was only prepared to take a 'balanced' risk with his pension fund investments.

On 4 August 2017, P&P advised Mr R to transfer his pension benefits into a SIPP and invest the proceeds, which were £860,057, in a range of funds. P&P managed the funds as a discretionary fund manager. The suitability report said the broad reason for this recommendation was *'to provide sufficient income to maintain a good standard of living in retirement, and provide a legacy income for our children'*. The suitability report also said Mr R's other aims were to:

- Potentially access his pension before age 60 without a penalty.
- Potentially vary the level of income he could take.
- Have the ability to manage withdrawals tax efficiently.
- Have flexible death benefits.
- Benefit from investment growth.

Mr R complained in 2020 to P&P. His initial complaint was concerned with the recent fall in the value of his funds, and the delay he said P&P had caused when he tried to mitigate these falls. When this complaint wasn't resolved, Mr R also made his complaint about the suitability of the transfer advice. He essentially said that he thought the advice to transfer was unsuitable because of these losses. He thought P&P should have been clearer about the benefits of his OPS and not advised him to transfer the value of it away.

P&P didn't uphold Mr R's complaint. It said that it did a robust fact-finding process and the information gathered met regulatory requirements. Mr R was fully informed about the advice and it met his needs at the time. It thought the advice was suitable for him.

Mr R referred his complaint to our service. An investigator upheld the complaint and recommended that P&P pay compensation. The investigator said that:

- The early contact was probably advice, and it resulted in Mr R leaving his DB scheme prematurely.
- The transfer wasn't financially viable, so it wasn't suitable to recommend that Mr R proceed.
- The advice was described in terms that made it seem like it was the best course of action, such as the transfer value being 'exceptional value', this was misleading.
- Whilst Mr R could take some risk his capacity for loss was limited and so the risk of the SIPP was likely to be too great for Mr R.

P&P disagreed, saying:

- The initial meetings were not advice, they were 'triage and educational' meetings only. Mr R decided to opt out of the DB scheme himself.
- Mr R wanted to retire before age 60 if possible. The DB scheme wouldn't have provided the income he and his wife needed at this age.
- His attitude and capacity for risk were fully assessed and Mr R was aware that his pension income would be at risk.
- Mr R was given full information about the advice and its implications. The transfer process took place over many months and Mr R wasn't pressured.

The investigator wasn't persuaded to change their opinion. There was some further correspondence and comment from all the parties involved in the complaint. But no new issues were raised, and no agreement was reached. So, the complaint was referred to me to make a final decision.

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 P&P's 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, P&P should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

As both parties are aware there was a significant contact before P&P gave written advice. And there is some dispute about when the advice to transfer was given. Mr R thinks that he was advised to leave his DB scheme during the first discussions, whereas P&P thinks it only gave information in this early contact and Mr R, essentially, chose to leave the DB scheme himself.

As a starting point, before it was able to give full advice, P&P should have informed Mr R that he shouldn't make any decisions about his pension planning before it looked into his circumstances properly. I can't see that P&P did this.

And having looked at the notes and other documents provided about this early contact I don't think only information was provided. For example, the initial discussion document says that the '*potential level of income payable from the SIPP is far greater due to the complete flexibility in the manner in which benefits can now be taken.*' There is some qualification to this, but I think overall, at this early point, P&P was indicating that the transfer was the right

course of action for Mr R. I don't think this was right. And this resulted in Mr R leaving his DB scheme when he should have been advised to remain in it.

That said, I think the advice to transfer was unsuitable for Mr R in any event, so this isn't material to why I think P&P should pay compensation.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Mr R's DB scheme benefits at age 65 was 9.21% and at age 60 this rose to 15.46%. Both of these were based on Mr R taking a full pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.7% per year for 9 years to retirement. 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% per year.

Added to this the Pension Transfer Report said that Mr R would need a fund value of £1,706,122 to replicate the value of the DB scheme benefits at age 65.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's 'balanced' attitude to risk and also the term to retirement. There would be little point in Mr R giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Mr R's attitude to risk was assessed as being relatively high, that is at least balanced and possibly greater. And I accept that some of the answers he gave to the questions he was asked may indicate this was the case. But this was the majority of Mr R's pension entitlement. And given his age, and employment situation, he was unlikely to be able to increase this by a significant amount. And as he wanted a higher income in retirement, I don't think he had a very high capacity for loss.

And the reality of the situation is that Mr R was very uncomfortable with the losses to his pension fund value later on. So, I don't think his attitude to risk was as high as P&P assessed it to be.

So here, given the lowest critical yield was 9.21%, I think Mr R was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his attitude to risk.

P&P has provided cashflow models which it says shows Mr R would've been able to meet his needs despite the high critical yields. I've considered these. P&P's models show that if Mr R withdrew a similar amount that he would receive from the DB scheme, and assuming a 'medium' rate of return, he would have a much-reduced fund value after age 90. The suitability letter said, using these assumptions, the fund would run out at Mr R's age 94.

Also, as P&P 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, particularly over such a long period of time. And, of course, there is a risk here of the fund being very depleted, or used entirely, if large falls were suffered, as has happened.

For this reason alone, a transfer out of the DB scheme wasn't in Mr R's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as P&P has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

The suitability letter, in some detail, set out to show how Mr R could meet his retirement needs, and perhaps retire early, using a drawdown arrangement. And it said he could use this fund flexibly over time, and it was unlikely to erode to any great degree. I've looked to see if Mr R needed this flexibility and if this was reasonable.

It was documented at the time of sale that Mr R wanted £45,000 a year in his retirement. If he took benefits from the DB scheme at 65, he would be entitled to an annual increasing income of £43,274. And he would also have his state pension provision. So, as a starting point, the DB scheme would be very close to, or would meet, his retirement aims, assuming they remained the same at retirement.

The advice was given on the basis that Mr R wanted to retire early. And I accept that he was looking to do this. In very broad terms the advice to transfer was given on the basis that Mr R could achieve this, while essentially retaining the same, or increasing, the benefits he would get from the DB scheme. And this was based largely on the cash flow analysis.

The cash flow analysis compared what Mr R would've got from the scheme. In one example it looked at an income of £32,947 each year from age 60. And it concluded that, as there would be a fund left at age 99 (if the fund performed well) then the transfer would be in his best interests. But this would not have met Mr R's retirement needs as noted in the fact-find. It was recorded that he wanted a higher income.

Another cash flow example looked at Mr R withdrawing £45,000 from age 56, as I mentioned above, there was a residual fund left of around £250,000 at age 99 (given certain assumptions).

This is closer to Mr R's stated retirement needs but, and I think crucially, this doesn't factor in the increases that the DB scheme would provide. The fund would be much smaller and would likely run out much sooner if the income increased.

And the increases to the DB scheme income meant that it perhaps could have met Mr R's aims albeit with a lower starting income. P&P should have fully explored this.

As I've said above, Mr R was giving up a significant benefit here. The cost of replacing this, as shown on the suitability letter, was over £800,000 at his age 65. In order to make this suitable there needed to be a good reason to make the transfer. Mr R would need to have a well-developed retirement plan, and accept that this reduction was worth it to meet these. I don't think Mr R's needs were qualified enough to be able to say this.

So overall, I'm not persuaded Mr R required flexibility at the time of the advice. This is because based on the evidence I've seen, I don't think he had a genuine need to access his retirement fund, or take any tax free cash and leave his funds invested until a later date. And

I also can't see evidence that Mr R had a strong need for variable income throughout his retirement. Whilst this was mentioned, this doesn't seem to have been discussed in any detail.

So, I'm not satisfied the transfer met Mr R needs due to the flexibility it provided.

Death benefits

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. That said the discussion document does say that they discussed that whilst death benefits of the SIPP shouldn't be ignored they weren't a good reasons to transfer alone.

The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think P&P explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr R was married and, so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr R predeceased her. I don't think P&P made the value of this benefit clear enough to Mr R. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, P&P should not have encouraged Mr R to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr R genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think P&P should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr R. And I don't think that insurance was properly explored as an alternative.

Use of DFM

P&P acted as a discretionary fund manager in respect of the investments in the SIPP. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr R, it follows that I don't need to consider the suitability of the investment recommendation.

This is because Mr R should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given. He wouldn't have incurred these losses.

I also haven't considered Mr R's complaint about the losses he incurred when he tried to switch funds. These losses will be accounted for in the compensation below.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr R. But P&P wasn't there to just transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr R was very likely to obtain lower retirement benefits and in my view, there were no other pressing reasons which would justify a transfer and outweigh this.

So, I think P&P should've advised Mr R to remain in his DB scheme.

Of course, I have to consider whether Mr R would've gone ahead anyway, against P&P's advice.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against P&P's advice. I say this because whilst Mr R clearly saw some benefit in transferring, this pension accounted for the majority of his retirement provision. So, if P&P had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr R's desire to retire early was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If P&P had explained that Mr R could probably meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of the DB scheme.

Also, as I've talked about briefly above, I think Mr R's decision to leave his DB scheme and make the transfer came about as a direct consequence of his contact with P&P.

In light of the above, I think P&P should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

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 Mr R whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and or rules to be published.

He has chosen not to wait for any new guidance to come into effect to settle his 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 Mr R.

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for P&P's unsuitable advice. I consider Mr R would have most likely remained in his DB scheme if suitable advice had been given.

P&P 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, Mr R has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 Mr R's acceptance of the decision.

P&P may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R'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 Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 Mr R 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 his 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 Mr R within 90 days of the date P&P receives notification of his 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 P&P to pay Mr R.

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.

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.

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 P&P to carry out a calculation in line with the updated rules and/or guidance in any event.

My final decision

Determination and money award: I uphold this complaint and require Principal & Prosper Holdings Limited to pay Mr R 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 Principal & Prosper Holdings Limited to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Principal & Prosper Holdings Limited to pay Mr R any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Principal & Prosper Holdings Limited pays Mr R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts this decision, the money award becomes binding on Principal & Prosper Holdings Limited.

My recommendation would not be binding if Mr R accepts this decision. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R 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 Mr R to accept or reject my decision before 14 November 2022.

Andy Burlinson
Ombudsman