DRN-3299205

## The complaint

Mrs G says the advice given and the arrangements made by City Capital Analysis Limited (CCAL) to transfer benefits from her two occupational pension schemes (OPS) into a Self-invested Personal Pension (SIPP) was unsuitable.

CCAL was an appointed representative of Best Practice IFA Group Limited (BP) at the time of the events complained about. As the principal firm, BP has responsibility for the acts and omissions of its agents. To keep matters simple, I'll refer to BP throughout my decision.

## What happened

Mrs G sought advice from BP about her pension arrangements in February 2017. Information was gathered about her circumstances, objectives and matters such as her attitude to risk.

BP issued a Proposal for Pension Planning (suitability report) dated 20 March 2017. It identified Mrs G's objectives in the following terms:

- *You wish to be able to partially retire at age 55. This may involve working for 6 months per year.*
- *You plan to retire fully at age 60, with the slight possibility of continuing some consulting work post 60, should your health remain robust.*
- *From the age of 55, you would like to access some of your pension schemes (income/capital) to fund a lifestyle change by living overseas…*
- *In accessing pension benefits (early) you wish to have as much flexible control of access as is possible under pension freedoms.*
- *You wish to ensure on death, that you can pass as much pension asset as possible on to [your husband and child].*
- *You also wish for remaining pension benefits to be inter-generational and capable of passing from [your husband to your child] and on to his children in turn.*
- *You wish to ensure that liability to inheritance tax is mitigated.*

Mrs G was a member of two OPS. She had deferred benefits accrued over 15 years of service with two employers between 1992 and 2010. She also had a SIPP with Hargreaves Lansdown (HL) worth around £100,000. And she'd recently joined another OPS having taken on a role with a new employer in 2016.

The transfer value of her deferred OPS benefits was around £535,800. BP recommended she should transfer this into a SIPP and invest in funds with a balanced risk exposure. Mrs G accepted the recommendation and the monies were transferred in May 2017. I've not seen any transaction details, but presumably BP's fees were deducted from the funds transferred.

In July 2020 Mrs G raised a complaint about what had happened in 2017. She said BP knew her OPS benefits were her main pension provision and important to her family. She didn't believe the advice she'd received to transfer out of the schemes had been appropriate.

Mrs G says she'd been dealing with mental health issues at the time of the advice and this had affected her decision making. She also thought BP had manipulated the risk assessment it conducted to facilitate the transfer of her funds.

BP refuted Mrs G's complaint. It said it was very rare for the firm to recommend the transfer of benefits from an OPS because of the guarantees and protections they afford. But given Mrs G's specific circumstances and her objectives it said the advice was suitable.

BP noted that there had been a discussion of Mrs G's health situation, and this had been a key driver for moving ahead with the transfer. It said she hadn't disclosed any mental health issues, nor did the adviser pick up on any causes for concern. In respect of the risk assessment, it said it not only took into account her appetite for risk, but also her capacity for loss – hence it reduced the risk exposure recommendation.

The Investigator upheld Mrs G's complaint. He considered that while her health situation was a significant consideration, a transfer at that time wasn't necessary to meet her objectives. He thought BP should perform a redress calculation comparing the value of her comparable SIPP funds as they stood, with appropriate adjustments, with the value of the OPS benefits she'd foregone.

BP disagreed with the Investigator's conclusions. In summary it said:

*"…[Mrs G] wanted to achieve several objectives and when considered as a whole these could only be met by recommending the transfer, and also by completing the transfer then and not deferring until she was ready to retire and/or her health deteriorated again. In this regard we would also add that to maximise investment growth and performance it was far more appropriate to undertake the transfer aged 50 than defer, and in this regard we would repeat that the evidence clearly supports the fact that [Mrs G] was willing to accept the required level of risk and that she also had the propensity to accept that level of risk as well.*

As both parties didn't agree with the Investigator's recommendations, Mrs G's case has been passed to me for review. I issued a provisional decision in January. Both parties disagreed with elements of this. I'll touch on any key points they raised in this final decision. But I find no compelling reason to depart from my initial findings and conclusions.

**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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mrs G's complaint, but not providing the extent of redress she'd like. I'll explain why.

*How does the regulatory framework inform the consideration of Mrs G's case?*

The first thing I've considered is the extensive regulation around transactions like those performed by BP for Mrs G. The Financial Conduct Authority (FCA) Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like BP. As such, I need to have regard to them in deciding Mrs G's complaint.

At the time of the advice BP gave Mrs G, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*"When advising a retail client who is…a member of a defined benefits occupational pension scheme…with safeguarded benefits whether to transfer…**a firm should start by assuming that a transfer…will not be suitable.** A firm **should only then consider** a transfer…to be suitable **if it can clearly demonstrate**, on contemporary evidence, **that the transfer…is in the client's best interests**."*

Under COBS 19.1.2, BP was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Mrs G to be able to make an informed decision.
- Give Mrs G a copy of the comparison, drawing her attention to the factors that do and don't support its personal recommendation, in good time.
- Take reasonable steps to ensure that Mrs G understood its comparison and how it contributed towards the personal recommendation.

In simple terms, BP had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Mrs G on what to do.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

It’s also important to review the FCA’s specific stance on advice provided about SIPP’s. For example, in January 2013 the regulator issued an industry alert which said:

*“It has been brought to the FSA’s attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, we have seen financial advisers moving customers’ retirement savings to [SIPPs] that invest wholly or primarily in high risk, often highly illiquid unregulated investments…”*

*“Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect. The FSA’s view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes..’’*

*“If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable. This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements. There are clear requirements under the FSA Principles and Conduct of Business rules.”*

BP wasn’t recommending Mrs G invest in unregulated funds. But the principle here holds true – it needed to consider the overall proposition. That is, the transfer and the expected underlying investments she would hold.

*Did BP adhere to the regulatory requirements placed on it when advising Mrs G?*

There are several documents relating to BP’s transaction with Mrs G that are important to my consideration, these include the fact-find and suitability report. More recently, Mrs G has shared some email exchanges she had with the adviser. I’ve also thought carefully about the testimony of both parties.

This is a finely balanced case. I note the regulatory position set a high bar, which meant BP must be able to *clearly* demonstrate, on contemporaneous evidence, that the transfer was in Mrs G’s best interests. I’m not satisfied BP has managed to do this in the circumstances of this case.

Firstly, I want to consider a matter which has given rise to some debate between the parties. When Mrs G approached BP with her complaint, one of the main points she raised was as follows:

*“Mental health capacity - at the time of transfer I was receiving therapy from a psychologist post discharge from the priory hospital for clinical depression - subsequently and [following] another inpatient stay this has been formalised as [a specific disorder resulting in a range of impacts] - during the period of your advice I believe I was in a manic episode and therefore unable to make rational decisions - I do not recall you enquiring about my mental health at the time.”*

BP has recently told us:

*“There is no tangible evidence that [Mrs G] was suffering from [a mental health disorder] at the time and suspect that this has been cited after reference to the aforementioned FCA*

*transfer advice checker – and no doubt to create a further air of vulnerability and to add weight to her what is in our view a dubious claim. In this regard we are sorry to add that we do therefore challenge the fair and reasonableness of this outcome and whether or not it really does pass the test of considering each case on its individual merits."*

My role isn't to take sides, but to consider from contemporaneous evidence, as well as more recent testimony, what's most likely to have happened.

I can see there was a full discussion between Mrs G and BP about her health when the fact- find took place in February 2017. She gave comprehensive details of her serious health conditions. But she chose not to disclose anything about her mental health situation. I recognise she may not have wanted or felt able to do so. Indeed, from what she's said a diagnosis and understanding of her disorder happened after the events complained about.

BP says Mrs G didn't present in a way which would've given it any cause for concern or enquiry in terms of her mental health. For example, she'd researched the market for a suitable firm. It said she came across as confident and clear in her objectives. She didn't display the behaviour of someone acting irrationally or unable to make informed decisions. It said this was all consistent with her holding a senior management role.

On balance, I remain of the view that BP couldn't have discerned Mrs G's mental health issues without her disclosure. There was an opportunity for her to share this confidential information, as she'd done in respect of other sensitive health matters.

Further, I can see that Mrs G signed a declaration on 2 February 2017 which included the following acknowledgement:

*"The information requested is required to ensure that the financial advice offered is appropriate to your personal circumstances. Failure to provide some information may lead to inappropriate advice being given."*

Given the gravity of the decisions being made in relation to her main pension provision and her personal circumstances, I think Mrs G would've appreciated the significance of this declaration.

Had Mrs G told BP about her mental health issues I think it's more likely than not the approach it adopted to providing its service would've been different. For example, I note in its final response to her that it might have suggested she was supported by a family friend or relative.

However, my finding here doesn't mean I shouldn't look further into the transfer of Mrs G's OPS benefits in 2017. This Service has an inquisitorial remit to identify the root cause of any complaint. The Financial Services and Markets Act 2000 (FSMA) says the FCA should make rules for us, which mean that we shouldn't look at a complaint if a consumer hasn't communicated its *'substance'* to the business.

So, it's not about the way Mrs G has expressed her complaint but about what the crux or substance of her concern is really about. The DISP rules required BP to look fairly at the 'subject matter', get more information when it needed to and be both thorough and impartial. The rules also stress it had to look at all the evidence, and the specific circumstances of her complaint. I think BP has tried to do this in good faith.

This Service must also think about what lies at the heart of a complaint and look at the whole picture. Mrs G also raised concerns about the appropriateness of the advice she received, how the process had been conducted and its impact on her household's prospects. And I don’t think the Investigator would’ve been considering those concerns properly if he hadn’t looked at the advice process in the round.

At the time of BP’s advice in March 2017 Mrs G was 51 years old. She was married with one dependent child. She and her husband had a monthly household disposable income of around £2,500. She was a senior accounts manager earning a basic salary of around £60,000 a year.

Mrs and Mr G owned their home, it was worth around £320,000 with an outstanding repayment mortgage of around £220,000. No other liabilities were recorded. Aside from Mrs G’s pension provisions as previously outlined, she also had a stocks and shares ISA worth £30,000. Her husband also had pensions and savings, but these were not detailed. It’s recorded Mrs G’s required income in retirement was likely to be in the range of £2,500-£3,000.

BP says Mrs G wanted to achieve several objectives and when considered as a whole these could only be met by recommending the transfer, and also by completing the transfer in 2017 and not deferring until she was ready to retire and/or her health deteriorated again.

Mrs G’s stated objectives were to be able to partially retire at age 55 and fully retire at age 60, with the possibility of continuing some consulting work should her health remain robust. From the age of 55, she wanted to access some of her pension benefits to fund a lifestyle change by living overseas.

In accessing her pension benefits early Mrs G was said to require as much flexible control of access as is possible under pension freedoms. She wanted to ensure on her death, she could pass as much pension asset as possible on to her husband and child. She wanted her pension benefits to be inter-generational. And she wanted to ensure that liability to inheritance tax was mitigated.

I find some weaknesses in BP’s assertion that Mrs G’s objectives could only be met if she transferred her OPS benefits in 2017.

I’d observe that just because a client has a strong idea about what they want to do with their pension benefits, that doesn’t always mean it’s in their interest to pursue a course they’re set on. It was BP’s role to have advised Mrs G about what was in her best interest for retirement planning.

Naturally, Mrs G wanted to ensure her family were provided for in the event of her passing – she wanted her pension benefits to pass to her husband, and then her child and then her child’s children. But, of course, it was likely she’d use a significant proportion if not all her benefits, and then potentially her husband. It’s unlikely any benefits would be left for her child when they had both passed, let alone another generation.

So, I give less weight to these objectives, as BP should’ve. It knows the main purpose of pension pots built up over many years is to provide an income for the main beneficiary in retirement.

Further, I don’t agree with BP that progressing the transfer of Mrs G’s OPS benefits in 2017 was the right time and that the risks and downsides of delay outweighed any risks she was taking on. Actually, some of Mrs G’s objectives related to the ability to take pension benefits when she reached 55. For example, going part-time and moving overseas. But she couldn’t use these flexibilities for four years – why not wait?

BP says that transferring her OPS benefits in 2017 meant there was an opportunity for her investments to grow. That's true but given the period in debate here was the short-run 2-3 years and the investments it recommended were for the medium term, it's also possible she could've lost money in that time.

As soon as Mrs G moved her pension many of the risks her former employers had been bearing, moved to her. In the scheme of things, I'm not persuaded of the case BP makes for it being optimum that she transferred her benefits in 2017, rather than say 2-3 years later. If she'd delayed, her OPS benefits would've continued to grow with no risk and she'd have had more time to develop her phased retirement plans.

BP says that the critical yield required by Mrs G's new arrangement wasn't an overriding factor given her objectives, although it accepts the information was a consideration in conjunction with these. I think there's some merit in its argument. But the financial analysis was nevertheless still important.

The critical yield is the level of returns Mrs G's new SIPP would need to have achieved for the transfer to match her OPS pension benefits at retirement (aged 60). The suitability report indicates that for her main OPS an annual return of not less than 7.48% would be required. And for her second smaller OPS an annual return of 10.97% would be needed to match the benefits provided by her then existing scheme.

BP's advice was given during the period when this Service published '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, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in Mrs G's case.

As stated, the critical yield required to match Mrs G's OPS benefits was somewhere between 7.5-11.0%. This compares with the relevant discount rate of 3.7% given it was around 9 years to her 60th birthday. The shortfall is clearly very significant.

The comparable growth rates this Service used were based on a typical investment spread across shares and bonds. So, it's arguable that if Mrs G had a high appetite for risk, the investment portfolio selected in that case might've had an outside chance of big returns sufficient to make up the gap with the critical yield. This is in part what BP argued.

In the suitability report it gave Mrs G, BP said her high attitude to risk could help her new pension bridge the gap to what she would've received from her OPS. The problem for BP is that it faces both ways here. I say this because later in the same report it confirms that, given her capacity for loss her adjusted risk appetite was medium. It should've been clearer about the likelihood of her pension benefits being eroded.

I do recognise Mrs G's medical history was a key factor in BP's recommendation for her to transfer her OPS pension benefits. But while serious ill-health can be a good reason to consider transferring benefits from a final salary scheme – it's by no means a cut & dry proposition.

Significantly, Mrs G disclosed to BP that she'd been diagnosed with a serious disease in 2003. She underwent intensive treatment which had been successful. She had to have annual screening to ensure that the problem hadn't returned, which happily was the case up to when she received financial advice in 2017. However, Mrs G told BP that she'd received medical advice that she could expect increased ill-health from the age of 50 and that her life expectancy wouldn't be normal.

I can see Mrs G told BP about the impact her condition could have on her current health as well as her life expectancy. But we know her main condition had been in remission for 14 years. And there's no evidence to suggest there were concerns at the time when the advice was given in 2017.

These were clearly critical matters to weigh. But I can't see BP sought evidence from medical professionals and actuaries about the likelihood and impact of the health issues Mrs G told them about. And I can't see there was any assessment of the effect of her condition on how long she might reasonably expect to live.

These matters are important. As BP itself acknowledged, if someone has a relatively short life expectancy, then a transfer of pension benefits has the potential to cause tax liabilities. For example, in a situation where an individual, under the age of 75, in ill health, transferred from an OPS to a SIPP and subsequently died within two years of the transfer taking place.

In this scenario, it would be difficult to argue that the transfer was for any other reason other than for IHT purposes. And HM Revenue and Customs (HMRC) could deem that a 'gratuitous benefit' had occurred – where greater death benefits were received by an individual who may not have previously received them if the transfer had not occurred. In these circumstances, HMRC may levy IHT on those funds.

Conversely, there are many serious conditions that with the advance of medical treatments mean that more people are living fuller lives and for longer. A transfer of pension benefits, that as identified through considering matters such as the critical yield, was likely to be eroding value, raises questions about what provision would be available in the medium to longer term.

Other than a short sentence about what income it considered Mrs G might require in retirement, I can't see that BP carried out any work to show what resources might be available under her new arrangements using, say a discounted cash flow model and providing a direct comparator with what her OPS provided for. I think this would've been important to her being able to take an informed view about the transfer.

I think to reach the bar of *clearly* demonstrating, on contemporary evidence, that the transfer of Mrs G's OPS benefits was in her best interests, BP needed to have done more due diligence here. The case for transfer *may or may not* have been established – the problem for BP now is that the necessary work wasn't done.

One of the reasons people in serious ill health sometimes decide to explore the transfer of OPS benefits into a personal pension is because they believe the position on death benefits will be superior. Of course, it all depends on the individual's circumstances, such as their health situation, the relative benefits from an OPS or personal pension should the worst happen, and so on.

BP pointed to improved death benefits if Mrs G transferred. But this on its own is unlikely to make the transfer of benefits suitable. Especially given the BP hadn't done the work necessary to show Mrs G's health situation meant that it was reasonably clear this was in her best interest.

I find it odd that in the suitability report, BP said (bolding is my emphasis):

*"Although Occupational Schemes (when properly funded) provide unmatchable guarantees and consistent inflation proofed income, they also come with restricted scheme Member flexibility, no control over access (once commenced)* ***and no material***

***Dependent/Survivor value (beyond minimum initial guarantee periods of 5 years in this case****).”*

The suitability report noted death benefits were important to Mrs G and I don’t know how much weight she would’ve placed on this commentary. But the fact was her OPS provided good benefits in the event of her passing. Her main OPS would’ve paid either a 50% or 67% widow’s pension depending on whether death occurred before or after retirement. And her second OPS would’ve paid a 50% widow’s pension irrespective of when the death occurred.

The primary point of a pension is to provide income in retirement. And so, when compared with the guaranteed retirement income Mrs G was giving up, transferring for the possibility of improved death benefits generally wouldn’t constitute good advice. I’ve already dealt with the relevant matters related to Mrs G’s health.

Turning to the assessment by BP of Mrs G’s attitude to risk. She scored 9 out of 10 ‘aggressive’ in terms of her preferred investment approach. The definition provided was:

*“Your attitude to accepting risk is Aggressive. Your priority is likely to be making higher returns on your investments and so you accept that you may not get as much back from your investments as you put in. Your preferred investment portfolio is likely to contain a large percentage of higher-risk investments such as shares.”*

BP noted that its assessment was validated by Mrs G’s current self-management of her SIPP with HL. But importantly it didn’t stop at that point. It went on to consider her capacity for loss. This included matters such as her net asset position, liabilities, pension values and future earning potential.

In the recommendations it made to her in the suitability report it said:

*“You have a 9 out of 10 Attitude to Risk, which we have interpreted to mean you have a High Attitude to Risk. Given the importance of this [pension] asset, we recommend that it is managed on a lower risk basis than Level 9. The volatility of risk at this level is very high and while we acknowledge that you are an experienced investor, we caution you on the importance of this asset as the cornerstone of your future financial security.*

*“You will have already taken some risk in leaving a guaranteed benefit environment, which automatically increases risk, and we therefore feel that a Level 5/6 Risk approach at Medium would be more appropriate.”*

The definition of level 6 risk was:

*“Your attitude to accepting risk is Balanced. This means that while you are likely to be concerned with not getting as much back from your investments as you put in, you also want to make higher returns on your investments. Your preferred investment portfolio is likely to include low-risk investments such as cash and bonds, as well as higher-risk investments such as shares.”*

BP’s overall recommendation was as follows:

*“In view of your health condition and specific financial objectives, I recommend that you transfer both Defined Benefit schemes to a Fusion Self Invested Pension Plan (SIPP) with underlying investment management via Brewin Dolphin. On a Medium Investment Risk Level 5/6 remit.”*

I think BP took a responsible approach to advising on and managing Mrs G’s assessed appetite for risk. Taking into account her capacity for loss. And that this was reflected in the recommendations it made for her investments.

But there's a further complication in Mrs G's case for me to consider. Her relationship with BP appears to have ended around May 2017. I understand that she proceeded to invest her pension funds with her existing SIPP provider. I have no information about how the funds were invested, although she has confirmed that no other advising firm was involved.

Mrs G says at the time of the advice she made it clear to BP she would transfer her pension funds into her HL SIPP. She says the funds were initially placed with another provider to facilitate the payment of advice fees. She says once the funds were in this account BP said she could apply to transfer the money across to HL, which she did.

Mrs G says the adviser knew of her intention to attempt to manage the funds herself on HL's platform. She says this was raised when both parties had a discussion about her high risk appetite.

BP strongly refute any suggestion that during the advice process its advisers knew of Mrs G's intentions to transfer the funds to HL. As far as it was concerned it was always expected her pension funds would be invested precisely as described and recommended in its suitability report.

BP says while it was aware that Mrs G already maintained a SIPP with HL, it hasn't seen any tangible and/or contemporaneous evidence to support Mrs G's argument.

When both parties to a complaint take opposing positions, I must decide on the balance of probabilities what is most likely to have happened.

I'm mindful that in the suitability report BP was clear about the level of risk it recommended Mrs G should take on. And it advised on a SIPP provider, discretionary fund management arrangement and sample portfolio consistent with its assessment.

I've also seen exchanges of emails from April and May 2017 which imply that Mrs G would be dealing with BP in respect of her investments. For example, on 11 April 2017 BP's adviser sent her an email which said:

"*…as you will know, the IM SIPP has now been established and is awaiting the transfer of the [OPS] funds. We have confirmation that the discharge papers have been received by the ceding Schemes and they have given us a 10-15 working day turnaround to send the funds to IM. Once the funds have cleared, we can meet to discuss how you would like to proceed…"*

Mrs G responded on 12 April 2017 in the following terms:

*"Thanks…for the update. I have the IM confirmation now. As agreed we will hold the transferred monies in the IM SIPP as cash until we agree an investment strategy. Appreciate your help as always."*

On 24 May 2017 BP's adviser sent Mrs G a further email. It said:

*"…I can now confirm that both [OPS] transfer sums have now been received and are sitting in the cash fund with the IM SIPP. The value is £535,712.43. If you would now like to look at some investment strategies and move forward on the Will and Trust arrangements, can you give me a couple of dates and times that would be good for you next week?*

On balance, it seems to me more likely than not BP thought it would be involved in ensuring Mrs G's funds would be invested in accordance with the risk appetite it had confirmed for her. It didn't know she would end its servicing of her pension and make her own decisions about where to place her funds. This is important in my consideration of the appropriate approach on redress.

There's another argument which arises here. If Mrs G had sufficiently firm views about her pension funds to follow her own investment strategy, then perhaps even if BP had recommended that she didn't transfer her OPS, she'd have gone ahead anyway. BP takes this view. On balance, I don't agree.

I think BP should've provided Mrs G with an explicit recommendation not to proceed with the transfer of her OPS benefits into a SIPP. I say this because I think it placed too much emphasis on her health situation, for which it hasn't shown it did sufficient due diligence to be able to support its recommendation.

BP was in a good position to have analysed, tested, challenged and advised Mrs G about what was in her best interest for retirement planning. It knew pension pots built up over many years are to provide an income in retirement. And certainly, when early access to benefits is recommended there need to be compelling reasons. I don't think this was the case here.

It was BP's role to discern what Mrs G's wants and needs were and why. Its role wasn't to facilitate what she wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in her best interests. It hasn't demonstrated that it met these obligations to the fullest extent required.

I think that if BP had given Mrs G appropriate advice, she wouldn't have gone ahead with the transfer. It's unusual for a lay person to seek professional advice and then go against the recommendations received, especially given the importance of what was being considered.

BP dispute that Mrs G was a layperson, but I've not seen evidence to show she was experienced in pension matters. And ultimately she sought and paid for professional advice.

I've concluded, on balance, that with better advice, she'd have been sufficiently informed to have recognised that moving her OPS benefits at that precise moment wasn't necessary or in her best interests.

So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against Best Practice IFA Group Limited and for it to put things right.

**Putting things right**

I'm upholding Mrs G's case. So, she would need to be returned to the position she would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Best Practice IFA Group Limited responsible for.

If BP had done everything it should've, I don't think Mrs G would've transferred her OPS benefits into a SIPP. And she wouldn't have suffered any financial loss she is facing. I think it's most likely she would've left her pension where it had been.

Mrs G's main argument against my provisional decision concerned the redress I proposed. She made a reasonable argument that, but for BP's advice I'd concluded she would've remained in her OPS. And so putting her back in the position she would've been in had the transaction not occurred, should mean in broad terms her redress would be the difference between the benefits she could've received from her OPS compared with what was now available from the funds that were transferred in 2017.

Generally, this is the position this Service would take on redress. But we must always consider the specific circumstances and evidence in each case. As I've mentioned, as part of its recommendations BP made a proposal for her investments, which reflected the risk appetite it had carefully assessed with her. I've concluded that it anticipated she would move ahead with such a portfolio and that it would be assisting her with this.

But Mrs G chose to sever links with BP shortly after the transfer of her OPS pension had been effected. And she proceeded to make her own investment decisions. I don't know what exposure to risk she took on, but it seems it may've been higher than that recommended by BP, given her discussions with it during the advice process. She has also told this Service her investments have performed poorly.

Although BP was wrong to recommend the transfer of Mrs G's OPS funds. I don't think it would be fair for it to meet losses that it wasn't responsible for. Causation must have an end point. And I think Mrs G must bear some responsibility for ignoring the investment recommendations of her adviser.

For the avoidance of doubt, given my findings concerning how Mrs G's pension funds were invested, the reference point for calculating compensation should be the SIPP's value based on the benchmark her provider should've been working to for her attitude to risk and portfolio recommended by BP, not the equivalent value of Mrs G's SIPP as it stands, which has been determined by her own subsequent actions.

So Best Practice IFA Group Limited needs to do the following.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

**Decision and award:** I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Best Practice IFA Group Limited should pay Mrs G the amount produced by that calculation – up to a maximum of £160,000.

**Recommendation**: *If* the amount produced by the calculation of fair compensation is more than £160,000, I recommend that BP pays Mrs G the balance.

This recommendation is not part of my determination or award. BP doesn't have to do what I recommend. It's unlikely that Mrs G can accept my decision and go to court to ask for the balance. She may want to get independent legal advice before deciding whether to accept this decision.

I consider Mrs G would've remained in her former DB scheme. BP should therefore undertake a redress calculation in line with the pension review methodology, as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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 Mrs G's acceptance of the decision.

BP may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs G'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 Mrs G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mrs G'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 Mrs G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free 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 compensation amount must where possible be paid to Mrs G within 90 days of the date BP 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 BP to pay Mrs G.

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.

Further information

Some examples of how calculations should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'.

**My final decision**

For the reasons I've already set out, I'm upholding Mrs G's complaint. As such, I require Best Practice IFA Group Limited to put things right in the way I've outlined.
Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 14 March 2022.
Kevin Williamson
**Ombudsman**