The complaint

Mr M complains that Compass Wealth Management Consultants Limited (Compass) enabled him to transfer his existing pensions before it had given him its recommendation and suitability report. And, when it did later send its report, it advised Mr M against transferring.

What happened

Mr M, an experienced financial adviser, contacted Compass to discuss potentially transferring his two final salary pensions (OPS) and a defined contribution (DC) pension. Apparently, at the point that he got in touch with Compass, Mr M had already received a transfer value (which was only guaranteed for a specific amount of time) for at least one of his OPS and had contacted a couple of other firms, but hadn't received advice.

According to Compass' notes, Mr M was a personal friend and former colleague of a senior employee at Compass who then put him in touch with one of its specialist pension advisers. Compass said it would treat Mr M as a retail client, otherwise if it treated him as a professional client, he'd lose certain protections given to retail clients.

In an online 'fact find', Mr M confirmed:

- he was age 44;
- he was separated and had three financial dependants;
- he had an annual income of £80,000 a year and received a regular bonus of £20,000;
- his monthly net income was around £4,700 and his expenditure around £4,000;
- he'd like to retire at age 55, but he may decide to work beyond that age or work part time.

He also:

- owned his own property valued at £200,000;
- had savings of £25,000;
- had various 'in service' benefits including death cover of £960,000 and critical illness cover of £100,000.

Compass noted that Mr M had the following pensions with a total combined transfer value of £466,033.08, broken down as follows:

- two final salary pensions with transfer values of £217,827 and £85,497 respectively.
- a defined contribution (money purchase) pension with a transfer value of £162,709.08 (made up of a credit and investment account).

Attached to an email dated 22 October 2015, Compass sent Mr M discharge forms to complete to transfer his final salary pension with a provider I'll refer to as S. (The transfer value was only guaranteed until 4 November 2015). Compass said a recommendations report "*will follow in due course"* but due to S' timescales, the transfer process needed to be started as soon as possible. Compass managed to secure the guaranteed transfer value by the deadline. A new personal pension took effect from 27 November 2015.

Compass also arranged the transfer of two of Mr M's other pensions, the funds from which were deposited into his new personal pension in March and April 2016 respectively.

Mr M and Compass had an email exchange on 6 April 2016 primarily aimed at discussing fees. However, Mr M also said "*I do agree that I will manage the investments going forward".*

In an email dated 22 April 2016, the adviser confirmed that the final pension transfer was complete. She added that the 'report' was with Compass' compliance team and would be sent to Mr M once it has *'passed*'. She also pointed out that Mr M should have received the '*execution only'* letter along with forms relating to structured products.

In May 2016 (once the transfers had already been completed) Compass noted further details about Mr M's circumstances and objectives:

- he wanted to consolidate his existing plans and manage the investments himself;
- he felt the death benefits under a personal pension represented much better value;
- it was 'very important' for him to retire at age 60 as was avoiding taxes;
- he'd be looking to withdraw money from his investments in 11 years or more.

When describing his attitude to risk, Mr M said that if he were to lose on his investment "*while I wouldn't be pleased, I do not rely on this money for my current household expenses and it would not have a significant effect on my overall finances".* Out of a range of potential portfolios, Mr M indicated he was most suited to one that potentially had higher losses and gains. And he indicated that he understood investments can have occasional negative annual returns. In which case he said he'd stick with his investments as he'd have a higher chance of reaching his investment goals.

In an internal email dated 18 May 2016, Compass indicated it was not in a position to advise Mr M about the pension transfers under self-management.

Compass prepared a pensions recommendations report dated 23 May 2016, which it sent to Mr M on 6 June 2016 (around one/two months after the last of his pensions had been transferred). Amongst Mr M's objectives, Compass noted that he wanted to transfer his final salary pensions to a personal pension. So, he wanted a pensions specialist to '*review these and carry out the transaction'*. Compass also noted that Mr M then wanted to select and manage his own investment funds. Ultimately, Compass concluded that it couldn't recommend Mr M transfer his pensions. It felt the critical yield probably was achievable with the aid of active management. But, as Mr M had some time before retirement, it felt it more sensible for him to wait as he had no pressing need to transfer at that point. Another factor in its recommendation not to transfer was because Compass couldn't say how achievable the critical yield would be if Mr M managed his own funds.

The adviser told Mr M that "*in the end"* she was happy to recommend a pension transfer, but Compass' compliance team weren't happy that Mr M would be making his own investment decisions. So, Compass felt it had to complete the report on an 'insistent client' basis. It asked Mr M to send it a handwritten letter indicating he'd wanted to transfer his pensions in any event.

Mr M responded and said he was "*a bit confused".* He said that in the email the adviser mentioned she was happy to recommend a transfer but in the report said things like "*we feel that it would be sensible to postpone a transfer until nearer that time, as you have no pressing need for a transfer at this time".* Mr M described the situation as "*a bit of a mess really".* He said he'd been sent the suitability report about six months after the first transfer. And he should have had Compass' recommendations before the transfers went ahead.

The adviser apologised for any confusion caused. She added that Compass wouldn't normally process things in this way but did so on that occasion because Mr M was friends with one of Compass' senior employees.

Compass chased Mr M for his 'insistent client' letter during June 2016. Despite indicating that he'd draft the letter, Compass continued to chase him for it until at least the end of July 2016.

Mr M later complained to Compass about the advice he'd received. It didn't uphold the complaint. Amongst its reasons for saying so, Compass said:

- Mr M was an experienced financial adviser and held the G60 qualification (Mr M has since confirmed he didn't hold that qualification);
- it felt he had a good working knowledge of pensions and had been involved in pension transfers for his own clients;
- Mr M was "*already of the mind"* to commence transferring his pension benefits and therefore gave the go ahead to proceed, especially as the transfer value quoted was only valid until 4 November 2015;
- Mr M would have been aware of the process and the complexities involved including the potential risks and implications associated with defined benefit pension transfers. Yet he didn't query at any point why the transfers were going ahead without the suitability report having been issued. Although it noted that Mr M never anticipated the possibility that the recommendation would be not to transfer.

Mr M wasn't happy with Compass' response so he complained to our service. One of our investigators looked into the complaint and upheld it because she didn't think Compass' advice was suitable.

Mr M accepted the investigator's assessment, but Compass didn't. It provided extensive comments, some of which were similar to those it made directly to Mr M. Amongst other things it also said:

- it could have refused to proceed with the transfers until such time as it produced a suitability report. However, it said this would likely have been at a cost to Mr M due to the possibility of lower transfer values being received if the transfers hadn't gone ahead when they did;
- it felt there was sufficient evidence in Mr M's case to support the decision to proceed;
- Mr M's personal pension had performed well in the circumstances and had given him more flexibility concerning his ongoing financial needs and in line with his financial objectives.

Compass asked for the case to be referred to an Ombudsman. So, it's been passed to me to decide.

My provisional findings

I sent Mr M and Compass my provisional findings on 30 March 2022. I've included the relevant extracts below:

“Having done so, I’m also intending to uphold this complaint. I’ll explain why.

What was Compass required to do?

The regulator places important obligations on firms. Those include the overarching principles for businesses, which include:

Principle 1 – Integrity; Principle 2 - skill, care and diligence; Principle 6 - customers interests; Principle 9 - reasonable care.

A firm’s specific responsibilities will, to a certain extent, depend on the type of service it’s giving the client. So, for instance, in an ‘execution only’ situation, the client will normally give the business a specific instruction and won’t expect to receive advice. But there’ll be other things that the business is still required to do such as making sure that the client understands the features of a product he’s likely to invest in and any risks involved.

The Code of Business Sourcebook (COBS) sets out specific obligations when giving advice. Those include (but are not limited to) making it clear that firms like Compass are required to take reasonable steps to ensure any personal recommendations are suitable for their client. That means they’re typically required to find out about their knowledge and experience (relevant to the specific type of investment); their financial situation and investment objectives.

As well, businesses should gather enough information to ensure the recommendation meets the customer’s objectives; the customer can bear the risks involved; and has the necessary experience and knowledge to understand the risks.

But there are other requirements when advising a client about potentially transferring out of a defined benefit (often final salary) OPS (these are set out in more detail in COBs 19.1.6G). That’s because those types of pensions typically come with various valuable and guaranteed benefits. The regulator says that when advising retail clients about transferring out of a defined benefit OPS, the firm should start from the position of assuming it won’t be suitable unless it can clearly demonstrate whether it’s in their best interests overall.

On top of that, the regulator’s made it clear that a firm shouldn’t be giving advice unless it’s also able to comment on the suitability of the underlying investments.

Given the quite different approaches and expectations set by the regulator, it’s important that the firm understands the level of service a client is seeking. And that it’s clear about whether that’s the kind of service it can offer. And if it can’t, the firm is within its rights to say that it can’t help and walk away.

Did Compass give Mr M suitable advice?

In short, no I don’t think it did. I think it’s worth saying here that had Compass given Mr M its suitability report in advance of the transfers happening, I’d likely have agreed with some of what it said. For instance, I too could see no compelling reason for Mr M to transfer his pensions at the points he did – he was age 44 at the time, in good health and in a good overall financial position. So, I’d agree that leaving his pensions where they were seemed to be the right advice as he had no pressing need to change anything. That said, I also realise that, on the basis Compass wouldn’t have been able to vouch for the suitability of the underlying investments (because Mr M wanted to manage them himself) it’s possible it would have said, at the time, that it couldn’t help Mr M. Or it might have insisted that it needed to give him advice on the investments too.

But the fact of the matter is that Compass did enable Mr M to transfer three existing pensions with a combined transfer value of over £460,000 without giving him clear advice or a recommendation. At times it almost seemed that Compass was confused about whether it was treating Mr M as an 'execution only' client. And I think that's borne out in some of the language it used too.

But I'm satisfied from everything I've seen that Mr M was expecting to receive advice – and I think Compass itself accepts that position too. So, that being the case, I can't fairly say that Compass did what was expected by taking proper account of Mr M's circumstances or demonstrating that it was acting in his best interests. But the fact that it also wasn't able to comment on the underlying investments meant that it didn't satisfy the regulator's requirements in that respect either. And whilst I accept that it did eventually give a recommendation with some reasoning (albeit not in terms of the underlying investments and after the event) that effectively becomes immaterial if the transfer has already happened.

Compass has since made a number of detailed points to demonstrate why it thought it was reasonable for it to advise Mr M in the way it did - to press ahead without being given a suitability report. Those include that there would probably otherwise have been a detriment to Mr M in terms of the transfer values potentially reducing. In the same way that Mr M was clearly 'enticed' by a transfer value he'd received in relation to at least one of his OPS, it seems Compass became enticed by the prospect of securing that value for him.

But I'm not persuaded by its argument here. I think Compass ought to have known that when advising on a potential pension transfer, it was required to understand all of Mr M's needs and aims. Those included (but were not limited to) why he was looking to invest; his income needs in retirement and, importantly, whether his needs could be met through his existing pension arrangements. And all of this needed to happen before the transfer took place. So, the risk of not securing a preferential transfer value isn't a compelling reason to go ahead in these circumstances. I say that especially as until it fully explored what Mr M wanted to do, I don't think Compass would even have known if it was something it could help with. And, as the evidence shows, that problem did in fact materialise when Compass eventually looked into things as it should have done at the outset.

I'm not sure that the fact Mr M was a personal friend and former colleague of a senior employee at Compass holds much weight overall either. It's certainly possible that the process Compass followed was less formal because of Mr M's position. And Mr M may have been fairly comfortable with that whilst he believed Compass would be recommending a transfer. But I can certainly appreciate why not receiving a report became more pertinent as soon as Mr M realised that Compass wasn't recommending a transfer. But, as far as I understand things, the adviser wasn't previously known to Mr M. So, I think she had the same professional responsibility to do the right thing and demonstrate that she'd acted in Mr M's best interests as she would for any other client. For the reasons I've outlined, I'm not satisfied that Compass did that.

Compass has also argued that, as an experienced financial adviser, Mr M ought to have known of the risks of transferring out of defined benefit pensions to a personal pension. It also makes the point that he had more than a basic understanding of pensions. As an experienced financial adviser, albeit not a pensions specialist, I accept that it's entirely possible Mr M had more of an understanding of pensions than an average retail client. But an important point to note here is that Compass told Mr M it would treat him as a retail client. So, regardless of any financial experience that he had, I think Mr M was entitled to rely on Compass to give him suitable advice. Especially as he was paying Compass for that service. And, in addition, by referring Mr M to a pensions specialist (as *opposed to a different type of financial adviser) I think Compass had already accepted that Mr M would need advice. So, I don't find its arguments here persuasive either. And, in these circumstances it was for Compass to give Mr M suitable advice, at the appropriate time, that took account of his personal circumstances and investment aims. Another point that Compass has made is that Mr M's investments have actually performed well and have probably given him the flexibility he was looking for. Whilst it might be the case that his investments have performed well, I'm well aware that the position could quite easily change. But in any event, that alone wouldn't make an unsuitable advice process and recommendation suddenly become suitable. And the fact remains that by transferring his OPS in particular, Mr M will likely have lost various guaranteed and valuable benefits. And the impact of that is yet to be seen.*

The upshot of its approach is that Compass gave Mr M the impression that it was willing to support pension transfers. So, Mr M went ahead on the strength of what Compass led him to believe. But he's since found out that Compass didn't recommend the transfers after all. And Compass has since tried to treat Mr M as an 'insistent client' retrospectively. The definition of an insistent client is one who, having received clear advice not to transfer, goes against the advice. But that's not what happened here. So, I don't agree with Compass' approach in these particular circumstances either.

Would Mr M have gone ahead anyway?

A key consideration in a case like this is whether Mr M would have gone ahead with a transfer even if he'd been given suitable advice at the right time.

I've thought very carefully about this. And, on balance, I don't think he would.

I accept that Mr M had already requested at least one transfer value and approached two other firms before he contacted Compass. So, I'd probably be inclined to agree that, initially at least, Mr M was of the mind to transfer his pensions. But there's a world of difference between being of the mind to do something and making an informed decision once suitable advice is received.

And the fact that Mr M had approached other firms and not taken things further might even be indicative of the fact that, having considered what Mr M wanted to do, those firms didn't feel able to support him. It's entirely possible that had Compass acted in a similar way, Mr M might not have done anything more about this.

But the fact remains that, Mr M paid Compass for specific pensions advice and it didn't do what it was required to do. Mr M clearly understands the importance of a suitability report in an advice process. And he's gone as far as saying that the suitability report is considered decisive when understanding if a transfer should go ahead. So, I think it's reasonable to assume that, if he'd had any cause to think that Compass would be advising against transferring, he'd have insisted on seeing the suitability report first. And Compass itself seems to recognise that Mr M couldn't have been expected to foresee that it would later say, after the event, that it didn't recommend transferring. Taking account of Mr M's circumstances at the time; his profession; and the fact that most people who've approached an expert for specialist advice would be willing to listen, on balance, I think Mr M would have followed Compass' advice if it had told him in clear terms, at the right time, that it didn't recommend pension transfers.

For all the reasons I've set out, I'm intending to uphold this complaint.

Putting things right

<u>OPS transfers</u>

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational schemes. Compass 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.*

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 M's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M'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 M 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 compensation amount must where possible be paid to Mr M within 90 days of the date Compass 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 Compass to pay Mr M.

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.

<u>DC pension transfer</u>

In addition to the above, Mr M transferred out of a defined contribution pension plan. So, I've set out below what I think Compass needs to do to put things right in respect of that.

Fair compensation

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr M would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this *into account and given Mr M's circumstances and objectives when he invested.*

What must Compass do?

To compensate Mr M fairly, Compass must:

- *Compare the performance of Mr M's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.*
- *Compass should add interest as set out below:*
- *Compass should pay into Mr M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.*
- *If Compass is unable to pay the total amount into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.*
- *The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age, which is assumed to be 20%.*
- *However, if Mr M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.*
- *This matter has clearly been a source of concern for Mr M. So, to recognise that, I think Compass should pay him £250 compensation.*

Income tax may be payable on any interest paid. If Compass deducts income tax from the interest it should tell Mr M how much has been taken off. Compass should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	*Status*	*Benchmark*	*From ("start date")*	*To ("end date")*	*Additional interest*
DC transfer portion of the portfolio with T	*Still exists and liquid*	*Notional value from previous provider*	*Date of investment*	*Date of my final decision*	*8% simple per year on any loss from the end date to the date of settlement*

Actual value

This means the actual amount paid from the investment at the end date.

Notional Value

This is the value of Mr M's investment had it remained with the previous provider until the end date. Compass should request that the previous provider calculate this value.

Any withdrawal from the plan should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Compass totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Compass will need to determine a fair value for Mr M's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- *Mr M wanted Capital growth and was willing to accept some investment risk.*
- *If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.*
- *The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.*
- *Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.*
- *Compass Wealth Management Consultants Limited should provide details of its calculation to Mr M in a clear, simple format.*

My provisional decision

I'm intending to uphold this complaint.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business pay the balance.

***Determination and award:** I consider that fair compensation should be calculated as set out above. My decision is that Compass Wealth Management Consultants Limited should pay Mr M the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.*

***Recommendation:** If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Compass Wealth Management Consultants Limited pays Mr M* *the balance plus any interest on the amount as set out above.*

This recommendation is not part of my determination or award. It does not bind Compass Wealth Management Consultants Limited. It is unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept this decision".

Responses to my provisional decision

Mr M accepted my provisional decision.

Compass said it had nothing further to add.

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.

As Mr M accepted my provisional decision and Compass had no additional points to make, I see no reason to depart from what I said in my provisional decision.

Putting things right

Compass Wealth Management Consultants Limited now needs to settle the complaint as I set out in my provisional decision.

My final decision

I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 May 2022.

Amanda Scott
Ombudsman