

The complaint

Miss F says the advice given and the arrangements made by Foster Denovo Limited (FDL) to transfer her occupational pension scheme (OPS) benefits to an alternative provider and the associated investments made were unsuitable.

Miss F is represented by Barretts Financial Solutions (BFS).

What happened

Miss F approached FDL in September 2018 following the recommendation of an existing client. She wanted advice about her pension arrangements. Between September and December 2018 it gathered information about her circumstances, objectives and matters such as her attitude to risk. These were captured in a Personal and Financial Profile (fact-find).

Miss F was a member of two defined benefit (DB) pension schemes. As well as accruing these deferred benefits, she was also a member of a defined contribution (DC) scheme. And she'd made additional voluntary contributions (AVC's). The total transfer value of these benefits was around £637,300.

FDL produced two Retirement Planning Recommendation Reports (suitability reports) dated 31 January 2019 and 6 February 2019. In these it advised Miss F to transfer her DB and DC funds into a Self-invested Personal Pension (SIPP) with Standard Life. This was completed by March 2019. FDL recommended she should keep about £38,000 in cash to meet fees for the new arrangement and her short-term income requirements. The residual money was to be placed in several investments which matched her assessed attitude to risk.

Unfortunately, a year later Miss F had cause to complain about the advice she'd received. She raised several concerns. For example, she said that she'd wanted to use tax-free cash (TFC) from her pension benefits to pay down the mortgage on her UK property. She thought there were deficiencies in the cash-flow analysis it had provided. She was worried about the volatility of her SIPP given the need to access funds. And she raised matters related to FDL's charges.

FDL rejected Miss F's complaint. It said that paying down the mortgage on her UK property using TFC from her pension fund hadn't been an objective. It said its recommendations provided for the flexibility she'd wanted, so that she could take pension benefits at the time it suited her lifestyle and retirement plans. It said she'd been aware of and comfortable with the potential for her investments to fluctuate in value. And that it had fully explained and disclosed the fees she'd pay for its work.

The Investigator upheld Miss F's case. He didn't think FDL had clearly demonstrated that the transfer of her safeguarded DB funds was in her best interests. He thought that if it had advised her not to proceed, she'd have accepted its advice and the whole transaction including the switch of her DC benefits wouldn't have happened.

FDL disagreed. It thought the Investigator had placed too much weight on the financial comparison between Miss F's benefits under her former schemes and that available from her new arrangements. It said these funds only accounted for around half her retirement provision. It reiterated that the repayment of her UK mortgage hadn't been one of her objectives. And it said the advantages of the new arrangements included flexibility of accessing pension benefits and better death benefits – both of which were priorities for her.

As both parties couldn't agree with the Investigator's findings, Miss F's complaint was passed to me to review afresh. I issued my provisional decision in March. FDL disagreed with my initial findings and conclusions. I'll address FDL's main arguments in this 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.

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 Miss F's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Miss F's case?

The first thing I've considered is the extensive regulation around transactions like those performed by FDL for Miss F. The FCA Handbook contains 11 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 3 - which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to 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.

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 FDL. As such, I need to have regard to them in deciding Miss F's complaint.

At the time of the advice FDL gave Miss F, COBS 19.1.6 made the following specific point about advising on a transfer from an OPS scheme (bolding is my emphasis):

(2) When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering

whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.

*(3) A firm should **only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the retail client's best interests.***

To do this FDL had to take into account a range of factors including Miss F's intentions for accessing her pension benefits; her attitude to and understanding of the risks of both giving up her safeguarded benefits and of making investments; her realistic income requirements in retirement; and alternative ways in which her objectives could be achieved without transferring from her OPS.

Under COBS 19.1.2B, FDL was required to conduct an appropriate pension transfer analysis. It had to:

- (1) Assess the benefits likely to be paid and options available under the ceding arrangement;*
- (2) Compare (1) with those benefits and options available under the proposed arrangement;*
...and
- (4) Undertake the analysis in (1), (2)...in accordance with COBS 19 Annex 4A and COBS 19 Annex 4C.*

COBS 19.1.3A required FDL to compare the transfer value offered by Miss F's OPS provider for her safeguarded benefits with the estimated cost at the time of the advice to purchase the future income benefits available under her existing scheme using a pension annuity. It had to inform her of such.

COBS 2.1.1 R required a firm to act honestly, fairly and professionally in accordance with the best interests of its client, 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.

In 2009 the then Financial Services Authority published a checklist that I think is still helpful today when considering the switch of non-safeguarded pension benefits. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

Did FDL meet the regulatory obligations placed on it in its dealings with Miss F?

I don't think FDL met its regulatory obligations – I'll explain why.

Firstly I'll deal with some of the differences between the parties about what happened during the advice process. It's unfortunate that after a short space of time Miss F and FDL formed different recollections. I've no reason to doubt that both parties hold their positions in good faith.

A particular point of contention is whether Miss F had been clear paying down the mortgage on her UK property was a priority that needed to be accounted for. I've been provided with two fact-find documents, the first is dated 26 September 2018 and appears to capture the hand-written notes of both parties. The second is dated 1 December 2018 and is typed-up.

FDL provided helpful clarification, it says the initial fact-find was completed by Miss F and at the first meeting additional commentary was added by its adviser. It said the second fact-find was produced to make things easier to follow. The problem is that there are some significant differences between the paperwork, and these seem to speak to some of the problems that gave rise to Miss F's complaint.

For example, the fact-find conducted in September 2018, with Miss F and the adviser's hand-written commentary, identifies her reason for seeking financial advice in the following terms:

"Looking to take redundancy package and/or manage my properties and savings to give me liveable income. Full Review of pensions."

The earlier fact-find sets out the plans for all four of her properties, and this included the sale of two of her overseas properties and paying off the interest only mortgage on her UK residence. Her lifestyle expectations in retirement were to take holidays, eat out and buy sports equipment. She wanted to maximise her income until she reached 90. The threshold of £3,000 per month seems to have been identified as a minimum net income from 60 until she reached 75 and thereafter a minimum of £2,000. A note is also added that there would be no mortgages when she took her benefits.

The second fact-find from December 2018 records Miss F was seeking financial advice because she wanted a full review of her pensions. This is a much narrower focus than indicated in September 2018. It's also silent on plans for her two remaining properties, including what to do about the expiry of the existing mortgage on her house in the UK. The second fact-find did confirm plans for major expenditure of £8,000 and a net income requirement of £36,000 a year.

FDL says repaying Miss F's mortgage was not a stated objective at the time the advice was provided. It says taking TFC from her SIPP was never sufficient to fully repay the mortgage. That the mortgage had a low loan to value ratio and was easily affordable against a rental income of £18,000 per year. It said given market conditions at the time she wouldn't have had any issues finding a replacement mortgage. So, there was no sound mathematical reason for the mortgage to be repaid early.

I don't know what discussions happened between the parties about Miss F's circumstances and plans. But I can see that in its suitability report of 31 January 2019 on page seven there's a specific section about the mortgage repayment. It said (bolding is my emphasis):

"You have an outstanding interest-only mortgage of £225,000 on your London property and you are happy to leave this in situ for the time being as the monthly income payments are affordable and are easily covered by the rental you receive."

*Going forward, several options are open to you regarding your properties – one being that you continue to own and rent out the London property and retain the mortgage to maturity. Another option is that you sell either your London or French property and use the proceeds to repay the mortgage. Although **you have made no firm decision on this at present**, any property sale will most likely occur around when you are age 75.”*

I think it's more likely than not the suitability report reflects the actual position at the time – no firm decision had been taken about what to do. Given the significance of the matter, it would of course have been incumbent on FDL to have made Miss F aware that the decision here would've had a material impact on planning for her retirement.

Another matter which has raised debate between the parties is Miss F's base for tax and pension matters. It seems she spent significant time in both France and the UK. On the first fact-find it's recorded she was domicile in France. In the second it says UK. I note that one of the matters she complained to FDL about in March 2020 was it had got these matters wrong.

In her complaint, Miss F told FDL she was resident in France, paying tax in France and was unlikely to return to the UK and pay tax there. This matter was important to get to the bottom of because of the impact of the different tax regimes in operation. For example, I understand that in France, there isn't TFC as such, social and income tax charges would apply. The suitability report produced by FDL is silent on the issue.

As an aside, BFS informed this Service that Miss F has taken TFC from her pension provision – and so presumably has decided she is domiciled in the UK.

I think this is more likely than not another example of where at the time of the advice Miss F had yet to make a firm decision.

Another area of contention between the parties concerns who Miss F saw during the advice process. Two of FDL's staff were involved. The first and main contact with her was an investment adviser (Mr A). The second individual was responsible for the pension transfer advice (Mr B). It's important to note only authorised individuals are able to provide advice on OPS pension transfers. So there's no sense in which this division of labour within FDL was inappropriate, indeed I'm sure it was following regulatory requirements.

Miss F initially said she'd never met Mr B and had no recollection of speaking with him. Although most recently her representative has confirmed he may've been present during a meeting scheduled with Mr A. But she maintains he was never involved in the advice process.

I think Miss F did have dealings with Mr B as well as Mr A. I say this because I've seen an exchange of emails, which touches on a prior conversation between the two where Mr B seeks further information from her, which she responded to. The suitability reports are also from Mr B. That said, I've no reason to doubt Miss F mainly dealt with Mr A, and that she was unclear about the respective roles of both advisers.

Next I'll address FDL's observation about the scope of Miss F's original complaint and how matters have evolved. It said:

“Our understanding is that the client's concerns were, initially at least, more related to the investment losses and volatility of the funds; the transfer met her requirements and the complaint seem to have come about due to her having panicked somewhat when the value of her pension fell in 2020. We understand these fears and would have liked to work with Miss F to support her through this period.”

Concerning the scope of Miss F's complaint. This Service has an inquisitorial remit to identify the root cause of any complaint. The Financial Services and Markets Act 2000 (FSMA) says the Financial Conduct Authority (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 Miss F has expressed her complaint but about what the crux or substance of her concern is really about. The DISP rules required FDL 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.

This service must also think about what lies at the heart of a complaint and look at the whole picture. This approach was recognised in court in *R (Williams) v Financial Ombudsman Service* [2008] EWHC 2142:

"The ombudsman is dealing with complaints, not causes of action. His jurisdiction is inquisitorial not adversarial. There is a wide latitude within which the ombudsman can operate."

Miss F's concerns range across several matters including a failure by FDL to understand her objectives and circumstances; the taking on of unwanted risk; and concerns about charges applied. So, it's reasonable for this Service to consider the advice that led her to give up a guaranteed, regular, pension in favour of a SIPP arrangement and associated investments.

This Service wouldn't have been considering Miss F's concerns properly if it hadn't looked at the advice process as a whole; it's what she asked this Service to do. So, I'm satisfied that I can look at the issue of Miss F's OPS benefits and how they came to be transferred to a SIPP.

I'm also satisfied FDL has had an opportunity to fully respond to these broader matters. Both following the Investigator's view and again following my provisional decision. It follows that I don't think it's been subject to unfair process.

FDL has questioned the status of BFS, in particular its credentials as a claims management company (CMC). To my knowledge, BFS hasn't held itself out as a CMC, it is Miss F's current financial adviser and she has asked it to represent her in her case. A consumer can ask anyone to help them bring their complaint to this Service as long as they have given us the proper authority, as is the case here.

I'll now set these broader matters to one side and turn to the core issues in this case.

There are several documents relating to FDL's transaction with Miss F that are important to my consideration, these include the fact-find and suitability reports. I've thought carefully about the testimony of both parties and other communications such as the various email exchanges.

The regulatory position sets a high bar, which FDL must be able to *clearly demonstrate* was met, on contemporaneous evidence, that the transfer from her DB scheme was in Miss F's best interests. I'm not satisfied it's managed to do this in the circumstances of this case.

At the time of the advice Miss F was 58. It's recorded that she was single with no dependents and had a brother and a niece/nephew. Miss F has told this Service that actually she was still married but had been estranged from her husband for some time. She hadn't

ruled out the prospect of getting married again at some future point. And that she had two sisters, nephews and nieces.

Although again the parties seem a little at odds over some of the details – I think it's reasonable for FDL to have relied on the information Miss F provided as part of the fact-find process.

Miss F worked part-time earning around £20,000 a year. She also received about £18,000 in rent from a property. Her annual expenditure was estimated at £24,000. Miss F was said to have £123,000 in savings and about £12,000 in shares. She had a property in France worth around £400,000 which was unencumbered. And a property in the UK worth £650,000 with an interest only mortgage of £225,000. The mortgage was due to mature in 2020. Aside from her pensions she had no other assets. She had no other liabilities.

Miss F was a member of two DB pension schemes. She accrued benefits during her service with a bank and separately working for an airline. In addition, following the closure of the airline's OPS, she joined its defined contribution DC scheme. She had also made additional voluntary contributions (AVC's). These were her only pension funds.

The transfer value of Miss F's DB funds from the bank's scheme was £23,300. The transfer value of her DB and DC funds from the airline's scheme was about £614,000 (of which around £572,000 was her DB pot).

FDL produced two suitability reports for Miss F, one dated 31 January 2019 and a second dated 6 February 2019. Her objectives were recorded in the following terms:

- You are looking to retire at age 60 and will require approximately £36,000 per annum net – this should increase in line with inflation each year.
- You would like to receive this income as tax efficiently as possible.
- You are also aware that your spending patterns may vary at different stages of your life You feel it is likely that you will be more active between the ages of 60 and 75 before probably settling down for a quieter life There is also the question of future potential care home fees to consider. Therefore, you would still like the option to vary this amount (should you need to) in line with your changing circumstances. As such, the ability to receive your income in as flexible a manner as possible is a key requirement for you.
- It is also important to you that your beneficiaries can benefit from your pension arrangements in the event of death.

FDL recommended that Miss F should transfer her DB and DC funds into a Standard Life SIPP. Her funds would be invested according to her attitude to risk. It said the new arrangements would meet her requirement for a flexible income. That she could take £36,000 net a year (increasing annually in line with assumed inflation) from her pension. That the proposed arrangement would deliver better death benefits. And that she'd be able to access different investments according to her risk appetite.

In responding to my provisional decision FDL said:

"We are fully aligned with the FCA's principles and always adopt the starting point of "Do Not Transfer". The only reason that a transfer is ever recommended is when a client's (reasonable) objectives cannot otherwise be met and on condition that stress tests are satisfied. These tests ensure that, even under adverse conditions such as loss of employment income or market shocks, that retirement needs continue to be met."

“In the case of Miss F the objectives, needs and circumstances articulated to us could not be met (mathematically) without a transfer and stress tests conducted were satisfied.”

“Miss F (recorded fact) wanted to front load her retirement income, for the first c15 years, with the understanding that the income at this level would then reduce in later years, when she anticipated her income needs would reduce.”

So, I've considered the options that were available to Miss F to deliver the income she was said to require in retirement, and her need for flexibility to deliver her plans. I'm particularly interested in what happened to her safeguarded DB benefits from her main scheme because these formed the bulk of her pension provision.

Turning first to the financial case for this transaction. FDL was required to inform Miss F about the comparison between the cash equivalent transfer value (CETV) that she'd been offered from her DB scheme with an indication of what it could cost to replace those scheme benefits. FDL told her that the CETV she'd receive was about £572,000. It found that to obtain the same benefits she enjoyed with her existing scheme, she would need to pay an insurer in the UK annuity market around £872,000.

My first observation is basic. It wasn't until page 20 of the report that FDL set out the comparator analysis. It followed various technical sections. The executive summary was from page 1 and the recommendations on page 4 – neither provided this information. It needed to give more prominence and proper context to this information, which was a regulatory requirement. It didn't communicate in a way that was clear and fair on this important matter.

The comparator was essentially pointing to the potential substantial erosion of the value of her pension benefits if they were transferred. The value of this erosion was about £300,000 or over 34%. In responding to the Investigator FDL said that bearing in mind Miss F didn't have a spouse and was likely to take her TFC, the disparity was reduced to about £120,000.

In my provisional decision I said that I found FDL had made a big leap to assume that Miss F who wasn't even 60 would never find another partner. She'd been married previously and so discounting spousal benefits without foundation was unsafe.

In responding FDL provided evidence to show that Miss F hadn't made any contributions to her main OPS to provide for a survivor's pension. I think this is a strong argument that my focus shouldn't be on the £300,000 figure because that wouldn't be comparing like with like. So, I've focussed on the lower of the benefit value shortfall figures of £120,000.

I note that even on this basis the erosion of benefits on transfer equates to around 17%. This also excludes the potential for her OPS to have provided a statutory minimum payment to any future spouse or civil partner in the event of her passing of around £3,000.

FDL says the transfer value comparator analysis is just one element in a wider weighing of the advantages and disadvantages when considering the transfer of pension benefits – I agree. But on this measure, flags were being raised.

Next I've thought about Miss F's target for net income in retirement – she wanted £36,000. Based on the information available, this was a significant uplift compared with her then current net earnings of, say, around 20%. The December 2018 fact-find records that she'd comfortably be able to live off this income.

In its January 2019 suitability report, FDL confirmed that if Miss F accessed her main DB pension at the scheme retirement age (less than two years away), and assuming she took

the TFC of £134,000, then she'd receive a net annual pension of around £16,800. This would've increased each year to take into account inflation. Together with assumed net rental income of about £16,900, she'd be short of her target net income by around £2,300 a year.

I find this a minor shortfall, for several reasons. I'll turn to the assets Miss F had available to her later. But given Miss F had a smaller DB pension that would become payable when she reached 60, had she taken that pot as income, that would've added another £1,100 to her annual income reducing the gap to around £1,200 a year. She could easily have met this gap, if she needed to, by drawing on some of her TFC.

In simple terms, I think Miss F could've comfortably met her income requirements for retirement from her existing DB provisions. There was no need for her to transfer her benefits to meet this objective.

FDL reasonably points to the position on death benefits comparing her OPS with the new arrangements it advised her on. There's no question that in the event of her passing, Miss F's potential beneficiaries – her sisters, nephews and nieces – would've been better off following the transfer of her pensions.

But as FDL knows, pensions are to provide an income in retirement. Miss F didn't have a partner at the time nor any dependents. She was in good health. The matter of pension death benefits in this case was a second order concern.

That leaves the question of flexibility. I do think it's important to recognise Miss F's stated position on this. In responding to key questions from FDL's adviser, she said:

"I understand that I have a very good DB scheme..., however this pension will grow as I get older. I am at present very active and adventurous and have the health to support that lifestyle. I have looked into the pros and cons of taking my pension out of the [DB] scheme for 2 years now and I have finally reached the conclusion that I would prefer to have more money whilst I am young and fit do the things I aspire to than having a lot of money on my 70's and 80's when my needs will be less. So although I am giving up a guaranteed income I think on balance I would prefer to take a risk and have a flexible income when I want it."

"It is very important to me to be able to take more money now whilst I can enjoy it than having a lot of money later in life when I may not be fit to enjoy that income. My needs will get less as time goes on. I see that with my parents now."

"I am fully aware that an investment in a SIPP may not bring dividends and that I may run out of money in that fund but the projection is that that will not be until I am in my 70's . I will not expect to go on an extreme motorbike tour in the Himalaya (which I am planning now) in my 70's nor go ski touring in Antarctica etc but I do want to do that now. So if my investment under performs I will have at least done those things and if I live long enough to need more if that happens I can live off my state pension and my rental income or sell a property and re invest that. If there is a market downturn it surely can't last forever."

"I do feel that income flexibility outweighs the benefits of a fixed income from my [main OPS] pension because of the reasons stated above. I have no dependants so I will actually be quite annoyed to think I will have a lot of money left when I die. I want to enjoy life now whilst I am fit enough to. I don't have to provide for a family or leave an inheritance to children."

"To finish, this is not a snap decision, rather something I have looked into for a long time and wavered between the two options a lot, but finally it comes down to a lifestyle choice and I choose to live now."

On the face of it what FDL was proposing could've been useful to Miss F. Moving to a SIPP could've enabled her to draw more of her pension benefits upfront to cater for all the plans she had for her retirement.

Miss F was responding to some questions written down by Mr B. FDL pointed out these were open questions designed to confirm her understanding of the risks being taken and the benefits being given up. It says the questions were asked following detailed discussions, they were not in isolation and were not simply at the beginning of the advice process. The responses were in her own words with no influence from it.

I've no reason to doubt what FDL says. The point I was making in my provisional decision was that it then needed to have analysed, tested, challenged and advised her about what was in her best interest for retirement planning. It knew pots built up over many years are to provide for the whole of retirement. Some future costs could be large and lumpy – for example, as it recorded as part of her objectives, potential care costs as she got older. I've not seen evidence of this deeper consideration.

Miss F had £123,000 in savings. She had £12,000 of shares. She also owned two homes – these had a value of about £1,050,000. Miss F also had the option of taking TFC from her DB pensions when she was 60 of around £140,000. Leaving aside the pension income she'd receive from her DB schemes, she also had benefits in DC plans with investments worth around £47,000.

So, it can't be in dispute that Miss F had very significant assets. It's clear that she wanted to travel, be adventurous and enjoy retirement fully, and that this would likely entail some 'frontloading' of her cash flow requirements over the coming years. She also had to address her outstanding mortgage of £225,000, renewing, reducing or clearing it.

In responding to my provisional decision FDL said:

"...The mathematics of the case are that Miss F had the option of remaining in the Scheme and this would have provided TFC of £134,000 and pension income of £21,000 pa. She already had liquid assets of £135,000 (savings of £123,000 and shares of £12,000). If, as Miss F now states that what she wanted to do all along, was to repay her mortgage, this would reduce her liquid assets substantially to £44,000."

"This would have been all she was left with in terms of liquid assets and therefore the flexibility element that was an important element of both Miss F's objectives and the subsequent recommendation would have been severely diminished as she would have been left with pension income of £21,000 pa gross and rental income of £18,000 pa gross."

"Therefore the statement that Miss F retained "...considerable flexibility" by not transferring is not mathematically accurate. This would have left Miss F with approx. £39,000 gross pa income plus £40,000 of liquid assets and 2 properties, one of which she lived in the other helped to provide income."

"We do not see how this level of income would meet Miss F's stated objectives to achieve the sort of lifestyle that Miss F had planned on retirement?..."

I understand the case FDL makes. But I find several weaknesses that undermine its argument. Miss F had noted she'd comfortably be able to live on a net income of £36,000 a year – implying it gave her some latitude. Its own calculations showed her existing OPS provision brought her very close to that objective, with no risk being taken on by her.

Much has been made of Miss F's desired lifestyle in retirement and how this would've required substantial capital to enable it. But even if she'd used some of her assets to pay-off

her UK mortgage, FDL notes she would've still had over £40,000 to draw on. The real problem here is that it never quantified what her capital requirements were likely to be in respect of her retirement plans.

I also disagree with FDL when it says it isn't mathematically accurate to say Miss F already had considerable flexibility in her financial position prior to the transfer of her pensions. I've already set out the substantial breadth and scale of her assets.

Ultimately, FDL hasn't clearly demonstrated, as it was required to do, that the only way Miss F could meet her requirements was to transfer her DB benefits. And that to do so was in her best interests. Miss F already had considerable flexibility. Her assets provided a diversified portfolio of risk.

It was FDL's role to discern what Miss F's wants and needs were and why. Its role wasn't simply to facilitate what it thought 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.

I think there are some weaknesses in how FWS assessed her appetite for risk. In its suitability report FDL reported Miss F has a low end of moderate to adventurous risk appetite - 7 on a scale of 1 (lowest) to 10 (highest). This was defined in the following terms:

"You are prepared to take a medium degree of risk with your investment in return for the prospect of improving longer term investment performance. Short term capital protection is not important to you and you are willing to sacrifice some long term protection for the likelihood of greater returns. A typical Moderate to Adventurous investor will be invested mainly in equities but with other assets included to provide some diversification. There may be a small amount of specialised equity within the portfolio. Because you are a Low end of Moderate to Adventurous investor there will be slightly more invested in fixed interest and cash."

I think this reflects Miss F's answers to the detailed questionnaire she completed about her risk outlook. But I've not seen much evidence of test and challenge. I think this would've been important. There's no evidence Miss F was an investment professional or a sophisticated investor. Indeed, FDL knew her experience was limited. She had savings, she made regular contributions to her employer's pension scheme and she held shares in the company she worked for. This is important context when I consider what happened to her.

An important element of a risk appetite assessment is understanding a client's capacity for loss. FDL said of Miss F:

"Her income requirement of £36,000 net per annum can be met from a combination of rental income, various pensions and her state pension when it becomes payable. This is supported via cashflow modelling analysis, using Voyant. We have also completed a 'stress test' scenario whereby the [main DB scheme] is transferred to a SIPP and investment markets suffer a 30% fall in value at age 60. In this scenario, the cashflow modelling indicates that her income requirements can still be met throughout her lifetime and there will be an amount left in her estate when she dies."

I've covered Miss F's asset position already. And we know she wanted to use these in respect of her retirement planning. So I'd agree with FDL that she did have some capacity for loss. But I'm also mindful that her pensions remained a key element of her provision in retirement.

More generally, I'm not satisfied that Miss F fully understood that by moving away from her OPS scheme and using the funds to invest, she was moving from a situation where her

former employer was bearing the risks related to the provision of her retirement income to one where she was taking on that risk. And that altered the risk profile of her whole portfolio of assets.

On balance, I think FDL's assessment overstates Miss F's risk appetite a little. I know FDL disagrees with my opinion on this matter. But my finding is largely academic. I've already concluded that Miss F's retirement objectives in terms of flexibility and income could be achieved without the transfer of her pensions. There was no need for her to either significantly, or very significantly – depending on one's view of her real risk appetite – increase her risk exposure.

I've already mentioned differences of account between Miss F and FDL about the events from 2019. From the information available, it seems that there were still some big issues she needed to settle before deciding what to do with her pension provision. For example in relation to where she would be domiciled, what she wanted to do with her property assets and her outstanding mortgage. The decision she would take on her pension arrangements was irreversible and would impact her position for her remaining lifetime.

In its recent response to my provisional decision FDL noted:

“Reviewing the information that you have collected from Miss F, and comparing to our documented evidence, suggest that Miss F has had a change of heart in respect of what she was looking to achieve.”

Another way of looking at what gave Miss F cause to complain so soon after she'd had advice from FDL was that she remained uncertain about her plans. I've already set out my findings in relation to the fact-finds I've seen, which indicate such to me. I've not seen evidence of how these were effectively brought to a head and decided on.

Earlier FDL had noted the option of Miss F delaying any decision until she was nearer 60. The rationale for dismissing this approach was that the transfer value offered *might* be reduced. I think this option was worthy of serious further exploration in the context of the significant uncertainties in Miss F's circumstances. I don't think this required the hindsight of later developments.

Overall, I think FDL should've provided Miss F with an explicit recommendation not to proceed with the transfer of her DB scheme funds into a SIPP with Standard Life in January and February 2019. I think if she'd received appropriate advice, she wouldn't have gone ahead with the transfer of any of her OPS benefits (DB or DC), including her associated AVC's.

To conclude I don't think the transfer of Miss F's OPS pension funds could sensibly be regarded as fair to her. As such I think FDL failed to meet the regulatory requirements when providing her with advice and making the arrangements. So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against FDL and for it to put things right.

Putting things right

I'm upholding Miss F's case. So, she needs 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 Foster Denovo Limited responsible for.

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 Foster Denovo Limited should pay Miss F 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 Foster Denovo Limited pays Miss F the balance.

This recommendation is not part of my determination or award. Foster Denovo Limited doesn't have to do what I recommend. It's unlikely that Miss F 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.

The DB scheme element of her transferred OPS benefits

I consider Miss F would've remained in her DB schemes, but for FDL's unsuitable advice and arrangements. It 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 Miss F's acceptance of the decision.

FDL may wish to contact the Department for Work and Pensions (DWP) to obtain Miss F'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 Miss F's SERPS/S2P entitlement.

The DC scheme element of her transferred OPS benefits

For the DC and associated AVC component of Miss F's transferred OPS benefits, FDL should look at how the investments in the scheme would've grown to the present and compare this to her existing investments derived from that part of the transfer, as at the date of calculation.

Any losses

If the redress calculations demonstrate a loss to Miss F, the compensation amount should if possible be paid into her 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 Miss F 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.

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'.

Provision for an award of interest

The compensation amount must where possible be paid to Miss F within 90 days of the date FDL 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 FDL to pay Miss F.

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.

Distress and inconvenience

In addition, FDL should pay Miss F £200 for the unsuitable advice to transfer her retirement provision into a SIPP, which has caused her trouble and upset.

My final decision

For the reasons I've already set out, I'm upholding Miss F's complaint. I require Foster Denovo Limited to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 19 May 2022.

Kevin Williamson

Ombudsman