

The complaint

Mrs S says the advice given and arrangements made by Pi Financial Ltd (PFL), trading as PI Financial Dixon Sutcliffe & Co, leading to the transfer of her Occupational Pension Scheme (OPS) benefits into a personal pension with Scottish Life, and her opting out of her employer's pension scheme, were unsuitable.

Mrs S is represented by Rightside Financial Services Limited (RFS).

What happened

PFL says Mrs S approached it following a meeting it had with her husband to discuss the possible transfer of his OPS. It says it strongly recommended against this and he accepted the advice.

PFL says Mr S suggested his wife's pension - which was worth less than his - should instead be considered for transfer. It says they "desperately" wanted to access tax-free cash (TFC) to cover a shortfall on their endowment policy. They had an interest only mortgage of around £36,000. Their policy was due to mature in March 2013 and it was expected to realise around £25,000. So, they needed to find another £11,000 to pay off the balance.

PFL gathered information about Mrs S's circumstances, objectives and attitude to risk in January 2013. It obtained some information from her OPS provider about her existing pension benefits.

PFL prepared two suitability letters for Mrs S. The first was dated 22 February 2013 and focussed on the potential transfer of her OPS benefits. It noted her prime objective was:

"...to examine the merits or otherwise of moving the retirement benefits you have with your current employer."

PFL advised her not to proceed with the transfer, highlighting several disadvantages. But Mrs S wanted to proceed and she signed letters dated 25 February 2013 to say it should treat her as an *insistent client*. The transfer of her OPS benefits went ahead as such.

A subsequent suitability letter dated 4 March 2013 also covered matters related to proposed new pension arrangements and investments. The transfer value of her OPS was about £50,700.

Mrs S took TFC of around £12,400. Initial fees were then deducted, including PFL's charge for advice, with the balance invested in a personal pension with Scottish Life in funds said to be consistent with her attitude to risk, in May 2013.

RFS approached PFL on Mrs S's behalf in January 2020. It raised several concerns about the advice she'd been given in 2013. For example, it said the transfer of her OPS benefits had been expensive and unnecessary. And it questioned the validity of the insistent client process followed.

PFL sent Mrs S's representative its final response to her complaint on 26 March 2020. In summary, it rejected her case and said:

"The key reasons [for not upholding her complaint] are as follows:

- *There is clear evidence [we] advised Mrs S not to transfer.*
- *[We] investigated alternative ways of fulfilling Mr and Mrs S's objectives.*
- *Mrs S confirmed her understanding of the report produced by [us].*
- *The case was completed on an insistent client basis, the implications of which were explained to Mrs S and she confirmed her understanding."*

An Investigator considered Mrs S's case. He thought the evidence showed Mrs S was an insistent client. He thought that even if PFL had refused to facilitate the transfer she'd have gone ahead anyway. He didn't uphold her complaint.

RFS, on behalf of Mrs S, disagreed. So, her complaint was passed to me to review. I issued provisional decisions in January and April. Both parties provided further submissions, which I've considered as part of this final decision.

In addition to its arguments about the merits of this case, PFL raised a late challenge about whether Mrs S had brought her complaint in time. It also made serious allegations about the conduct her representative and the status of her case.

Why I can look at this complaint

Our service was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). It's important to make clear that as a public body we don't have a general, 'at large', power to investigate any complaint. We can only investigate what FSMA and the rules made under it say we can – this sets the boundaries of our scheme. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the FCA the power to say what complaints we can and can't consider. The FCA has set these out in the Dispute Resolution chapter of the FCA Handbook (also known as 'DISP' or 'the DISP rules').

If a business doesn't consent, this Service can't consider a complaint which isn't made within specified time limits. Dispute Resolution rule 2.8.2R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

- *more than:*
 - o *six years after the event complained of; or (if later)*
 - o *three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;...*

unless: in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances.

Mrs S is worried she's lost out because of the advice she received from PFL to transfer her OPS benefits in 2013.

Taking the six-year rule first, a complaint is out of time if it's referred to our Service more than six years after the event complained about. That's unless the complaint was referred to the respondent business within that period and the complainant has a written acknowledgement or other record of the complaint having been received.

Mrs S's complaint was raised with PFL in January 2020. It issued a final response to her in March 2020. As the advice complained about happened in 2013, her case is out of time on the six-year limb of the test.

Turning to the three-year test. When considering if Mrs S had a *cause for complaint*, that means whether she was aware of, or ought reasonably to have become aware, there was a problem; that she had suffered or may have suffered a loss; and that someone was responsible for this problem (and who that was).

I need to decide when Mrs S became aware, *or ought reasonably to have become aware*, that she had a cause to complain. And having established that date, determine whether she brought her complaint within three years of it.

In making its initial case to time bar Mrs S's complaint, PFL said:

"...the events complained about occurred on 22nd February/4th March 2013 and the complaint was initiated on 30th January 2020, outside the 6 year limitation set...The 3 year limitation...has clearly been met following the press coverage of the British Steel Pension Scheme scandal "et al". It is my submission therefore the case falls outside the FOS's jurisdiction.

I've considered what PFL has said, but I don't find the case it makes for time-barring Mrs S's complaint a strong one. What was it about the British Steel Pension Scheme scandal that was meant to ring alarm bells for Mrs S about what had happened to her local government pension? PFL hasn't done enough to demonstrate what should've triggered her awareness, when and why.

In responding to enquiries from this Service about why Mrs S complained to PFL about the advice she received, RSF said:

"Mrs S and Mr S have been clients of Emcas since 2015 (Rightside took over the business of EMCAS in April 2019)...we have submitted varying financial claims for both, [and] in subsequent discussions with Mrs S it was discovered that her pension had been transferred. A DSAR request was sent to Royal London for documentation in September 2019. Upon reviewing these documents, it was seen that Mrs S had been advised whilst still working for the local authority to transfer away from her OPS into a personal pension / drawdown arrangement. It was apparent that this transfer was not in Mrs S best interest and following further discussions a DSAR request was sent to PI Financial."

In responding to my provisional decision PFL said:

"[Mrs S] was a client since 2015 of EMC Advisory Services ("EMCAS") a claims management company. It is fair to deduce that in 2015 [she] believed she had cause to complain and sought the advice of EMCAS. Therefore under DISP 2.8.2R the complaint does not fall within the FOS's jurisdiction."

I don't agree with PFL's reading of the statement RSF provided on behalf of Mrs S. I don't think the clock starts for a consumer for all possible financial disputes that might emerge at the point that they engage a claims management company. As the testimony makes clear, Mrs S and her husband had been a client of EMCAS and then RFS since 2015, but that was initially in relation to other matters.

Based on the evidence available to me, I think Mrs S became aware there might've been a problem with the services she'd received from PFL after RSF had obtained and reviewed

paperwork from her personal pension provider, towards the end of 2019. And she made her complaint within three years of this.

This Service can consider Mrs S's complaint.

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 concerning the events complained about 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 S's complaint. I'll explain why.

PFL allegations concerning conduct of RFS

Before moving on to address the merits of this complaint - and doing so in light of submissions from both parties in response to my provisional decisions – I need to address the allegations PFL has made about the conduct of Mrs S's representative.

PFL has told this Service it is gravely concerned about RFS's role in representing Mrs S. It challenges the authenticity of the claims it says were created. It suggests Mrs S has been coerced into bringing a complaint, which it says is fabricated. It has even called into question whether it was in contact with her.

PFL has provided a record of contacts it had with Mrs S after it had received the subject access request (SAR) from RFS on her behalf. Its adviser said:

"Since the initial SAR I had spoken to both Mr & Mrs S on 12/11/19 who stated that they didn't know anything about a complaint and were relatively unsure as to who Rightside were and that 'it must have been a cold call' and to 'just dis-regard the request'. I had explained that we couldn't do this and that they would have to contact them directly which they confirmed they would do."

"I then spoke to them on 18/11/19 where they said that they had emailed Rightside twice to end their agreement but had no response so they 'had just given up trying' so I asked them to email me a copy of these emails but they did not materialise. Again, they stated that there was no issue with the advice and that the issue was with RL and the tax payable on the full withdrawal so I explained that I would send them a letter outlining our discussions etc. so that we could confirm to Rightside that there was not an issue with our advice ."

Mrs S never responded to PFL's letter, which would've confirmed she had no complaint against it. Its adviser then began to question Mrs S and her husband's motives, as well as RFS's approach:

"On 17/12/19 Rightside had sent an email to Pi to say that I had been making 'threatening phone calls' which is ridiculous as per the description of calls above which were all to assist and explore the reasoning behind the SAR."

"I find it strange that they [Mrs and Mr S] have completely changed their story since speaking to Rightside who are obviously coaching them as to what their recollection now seems to be when during every contact with them they had stated that it was not an issue with the advice. I also feel that there are some contradictions in what they have said they have done and what they have actually done i.e. did they really email Rightside as they never did send over a copy of the email nor did they return the letter I had sent to confirm my understanding?"

"Also is it true that they didn't know anything about it or are they just saying this as they have been questioned as to their intended outcome? Unfortunately, the only ones who can answer this are [Mr & Mrs S] but I would suggest that they seem capable of changing their version of events to suit the situation to their advantage and that Rightside will be assisting with how to do this within the CMC world!"

At this point I should make it clear; I won't be drawn into a dispute involving serious allegations between different business entities. Both parties will know this is not my role. Ultimately, such matters can be tested through the courts should either wish to go that route.

But in light of the matters raised by PFL, I needed to assure myself as far as reasonably possible about the conduct of RFS insofar as to any effect this may've had on Mrs S and the development of her complaint.

As such I've asked Mrs S to respond to a number of questions, including about how her complaint arose (which I've already covered), her observations about PFL's interaction with her following RFS's involvement and whether her relationship with it remained in place.

RFS told this Service:

Mr & Mrs S were reluctant to engage with [PFL's adviser] once they established that the pension transfer he facilitated was unsuitable advice stating "he gave me so much hassle" I kept putting the phone down. To the extent that Mr S had to tell [the adviser] not to contact them anymore...when asked had she been pressured by Rightside to complain or continue [Mrs S] confirmed that this was not the case.

I've listened to the phone call RFS had with Mrs S to get answers to my questions. Mrs S did indicate her frustration with PFL when it started to contact her about the complaint. She confirmed it was still a live matter. And that she was happy with RFS's representation.

I've found no basis to dismiss Mrs S's complaint based on the evidence I've been provided with about it or RFS's involvement in her case.

I note in its last submission, PFL continue to argue that RFS has misrepresented facts and has sort to confuse Mrs S and this Service. In light of such serious allegations it will no doubt be considering what action to take.

PFL has requested copies of communications between Mrs S and RFS. Where I've considered these are material to my decision, then I think it's reasonable to share these – although as such it will be aware of the key contents. The Investigator will make necessary arrangements.

PFL has again requested an oral hearing, which it says would provide this Service with an opportunity to hear Mrs S's version of events without being coached by RFS. I would note that it's her right to be represented in our process. It is also in receipt of my letter from March setting out the purpose and operation of hearings. And setting out why I'd concluded that a hearing was unnecessary. My conclusion hasn't changed.

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

The first thing I've considered is the extensive regulation around transactions like those performed by PFL for Mrs S. The 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.
- 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.

PFL acknowledges the importance of the principles as guidance. It says the FCA's enforcement guide says that as such, it isn't mandatory and an authorised firm isn't required to adhere to every word. It doesn't go on to develop its point by telling me what elements of the regulatory guidance it hasn't felt necessary to follow. So, it's difficult for me to respond specifically to it in this regard.

Suffice to say, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be considered by regulated firms like PFL. As such, I need to have regard to them in deciding Mrs S's complaint.

In responding to my provisional decision, PFL said I had referred to pension transfer suitability rules from October 2020, noting that its advice had been provided in 2013. I hope it is helpful for me to provide it with the relevant regulation in full, which was actually established in 2007:

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

In responding to my provisional decision, PFL said that I was referring to later regulations about the preparation and provision of a transfer analysis. For the avoidance of doubt, I've reproduced in full the requirements of COBS 19.1.2 at the relevant time, when it gave Mrs S advice in 2013. It was required to:

(1) Compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme;

(2) Ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) Give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, no later than when the key features document is provided; and

(4) Take reasonable steps to ensure that the client understands the firm's comparison and its advice.

In simple terms, PFL 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 S 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.

Did PFL adhere to the regulatory requirements placed on it?

In short, I don’t think PFL met the regulatory requirements placed on it. I’ll explain why.

There are several documents relating to PFL’s transaction with Mrs S that are important to my consideration, these include the Financial Planning Questionnaire, risk assessment, suitability letters and other forms and letters it used in its advice process.

At the time of PFL’s advice Mrs S was 60 years old and her chosen retirement age was said to be 65. She was married with no financial dependants. Mrs S worked as a carer earning around £17,000 a year.

Although there wasn’t a detailed income and expenditure analysis conducted, nor was information for her husband collected (who also worked for the council), the fact-find does record that based on Mrs S’s earnings alone, there was a net monthly disposable income of around £160.

Mrs and Mr S were homeowners. The value of their property was recorded as £78,000. They had an interest only mortgage of around £36,000. To cover this, they had an endowment policy, which was due to mature in March 2013. They expected this to leave a shortfall of around £11,000.

Mrs S was a member of the Local Government Pension Scheme in 2013. She’d accrued around nine years of pensionable service (it appears largely in part time roles). As at February 2013 the cash equivalent transfer value (CETV) of her benefits were around £50,700. This was her only pension provision.

Mrs S was said to be happy with her OPS but wanted immediate access to as large a cash lump sum as was possible. This was to pay off the balance of her mortgage. Other reasons for Mrs S wanting to transfer her pension benefits were recorded, including flexible access, taking control of her funds and generally wanting to enjoy the money now rather than later.

I find these additional stated reasons in part inconsistent and unconvincing. I’m not persuaded they added real weight to her motivation for the transaction. It’s straightforward from what I’ve seen Mrs S’s primary driver was clearing her residual mortgage.

PFL says that it advised Mrs S not to go ahead with the transfer of her pension. It told her she’d be losing valuable benefits. It said she understood but said the reasons for transferring were more important to her than future benefits. Mrs S had been an insistent client. And PFL notes she signed letters to this effect after it had recommended she shouldn’t proceed.

I’ve thought carefully about what PFL has said. This isn’t a clear cut case and its arguments aren’t without merit.

Where a firm decides to transact with a customer on an insistent client basis, it should communicate with them:

- In terms that are clear, fair and not misleading.
- Having regard for the information needs of the client such that the client can understand.
- That it hasn't recommended the transaction and that it will not be in accordance with the personal recommendation.
- The reasons why it isn't in accordance with that personal recommendation.
- The risks of the transaction proposed by the client.
- The reasons why it didn't recommend the transaction.

PFL also needed to obtain Mrs S's acknowledgement that the transaction wouldn't be in accordance with the personal recommendation given by it; and the transaction was being carried out at her request. I think this acknowledgement is better if in Mrs S's own words.

I've thought carefully about what PFL did and what it's said about the insistent client process it followed. I do have some concerns about it. And, on balance, I've concluded it was flawed. I say this because:

- There's no evidence Mrs S was knowledgeable in pension or investment matters.
- While it's communication with Mrs S did set out its recommendation for her not to proceed with the transfer, this was somewhat undermined by information in the same letter that should would still be able to access her benefits.
- There are significant gaps in the information Mrs S received, for example in terms of the benefits she was giving up and retirement planning. So how could her decision making be said to be fully informed?
- The shortfall on Mrs and Mr S's mortgage was very modest. And given the health of their household finances it's not plausible there weren't better alternatives available to them for bridging the gap. I can't see their options were properly explored.

I'll now consider these findings in a little more detail.

In relation to Mrs S's experience of pension and investment matters, PFL noted that she had an endowment policy, had witnessed a shortfall in value due to its performance and was a member of an OPS scheme. If it's asserting anything more than a layperson's understanding here, it's a thin foundation for doing so.

There's no evidence Mrs S had knowledge and experience of pension and investment matters. I think this would've been clear from the information PFL gleaned. This should've put it on notice that it had to be careful if it was to take matters through the insistent client route. And it's important context when I consider what happened to her.

There's no doubt PFL's suitability letter advises Mrs S not to transfer. It told her:

"I have recommended that you keep your benefits with the existing scheme in order to get the most from your pension when you reach retirement."

PFL went on to set out why she shouldn't transfer. It said her OPS would give her an excellent level of benefits when she retired. These came with guarantees such as automatic annual increases, death benefits and life cover. It said she may not be able to re-join the scheme.

But there are other areas of the first suitability report that signpost the facilitation of the transfer. For example, under the same recommendation section PFL confirmed it had completed a full assessment of the options available to her for transferring her OPS benefits. It said:

“As explained, I would not recommend that you transfer your benefits to a personal pension/stakeholder plan based on your current circumstances. However, for the reasons given above, you have asked me to facilitate the transfer for you regardless and recommend an appropriate plan based on your insistence that the transfer be made.”

“I have asked you to put this in writing to me to confirm that you have fully understood my recommendation to stay within your existing scheme and that you understand the benefits that you are giving up in order to move.”

“Furthermore, you confirm that if you still insist that I facilitate the transfer of your benefits to a personal pension arrangement for you, I cannot be held accountable for the loss of these benefits explained and highlighted to you...”

PFL recommended Mrs S shouldn't transfer her OPS benefits. But in the same suitability letter it went on to tell her this could still be done and that it had researched her options. It knew Mrs S had a very strong desire to transfer her OPS benefits, because she wanted to pay off the balance on her mortgage.

Mrs S ended up signing three 'insistent client' letters. The first was dated 29 January 2013, before she received any advice. This confirmed she wanted PFL to conduct the research into her pension options and that she was aware that if she chose to transfer from her OPS her benefits could be less in retirement.

Mrs S also signed two insistent client letters on 25 February 2013, shortly after receiving PFL's first suitability letter. I don't know why there are two versions – perhaps one is less of a template and more aligned with what we know of her motivations. Taken together, the letters confirmed she was going against PFL's advice. That she understood she'd be giving up significant benefits. And the reasons why she wanted to press on.

Recently Mrs S has told this Service she can't recall signing any letters stating that the adviser didn't recommend she should transfer her pension. I note she doesn't say she didn't sign such letters and she hasn't disputed receiving the suitability letters from PFL either. To be clear, from what I've seen, I don't think she was duped into transferring her OPS benefits. It seems very clear it's what she wanted at the time.

I think a more telling problem for PFL in this case are important information weaknesses. For example, in its first suitability report to Mrs S of 22 February 2013 PFL failed to provide her with a meaningful comparison of the value of her OPS benefits with the new arrangements.

At the least I would've expected to see a critical yield figure – the average annual investment return required on the transfer value from the time of advice until retirement, before the provider applies its charges, to deliver the same annuity income as the OPS pension would have done.

PFL says that this information was provided in its second suitability letter of 4 March 2013. It was. But there are two problems. By this time Mrs S had signed another two insistent client letters – and I think she'd done so without being fully informed about the quantum of benefits she was giving up. And even the information it provided her in March wasn't as prominent and clear as I would've expected.

PFL says Mrs S could've changed her mind at any time without pressure or cost, but she insisted the transfer went ahead. I agree, she was motivated to press on, but I think it's more likely than not she was doing so without being fully informed of the consequences.

I think PFL makes a fair point when it notes certain deficiencies with the information yielded from the transfer analysis process. These were reported on by the Regulator and it subsequently put in place transfer value comparison requirements which it considered more useful to consumers.

But this doesn't mean PFL can rely on these developments to suggest its approach in 2013 to providing Mrs S with the necessary information for her decision making had been adequate – it wasn't. I can't see it effectively moved high level assertions about the possibility for Mrs S to be worse off after the transfer, into the realms of practical monetary implications for her retirement.

PFL doesn't dispute that the transfer of her OPS benefits was highly likely to significantly erode the value of her retirement benefits. But I can't see that Mrs S received a direct comparison between her OPS benefits and what would be likely from her new drawdown arrangement, at the appropriate time.

PFL says that the CETV was *more likely than not* discussed with Mrs S. But I've not seen how she was given effective information to be able to weigh properly how far her retirement benefits were being eroded or to appreciate the medium and long-term consequences of such.

Linked to these weaknesses in providing Mrs S with clear, fair and not misleading information, was the absence of effective retirement income planning by PFL. I can't see that her required income in retirement is explored. In the evidence provided by PFL I've seen no attempt to get to the bottom of this reasonably fundamental question.

PFL says:

"She was taking the benefits immediately and leaving the income to age 65. The figures were provided showing her existing scheme benefits and the illustration highlighting the possible income at age 65 but taking the PCLS immediately. The existing benefits were explained but at the time, she was unable to take her pension directly whilst still working for the council)."

However, while Mrs S was focussed on the immediate, it was PFL's role to make her consider matters over a longer horizon. I've not seen evidence that PFL effectively advised her about the long-term nature of pension planning. The need for a pot of funds to provide an income for many years ahead. I've not seen any analysis about how much her OPS would've contributed to her retirement income prospects. And I'm not convinced that she really understood the scale and scope of the benefits she was giving up, including her death benefits.

So, PFL hasn't satisfied me that it treated Mrs S fairly by helping her to understand the significance of the decision she was about to make. She may have signed an insistent client form, but this doesn't absolve it from acting with due care and skill, and in her best interests.

I'll now turn to Mrs S's financial situation. I've reviewed the two financial planning questionnaires. I've taken the one dated 29 January 2013 as my reference point since it was the later of the two.

I note that Mr S wasn't present at the meeting Mrs S had with PFL when the financial planning questionnaire was completed. It was recorded that she only wanted to deal with her pension at the time and did not want to provide information for her husband. This was a significant weakness in the information collected. PFL should've got to the bottom of the household finances. I'll explain why.

Mrs S earned £17,000 a year and her net earnings after tax were said to be £1,133. There's a note from the adviser which says that household outgoings were fully discussed and that their overall *joint* monthly expenditure was in the region of £975.

So, there was a small disposable income based on Mrs S's earnings alone of around £160 a month. And adding Mr S's income would've made the overall position much healthier. I understand that he was still working for the council at the time.

Further, while it's clear Mrs S had a strong idea about accessing her pension TFC, PFL hasn't satisfied me it effectively engaged with her about the range of options open to her. Although full information isn't available from the fact-find, it appears she and her husband would've had a healthy disposable income.

PFL says that if Mrs and Mr S had a healthy disposable income, why was it Mrs S made regular withdrawals from her new pension arrangement and cleared the residual funds within three years? It argues her actions show she was an insistent client and comfortable making her own decisions regarding her pension without the need for advice afterwards.

The problem for PFL here is that it didn't find out what Mrs S's household income was. I've concluded the driver for the transfer of her DB pension was the shortfall on their endowment. This was relatively small – recorded as £11,000 at the time (although I understand was actually nearer £9,000). I've not seen evidence PFL effectively identified alternative ways of meeting Mrs S and her husband's immediate priority to pay off their residual mortgage.

Rather than listing possible options and her apparent dismissal of these, I'd expect to have seen a meaningful analysis of the costs and benefits of the lead alternatives, compared against accessing her TFC and the impact on her pension benefits, which would be so important for her retirement. Again, without this information how could she make a fully informed decision?

PFL's adviser recorded in the fact-find that he strongly advised Mrs S against transferring her OPS benefits and resigning from the scheme because:

"...it would have a very detrimental effect on her future benefits and the security and guarantees that she has at present, however she is adamant that I facilitate the move for her as her immediate priority is the only important one to her regardless of how this would affect her future pension."

PFL's role was to discern what Mrs S's wants *and needs* were, and why. Its role wasn't simply to facilitate what she wanted without any critical thinking. It had to do these things because it had to act in her best interests. Even though it recommended Mrs S shouldn't transfer her OPS benefits, I don't think it's demonstrably met these obligations.

PFL was in a good position to have analysed, tested, challenged and advised Mrs S about what was in her best interest for retirement planning. And certainly, when early access to benefits is contemplated, there need to be compelling reasons, that has been demonstrated here.

PFL can't rely on its recommendation to Mrs S not to transfer to say that full advice wasn't required or that failings didn't matter. While PFL acknowledged the transfer of Mrs S's OPS wasn't suitable, there were failings in the advice process which meant she wasn't fully informed about her position and I think it's more likely than not the effect of fuller information and better analysis would've been significant to her decision making.

On balance, given these failings, I don't think it would be reasonable for me to conclude the process PFL followed meant that Mrs S can truly be regarded as an insistent client. Its communications weren't clear or fair. It didn't act in her best interests. And it failed to act with due care and skill.

I note PFL's initial advice fee was linked to Mrs S's decision about whether to transfer her OPS benefits - if she proceeded it would be paid. It's recorded she was charged 7.5% of the transfer value of her funds, or nearly £4,000 for the initial transaction. And there were additional fees from her new pension provider and her investment funds to consider. I'm mindful of the scale of these fees when set against her desire to access £11,000.

These charges would've eroded her pension benefits even further. PFL failed to provide a clear comparison of the fees she would incur in the new arrangements with her former pension plan.

I think that if PFL had given Mrs S appropriate fully formed advice, she wouldn't have gone ahead with the transfer of her OPS benefits. That's because it would've brought home to her the damage she would be doing to her retirement prospects. And she'd have had access to better information about how to deal with the modest mortgage repayment shortfall she and her husband faced.

Given what it knew, PFL also had the option not to transact with Mrs S on an insistent client basis, which again would've reinforced the seriousness of the situation she was straying into.

To conclude I don't think the transfer of Mrs S's OPS benefits could sensibly be regarded as fair to her. As such I think PFL failed to meet the regulatory requirements placed on it when providing her with advice and making the arrangements.

So, taking all the circumstances of the case into account, on balance it's reasonable to uphold this complaint against PFL and for it to put things right.

Putting things right

Mrs S 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 Pi Financial Ltd responsible for.

I consider Mrs S would've remained in her OPS. Pi Financial Ltd should therefore undertake a redress calculation in line with the pension review methodology, 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 Mrs S's acceptance of the decision.

PFL should contact the Department for Work and Pensions (DWP) to obtain Mrs S'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 S's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mrs S'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 S 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 S within 90 days of the date PFL 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 PFL to pay Mrs S.

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.

My final decision

For the reasons I've already set out, I'm upholding Mrs S's complaint. And I require Pi Financial Ltd to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 June 2022.

Kevin Williamson

Ombudsman