DRN-3477010

The complaint

Mr R complains about advice he received from Premier Financial Advice Limited (PFA) in 2017. He says he was advised to transfer the benefits in his occupational pension scheme (OPS) to a personal pension. In general Mr R questions the suitability of the advice he received and some of the details that were recorded by PFA at the time. He believes he may have been disadvantaged as a result. PFA is an appointed representative of The On-Line Partnership Limited trading as In Partnership (On-line) and so On-line takes responsibility for its actions and has addressed Mr R's complaint.

What happened

I issued a provisional decision on 1 March 2022. In that decision I set out why I believed the complaint should be upheld. I have included the content of the provisional decision below and the provisional decision should be read in conjunction with, and forms part of, this final decision.

Provisional decision of 1 March 2022:

"Mr R says his employer recommended that he review his pension. As I understand it, Mr R was referred to PFA by another financial adviser who had undertaking some initial fact finding about his situation. I will call that financial adviser Business A. This was because PFA had the necessary expertise to advise as to a potential OPS transfer. Mr R was reviewing his pension benefits and wanted advice in that regard.

Mr R had a defined benefit (final salary) pension with his employer. It would appear that these were his only pension benefits – brought about by 37 years pensionable service.

After receiving advice from PFS Mr R transferred the value of his OPS (about £1.4M) to a personal pension plan. As I understand it, Mr R entered into drawdown in 2019 and has taken some withdrawals from his plan.

On-Line responded to Mr R's complaint. It did not uphold it. In a letter dated 26 February 2020 it said, in summary:

- *If there were any inaccuracies in the reports prepared for Mr R then it was made clear at the time that he should inform PFA.*
- *The 'Member Discharge Form' that Mr R signed at the time set out that Mr R agreed that he would have no further rights in the OPS scheme. PFS acted on the basis that he had left the scheme.*
- *There was evidence that, over time, Mr R's annual salary had been confirmed and accepted as about £63,000 a year.*
- *Conducting a comparison using anything other than a retirement age of 65 would not have resulted in a like-for-like comparison.*
- *It was not specifically indicated that Mr R wished to retire at 60. A range was indicated between 60 and 65.*
- *The OPS normal retirement age was 65. It was possible to take (reduced) benefits from 55 but this was at the discretion of the scheme trustees.*
- *The stochastic modeling using a figure of £9,000 a year was illustrative and was not*

material to the suitability of the advice.

Mr R referred his complaint to this service and it was considered by an investigator. The investigator thought the complaint should be upheld. He said that Mr R was advised to give up valuable secure defined pension benefits. But the nature and value of these benefits was not made clear to Mr R at the time and he was not given a balanced comparison. He was not persuaded that there were persuasive reasons why Mr R should have been advised to give up these benefits at the time.

On-line did not accept the investigators assessment. In summary it:

- *Referred to Mr R indicating to its adviser that he might need his pension funds at age 55 to help repay his mortgage.*
- *Said Mr R had made two withdrawals from his pension since the advice was given. This evidenced Mr R's need to access his pension funds.*
- *Questioned the investigators findings as to the critical yield required to match the benefits being given up. And said that the critical yield was only one factor – flexibility being a material factor in the context of this advice.*
- *The 'suitability report' provided to Mr R was very detailed and included warnings or explanation that in transferring his future benefits would not be guaranteed.*
- *Mr R's position now as to repaying his mortgage is not what is set out in the financial planning documents. In those documents it is recorded that he may require access to his pension tax free cash to repay his mortgage. There was no comment about selling one of his properties. It requested that any comments Mr R has made now about how he wishes to repay his mortgage should be 'set aside'.*
- *Mr R expressed various reasons why he wanted to transfer and he would have proceeded to transfer whether or not it had recommended he transfer.*
- *Based on the information it was given at the time its advice to Mr R to transfer was in his best interests. The complaint should be rejected. If the investigator was not persuaded to change his assessment then the complaint should be referred to an ombudsman.*

PFA did however make an offer in settlement of the complaint. Mr R rejected that offer.

Mr R's submissions

Mr R has questioned some of the detail that was recorded about his financial circumstances at the time the advice was given. I have read all his submissions but I will not list every issue. The main issues would seem to be:

- *The assumption that he had already made his decision to transfer his benefits when he met with PFS.*
- *That his retirement age was 60, not 65.*
- *That his income had been inflated*
- *That he would have tax free benefits available from his OPS at 55.*
- *That he had already left his OPS.*
- *That he was not advised that a possible option was to retain in his OPS.*

Mr R says he had not made the decision to transfer when he met with PFS. The reason he met with PFS was to obtain advice as to what steps to take with his pension. He says he had not left his employer or the pension scheme and was still paying into it when he met with PFS. He also says that he would have had access to his OPS pension benefits from 55.

I note that Mr R says that he received PFS's report (which contained the details in dispute) in June

2017. He says he noticed some errors but, "he was not aware of the importance, after the assurance I had been given" by PFS and the adviser that referred him to PFS (121 Finance). He says he did raise this with both entities. He says he did not receive satisfactory explanations but did not realise the importance of the errors.

Mr R has provided an email he sent to the adviser that referred him to PFS, which is dated 3 January 2018. In this email one of the points raised was:

"Retirement Suitability Report – Errors

a. Page 4 - Annual Income £65,156 (this figure is also on the Royal London Report?)
b. Page 5 - Worked for (OPS) from 2/10/1989
c. Page 5 - Left (OPS) on 08/12/2016
d. Page 13 - Stochastic Projections - using a figure of £9000 per annum - 85% chance of reaching this goal
e. The report refers to retiring at 65 - the Royal London Data states age of 75"

Given the information that was recorded at the time and the recommendations set out above, we asked some further questions of Mr R.

We asked Mr R about his selected retirement date and whether this was the normal retirement date of his OPS. Mr R said:

"The age of 60 was ideally my retirement date and was detailed during the pension transfer process. I believe there is/was not a working age restriction on employees in (the OPS) or the (OPS) pension scheme. The (OPS) retirement dates, 60 or 65 are normal retirement dates and are included in my (OPS) pension booklet to illustrate the options to retire at 60 to 65 or past 65. Also (OPS) employees at the age of 55 have an option to retire. My (OPS) pension details including the (OPS) pension booklets were passed to and copied by the financial advisors at the time."

Mr R also confirmed that he has been informed that he could have started drawing his benefits at age 55 from the OPS.

Mr R was asked about his membership of the OPS after he transferred. He said:

"The membership of the (OPS) ceased when I transferred out and I did not join another pension scheme. The advisors stated the only benefit of joining a pension scheme would give me access to Life Insurance Cover for my family and said the decision was up to me. 121 Finance has also stated to me 'the importance of making regular contributions into a pension to ensure that I have the funds in place to provide me with sufficient income in retirement.' I was losing confidence in the advisors and I then decided to take out the (OPS) pension to ensure I had sufficient Life Insurance Cover for my family. So I'm still confused and not entirely sure if this is the right decision?"

Mr R was asked about the 55% tax charge on lump sum withdrawals over the Lifetime Allowance. He said:

"I am aware of tax rates at work (paye) but did not understand tax charges in pension situations. During the initial discussions and engagement I recall being informed that tax issues were important and would be addressed by the advisors as part of the assessment work. Therefore I was dependent on the advisors fully exploring the details. I do not recall being supplied any full explanation of pension tax charges, the future impacts and my options and to add, I am still not fully aware of the details of 55% tax on pension funds."

Mr R was asked how he intended to repay his mortgage in future. Mr R said:

"It has always been my intention to repay my mortgage by selling my property leading up to retirement and this information was passed to the advisors. The properties belong jointly to me and my wife and when we took out the mortgage to purchase the property we had a meeting with a mortgage advisor and it was agreed to repay the mortgage upon retirement. This was and still is our plan and our mortgage is totally separate from any pension arrangements we have. The advisors were informed of my mortgage, property and the future plan and that it had been in place for approximately 5 years before (OPS) recommended I seek professional advice about my pension. The data I supplied the advisors included my mortgage details and became a point of

focus for the advisors. The only other ‘option’ you may be referring to was my son buying my property from me to repay my mortgage, this option was not realistic and I’m not sure if this was discussed with the advisors?

As per previous correspondence and as requested by the advisors, I did pass over all my pension and financial details and have been completely honest and open. This data was mainly my (OPS) pension, my property and my mortgage, I have no other information of relevance. I had previously seen a mortgage advisor and do not recall actively planning to discuss my mortgage in any great detail. I assumed the advice purchased was principally for my pension and it now appears the advisors have made this an issue to focus on to try to justify and support the pensions advice they provided. Therefore a lot of the significance surrounding my mortgage has been inflated by the advisors and this can be highlighted by (PFS adviser), in his email dated 08th January 2020 stating , (Mr R) was initially VERY eager to transfer his plan and couldn’t wait to come and see me because of the size of his pension and the fact he could off his mortgage’ However I did not meet or even speak to (PFS adviser) until the meeting to discuss the pensions advice which was arranged by 121 Finance. Clearly I did not make that statement and it has been fabricated, which can be evidenced by the first meeting with 121 Finance in May 2017. Whilst I do not directly recall discussing how I would repay my mortgage with the advisors, I do agree it was part of the data supplied and raised by the advisors during the subsequent meetings and recorded as a potential option by the advisors. However, during the meetings they advised me not to pay off my mortgage because the interest rate was low & the money would earn more if I moved it and left it in the Royal London Fund.”

Mr R was asked about the matters that were noted as important on the documents completed at the time the advice was given. In the main they were that he would be in full control of the pension, the flexibility as to when and how to take benefits (in comparison to the OPS), the value of death benefits, the fact that he could pass the pension value to dependants and that transfer values were high and there would be a future 10% reduction in transfer values if he did not transfer now. Mr R said:

“My objectives are listed in the initial 121 Finance review documents and I was definitely not anxious or in any rush to transfer my pension. I was informed I had a large pension fund and the transfer value was high and I was advised to seek professional pensions advice for my future options. I had very little knowledge, skills or experience in pensions and therefore I was interested in reviewing my current (OPS) and wanted to understand about the different options available and to obtain the right advice.

The things listed were items that were discussed and needed to be explained as part of the bigger picture and now appear to be exaggerated out of context and used to justify the advisor’s pensions advice. With regards to this list above, I do not consider these to be important matters when factored into the overall transfer of my pension and I have made comments on each of the subjects. In full control of the pension the flexibility as to when and how to take benefits (in comparison to the (OPS)): ‘This was not urgent or important at the time I was 53 and not planning to access my funds for 7 years.’ Value of death benefits: ‘My objective was to review the pros, cons and future options of inheritance for my dependents, it would not have been an important issue because I did have Life Cover, death benefits as part of my (OPS) and the pension would have transferred to my wife’.

Transfer values high with a future 10% reduction in values: ‘My objective was to review my pension situation and obtain advice and understand what this means to me. This item did trigger the initial engagement and the requirement for me to seek independent financial advice, however the transfer value is part of a bigger picture and should have been fully explained and compared against the reasons not to transfer out my pension. Following my own research and on reflection the transfer value was not of high importance as the advisors declared, they should have confirmed remaining in my pension scheme was the most suitable option for me.’ To add to this, I do not recall using the term ‘All-time high’ or my pension scheme using a statement with ‘All-time high’. I have now been informed this is an incorrect statement and was made up by the advisor and then slotted into the RSR report to maybe indicate an urgent ‘one-off’ opportunity. As you are aware the value of pensions goes up and down by a calculation regularly used for the funds by finance. This was not explained to me at the time and I believe is another example of the advisor's appetite to inflate the significance, encourage and convince me to transfer out my (OPS) .”

Mr R was asked about the recorded comment that he wished to transfer to take advantage of the 'all time high' transfer value. Mr R said:

"At the time I was informed by my pensions department that they were making changes that may mean the value of my pension could be reduced and that I should get expert pensions advice. As such I required the services of professional, expert advice from qualified advisors and as you are aware I was not a financial expert and had little experience in these matters. I completed the due diligence and I honestly believed I had engaged the professional services of pension experts and that they were employed and working for me, in my best interests. The advisors assured me they were governed and enforced by financial laws and regulated by the FSA. They explained the process and stated it will ensure a comprehensive tailored-made report, with options and guidance, designed to meet my specific objectives. It will take into account my current circumstances, attitude to risk, my level of knowledge and experience.

My expectation was they would execute their professional and legally binding roles in compliance with the rules and regulations and with the attention to detail that I required and requested, bearing in mind the fees that were charged for this work. At this point the advisors gave me confidence by the skills, qualifications, competence and financial registrations that they hold and were working in my best interest and will provide the best advice, unfortunately this did not happen and I believe I was misled and not informed about the benefits I have now lost. The above statement 'You have made the decision to transfer your (OPS) benefits away to an alternative provider' indicates the (OPS) benefits are transferring to the Royal London and not being given up. I feel this is another indication of the advisor's eagerness for me to transfer my pension. Another example of this is the advisors stating the transfer value was at a 'All-Time High' which is incorrect and was not fully explained and did form part of the advice I received.

It was not apparent to me during the process that the advisors were not working in my best interest, but quite the opposite. In hindsight, they emphasised on the positives and hid the negatives to convince me that transferring my pension was in my best interests. Following the pensions advice from 121 Finance I made the decision to transfer my pension to the Royal London Fund, unfortunately after the transfer I have realised that I have been misled and mis-sold pensions advice. At the time I did have trust in the advisors and my decision was made on that pension advice I was given. I do now regret taking the advice to transfer my pension and I would not have done so if there was any doubts raised, or conflicting evidence or advice given to me to remain in the (OPS).

Mr R was asked if he received any explanation of the errors he says he identified in PFS's recommendation report. Mr R said:

"My email to 121 Finance on 3rd January 2018 was in advance of the first face to face review with 121 Finance and I listed details of some points we had discussed during the transfer process and afterwards. 121 Finance responded to my email on the 4th January and stated, point 8, refers to the (PFS) report and that they will be able to help answer any concerns. At the face to face meeting we discussed the points raised in my email, the 121 Finance Advisor did not indicate there was anything to be alarmed or worried about and stated point 8 refers to part of the work by (PFS) completed and had been checked.

I do not recall any specific explanations but do recall talking around parts of point 8 and mainly focusing on the other points. I did again raise my concerns about these matters and the growing list of errors in the pensions advice documents and the 'Capital Fusion' report. This report was referenced in the RSR report but was never issued without any explanation and I am suspicious that this report may have contained conflicting guidance. 121 Finance stated there were not any issues with the pension advice and documentation and they may have stated they would look into it further.

It was my assumption that 121 Finance were working for me, being paid by me and were acting in my best interests. Therefore it was my expectation that the role and responsibilities of the advisors would have been to also have checked the documentation, details and compliance, which appears not to have happened. At this point in time I did not fully understand the magnitude of this situation, *the errors and incorrect pensions advice I was given. However I was becoming more and more suspicious of the advisors and that they were not acting in my best interests. None of the above were recorded in the follow up letter dated 5th January from 121 Finance. It did state I was not interested in any lump sums and my risk profile had changed from moderate to dynamic. During the discussions in this period, 121 Finance stated Brexit, Trump and North Korea were impacting pensions and then advised me to put my pension into a higher risk fund of which I declined. I finally lost confidence in the advisors and what they were doing for me. I found out the Royal London Experts were managing my fund and could not quantify what 121 Finance were actually doing for me. After discussions with the Royal London and seeking local advice I decided to cease the services of 121 Finance in August 2018. Following this I started carrying out my own research in the subject and it became very clear 121 Finance and Premier did not provide correct pensions advice in my best interests and did not comply with FCA's policies and procedures. I believed I had been doped by these professional advisors. I came to realise the gravity of my situation, understanding more and I had been mis-sold pensions advice. This was extremely upsetting, stressful, unnecessary and I decided to make an official complaint to Premier."*

We also asked Mr R what his view would have been at the time if it had been made clear to him that his pension benefits were valued differently for the purposes of the Lifetime Allowance (Final Salary as compared to Money Purchase).

"I was not informed about this and I have looked again and can find no records of this in my documentation. I have contributed to my final salary pension scheme over a 40 year career with (OPS) with the intention of a safe, stable pension in retirement. Therefore if I would have been told these details I would not have taken the advice to transfer and would have remained in my final salary pension scheme. I procured the services of the financial advisors to advise me on the correct course of action that was suited to my personal circumstances and I acted on the information given by the financial advisor."

And we asked Mr R if he appreciated the difference in flexibility between the Final Salary as compared to Money Purchase in terms of cash withdrawal and passing on the pension fund to beneficiaries. He was asked that if he was given the option of reinstating those Final Salary benefits and losing the flexibility of the current pension, what step he would take.

Mr R said:

"My choice would be to reinstate my final salary pension because access to lump sums were not important to me, I am not a risk taker and required a steady pension in retirement, as recorded at the time by the advisors. I live and plan to live a modest life and did not seek to increase any risks in my retirement. My wife and I were 53 years old and both in good health. Hopefully we have many years in front of us and I intend to live a long and steady retirement and in the very rare event of both of us dying my beneficiaries will be entitled to my property. Therefore I can state when we both pass away, what may or may not be left in my pension, is not in any way a factor for me to consider for advice in respect of transferring my pension and has been inflated by the advisors."

What I've provisionally 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.

Documentation

I have seen a number of documents setting out the position when the advice was given. I will discuss the detail contained in the material documents.

Mr R's OPS provided a letter dated 21 December 2016 which set out his current pension benefits and the sum that would be transferred to another pension provider should he decide to transfer. The letter recorded that his deferred pension at that time was about £38,000 a year. The spouse's pension payable was about £23,000 a year.

Dependent children would also be provided with an (unspecified) allowance to age 18 or 21 if in education. The trustees would have discretion to pay benefits for longer than this if they saw fit.

Mr R's OPS issued a further letter on 1 March 2017. This set out that from 23 February 2017 transfer values would be amended. The effect would be, approximately, a 10% reduction in transfer values. It was set out that as Mr R had already obtained a Cash Equivalent Transfer Value (CETV) in the last 3 months, the OPS was putting in place transitional arrangements – in effect honouring the transfer value Mr R had received until 23 May 2017.

Mr R has supplied a letter dated 5 January 2017 from the adviser that referred him to PFS. This set out some of his financial circumstances – one which was that his income was about £63,000 a year. Mr R disputes that. The letter also records that his "preferred" retirement age is 60. A letter from the same adviser of 7 June 2018 reiterates that retirement age.

A 'Fact Find' was completed which recorded Mr R's circumstances, including finances. This is undated but it is likely this was completed before Mr R was provided with advice, given its content. Mr R says that he completed it for the financial adviser who referred him later to PFS.

It was recorded that Mr R had been working for his employer for 37 years and was a member of its OPS. Its was set out that he had an interest only mortgage of £250,000, a holiday home worth £250,000 and savings of £10,000. With respect to his pension it was recorded that he had 37 years pensionable service – with a current value (which I assume to be a CETV) of about £1.4M.

In the 'Notes' section of the Fact Find:

"(Mr R) wants to review his pension + transfer his fund to a personal pension. He wants to take advantage of high transfer value, higher death benefits, succession planning + higher tax free cash + access to the tax free cash earlier than 65. (Mr R) said he may pay off his mortgage at age 55".

It was then set out that he had 'Balanced' attitude to risk.

It was recorded that Mr R didn't have any existing life assurance, critical illness cover or emergency funds.

There is also a 'Supplemental Fact Find' for Mr R. This records the answers to several questions. In particular I have noted:

- *"At what age do you realistically expect to retire? 65-60"*
- *"Do you wish to take control and responsibility for your pension funds? Yes"*
- *"Do you have serious concerns regarding the financial stability of your ex-employer? No"*
- *"Do you want to move your existing benefits from under the control of your ex-employer? Yes"*
- *"Do you mind if your pension benefits remain with your former company pension scheme? Yes"*
- *"Do you wish to maximise any tax free cash entitlement? Yes"*
- *"Do you wish your dependants receive a significant sum upon your death? Yes"*
- *"Do you wish your dependants receive an income from your pension on your death? No"*
- *"Would you like the flexibility at retirement to control the way benefits are paid and retain the flexibility to decide depending upon circumstances at the time? Yes"*
- *"Would you wish to maximise the benefits payable to you during your lifetime as you do not think you will be married when you retire? No"*
- *"This pension is a major proportion of my pension funding which should be protected as far as is reasonably possible. Yes"*
- *"I would like to risk my benefits in the hope of good returns and the prospect of retiring early? Yes"*
- *"I anticipate retiring early and am happy to accept a lower pension. Yes"*

- *“I do not think that I will be able to afford to retire early but would like the option of flexibility in case my circumstances change in the future. Yes”*
- *“I do not consider that I will ever be able to afford to retire early if my benefits are reduced.”*

Mr R signed this form on 12 May 2017 to indicate that:

“I acknowledge that the above information provides an accurate picture of my feelings towards my existing pension benefits.”

A ‘Pension Transfer Analysis’ dated 11 May 2017 was completed for Mr R. This calculated the growth rate required to match the benefits given up if Mr R transferred, using assumptions set out by the Financial Conduct Authority (FCA).

The critical yield to match Mr R’s OPS benefits was 4%, or, on a joint life basis, 5.4% (a year). This was based on a retirement age of 65.

The report records the OPS scheme retirement age as 65 and the earliest retirement age allowed as 55. It records Mr R’s “Final Pensionable Earnings” as about £63,000.

There is also an OPS Discharge form which records a “date of leaving” of 8 December 2016. This was signed by Mr R on 12 May 2017.

PFA prepared a Retirement Suitability Report (often called a ‘suitability letter’) dated 12 May 2017. This set out Mr R’s circumstances, objectives and its recommendations. I have included some of the content which I believe is relevant to Mr R’s complaint.

In the ‘Introduction’ section:

“My role is to provide the specialist pension advice you require for these pension scheme benefits only.

*This report is tailored to meet your specific objectives. We have taken in to account your current personal and financial circumstances Including your, attitude to **risk,** tolerance for loss and level of knowledge and experience of investments into account. This is an important document, and as such you need to fully understand its contents. If you require an additional explanation on any points or if you do not consider the contents to be accurate you must ask for these to be revisited and explained to your complete satisfaction.”*

*Notable details included that Mr R had three dependent sons at the time and a ‘selected’ retirement age of 65**.***

It was also recorded that Mr R had an interest only mortgage of £250,000 with 10 years remaining. He had a house worth £850,000, a holiday home worth £250,000 and savings of £10,000.

Then Mr R’s ‘Objectives & Priorities’ were set out. The adviser commented:

“You asked me to look at your pension plan with (employer) who you currently work for; your period of service has been from 02/10/1989 until the present time. You joined the (OPS) on 02/10/1989. You want to find out the benefits of your (OPS) and then decide what to do with these plan benefits.

Although you continue to work for your (employer) you have made the decision to transfer your (OPS) benefits away to an alternative provider (Royal London) as you are aware that the current fund value within the (OPS) is at an all time high and you want to transfer this fund value now to an alternative provider to take advantage of this high fund value.

You want to take control of these pension benefits and you also want the higher tax free cash that would be available upon transfer and also the superior death benefits and pension succession planning than can be obtained by transferring to an alternative pension provider.

You have said that you may also like to access the tax free cash from these scheme benefits at *your age 55 in order to pay off your outstanding £250,000 interest only mortgage loan. All these options are not available within your existing (OPS).*

Also, another reason why you want to transfer these pension benefits away from your employer is because they stated that after 23 May 2017 all plan transfer values will be reduced by 10%.

Later in the report:

"Retirement Planning

- *You would like me to review and advise you on your existing (OPS) the details of which are as detailed below under 'Your Current Pension Benefits'."*

Mr R's current pension benefits are set out:

"You have worked for (OPS) from 02/10/1989 until the present time and they have a company pension scheme of which you were a member; your pension was based on your final salary. You left the (OPS) on 08/12/2016 and you are entitled to a deferred pension, payable from the Scheme's Normal Retirement Age (NRA) at your age 65. The pension due to you at your date of leaving the scheme was £37,951.49 per annum and I estimate that the full pension payable from your age 65, the schemes normal retirement age, will be £52,773 per annum."

It was then set out that most of Mr R's pension benefits would be revalued at RPI before and after retirement.

It was then set out:

"Tax Free Cash

(OPS) has confirmed that you are entitled to a tax free cash lump sum at the scheme's normal retirement age of 65 and I estimate this to be £243,567.

Benefits on death before retirement

If you die before you retire a spouses pension is payable.

Your wife Tracey would receive a pension of 2/3rds of your deferred pension, before any tax free cash had been taken, at the date of your death. The excess pension on death before retirement escalates in payment each year in line with RPI up to a maximum of 5% per annum.

The Transfer Analysis Report includes a comparison of the value of your death benefits in the Scheme with the value of the death benefits if you were to transfer. This comparison is based on the 'day 1' position. That is, it is based on the value of benefits if you were to die immediately after transferring.

The 'day 1' death benefit if you were to transfer is £1,380,913.68p and if left in the scheme it is a spouses' pension of 2/3rds of your pension which would be £22,971.25p revalued from date of leaving until date of death, as above.

Benefits on death after retirement

If you die after you retire (OPS) will pay a spouses pension of 2/3rds of your pension at the date of your death is payable, which would be £22,971.25p revalued from date of leaving until date of death, as above.

Your pension is guaranteed to pay out for 5 years. That is, if you should die three years after retirement, two more years' pension instalments would be paid to your spouse. A spouse's pension would then commence at the end of the guarantee period.

Death benefits

We discussed the benefits of completing a nomination of beneficiary's form, which gives you the choice of nominating a beneficiary to receive any lump sum death benefit. By *doing so, the amount payable will normally fall outside your estate, and will not be part of the accumulation for Inheritance Tax. You have chosen your wife and 3 children to receive any death benefits payable.*

And:

"Investment risk

The Scheme bears the cost of providing your benefits - even if the cost of providing those benefits increases. For example, if life expectancy continues to increase, so too will the cost of paying you a pension for life. Ultimately, it is the responsibility of your employer to ensure the Scheme maintains sufficient assets to be able to do this. In effect, your employer insures (or 'underwrites') your pension benefits.

This means that for as long as your employer remains solvent, they must pay contributions in accordance with independent actuarial guidance. If investment returns are lower than anticipated, or the cost of liabilities should rise for any reason, this is likely to mean that higher contributions must be paid. So the investment risk of providing your Scheme benefits is borne entirely by your employer."

With respect to risk:

"Following our detailed discussions surrounding investment risk and the subsequent completion of the Risk Profiler provided, I have confirmed that having regard to the output of the risk profile questionnaire in conjunction with your knowledge and experience that your attitude to risk in relating to this investment came out as Moderately Adventurous/ ATR 4.

*However, after further discussion with you it was decided to reduce this to **Balanced / ATR 3** as you said you feel more comfortable with this lower risk profile due to your current age and potentialterm until your retirement.*

This ATR is based on risk profiles 1 to 5, with 1 being the lowest risk (cautious) and 5 being the highest risk (Adventurous).

We discussed your past experience of investing and you told me that you have had some limited experience in the past with your existing (OPS) scheme benefits.

We also discussed your capacity and tolerance to risk. You felt that you had both the capacity and tolerance to invest in this area as you felt that you had enough time ahead of you to cope with market fluctuations that may occur due to normal markets conditions."

And

"We discussed the level of loss that you could accept on your new investments. You have confirmed that your capacity for loss (the amount you can afford to lose in one year) and your tolerance for loss (the amount you are willing to accept losing in one year) is 15%. This means that, for example, based on an investment of £101,000, you are willing and able accept a loss of

£15,150 ina one-year period. We discussed the effect that the loss of capital within your investment would have in relation to your standard of living and any future objectives."

It was also set out in the report:

"Knowledge and Experience

Upon reviewing the type of investments that you currently hold and investments that you have informed me you have held in the past, I have established that you have knowledge and experience of investing in thefollowing:

Existing Pensions; you would class yourself as a fairly inexperienced investor but you understand the investment approach and believe that a Balanced / ATR 3 approach is correct at this point based on your time until retirement and your objective of long term capital growth over and above inflation. As you are a fairly inexperienced investor we discussed the capacity for loss boundaries in detail to make sure you have the capacity and tolerance to cope with the potential losses this profile *could deliver.*

I checked that the asset allocation of recommended fund will fit within your selected 15% capacity for loss boundary."

And:

"Transferring to a Royal London Personal Pension Plan (PPP)

We discussed the option to transfer to a Royal London Personal Pension Plan.

Transferring involves uncertainty - there are no guarantees about investment performance (which could even be negative) so the benefits you will receive at retirement cannot be predicted. They could be higher or lower than the benefits you would be giving up. The three factors which will determine the value of your benefits are:

- *investment performance in the period to retirement; and*
- *contract charges; and*
- *the cost of converting your accumulated fund value into an income at retirement.*

Transferring is therefore only suitable if you are prepared to accept the associated investment risk.

As you know from our recent discussion, we measure the investment risk of transferring by calculating 'Critical Yields'. The Critical Yield to your 65th birthday is 4.0% per annum.

The Critical Yield is an estimate of the level of investment growth required over the period to your anticipated retirement date which, if achieved, should provide benefits equivalent in value to the benefits you would be giving upon transfer. Theoretically, therefore, if investment returns match the Critical Yield, the value of your benefits following a transfer will be the same as the value of your benefits had you not transferred.

However, it is important to understand that the Critical Yield is an estimate only, based on a number of actuarial assumptions (these are detailed in the Transfer Analysis Report). Unless these assumptions are borne out in practice, the rate of investment growth actually required to provide equivalent value benefits could be higher or lower. In other words, even if the investment return exactly matches the Critical Yield, you may not receive equivalent value benefits to those you would be giving up. Indeed even if the investment return exceeds the Critical Yield, the value of the benefits you could secure after transferring could be lower than the benefits you would be giving up by transferring.

Our Critical Yield calculations are based on an Annual Management Charge of 1.35% in the Transfer Value Analysis (TVAS) report. I explained I used the Selectapension to produce the TVAS report.

The charges apply to Royal London's internal fund range. If you invest in their external fund range, an additional Annual Management Charge will be applied. So if at any time you invest in their external fund range, the investment return required to match Critical Yield will increase proportionately.

Benefits on death before retirement

On death before age 75, your pension can be paid tax free to your estate or nominated beneficiary, either in instalments or as a tax free lump sum. Should you die after the age of 75, the death benefits can be paid either as an income or as a lump sum to a beneficiary, which is then taxed at their marginal rate of income tax.

Accessing your pension - early and late retirement

Following a transfer, you will be able to take your benefits at any time after age 55. You are not obliged to buy an annuity at any time but if you do wish to, you must take the tax free cash before your 75th *birthday."*

And:

Additional Important Information

As your total pension fund is in excess of £1M you have stated that you understand and are fully aware of the potential tax charge that may be applied to your pension funds in excess of £1M.

The amount over £1M will be taxed at 55% if taken as a lump sum or 25% if taken as an income.

Flexibility

As noted above, the way in which your pension would be paid by the Scheme will be dictated by its Rules at that time.

By contrast, transferring into an individual plan will mean that there you have substantial flexibility- not just in how you invest your fund before retirement and in when you choose to take benefits, but also in how you take your benefits, such as:

- *Taking your benefits (including Tax Free cash) - in part or in full - at any time after your 55th birthday*
- *Buying a guaranteed lifetime annuity to suit your financial and domestic circumstances at that time*
- *Buying one or more temporary annuities to provide a specific level of income for a set period (less than five years)*
- *Income Withdrawal, enabling you to take Tax-Free cash and to either defer taking any income at all, or to take an income of your choice.*
- *Continuing with a form of Income Withdrawal after age 75 until your death, rather than buying an annuity*
- *Take the entire fund as cash, this is subject to a tax charge.*

The adviser then set out his recommendation:

"My recommendation is that you should transfer your existing (OPS) to a Royal London PPP. I believe that the critical yield of 4.0% per annum to your age 65 is potentially achievable.

You have agreed with my advice, and although you continue to work for your employer…you have made the decision to transfer your (OPS) benefits away to an alternative provider (Royal London) as you are aware that the current fund value within the (OPS) is at an all time high and you want to transfer this fund value now to an alternative provider to take advantage of this high fund value.

You want to now take control of these pension benefits and you also want the higher tax free cash that would be available upon transfer and also the superior death benefits and pension succession planning than can be obtained by transferring to an alternative pension provider.

You have said that you may also like to access the tax free cash from these scheme benefits at your age 55 in order to pay off your outstanding £250,000 interest only mortgage loan.

All these options are not available within your existing (OPS).

Also another reason why you want to transfer these pension benefits away from your employer is because (employer) have stated that after 23rd May 2017 all plan transfer values will be reduced by 10%.

My recommendation is based on the following:

The Critical Yields are I believe achievable at 4.0% per annum (age 65) and could be achieved year on year in a personal pension plan. Your Risk Profile (your attitude towards investment risk) is Balanced/ ATR3 and I believe balanced risk rated funds should potentially achieve the growth rate needed *every year. I made you aware past performance is not a guide to future performance.*

Benefits on death before retirement are higher in a Royal London personal pension plan than in the (OPS) .

Benefits on death after retirement in the personal pension are dependent on the annuity rates at the time of your retirement, annuity are currently very low and it is unknown when they will rise again.

Personal Recommendation

There were a number of factors that have been taken into account before reaching my decision, some were financial, others were dependent on your personal circumstances and the risk exposure levels present within all generic product types available from the whole of the market.

We have excluded from our consideration all retail investment products that have an Inherent Risk level within the product that is higher than your agreed attitude to risk or that could produce a loss of Capital greater than your tolerance for loss.

Following research using the independent research tools O&M as well as market intelligence, and taking into account your objectives and attitude to risk, I recommend you do transfer your (OPS) to a Royal London PPP plan because of the critical yield needed to match the benefits in the (OPS) could be achievable. The available tax free cash, death benefits and pension succession planning are also better in a Royal London PPP than your existing (OPS).

Balanced investors do not particularly regard themselves as cautious people and have no strong positive or negative associations with the notion of taking risk. They will typically have some experience of investment and a degree of understanding of investment matters."

And:

"Benefits Lost on Transfer

You want to take control of your income in retirement we must point out however that by transferring your (OPS) you will lose the following benefits:

- *A guaranteed pension for life, once in payment would be paid for a minimum term of 5 years.*
- *A guaranteed spouse's pension.*
- *Statutory revaluation of your pension benefits through to normal retirement age, with escalation in retirement as previously indicated.*

Existing Arrangements

You will be transferring your existing (OPS) pension scheme benefits to this new plan being recommended with Royal London.

It has been explained that your existing pension provider will not apply a transfer penalty (up until the 23rd May 2017 only) in order for you to affect this transfer.

It has also been explained that there is no guarantee that this new pension provider will perform any better that the fund performance within your existing plan.

You understand that the process of transferring these funds to Royal London may take some time to complete.

There also may be a period of time during the actual transfer process that these funds are not invested and therefore not participating in any growth these funds may otherwise experience during this time.

You also understand the value of your pension fund with Royal London will initially be lower than currently due to our adviser charge being deducted from this capital investment and this may take some *time to recover its value.*

As an alternative to transferring your plan we considered the option of keeping this with your current provider whilst changing the funds into which you are invested.

This can have the advantage of avoiding any new initial charges whilst enabling your objectives to still be potentially achieved.

In this instance however we did not feel this was a suitable option for you because although you continue to work for your employer (OPS) you have made the decision to transfer your (OPS) benefits away to an alternative provide (Royal London) as you are aware that the current fund value within the (OPS) is at an all time high and you want to transfer this fund value now to an alternative provider to take advantage of this high fund value.

You want to take control of these pension benefits and you also want the higher tax free cash that would beavailable upon transfer andalsothesuperior death benefits andpension succession planning than can be obtained by transferring to an alternative pension provider.

You have said that youmayalso like to access the tax free cashfromthesescheme benefits at your age55 in order to pay off your outstanding£250,000interestonlymortgageloan. All these options arenotavailablewithinyourexisting (OPS).

Also another reason why you want to transfer these pension benefits away fromyour employer is because (OPS) have stated that after 23rd May 2017 all plan transfer values will be reduced by 10%.

You also wish to have your new plan regularlyreviewed going forward to retirement but did not wish to pay for these reviews from your own pocket, preferring them to be paid from the product itself.

It was confirmed that a fee of about £20,000 had been agreed for the provisional of advice. In the Appendix section it was set out:

"Lifetime Allowance

You can save as much as you like towards your pension, but there is a limit on the amount of tax relief you can get. The lifetime allowance is the maximum amount of pension saving you can build up over your life that benefits from tax relief. If you build up pension savings worth more than the lifetime allowance, you'll pay a tax charge on the excess.

The lifetime allowance applies to any pension savings you have in:

- *a registered pension scheme*
- *an overseas pension scheme that qualifies for UK tax relief for either you or your employer on or after 5 April 2006*

The lifetime allowance reduced to £1 million on 6 April 2016 (previously £1.25 million). Most people won't have to pay the lifetime allowance charge.

The lifetime allowance applies even if you're in a pension scheme that you don't make payments into; for example, if you're in a workplace pension that only your employer makes payments into.

Pension savings are tested against the lifetime allowance when you take your pension benefits and on certain other key events. Your scheme administrator will value your pension savings and check if they're worth more than the lifetime allowance.

Other events triggering a lifetime allowance test include:

- *when you reach age 75 in certain circumstances*
- *if you transfer your pension pot to a qualifying recognised overseas pension scheme (QROPS)*
- *if a pension you're getting increases beyond a certain limit*

- *on the payment of certain lump sums - such as serious ill health lump sums, some types of death benefit lump sums*

Rates of lifetime allowance tax charge

- *The charge is paid on any excess over the lifetime allowance limit. The rate depends on how this excess is paid to you. If the amount over the lifetime allowance is paid as a:*
- *lump sum - the rate is 55 per cent*
- *pension - the rate is 25 per cent"*

On 15 June 2017 a copy of the 'Suitability Letter' was sent to Mr R.

It is correct to say that Financial Conduct Authority guidance is that transfers from defined benefit schemes aren't usually in the consumer's best interests and that it should be assumed at outset that it may not be in the consumers best interests. Having said that, there can be reasons why an individual may still wish to transfer and why it might be appropriate for them. That is largely dependent on their objectives. In essence, in this case it is submitted that a transfer was appropriate because of Mr R's objectives. It is submitted that, in the main, those objectives were to take advantage of a high CETV before a reduction imposed by the OPS, and the flexibility that a transfer to a personal pension would confer.

It is clear that Mr R disagrees with this and he essentially says he sought out advice, as suggested by his OPS, as to what he should do with his pension. He says he had not made any decisions and required advice from PFS as to his options and what would be in his best interests.

I would set out initially that I disagree with the suggestion that the advice was given on the basis that Mr R had left his OPS or had ceased accruing benefits in that scheme. Mr R was still employed by the same employer and was a member of his pension scheme when the advice was given. The letter accompanying the provision of the CETV indicates that he was still a member and it was his choice as to whether he took a CETV of not. Furthermore I believe the PFS adviser gave the advice likely based on an understanding that Mr R was still a member and could continue to accrue benefits. In his report he said:

"You asked me to look at your pension plan with (employer) who you currently work for; your period of service has been from 02/10/1989 until the present time. You joined the (OPS) on 02/10/1989. You want to find out the benefits of your (OPS) and then decide what to do with these plan benefits.

Although you continue to work for your (employer) you have made the decision to transfer your (OPS) benefits away to an alternative provider (Royal London) as you are aware that the current fund value within the (OPS) is at an all-time high and you want to transfer this fund value now to an alternative provider to take advantage of this high fund value.

Later in the same report the adviser said:

"In this instance however we did not feel this was a suitable option for you because although you continue to work for your employer (OPS) you have made the decision to transfer your (OPS) benefits away to an alternative provide (Royal London) as you are aware that the current fund value within the (OPS) isat an all-time high and you want to transfer this fund value now to an alternative provider to take advantage of this high fund value.

You want to take control of these pension benefits and you also want the higher tax free cash that would beavailable upon transfer and also the superior death benefits and pension succession planning than can be obtained by transferring to an alternative pension provider.

You have said that you may also like to access the tax free cash from these scheme benefitsat your age 55 in order to pay off your outstanding £250,000 interest only mortgage loan. All these options are not available within your existing (OPS).

Also another reason why you want to transfer these pension benefits away from your employer is because (OPS) have stated that after 23rd May 2017 all plan transfer values will be reduced by 10%."

I don't believe Mr R had left his OPS at that point and I believe it is more likely that, as Mr R says, he was still a member and approached PFS as to what steps to take, based on that suggestion by his OPS. The decision then was whether to transfer. I also don't agree that it is likely that Mr R has already decided he wanted to transfer. I think that highly unlikely given he was exploring the options with PFS. And in any event, it still would have been PFS's role to advise on all the advantages and disadvantages of that so that Mr R was in an informed position as to whether to transfer.

As to the critical yield, I agree that was not high. The return required to equal the benefits given up is within a reasonable range of what could be achieved so I don't believe the transfer was inappropriate on that basis (i.e. the rate of return was optimistic or unrealistic).

However Mr R was giving up 37's years of benefit in a final salary scheme. Apart from his main residence, Mr R had very modest savings - £10,000. It is clear that he was materially dependent on his pension for his financial security in retirement. It was critical to his ability to support his future financial needs and his partner's needs. Apart from potentially downsizing and selling his holiday property, it is not apparent how Mr R would support himself and his spouse should those benefits be compromised. Whilst it was set out factually in the adviser's recommendation that his final salary benefits were largely guaranteed and that the money purchase benefits would be dependent on investment returns I don't believe any real emphasis was given to this. I believe PFS, acting in Mr R's best interests, should have advised caution in giving up those benefits and being entirely reliant on unknown investment returns – which could be negative. By transferring to the personal pension Mr R was entirely dependent on as yet unknown and (to some extent) volatile investment returns.

One the reasons why it is put forward that Mr R wished to transfer was because he wished to repay his mortgage with his pension. Mr R disputes that and says this was a separate matter and it was only mentioned as an option by PFS. Because Mr R had very limited other savings it would appear that, as he says, he only had limited options, such as the money needed deriving from his property – I assume selling his holiday property or downsizing. It is difficulty to arrive at any firm conclusions as to what Mr R's intentions were, but I would say that this does not necessarily mean he had to transfer or is an overriding reason why he had to do so given the benefits he was giving up.

In any event, the adviser set out that Mr R would be entitled to an approximate £250,000 lump sum from his OPS at 65. So, it was not that there were not significant sums available if need be from the OPS if Mr R needed that for mortgage repayment, if that was a step Mr R wanted to take in future. That does not seem to me to have been made clear as an option.

I don't believe Mr R was restricted by the date his benefits would become due from his pension scheme. He says that he could take benefits from age 55 – but I have not seen confirmation of that. But it does seem from the documents I have seen that he can normally take benefits at age 60 – which is the age when ideally Mr R was intending to retire. So it was not that it was crucial that Mr R needed to transfer so that he could take benefits at 60. And I am not of the view there is any persuasive evidence that he needed to take benefits from 55.

Furthermore I do not believe that sufficient emphasis was made of Mr R's immediate liability to tax if he took sufficient benefits from his pension on transfer. Immediately on transferring about a third of Mr R's pension was above the Lifetime Allowance – nearly £400,000. If he took that excess as a lump sum he would be liable to tax charge of over £200,000. It was set out factually what the Lifetime Allowance was, and how money in excess of that would be taxed but there were no worked examples in a monetary sense and it was not discussed exactly what that meant in Mr R's position. It does seem clear that Mr R did not, and does not, understand the ramifications.

What was also not discussed was that his benefits for the Lifetime Allowance were assessed differently dependent upon whether his benefits were Final Salary or Money Purchase. At the time advice was given, and based on the values at the time, it is my understanding that Mr R wouldn't have had any liability to tax by virtue of the Lifetime Allowance on his Final Salary benefits. Even based his expected pension income at normal retirement age and assuming no increase in the Lifetime Allowance limit, there would have only been a modest liability to tax.
Conversely any positive return on his personal pension would be subject to higher level of taxation.

I do recognise that Mr R did take some withdrawals from his personal pension. But he has *explained the reasons for that and I am persuaded that he more likely did that because it was an option open to him, rather than it indicating that this was the whole point of the original transfer. I have not seen that he made any other material use of the personal pensions flexibility – such as repaying his mortgage.*

Mr R's risk acceptance appears to me quite modest and he doesn't have any particular experience of investments. I don't believe he is an experienced investor and would find in easy to manage a personals pension (or subsequent drawdown) which such a large amount of money. He is not in my view an individual who would likely wish to gamble with his future security by transferring such a large defined benefit pension.

PFS has said that I should disregard any comments that Mr R makes now but I don't agree I should do so. Mr R's comments are evidence that I take into account and give the same weight as PFS's comments. I also take account of the documentation and what was recorded about the advice that was given.

Mr R has said that he prefers the certainty of a defined benefit pension to the situation he is in now, after he was advised to transfer. On balance I believe that Mr R didn't likely appreciate the benefits he was giving up and it was not made sufficiently clear what the disadvantages of that might be. As discussed I also believe that there were some material factors that were not explained sufficiently – such as alternative methods for repaying his mortgage and the taxation of pension benefits. I think, in addition to the security of his benefits going forward, the combination of these factors would have likely changed Mr R's decision to accept the transfer.

I appreciate there is a significant amount of factual information in the documents which would justify a transfer in these circumstances. But in the specifics of this case I don't believe Mr R was in a fully informed position as to whether to transfer and I don't believe a positive recommendation to transfer was in Mr R's best interests here.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. On-Line 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 R's acceptance of the decision.

On-Line may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr R within 90 days of the date On-Line 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 On-Line to pay Mr R.*

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

***Determination and money award**: I require On-Line to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.*

Where the compensation amount does not exceed £160,000, I additionally require On-Line to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require On-Line to pay Mr R any interest as set out above on the sum of £160,000.

***Recommendation:** If the compensation amount exceeds £160,000, I also recommend that On-Line pays Mr R the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.*

If Mr R accepts my final decision, the money award is binding on On-Line. My recommendation is not binding on On-Line. Further, it's unlikely that Mr R can accept my final decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept this decision.

I also believe that Mr R will have been caused some upset and inconvenience by the loss of his OPS benefits. I therefore believe an additional payment of £400 is warranted for this."

Submissions further to the provisional decision

Mr R accepted the provisional decision.

On-line didn't accept the provisional decision and made further submissions. I have considered its submissions in full but in summary it said:

- Whilst the COBS 9.2.1 guidance is that it should begin from the assumption that a (defined benefit) transfer is unsuitable, a transfer can still be suitable based on the facts.
- COBS 9.2.1 states that it must take reasonable steps to ensure that any recommendation is suitable. That different approaches may be recommended does not make one unsuitable.
- As to the Lifetime Allowance, there was a disclosure in its report that set out:

  "As your total pension fund is in excess of £1m you have stated you fully understand and are aware of the potential tax charge that may be applied to your pension funds in excess of £1M.

  The amount over £1M will be taxed at 55% if taken as a lump sum or 25% if taken as an income."
- So it fails to see how a finding can be made that this was not brought to Mr R's attention. Mr R was aware his pension fund was in excess of £1 million and that he would be taxed at 55%. The wording confirmed he 'fully understood' the issue. The adviser also discussed the issue with Mr R.

- It considers Mr R would have a general understanding of the LTA issue from his scheme membership and by comment in the media. Mr R has not been tested on this point. If Mr R was not clear on this issue then he was free to query it but he did not do so. The risk was disclosed to him.
- Whilst I have said in the provisional decision that the transfer was not unsuitable based on the critical yield, the provisional decision makes no finding as to whether Mr R would be better off in the long run and it believes, taking into account all the risks and benefits, he would be. If Mr R did beat the critical yield he would be better off. It believes a failure to consider this to be 'highly material'.
- I do not have a 'free hand' to weigh evidence without holding an oral hearing. Mr R has given some questionable evidence. Examples are the fact at he does not recall discussing repaying his mortgage using his pension or recall the term 'all time high' when this is recorded in in its recommendation report.
- It is unclear how I had reached a finding about whether Mr R wished to transfer when he met with it. Mr R had already formed a view as to the transfer. The fact that Mr R was taking advice was a requirement before he could transfer - so seeking advice does not indicate his state of mind.
- It is unclear whether the full reasons for the withdrawals from Mr R's pension had been established. If Mr R had been of the opinion that drawdown was unsuitable and his pension fund should be protected, then he would make no further withdrawals. It finds it irrational for Mr R to take withdrawals and not arrive at the conclusion that he was in favour of drawdown.
- It does not accept that I can take a view, on balance, as to what Mr R did or did not know from a review of the file alone or what this would have meant to his decision to transfer. I have not spoken to Mr R or the adviser. Its understanding is that this service is able to make a finding where there is no dispute over the facts and there is no dispute as to what the complainant would have done had they been advised differently. And this complaint fails on both matters. The facts are in dispute and the decision Mr R would have made is contested.
- It considered a hearing is necessary.
- A defined benefits transfer should not be characterised as a 'gamble' as I have done, and is rather a weighing of the costs and benefits and the likely expected outcome. All the risks of the transfer were documented or discussed with Mr R. So it did take reasonable steps to provide a suitable recommendation. The advice was thought out, reasoned and justified. There were a range of factors that supported a transfer and it would need a hearing to find otherwise.

I considered PFS's request for an oral hearing and issued a separate letter dated 25 April 2022 setting out my view that I dd not believe such a hearing was necessary in the circumstances to fairly resolve the complaint. And asked that the parties make any final submissions within 14 days.

Mr R said that he had not left his pension scheme when he met with the adviser – and only left his pension scheme in 2017 following the advice that had been given. He recalls giving all the pension documentation to the financial advisers involved.

On-Line did make further submissions. In summary it said that it remained of the view that a hearing was necessary. It said that there were factual disputes and counter factual scenarios that the contemporaneous file could not address. Therefore a hearing should be held to address that. It did not agree that the case could be resolved without a hearing or further clarification for my findings. It suggested that I had reached findings making assumptions about Mr R's understanding, attitude and intentions which there wasn't evidence to support.

It said that it would appear that a finding had been reached as to what he ought reasonably to have done and what he should have thought when the correct question was he would have in fact dine and what he did think. It felt that if the points made in its previous submission had been considered and further investigations has been made then it would be appropriate to issue a further provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered On-Line's further submissions. I believe I addressed its request for an oral hearing in my letter of 25 April 2022 and I remains of the view that an oral hearing is not necessary in this case to fairly resolve it. I did set out in that letter that there were factual matters that I considered in the provisional decision which led to my findings and sufficient evidence to reach those findings is available without the need to hold an oral hearing.

I also said that the fact that Mr R's intentions are in dispute or certain facts are in dispute does not mean that an oral hearing has to be held. It is normal in most complaints for there to be some disagreement about what has occurred and what the intentions of the parties were. It is for the investigator or ombudsman to weigh up the evidence in such circumstances, decide what is most likely to have happened and reach a fair and reasonable decision in the circumstances. That does not always require an oral hearing to be held.

I have not undertaken any further investigations since the issue of the provisional decision as I believe the evidence is such that I can reached a fair and reasonable decision. I set out in my letter of 25 April 2022 that both parties had been given ample opportunity to make representations and set out their positions. And they have been given a further period of time in response to my letter of 25 April 2022. Bearing that in mind and having taken all of the evidence and arguments into account, I am satisfied that I should now proceed to issue a final decision.

I set out in the provisional decision that I accepted that a transfer from a defined benefit scheme could be suitable dependent on the circumstances and the consumer's needs and objectives. I also said that the transfer did not appear unsuitable based purely on the critical yield – i.e. the yield was not so high that in isolation it presented unreasonable risk that parity or an increase in benefits would not be met. But neither does the fact that the critical yield falls within a reasonable range make the transfer suitable or appropriate. It is not possible as is submitted, to say that Mr R would be better off by transferring - because that could not be known at outset. There was only a possibility that his benefits could be improved (they could well be less than those given up) and therefore transferring was a 'gamble' to some extent because he was giving up guaranteed benefits for as yet unknown benefits. This is one of the main risks of transferring. So I disagree that it is possible to determine at outset that Mr R would be better off.

It was this uncertainty and the risk Mr R was being advised to take by giving up his principal source of financial security in the future that I did not believe had been fully made clear and I do not believe the evidence demonstrates that the gravity of that was made clear. Comments to the effect that future benefits are not 'guaranteed' does not go far enough in the circumstances. I explained in some detail in the provisional decision the extent of the risks Mr R was being advised to take and I would refer the parties to the provisional decision.

I do not agree with the submission that the issue I set out with the Lifetime Allowance was made clear to Mr R. As I set out in the provisional decision, the issue was not simply a factual statement that a pension value over a certain amount would be subject to tax. The issue was that it was not explained how that generated a much higher tax liability than was present if he retained his OPS. Mr R could not query the issue as is suggested if he did not know of it – he sought out professional advice so this kind of technical issue could be explained to him so he could make a fully informed decision. I have not seen any evidence that it was and I do not agree that it can be assumed by the suggested confirmation that he 'fully understood' the issue of the applicable tax rate on a sum above the lifetime allowance that he knew of the issue of the difference in tax liability generated by the transfer .

Mr R has been asked about this and clearly set out that he was not aware of this matter in the context I have described and I believe his version of events is more likely correct given the lack of any persuasive evidence it was explained. He has said that this would have made a difference to his decision to agree to the transfer and I believe that, in additional to the other matters I discussed in the provisional decision, this would have made a difference to his decision. That is not a finding as to what Mr R should have done or ought to have done, it is a finding about what he likely actually would have done.

I agree that there was a requirement that Mr R seek professional advice before a transfer could take place from his defined benefit OPS. However, I remain of the view that the evidence does not demonstrate he had 'made his mind up' to transfer as is submitted and he was set on that course of action. That is not what the evidence demonstrates and I set that out in the provisional decision. Furthermore Mr R has confirmed that he had not made his mind up that a transfer would be in his best interests and he was expecting PFS to set out all the various benefits and disadvantages to him and make a recommendation in his best interests. This is what a professional adviser would be expected to do in these circumstances.

Mr R has not made withdrawals from his pension to the extent that would indicate that this was a principal reason for his transfer. He has explained that he made a small number of ad hoc withdrawals for personal reasons and not to repay his mortgage. My view was that this was a route open to him after PFS had given its advice and after the event. It does not necessarily mean that this was the reason for the transfer itself. If the flexibility in the context of taking benefits was of great importance to Mr R then I would have expected him to make more use of that – which he has not done. So that does not indicate a particular need in that area.

Having reviewed the complaint, for the reasons given in my provisional decision and in the final decision, my decision is that the complaint should be upheld.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. On-Line 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 R's acceptance of the decision.

On-Line may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr R within 90 days of the date On-Line 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 On-Line to pay Mr R.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and money award: I require On-Line to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require On-Line to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require On-Line to pay Mr R any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that On-Line pays Mr R the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts my final decision, the money award is binding on On-Line. My recommendation is not binding on On-Line. Further, it's unlikely that Mr R can accept my final decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept this decision.

I also believe that Mr R will have been caused some upset and inconvenience by the loss of his OPS benefits. I therefore believe an additional payment of £400 is warranted for this.

My final decision

I uphold the compliant and order The On-Line Partnership Limited trading as In Partnership to calculate and pay my award as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 June 2022.
David Bird
Ombudsman