

The complaint

Mr R complains about the advice given by Rowanbank Financial Consultants Limited (Rowanbank) to transfer the benefits from his defined-benefit (DB) occupational pension scheme (OPS), and a personal pension, to a self-invested personal pension (SIPP). He says the advice was unsuitable for him as it was negligent. He believes this has caused a financial loss.

What happened

Rowanbank approached Mr R in 2017 to discuss his pension and retirement needs. Mr R says this was initially by a 'cold call'.

Rowanbank completed a fact-find to gather information about Mr R's circumstances and objectives. This showed that:

- He was 60 years old and married and with no dependents.
- He owned his own home.
- It wasn't recorded that he had any savings or investments.
- He had no liabilities.

He had three pension plans.

- A DB scheme, which had a normal retirement age of 64. He had 12 years of service in this and it had a transfer value of £151,065.94.
- A personal pension with Clerical Medical which had a value of £90,070.34.
- A second smaller DB scheme.

As it was close to the time Mr R could retire without penalty in the second DB scheme Rowanbank advised him to do this. Mr R has not complained about this part of the advice he was given.

Rowanbank also carried out an assessment of Mr R's attitude to risk. It said this was balanced and his capacity for risk was moderate.

In August 2017, Rowanbank advised Mr R to transfer the pension benefits of his large DB scheme, and his personal pension, into a Prudential SIPP. The SIPP invested in one of Prudential's managed funds. The total amount transferred was £241,136.28. The suitability report said the reasons for this recommendation were:

- To pass his pension to his wife and children as a lump sum should he predecease them.
- To have some flexibility over his retirement planning, such as taking withdrawals from his pension fund when he required them.

Mr R complained in 2021 to Rowanbank about the suitability of the transfer advice. He said his circumstances, and in particular his attitude and capacity for risk, made the investment into a SIPP unsuitable for him. He said the advice to invest in a SIPP was too risky for him.

Rowanbank didn't uphold Mr R's complaint. It said that:

- Mr R's fund had grown in value since the transfer, so he hadn't suffered a loss.
- Mr R's circumstances and attitude to risk were fully assessed. It was suitable that Rowanbank advised him to start a SIPP.
- Mr R was fully advised about the SIPP including the costs of it. He was informed that the new pension arrangement was not guaranteed.
- The investments did not have more risk than he wanted to, or was able, to take.

Mr R referred his complaint to our service. An investigator upheld the complaint and required Rowanbank to pay compensation. He said that:

- Even though it was reasonable to assume that Mr R could take some risk, the transfer was not financially viable.
- Whilst Mr R had some health concerns there wasn't anything that indicated his life expectancy would be reduced and he would need to transfer for this reason.
- Mr R wanted more flexibility. But he already had this to some degree with the personal pension, and he would incur advice fees going forward. So, there was no reason to transfer either his OPS or the personal pension.

Rowanbank disagreed, saying that:

- Although the point of sale documentation didn't fully reflect this, Mr R's health was poor and he wanted to make the transfer for this reason. He wanted to ensure that his family were looked after if anything happened to him.
- It reiterated that the transfers had not caused Mr R a loss as his funds had grown in value.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Rowanbank's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must 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.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.16 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Rowanbank should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

I've looked at the transfer of the DB scheme benefits first.

Financial viability of the DB scheme transfer

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 24.03% per year. This compares with the discount rate of 2.4% per year for 3 years to retirement in this case.

For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. And Mr R would need a fund value of around £325,000 at retirement to purchase the benefits he was giving up.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's attitude to risk and also the term to retirement. I think Mr R was likely, if not almost certain, to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his tolerance to risk. This is because it was very unlikely that he would be able to receive returns of around 25% over three years in any mainstream investment.

Rowanbank has provided cashflow models which it says shows Mr R would've been able to meet his needs despite the high critical yields. I've considered these, and I do note that Rowanbank's models show that if Mr R drew £1,000 a month from the transferred fund it was estimated that, assuming a moderate growth rate, his fund would not decrease in value (or would decrease by only a small amount).

But the cashflow models also showed that if Mr R took the same benefits as he would get from the DB scheme then the fund value would be reduced to zero at his age 85. So, there was a material risk of the fund being 'used up'.

And, as Rowanbank will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

For this reason alone, a transfer out of the DB scheme wasn't in Mr R's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Rowanbank has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr R. But whilst I appreciate death benefits would have been important to him, and he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Rowanbank explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr R was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr R predeceased her.

I don't think Rowanbank made the value of this benefit clear enough to Mr R. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Rowanbank should not have encouraged Mr R to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr R genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Rowanbank should've instead explored life insurance.

I acknowledge that Mr R had a health condition and so appears to have had concerns about his life expectancy. But the advice was given on the basis that Mr R was in generally good health, for his age. And if any health problems he may have had were 'pivotal' to the DB transfer decision, as Rowanbank now says, I would have expected this to have been documented at the time.

And Mr R not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr R would need his pension to last longer. If Mr R transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's pension was guaranteed and escalated.

And added to this Mr R's existing personal pension would have provided a lump sum. Which when added to the spouses pension from the DB scheme, may have met his dependents needs in any event.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr R. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr R's desire for control over his pension benefits was overstated. Whilst Mr R did have a personal pension he was not an experienced investor, and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr R – it was simply a consequence of transferring away from his DB scheme.

And as far as I am aware the funding of his employer's DB scheme was not in a position such that Mr R should have genuinely been concerned about the security of his pension.

Flexibility and income needs

I don't think Mr R required flexibility in retirement. This is because based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash earlier than the normal scheme retirement age. Mr R says that he didn't need to access any cash.

I also can't see evidence that Mr R had a strong need for a variable income throughout his retirement. This doesn't seem to have been discussed.

And I'm satisfied Mr R could have met his income needs in retirement through his existing pension arrangements at age 65. Mr R wanted £12,000 per year in retirement, according to the information gathered by Rowanbank. And under the two DB schemes, Mr R was entitled to an annual income of just over £12,000, even if he took some tax-free cash from the smaller one. And this is without taking into consideration his state pension entitlement and his personal pension that had a fund value of £90,000.

If it is correct that Mr R did only need £12,000 a year then he could have, for example, used his personal pension and drawn an income from his DB scheme later on. Or taken the benefits from his DB scheme and used the personal pension to bridge any gaps he had.

So, I think it's reasonable to say that leaving his pensions as they were could've met his stated retirement aims. And he also already had a significant amount of flexibility overall given that he had a personal pension. Thinking about all of this, I don't think there was a pressing need for Mr R to change his pension arrangements for this reason. Especially given the financial loss he would suffer doing this.

Was the transfer of the personal pension also unsuitable for Mr R

I've talked about why I think Mr R shouldn't have transferred his DB scheme benefits above. And how any need for flexibility he had could be met with both his existing DB scheme and personal pension. But I've also looked at whether there were any specific advantages or disadvantages to Mr R in making the transfer to a personal pension.

As our investigator said, Mr R wasn't currently contributing to the personal pension with Clerical Medical. But it would pay a large pension bonus of 0.2% per year. The bonus would be lost on transfer.

Both providers offered a range of funds with differing charging structures and expected risks and performances. In broad terms I don't think there would be a material difference between

how much it would cost Mr R to invest with either business, he could meet his investment needs with either of them. So, I don't think there was a real advantage in making the transfer due to the different investment opportunities.

And by transferring Mr R would have to pay for ongoing advice. And I'm not persuaded that he needed to pay for this advice, as I don't think the transfer was right for him.

So, overall, I don't think there was a good reason for Mr R to transfer his personal pension benefits. And it may have been a more expensive option in the longer term. I don't think the personal pension transfer made the whole advice suitable for Mr R

Suitability of investments

Rowanbank recommended that Mr R invest in a 'managed fund'. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme and the personal pension weren't suitable for Mr R, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr R should have been advised to remain in the DB scheme and personal pension and so the investments in the fund wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher, or different, death benefits on offer through a personal pension would have sounded like attractive features to Mr R. But Rowanbank wasn't there to just transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. Particularly in respect of the DB scheme transfer as he was giving up a guaranteed, risk-free and increasing income. By transferring, Mr R was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr R shouldn't have been advised to transfer out of the scheme just to potentially gain some flexibility, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Rowanbank should've advised Mr R to remain in the DB scheme and also to not transfer his personal pension into the SIPP.

Of course, I have to consider whether Mr R would've gone ahead anyway, against Rowanbank's advice.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against Rowanbank's advice. I say this because Mr R was a relatively inexperienced investor and this pension accounted for the majority of Mr R's retirement provision. So, if Rowanbank had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr R's concerns about his health were so great that he would've insisted on the transfer knowing that a professional adviser didn't think it was suitable for him or in his best interests. If Rowanbank had explained that Mr R could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of the DB scheme.

In light of the above, I think Rowanbank should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#). The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in [Finalised Guidance \(FG\) 17/19](#) (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr R whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance /rules to be published.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr R for the DB part of the transfer.

What should Rowanbank do?

My aim in awarding redress is to put Mr R as far as possible in the position he would be in now if Rowanbank had given him suitable advice. I think Mr R would have remained in the DB scheme. I also think he would have retained his existing personal pension arrangements.

To compensate Mr R fairly, Rowanbank must determine the *combined fair value* of his transferred pension benefits as outlined in Step One and Step Two below. If the *actual value* is greater than the *combined fair value*, no compensation is payable.

fair value – step one

If Mr R had been given suitable advice, I think he would have remained in the DB scheme. Rowanbank must therefore calculate the value of the benefits Mr R lost as a result of transferring out of his DB scheme in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

The calculation should be carried out as at the date of my final decision, 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.

Rowanbank 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 complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Rowanbank to carry out a calculation in line with the updated rules and/or guidance in any event.

fair value – step two

My aim in awarding fair compensation is to put Mr R back into the position he would likely have been in, had it not been for Rowanbank's error. I think this would have meant he remained invested in his Clerical Medical personal pension.

Any loss Mr R has suffered should be determined by obtaining the notional value of the pension from Clerical Medical on the basis that it had been invested in the same funds, and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

I consider the notional value outlined above is the fairest way of resolving this complaint. However, if Clerical Medical isn't able to calculate a notional value, my aim is to put Mr R as close to the position he would probably now be in if he had invested similarly. It's not possible to say precisely where Mr R would've invested. But I think what I've set out below is fair and reasonable given Mr R's circumstances and objectives when he invested.

Rowanbank must compare the total value of the Clerical Medical personal pension transferred to Mr R's SIPP with that of the benchmark shown below to determine the fair value of Mr R's Clerical Medical Personal Pension if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of the switched (personal pension)	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Rowanbank totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the *combined fair value*.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

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 payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mr R within 90 days of the date Rowanbank 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 Rowanbank 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr R wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

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.

My final decision

Determination and money award: I uphold this complaint and require Rowanbank Financial Consultants Limited 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 would additionally require Rowanbank Financial Consultants Limited to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Rowanbank Financial Consultants Limited 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 Rowanbank Financial Consultants Limited pays Mr R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts this decision, the money award becomes binding on Rowanbank Financial Consultants Limited.

My recommendation would not be binding if Mr R accepts this decision. Further, it's unlikely that Mr R can accept my 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 any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 November 2022.

Andy Burlinson
Ombudsman