DRN-3552512

The complaint

Ms H complains about the advice Cullen Wealth Limited ('CWL') gave to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension plan. She says the advice was unsuitable for her and believes this has caused a financial loss.

At the time CWL advised Ms H to transfer her pension it was trading under a different name. But, as it's now operating as CWL I shall only use that in this decision.

Professional representatives have helped Ms H to bring her complaint. But, for ease of reading I will refer to their comments as being Ms H's.

What happened

In 2004 Ms H contacted CWL in order to discuss her pension and retirement needs.

In June 2004 CWL obtained information about the value and benefits for Ms H's DB scheme. CWL wrote to her on 8 July 2004. It said it had recently confirmed the transfer value of Ms H's DB pension was £20,229. It said that in the event of Ms H's premature death the scheme would "*only*" pay a refund of her contributions together with a spouse's pension. It said the contribution refund was equivalent to only £5,104.75. It said that it might be more appropriate for Ms H to transfer her benefits to a personal pension, as in the event of her early death her spouse would benefit from a refund of the full fund value of £20,229. It said that as it was unaware of Ms H's current circumstances it asked her to contact it.

CWL obtained a transfer value analysis report. Amongst other things that said that Ms H's DB scheme:

- Would pay her £3,464 a year annual pension at age 60 if she did not take tax free cash ('TFC') or £2,753 a year if she took TFC of £8,043.
- The critical yield (the growth rates required to match the DB scheme benefits from an alternative pension) were 11.8% and 10.9% respectively.
- The DB scheme would pay a £5,104 lump sum if Ms H died together with a spouse or dependent's income of £1,242 a year.

In August 2004 CWL met with Ms H and completed a fact-find to gather information about her circumstances and objectives. Amongst other things it noted that:

- Ms H was 46 years old, divorced and had two dependent children.
- She was employed and earning between £6,000 to £7,000 a year.
- She owned her home and was paying an endowment that had six years remaining until maturity.

The next day CWL sent Ms H its suitability report recommending she transfer the value from her DB scheme and reinvest into a named personal pension. Amongst other things CWL noted that Ms H's DB scheme had a normal retirement age of 60. But CWL recorded that Ms H would like the flexibility to be able to take benefits at an earlier age. It said that her primary objective was to ensure that, if she died while her children were dependent upon her, a cash lump sum was payable to her estate. It said that they had discussed life assurance but Ms H felt that was too expensive.

CWL explained the death benefits available under the DB scheme and gave an example – had Ms H died the day before – that it would pay a lump sum of £5,104 and a yearly pension payable to a spouse or a dependent of £1,242. The pension would be payable to one of her children until they left full time education or age 22, which ever came first. It said that, in comparison, the personal pension would allow a lump sum payment (which didn't include the "protected rights" element of her pension funds) to her dependents of £19,627.76.

CWL advised that Ms H's DB scheme would provide a guaranteed income in retirement. But it said that, as her primary objective was for a lump sum payment if she died before retirement, then the scheme wasn't suited to her aims. So it recommended Ms H should transfer to a personal pension.

CWL compared the likely benefits of a personal pension at age 60 with those of Ms H's DB scheme. It noted that (assuming a growth rate of 7% each year) a personal pension could pay her TFC of £10,597 and a yearly pension of £1,449, but those figures were not guaranteed. CWL noted that the DB scheme was estimated to produce a "*considerably larger*" pension at retirement than a personal pension. It added that a personal pension would need to meet a critical yield of 10.9% to match the benefits of the DB scheme. It said that if Ms H's aim was to maximise her income at retirement then the critical yield would be too high to recommend that. But, as Ms H had told it that wasn't her priority and she was prepared to accept the possibility of a lower pension in return for lump sum death benefits, it recommended that she transfer the benefits from her DB scheme to a personal pension.

Ms H went ahead with the transfer from her DB scheme into a named personal pension. Around two years later, after CWL reviewed her investments, Ms H transferred her funds to a different personal pension plan.

In 2012, as Ms H turned 55, she contacted CWL again. She said her daughter was getting married and she needed £7,000 for the wedding costs. CWL explained that she could take around £6,500 from her personal pension as TFC but that she would need to crystalise the funds and also to buy an annuity. It said that was against its recommendation. But Ms H went ahead and crystalised the funds to release her TFC.

In December 2020 Ms H complained to CWL about the suitability of its advice to transfer out of her DB scheme. Amongst other things she said:

- CWL's advice was negligent.
- It hadn't adequately told her about the guaranteed benefits she would lose by transferring out of the DB scheme.
- Death benefits payable under the personal pension were dependent on investment returns, which couldn't be relied upon.
- Ms H had no health concerns and had a standard life expectancy so she didn't need to consider death benefits urgently.
- She would have benefited from the DB scheme and would have been better suited to looking for a life insurance policy but there was little evidence this was discussed.
- CWL didn't communicate in a way that was clear, fair and not misleading, in line with the regulator's guidance.
- The transfer was not in her best interests.
- The personal pension was subject to fees whereas the DB scheme wasn't.

CWL didn't uphold Ms H's complaint. Some of CWL's reply referred to Ms H taking funds in 2012. But with reference to the 2004 transfer CWL said, amongst other things, that it had helped Ms H achieve her objectives, which were flexibility and lump sum death benefits. It said it had made her aware of the benefits she would forego by transferring.

Ms H referred her complaint to our service. CWL initially challenged our jurisdiction to consider the matter as it thought Ms H had brought her complaint too late. One of my colleagues issued a decision explaining why the complaint was one we had the power to consider.

One of our investigator's then looked into the complaint. He upheld it and required CWL to pay compensation. In short he said the growth rate required for the personal pension to match the DB scheme benefits was too high. He added that the DB scheme would pay significant death benefits including a 50% pension to Ms H's spouse or dependents. And, while the personal pension could offer a higher lump sum death benefit, that was dependent on investment growth and how much was left in the pension fund when Ms H died. He thought the benefits from the DB scheme outweighed the potential for higher death benefits from the personal pension.

CWL disagreed, amongst other things it said:

- It had made Ms H aware of the risks of making the transfer in 2004 and she knew what guaranteed benefits she would be losing.
- Ms H wasn't ever going to wait until she was 60 to access her pension funds and, if she'd accessed her DB scheme at 55 then she "*may well have been worse off than the benefits she achieved*".
- Ms H wanted flexibility and this was overlooked in her complaint and our investigator's consideration of it.
- Maximising retirement income wasn't Ms H's objective. It made it clear that if Ms H was looking to maximise benefits then a transfer wasn't suitable.
- The decision to transfer out of the scheme was Ms H's. CWL had fully explained the advantages and disadvantages of doing so including that personal pension income wasn't guaranteed.
- Ms H would have gone ahead with the transfer "*no matter what the situation*".
- The fact that Ms H accessed her pension fund at age 55 demonstrated she was aware of the steps taken and the risks involved.
- Ms H couldn't have achieved her objectives by staying in the DB scheme; so CWL's recommendation was in Ms H's best interests.
- Transferring allowed Ms H to access her pension funds at age 55 even though this was against CWL's advice.
- Our investigator incorrectly said there was an initial charge to Ms H of £963 for arranging the transfer. This wasn't the case and that sum referred to commission paid to CWL by the personal pension provider. There was no initial charge to Ms H.
- It considered the complaint to be driven by Ms H's representatives and was vexatious.

The investigator wasn't persuaded to change his 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.

Both Ms H and CWL have made many points in bringing the complaint and replying to it. I've carefully considered everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues that are at the heart of Ms H's complaint and the reasons for my decision.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for reasons broadly similar to those given by our investigator.

The regulator's position

At the time that CWL advised Ms H to transfer out of her DB scheme, in 2004, the regulator's guidance, set out in its Code of Business rulebook ('COB' - 5.3.29G) was that:

"When advising a customer who is, or is eligible to be, an active member of a defined benefits occupational pension scheme whether he should opt out or transfer, a firm should:

- *(a) start by assuming it will not be suitable, and*
- *(b) only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interests."*

This is known as the *'presumption of unsuitability'* and has been renumbered to Conduct of Business Sourcebook ('COBS') 19.1.6G in the current regulator's handbook.

So, CWL should have only considered recommending a transfer if it could clearly demonstrate that it was in Ms H's best interests.

Financial viability and determining Ms H's best interests

CWL has acknowledged from the outset that Ms H was unlikely to match the financial benefits of her DB scheme by transferring out of it. In fact it said in response to the complaint that Ms H had acknowledged she was likely to be financially worse off by transferring. It told us she knew what she was giving up and the risks she was taking. CWL said Ms H wanted to go ahead in order to achieve her other objectives of greater death benefits and flexibility.

I certainly agree that, given the high investment growth required to match the DB scheme benefits, Ms H was likely to be worse off in retirement by transferring out of her DB scheme. But, as all the parties to the complaint agree that's the case, I don't intend to analyse the merits of the financial viability of the transfer further.

CWL has argued that, as a result of its recommendation, Ms H could achieve her other financial objectives. So I've gone on to consider whether CWL has clearly demonstrated that the advice to transfer was in Ms H's best interests. When doing so I've been mindful that CWL's role was to find out what Ms H's wants and needs were and why. Its role wasn't simply to do what Ms H wanted without appropriate analysis and challenge of her motives for doing so, in order to ensure its recommendation was in her best interests. And that's what I've gone on to consider below.

Lump sum death benefits

CWL's suitability report of August 2004 said on several occasions that Ms H's "*primary objective*" was to provide the maximum lump sum death benefit to her daughters in the event of her death before retirement age. It said that, at the time of its advice, the DB scheme would only provide a lump sum of around £5,104 plus interest and as such wasn't suitable for her.

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 benefit on offer through a personal pension was likely an attractive feature to Ms H. But whilst I appreciate death benefits were clearly important to her, and she might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here for CWL was to advise Ms H about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. But in transferring out of her DB scheme Ms H was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for her daughters that they were, probably, unlikely to need or indeed receive before Ms H's normal retirement age.

It's notable that in 2004 Ms H didn't have any health concerns. And there was no indication she shouldn't live to her life expectancy, which at that time – according to the Office for National Statistics – was around 81. So, Ms H could have anticipated living for another 35 years or so, 21 of those past her DB scheme normal retirement age. And in those circumstances I think CWL should have placed the emphasis in its advice on why a guaranteed income in retirement was more likely to be beneficial to her than an increased lump sum on death for her daughters in the short term. But I've seen no evidence that it did so.

Instead it's notable that before CWL had carried out any kind of fact-find or analysis of Ms H's circumstances it wrote to her on 8 July 2004. In that letter CWL suggested that, because the DB scheme death benefit lump sum was *only* £5,104 it might not meet her needs. And CWL indicated she could possibly be better off with a personal pension. So, from the outset not only did CWL fail to challenge Ms H's objectives for seeking higher lump sum on death over income in retirement but it steered her on course to believing that her DB scheme wasn't suitable for her before it had actually provided its advice. That is, it had raised the possibility that Ms H might be in a better position with a personal pension without any informed analysis to make that judgement. So, at that time, I don't think CWL could have known whether that was in Ms H's best interests or not, but its letter gave the impression it was already arriving at that conclusion.

I can understand Ms H was concerned to make sure her daughters were cared for should she die prematurely. But there was simply no indication that was likely to happen. I think this is something that CWL needed to clearly bring to her attention. That is CWL should have stressed that in transferring Ms H would be taking a significant risk with her income in retirement. And that she would be potentially taking that risk in order to help her daughters in the event of a situation that may not occur. But I can't see that CWL ever put this to Ms H in such plain terms. That is I can't see that it contrasted the guaranteed benefits she would be giving up against the possibility of a lump sum benefit that her daughters were unlikely to actually need or actually receive the benefit of. And in order to provide Ms H with fully informed advice, that was something it needed to bring to her attention. But its suitability report simply doesn't address this point.

Further I also think the existing death benefits attached to the DB scheme were underplayed. It seems Ms H was most concerned about the provision for her daughters if she died before retirement age. But while a personal pension might have provided a higher lump sum in those circumstances that was certainly far from guaranteed and was dependent on a number of factors. For example, it was true to say that, if she'd died immediately after the transfer then the personal pension would have paid almost four times the amount the DB scheme would (£19,627 compared to £5,104). But that ignores the fact that, on top of the lump sum, the DB scheme would also have paid a dependent's income which, in 2004 was £1,242 a year. I don't think CWL made the value of this benefit clear enough to Ms H. This was guaranteed and it escalated – it was not dependent on investment performance. And, if Ms H didn't die soon after the transfer, then the lump sum remaining on death in a personal pension was subject to the performance of the investment. And there may not have been a large sum left in a personal pension if Ms H accessed her funds early or lived a long life. In any event, CWL should not have encouraged Ms H to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

Also, as I deal with below, CWL has justified its recommendation for Ms H to transfer out of the DB scheme owing to her desire for flexibility. But, CWL's suitability report omits important information about how Ms H's two objectives of a lump sum death benefit and flexible early access to those funds contradicted each other. That is, if Ms H decided to access her pension funds "flexibly" by taking those at an early stage, then at that point she would no longer be able to leave all of those funds to her daughter(s) in the event of her death as she would have depleted the fund by any amounts she took out of it.

Further, owing to the rules in place at the time, if Ms H wanted access to any of her personal pension funds early then she would have also had to crystalise the rest of her pension pot and buy an annuity. And while she could have bought an annuity that provided an income for a named beneficiary in the event of her death, given the critical yields involved, this was unlikely to have matched the benefits of the DB scheme. But CWL didn't ever point out that the two reasons it felt a transfer was justified, higher lump sum death benefits, and flexible access to income, were essentially at odds with each other.

Also, given that Ms H clearly wished to leave a legacy for her daughters, then she could have done so without depending on the investment returns or how much of her pension fund remained at the time of her death, by exploring life insurance. I appreciate that the suitability report says that Ms H had discounted this for reasons of cost but CWL hasn't set out what sort of cover it discussed with her or what the likely costs of that cover would have been.

The example CWL gave of the relevant death benefits from the DB scheme and a personal pension in its suitability report assumed Ms H would die straightaway. But, as I've said above that wasn't realistic. So, the starting point ought to have been to ask Ms H how much she would ideally like to leave to her children. CWL could then have looked into cover on a whole of life or term assurance basis, for that sum. Ms H had no ongoing health concerns, so such a policy was likely to be a lot cheaper to provide than some other policies on the market. But CWL's presented no evidence that it put this possibility to Ms H.

It follows that I don't think that access to potentially higher death benefits before retirement age was a suitable reason for CWL to advise Ms H to transfer her DB scheme benefits to a personal pension.

Flexibility

CWL's said the second of Ms H's objectives was for flexibility. In particular its suitability report said:

"*The scheme has a retirement age of 60 but you would like the flexibility of having the option to take benefits at an earlier age if appropriate at that time.*"

While I can understand why that might have appeared an attractive prospect for Ms H, I don't think CWL gave her all the information she needed in order to make an informed decision. Nor has it documented any challenge to her reasons for preferring that flexibility over the guaranteed benefits from her DB scheme. Neither have I seen any evidence that it explained to her why that might not have been in her best interests.

Further I can't see that CWL contrasted the flexibility of early benefits on offer through Ms H's DB scheme against what she might achieve by transferring out of it. Ms H's DB scheme administrators had confirmed that she could have accessed her DB benefits from age 50, although this would have been at a reduced rate. But CWL's suitability report doesn't refer to this at all. In fact, it only ever refers to Ms H accessing her DB scheme benefits from age 60. So it's entirely possible that Ms H wasn't fully aware that she could access her DB scheme benefits before that age. And, in order for her to make an informed decision, this is something CWL needed to bring to her attention. But I've seen no evidence it did so.

CWL's suitability report also said:

"*Personal Pensions also offer good flexibility at retirement. You can choose when the benefits are taken, which is currently at any age between 50 and 75, and there is no need for you to give up work.*"

That would appear to imply that a personal pension offered flexible access to her pension funds that Ms H's DB scheme didn't. But as I've said above, Ms H could have accessed her DB scheme at any time from age 50. And, if she chose to take her pension later than the scheme normal retirement age of 60 then her benefits would have been enhanced by what's known as *late retirement factors*. But I've seen no evidence that CWL explained that Ms H's DB scheme also allowed her to access her funds early and why this was more likely to be in her best interests than having flexible access from a personal pension.

It's also worth pointing out again that, at the time, pensions rules would only allow Ms H to access funds from a personal pension by taking TFC and at the same time buying an annuity. Doing so might have given her slightly more flexibility over the type of benefits of the specific annuity she chose. But CWL has acknowledged that in transferring to a personal pension Ms H would be worse off in retirement. And the additional flexibility available from a chosen annuity was somewhat limited compared to the increased benefits from the DB scheme. So the limited extra flexibility certainly wasn't worthwhile giving up the guaranteed benefits for.

Further, Ms H was only 46 at the time of the advice, and based on what I've seen she didn't have concrete retirement plans. At that time, the earliest she could have taken retirement benefits was at age 50, but she was still four years away from that milestone. So, I think it was too soon for her to make any kind of decision about transferring out of the DB scheme. She certainly had no need, in terms of early retirement planning, to transfer out of the scheme in 2004. So, I don't think it was a suitable recommendation for Ms H to give up her guaranteed benefits when she didn't know what her needs in retirement would be. If Ms H later had reason to transfer out of her DB scheme she could have done so closer to retirement. And I think that, in order to give advice that was in Ms H's best interests this was something CWL needed to bring to her attention. But I've seen no evidence it did so.

Was CWL's recommendation suitable?

CWL believes its recommendation was suitable as it enabled Ms H to achieve the objectives described above. But, as I've already said CWL needed to do more than just transact what Ms H asked it to do. It should have analysed and challenged her motives for preferring potential lump sum death benefits and flexibility over the guaranteed benefits of her DB scheme. But I've seen no evidence of such a challenge even though that was in Ms H's best interests. And I don't think CWL met its obligations to challenge her objectives in light of what she would be giving up.

CWL was in a good position to have analysed, tested, challenged and advised Ms H about what was in her best interests for retirement planning. It knows valuable pension pots like Ms H's DB scheme were paid into with the intention of providing for retirement and that the regulator required it to start from the position of assuming that transferring out of such a scheme would not be suitable for her. CWL says Ms H's chosen path was to give up that guaranteed income in retirement for the chance of a potentially higher lump sum death benefit in the short term and flexible access to the funds at some point to be determined in the future. But CWL didn't present any form of robust challenge of those objectives. It simply accepted what she said rather than impressing on her the need for long-term planning. And without fully exploring and challenging Ms H's objectives I don't think that CWL was in a position to make a recommendation to transfer out of her DB scheme. So I don't think CWL's recommendation was suitable.

Ms H's decision to access her pension funds in 2012

In its response to the complaint and to our investigator's assessment of it CWL has on a number of occasions referred to Ms H's actions in 2012. That is when she chose, against CWL's advice, to take TFC and buy an annuity. I need to be clear that I'm not looking at CWL's advice process in 2012. My analysis in this decision is entirely about the suitability of its recommendation in 2004. And, as I expand on below, I don't think Ms H's actions in 2012 is indicative of decisions she would have taken in 2004.

That said, it seems that Ms H had a pressing need for cash in 2012 and she went against CWL's advice not to access her pension funds at that time. So it's possible that, had Ms H remained in her DB scheme until 2012 she might have decided, given her urgent need for cash at that time, to take her DB benefits then. Of course we can't now know for certain what she would have done because CWL had already advised her to transfer out of her DB scheme. But, on balance, it seems likely that – given her pressing need for cash – she most likely would have accessed her DB funds in 2012 had those still been available. So I've reflected that in the "*putting things right*" section below.

Motivation for Ms H's complaint

CWL's told us that it believes Ms H's complaint was entirely driven by her representatives and speculated as to how her complaint came about. It said it feels the complaint is vexatious. But, regardless of what prompted Ms H to complain in the first place, she was entitled to make that complaint. And the regulator requires CWL to respond to it. Further, given my findings in this decision, that CWL's advice was unsuitable, I think Ms H was justified in making her complaint. I'm satisfied that it wasn't in any shape or form vexatious.

Summary

I don't doubt that a higher lump sum death benefit and greater flexibility would have sounded like attractive features to Ms H. But, CWL needed to go further than simply arrange those for her. Its role was to really understand what Ms H needed and recommend what was in her best interests. It didn't do that.

CWL's advice wasn't suitable. And I think it should have advised Ms H to remain in her DB scheme.

Of course, I have to consider whether Ms H would've gone ahead anyway, against CWL's advice if it had recommended she remain in the scheme. And having considered this very carefully, I'm not persuaded she would have done so. That's because, she had no *need* for flexible access to her pension funds in 2004. There was also no indication that Ms H was likely to die prematurely, and so would require higher lump sum death benefits. And I think if CWL had been clear about that, rather than saying from the outset that her DB scheme wasn't suitable for her needs I think Ms H would likely have heeded that advice. That's because she had no real experience of investments and I think she'd have accepted the advice from professional advisers about her best interests at the time.

CWL doesn't agree. It's told us that Ms H was fully aware of the benefits she'd be giving up and of the advantages and disadvantages of doing so. CWL's suitability report does say that her DB scheme benefits were guaranteed when investments in a personal pension weren't. It did also indicate that personal pension investments were unlikely to match the DB scheme benefits. But in order to show that its recommendation was in Ms H's best interests, I don't think its advice went far enough. Given the flaws in CWL's advice process I've pointed out above, and its unsuitable recommendation to transfer, I'm not persuaded it fully informed Ms H about what the likely outcomes for her would be if she transferred. That's particularly the case as CWL told her that a transfer was in her best interests, when that wasn't the case.

CWL also said Ms H was always likely to have gone ahead with the transfer "*no matter what the situation*". And it's placed emphasis on the fact that Ms H accessed her pension funds in 2012 at age 55, when that was against its advice at the time. But, what actions Ms H took some eight years after CWL's DB transfer advice doesn't mean that she would have taken the same action in 2004. That's particularly the case as in 2012 she clearly had a pressing need to access TFC in order to pay for her daughter's wedding. In contrast in 2004 she was still four years away from being able to access her pension funds at all. And she had no urgent or pressing need to transfer out of the scheme.

Also, the fact that Ms H went against CWL's recommendation not to take her pension funds in 2012 is not persuasive that Ms H would have gone against suitable advice, had CWL given that, in 2004. I'll repeat that Ms H had no *need* to transfer her funds in 2004 at all. So I don't accept that because Ms H went against CWL's recommendation in 2012 meant she would have taken the same action in 2004.

Overall I'm satisfied that If CWL had given Ms H clear and robust advice not to transfer from her DB scheme she wouldn't have done so.

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

Putting things right

A fair and reasonable outcome would be for Cullen Wealth Limited to put Ms H, as far as possible, into the position she would now be in but for CWL's unsuitable advice. I consider Ms H would have most likely remained in her DB scheme if CWL had given suitable advice.

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) 17/9 (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 Ms H whether he/she preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published. She's chosen not to wait for any new guidance to come into effect to settle her complaint.

I'm satisfied that a calculation in line with FG 17/9 remains appropriate and, if a loss is identified, will provide fair redress for Ms H**.**

CWL 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.

For clarity, as I understand it Ms H has not yet retired. But I'm aware she took TFC and crystallised her personal pension funds in 2012. And, as I've said above, it seems likely that, had she not already transferred out of her DB scheme, she would have accessed the benefits from it at that time. So, compensation should be based on Ms H having accessed her DB scheme funds at age 55.

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 Ms H's acceptance of this decision.

CWL may wish to contact the Department for Work and Pensions (DWP) to obtain Ms H'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 Ms H's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Ms H'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 Ms H 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 her likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Ms H within 90 days of the date CWL receives notification of her acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% a 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 CWL to pay Ms H.

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.

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 CWL to carry out a calculation in line with the updated rules and/or guidance in any event.

My final decision

Determination and money award: I uphold this complaint and require Cullen Wealth Limited to pay Ms H the compensation amount as set out in the steps above.

I additionally require Cullen Wealth Limited to pay Ms H any interest on that amount in full, as set out above.

If Ms H accepts this decision, the money award becomes binding on Cullen Wealth Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms H to accept or reject my decision before 15 November 2022.

Joe Scott
Ombudsman