

## **The complaint**

Mr M complains about advice he received from Tideway Investment Partners LLP ('Tideway') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr M is being represented by a third party but for ease of reading this decision I'll refer to all representations as being made by Mr M.

## **What happened**

Mr M approached Tideway in April 2016 for advice about his pension. He has said he was prompted to do so because colleagues of his had mentioned releasing money from their pensions. Tideway sent Mr M information about the service it offered as well as a fact find that it asked him to complete.

Mr M completed the fact find and emailed this back to Tideway. The covering email also said Mr M had considered other options and plans. It included information about other retirement provisions and savings he and his wife held, why they didn't want to use the savings and said that they thought their other pension provisions would be enough. It went on to say that by clearing debt now they could live happier and make decisions on investment and inheritance, including helping their children onto the property ladder. The email also said Mr M was concerned that the transfer value he had been offered would not last forever.

Tideway has also provided a copy of another email sent to it by Mr M which included an attachment called 'pension – my choice' which gave further reasons Mr M wanted to transfer. This said Mr M was looking to release money as tax free cash ('TFC') from his pension – primarily to clear unsecured debt, reduce his mortgage balance and complete some renovations with a view to increasing his home's value. It said clearing debts was now essential and he'd already discussed options with the Citizens Advice Bureau ('CAB') but entering into debt management plans or other arrangements was out of the question.

The details recorded by Mr M in the fact find showed he was coming up on his 55th birthday at the time of returning the document, married with two non-dependent children. He had an outstanding mortgage of £155,000 and unsecured debts of roughly £47,000. An annual income figure was recorded but no monthly income or expenditure figures were requested or filled in. Mr M wrote that, at the time of filling the fact find, his current annual expenditure exceeded his income. Mr M also recorded that he had a low-medium attitude to risk.

On 20 May 2016, Tideway advised Mr M to transfer his pension benefits into a SIPP with a specific provider. It gave no advice at that time on how the funds should be invested after moving to the SIPP. Tideway has said that its process was to provide investment advice after the transfer had taken place.

The suitability report said the reasons for this recommendation were that transferring would give Mr M flexibility in terms of how he used his retirement funds as well as being able to leave the fund to beneficiaries of his choice in the event of his death. It also allowed him to

take the maximum possible TFC at that time, to allow him to carry out his plans of reducing debt and renovating his home. And Tideway said it felt Mr M had sufficient capacity to take the risks associated as he wasn't planning on retiring until age 67, so could continue to contribute to another pension he held, and because he thought his other retirement provisions, including state pension, were likely to be enough to cover his income needs in retirement.

Mr M transferred the full value of his DB benefits (just under £280,000) to the SIPP in July 2016, as recommended by Tideway. He took TFC of just under £70,000.

The pension fund was initially invested in 'cash'. Tideway says it tried to contact Mr M several times, primarily by email, to explain this and to discuss investing appropriately. Mr M has confirmed he received these emails but has said he was suspicious of them as he believed, as the money had been transferred to a SIPP, it was already invested. So, he didn't respond. As a result, the money remained in 'cash'.

Due to changes in Mr M's personal circumstances he made a number of withdrawals from the SIPP, incurring tax each time, in the three years after the SIPP was established. The result of which was that the balance was entirely depleted by May 2019.

In October 2020, Mr M complained to Tideway that the advice it had given was unsuitable. In summary he didn't think it had done enough to understand his circumstances or explain other options potentially available that may've been more appropriate.

Tideway didn't think it had done anything wrong. It said it felt from the information provided that Mr M had a clear understanding of his circumstances and what he wanted to do and that it was entitled to rely on the information provided. It also felt it was clear Mr M was experiencing financial difficulty and the transfer and release of TFC was appropriate as it met his main objectives.

The complaint was subsequently referred to our service. Mr M said he didn't recall making a number of the statements about his circumstances at the time in the documents provided. And he felt the way they were worded suggested they were not his. He also said that, at the time of taking the advice, he was not in arrears with any of his payments, was not being pursued in respect of any of the debts and was managing his payments without issue.

One of our Investigators considered the complaint. He felt the recommendation by Tideway to transfer was appropriate as it allowed Mr M to meet his objective of clearing debt which he felt was a priority. He did question whether the lack of investment advice meant the overall advice was unsuitable. But, as he was satisfied Tideway had tried to contact Mr M repeatedly to complete this process and he had not responded, he didn't think this meant the recommendation was wrong.

Mr M did not agree and asked for his complaint to be reviewed by an ombudsman. I considered the complaint and issued a provisional decision in June 2022 explaining that I intended to uphold Mr M's complaint. Below are extracts from my provisional findings, explaining why.

*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.*

*Tideway's role wasn't simply to facilitate something that Mr M might've thought he wanted or needed. It was to objectively consider all of the relevant information about his circumstances, goals and the options available – even if he may already have discounted some of these*

*alternatives – and then provide him with robust, suitable financial advice, which was in his best interests. And this needed to be done with particular consideration to the fact that the regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Tideway should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests (COBS 19.1.6).*

#### *Assessing Mr M's circumstances*

*COBS 9.2 talks about Tideway's obligations when assessing the suitability of its recommendation – which here was that Mr M transfer his pension benefits from his DB scheme to a SIPP. COBS 9.2.1 explains that Tideway needed to take reasonable steps to ensure its recommendation was suitable, which include obtaining the necessary information about Mr M's knowledge and experience in the relevant investment field, his financial situation and his investment objectives.*

*Cobs 9.2.2R provides additional detail, and in reference to Mr M's financial situation explains;*

*"...The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments."*

*This information is usually gathered through the completion of a fact find – which in this case Tideway sent to Mr M to complete independently and return. Having seen a copy of the fact find and the covering information Mr M returned with it, Tideway did broadly gather a lot of the information that I would've expected it to. But there wasn't a section to provide any significant detail around Mr M's regular financial commitments. And I don't think Tideway did enough here to fully understand this.*

*Total outstanding balances were given by Mr M, as well as the length of time remaining in respect of some of the borrowing. And in the case of two of the unsecured loans, the interest rates were noted. But not all of this information was provided in respect of each of the debts noted. And there was no information noted at all about how much Mr M had to pay each month towards the outstanding debts or any other regular commitments Mr M was responsible for. And I can't see that there was any attempt to gather this information by Tideway.*

*In the circumstances I think this information was particularly important – given one of the key reasons for the recommendation was that Mr M had a need to clear debt using TFC. Without asking for this information, Tideway did not have a full picture of Mr M's financial situation, making it difficult for it to ensure its recommendation was suitable.*

*I acknowledge that other comments provided by Mr M indicated his outgoings exceeded his income. Which Tideway has indicated it relied on. But there is no information to show how much that monthly deficit was – or whether this was due to other expenditure besides the debts. I think this was crucial information as without it, Tideway could not accurately establish how great a need this was or the viability of any alternative options for addressing this – such as perhaps scaling back other expenditure if possible. So, I don't think Tideway has done enough in terms of understanding Mr M's specific circumstances and needs.*

#### *The advice process*

*In addition to these issues with the information gathered before the advice was provided, the advice itself was in my view incomplete – which I think impacts whether it was suitable.*

*Tideway has said that its process was to give advice on the pension transfer first and then to provide advice relating to the investment of funds once the transfer has been completed. But I don't think the described process is in line with the requirements set by the regulator.*

*On 18 January 2013 the regulator at the time issued an alert about advising on pension transfers with a view to investing pension monies into unregulated products through a SIPP.*

*The alert included the explanation that;*

*"The [FCA's] view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating (...)"*

*I acknowledge this alert was in reference to investments in unregulated products and that there is no indication that Tideway intended to recommend unregulated investments to Mr M. But the underlying requirement – that when advising on pension transfers the advice must account for the overall investment strategy – is still applicable.*

*This was reiterated in a further alert issued by the FCA in April 2014 which said;*

*"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable."*

*COBS 19.1 also contains specific requirements and guidance relating to transfers from defined benefit schemes. COBS 19.1.2R required the following:*

*"A firm must:*

- 1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme;*
- 2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
- 3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
- 4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

*And COBS 19.1.3G says the FCA considers the comparison should, amongst other things, "...be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds are invested..."*

*Bearing all of this in mind, without Tideway giving advice relating to the underlying investment as part of the consideration of whether transferring was appropriate for Mr M, I don't think I can reasonably say the process it followed was appropriate or in line with the regulator's requirements.*

*Was the advice suitable?*

*Again, no assessment of an investment strategy took place. Without assessing and recommending an investment strategy, Tideway couldn't accurately determine if it was likely to meet Mr M's investments needs or if he could bear the related risks. And without a specific strategy being outlined, with likely expected returns, there wasn't a detailed enough comparison for Mr M to make an informed decision.*

*The suitability report talks about how long Mr M's pension funds would last, if he took equivalent benefits to his DB scheme, based on differing rates of return. And it provided information about some current rates of return for particular assets – albeit based on historic performance which aren't an indicator of future performance. And Tideway indicated it felt it was not unrealistic to target returns of 4-5%. But I don't think this general commentary is enough. And again, without a strategy specifically being decided upon and recommended with a specific comparison to Mr M's existing benefits provided, I don't think Tideway has done what was required of it. And I don't think Mr M could reasonably make an informed decision.*

*Tideway did include information about the critical yield – the rate of return, based on a number of assumptions set by the regulator, required on the pension funds if transferred to allow Mr M to purchase an annuity that would provide benefits equal to those he was entitled to under his DB scheme. Tideway says it calculated this to be 3.38% and did so based on 'more cautious assumptions' – although a transfer value analysis (TVAS) report was not produced and it isn't clear if this figure was based on Mr M taking TFC or not. Our service published 'discount rates' at the time of the advice. These are based on guidance set by the regulator to be used in loss assessments where a complaint about a past pension transfer was being upheld. And they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor, so are a good comparator for if the critical yield was achievable. And the rate published by our service at the time was 4.2%.*

*But while the discount rate is slightly higher than the critical yield, it isn't clear if the critical yield quoted accounted for SIPP's fees, investment platform fees and ongoing advice fees. Which could mean in reality the critical yield was in fact higher than what was quoted. And once the likely fees were considered I think it's unlikely Mr M would have improved on the benefits he was giving up. And again, because Tideway didn't recommend an investment strategy, including associated fees, Mr M couldn't make an informed decision, taking all of the relevant factors into account.*

*I'm also conscious that the information about the critical yield was followed by a statement that Tideway considered the critical yield assessment largely irrelevant – which it has repeated in correspondence to our service. So, the critical yield, and whether it was achievable, does not appear to have formed part of the reasons for Tideway's advice. And again, the critical yield being achieved was entirely dependent on the funds being invested appropriately. And there was no investment strategy recommended.*

*Overall, I'm satisfied by not providing investment advice as part of the pension transfer advice, Tideway's advice process was flawed which I think means the advice was unsuitable.*

*That notwithstanding though, I don't think the lack of investment advice is the only reason*

*the overall advice given here wasn't appropriate.*

#### *Enhanced TFC and flexibility*

*It is accepted that Mr M had a number of outstanding unsecured debts at the time in addition to his mortgage. Mr M has said in the course of his complaint that he was up to date with his payments and was not being pursued by any of his creditors. But the information from the time does indicate that Mr M had some concerns about meeting his obligations - mentioning having discussed options with the CAB and that his outgoings exceeded his income at that point. Mr M has said he doesn't recall making these statements but from the evidence I've seen I'm satisfied they are part of the information he sent to Tideway before it provided advice. So, I think there was certainly a concern about his outstanding indebtedness at the time and a desire on his part to explore reducing this.*

*Due to the lack of information that was gathered in relation to the details of these regular outgoings, it isn't clear how significant of a need this was. Or whether there were other ways of making these payments affordable, that could've been explored.*

*As a result, I have to decide what, on balance, I think the position was. Based on the information I've seen, in particular the mention of having spoken to the CAB about potentially significant debt restructuring and the fact that Mr M still had a significant mortgage which would've hindered any restructuring; I think Mr M did have a need to reduce his indebtedness at the time – primarily his unsecured debts. And I don't think Mr M had any viable alternative to releasing money from his pension.*

*The fact find completed mentioned his wife having some savings from an inheritance. But these weren't enough to clear Mr M's indebtedness. And he noted that these were his wife's savings, not his. The fact find did also list a deferred pension lump sum from another scheme. But the amount listed again wouldn't have been sufficient to clear Mr M's unsecured debt – which I think does appear to have been an important objective, given Mr M described it as "imperative".*

*But that doesn't mean I think he necessarily needed enhanced tax-free cash or the flexibility that Tideway has suggested to achieve this objective.*

*Transferring allowed Mr M to access TFC of £69,788.30 on his 55th birthday, a couple of months after the advice was given. But I don't think he necessarily had a need to do this given that the debts listed stood at approximately £47,000. When Mr M turned 55 it appears he was entitled to take benefits under his existing DB scheme early, including TFC. Indeed, Tideway estimated in the suitability report Mr M could take approximately £50,600 as TFC under the DB scheme at that time – enough to clear the debts. And he would then have also received a guaranteed ongoing regular income – which Tideway estimated to be approximately £7,600 per year.*

*While Mr M talked about his intentions for the additional TFC, after clearing debts, that he could've obtained by transferring – such as reducing his mortgage, potentially renovating or extending his property or helping his children onto the property ladder – I don't think he had a genuine need to obtain more TFC or that these potential uses were essential or time sensitive.*

*Tideway has said Mr M also wanted flexibility to take TFC but keep the rest of his pension invested and that he didn't want a regular income. But I haven't seen anything to support that Mr M ruled out the option of taking benefits under his DB scheme at that point purely because he didn't want an income. And while Tideway has argued that Mr M seems to have been well researched at the point it gave advice and that he had a plan in mind, again,*

*Tideway's role wasn't simply to facilitate what Mr M thought he might want. As the professional adviser, it should've made him aware of the pros and cons with the various options, so he could make an informed decision – something which I don't think it did.*

*As I've said, if Mr M had taken TFC under his DB scheme, and cleared his unsecured debts, he'd have then begun to receive a regular income under the scheme (which Tideway believed to be £7,600 per year). This additional guaranteed income from the pension, on top of his salary, would've helped with other expenditure and could've been used to make additional payments towards Mr M's mortgage – something he suggested he was interested in – or achieve some of the other things he'd discussed as uses for the TFC. Again, this guaranteed income would've been less than he would've received at the normal scheme retirement age. But if there were significant issues with disparity in income and expenditure – which Tideway seems to have relied on there being when recommending the transfer – then this course of action may've been more appropriate for Mr M.*

*And I understand, even after the crystallisation of the benefits under the DB scheme, Mr M could've still continued to contribute to his other retirement provisions, with a similar level of tax relief, something he indicated he intended to do. Which would not have been the case if he'd taken an income from the flexible drawdown arrangement Tideway recommended.*

*So, taking benefits under his existing scheme early – including a guaranteed, escalating income – to achieve the objective of repaying unsecured debt, while also providing additional income which could be contributed towards the other things Mr M talked about simply using TFC for, seems to have been a viable alternative. So, I'm not sure he did have a need for the flexibility that Tideway has said. And I don't think Tideway did enough to discuss and explore these alternatives – as there is no reference to alternatives within the suitability report or why they were discounted.*

#### *Death benefits*

*Tideway's suitability report said Mr M was attracted to transferring as he'd be able to leave his pension fund, on death to beneficiaries of his choice. But that wasn't listed as an objective in the information I've seen that Mr M provided to Tideway.*

*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 was likely an attractive feature. But whilst I appreciate death benefits are important to consumers, a pension is primarily designed to provide income in retirement.*

*I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr M pre-deceased her. This was guaranteed and it escalated – it was not dependent on investment performance – whereas the sum remaining on death in the SIPP was, and would've been further depleted through any income taken by Mr M.*

*I also note that Mr M said that both he and his wife had life assurance policies. And if Mr M felt this wasn't sufficient, and one of his objectives was genuinely to leave a legacy for his spouse and children which didn't depend on investment returns or how much of his pension fund remained on his death, Tideway could've explored amending this cover, and the sum assured.*

*Overall, I don't think different death benefits available through a transfer to the SIPP justified the recommendation.*

## *Control and the stability of the DB scheme*

*From the information available it appears Mr M was not an experienced investor. And I cannot see that he had the knowledge to be able to manage his pension funds on his own. Some of the summary information he provided to Tideway talked about investments. But the context was that he considered renovating his property and having additional disposable income as a potential investment. Not that he had knowledge or interest in investing his pension in a specific manner. And I think the fact that Mr M's pension remained in 'cash' following the transfer as he says he thought the SIPP manager was investing it shows that control over investments was unlikely to have been a genuine objective.*

*And although there has been passing comment to not being certain what would happen if the existing scheme became insolvent and potentially losing his money, Mr M's own emails acknowledged that he thought this was unlikely. And I've seen nothing to suggest the DB scheme was in trouble or that Mr M had reason to have concern about the security of his pension. Nor does it appear that Tideway did anything to allay these alleged fears or explain the cover he would've been provided by the Pension Protection Fund (PPF). So again, I don't think these points reasonably justify the recommendation made.*

## *Summary*

*I think Mr M likely did have a need to clear his unsecured debts. And I acknowledge he seems to have contacted Tideway thinking that transferring his DB pension may've been the best way to achieve this. But Tideway wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.*

*Ultimately, I don't think the advice given to Mr M was suitable. It was incomplete and Tideway didn't meet its obligations in terms of making a recommendation as part of the pension transfer advice about the ongoing investment of the funds. But more than that, the course of action was not I think in Mr M's best interests. It allowed him to release money to repay his unsecured debts. But it wasn't the only viable avenue for doing so. And the transfer involved him giving up a guaranteed, risk-free and increasing income.*

*I think appropriate advice, all things considered, would've been for Mr M to remain in the DB scheme but to take his retirement benefits early – at age 55.*

*Of course, I have to consider whether Mr M would've gone ahead anyway, against Tideway's advice, if it had advised him appropriately. But I'm not persuaded he would've done.*

*The correspondence Mr M sent to Tideway prior to receiving advice, does suggest he'd undertaken research and had a plan of action in mind. But I don't think this means Mr M would've ignored the recommendation of a professional adviser, whom he had sought out, if Tideway had advised him that his plan wasn't in his best interests and that there was a more appropriate alternative available. So, I don't think Mr M would've insisted on transferring, had he been correctly advised by Tideway.*

*In light of the above, I'm currently minded to say that Tideway should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.



Tideway did not agree with my findings. It maintained that the advice it gave Mr M was appropriate and in his best interests given his position at the time. It said this was primarily because of there being a generous CETV offer, Mr M having an urgent need for capital at age 55, him being able to obtain a significantly higher TFC sum by transferring, benefits under the existing scheme being significantly reduced had he taken these early and a sensible plan being agreed at the time. In terms of the plan it mentioned it referred back to the suitability report and the section which talked about returns of 4-5% per annum being achievable with an actively selected bond portfolio.

It questioned some of the things Mr M had said when complaining. In particular it disputed Mr M's explanation that he did not respond to contact about investing the money held within the SIPP Tideway had recommended, after the money had been transferred, as he was suspicious of the emails due to already believing the money to be invested. It said Mr M had received a significant number of emails from Tideway prior to this so it didn't believe he had grounds to think the emails were suspicious. It also thought Mr M's statement that he believed the money to already be invested was untruthful – as he had asked about the possibility of this being held in 'cash' prior to the transfer. Tideway also said the fact that Mr M had said he does not remember making certain written statements during the advice process called into question his testimony as the documents he referred to not remembering were provided to Tideway by him. And lastly it questioned what he'd now said about not being in any payment difficulties with his existing debts at the time of the advice – as he had suggested when he approached Tideway he'd already taken debt advice before the pension transfer was discussed, which Tideway didn't think Mr M would've done had he not been experiencing some difficulties.

Tideway also went on to say that some of the information I'd relied on in my provisional findings was incorrect. Specifically, the benefits that would've been available to Mr M under the DB scheme at age 55. I'd noted that the information available to me indicated that at age 55 Mr M could take TFC of approximately £50,6000 and a reduced pension of £7,600 per annum. But even though these figures came from Tideway and were those it used in its suitability report where it recommended the transfer, it said that these were calculated wrongly.

It provided corrected calculations showing that Mr M could only have taken TFC of £40,287.61 and a reduced annual pension of £6,043.14 per year at age 55. So, it disagreed with my finding that recommending Mr M taking benefits early under his DB scheme was appropriate or a viable alternative. And it also said recommending Mr M take benefits early under the DB scheme would've committed him to an income below what he needed.

Finally, it disputed what I'd said was a fair way to address matters. Tideway said that it felt a calculation of loss should be on the basis of how it would've recommended the SIPP be invested if Mr M had gotten back in touch after the transfer advice. It said it felt this was the reasonable comparison. It also said the reason for Mr M's current position was that he had not acted in line with its advice and had withdrawn funds from the SIPP. So, Tideway didn't think it should have to compensate for this but if I disagreed, it said Mr M should be required to account for how the money was used. Lastly Tideway said that it didn't think a lump sum redress payment was fair and the only appropriate way of addressing this would be for an annuity to be acquired.

Mr M initially said he didn't have anything to add. But later reiterated that he was under no pressure to transfer his pension. He said he'd never missed a payment and was not being chased for repayment of any of his outstanding debts and he provided a credit report, covering the period of advice and several years before, to show he was not in arrears. He said his wife held some savings at the time. And his mortgage was flexible, and he was in fact overpaying it, so if he had needed to free up money he could've ceased overpayments

and borrowed some money back. So, he felt he could've used funds available under his mortgage and savings to meet any needs at the time.

### **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.

There is a clear disagreement between both parties around the circumstances at the time of the advice – particularly around whether Mr M needed to access his pension. And I'd like to start by reiterating my role here. Our service is an impartial dispute resolution service and an informal alternative to a court of law. My role, where there is a disagreement or difference of opinion, is to decide, based on the information that is available, what I think on balance is more likely than not and then what I consider to be fair and reasonable.

Tideway has questioned the truthfulness of some of Mr M's comments. I understand that Tideway does not necessarily agree with Mr M and has a different opinion. But, although it has explained why it thinks this, this doesn't lead me to agree with its suggestion that some of the comments Mr M has now made are deliberately misleading.

That doesn't though mean I will necessarily agree with Mr M's recollections. I need to have regard for the fact that what Mr M has told us represents what he recalls and how he feels about the transfer process now – some years removed from the events actually taking place. Memories can and do fade. And I considered this in my provisional decision when I found that, even though Mr M said he didn't recall some of the things he'd said or written at the time of the advice, I was satisfied that these did represent his comments. And so, I felt Mr M did have a need to access his pension.

I've thought again about everything the parties have said and provided when reaching this decision, in the same way – deciding on balance what I think is more likely than not and what I think is fair and reasonable.

Mr M has again said that he didn't have a need to access his pension at the time of the advice. And he has provided a credit file to support this, showing that he did not have any missed payments.

I've reviewed the credit file, which does show a clear payment history for his credit agreements, including prior to the advice being given. So, I accept that Mr M does not appear to have been in any arrears. But not having missed payments before taking advice, doesn't mean that Mr M didn't have a need to address problems with repayments moving forward.

I've again reviewed the correspondence between the parties prior to the advice. As I explained in my provisional findings, Mr M sent Tideway emails explaining why he wanted to look at releasing money from his pension.

In one of these he said using part of the pension was "*essential*". The same document talked about having thought about extending his mortgage, but that this had been ruled out for several reasons. These included that it would mean he was paying more in his early retirement years and would prove costly, would restrict choices in the future, could create further debt problems and that the mortgage provider may not consider an extension. It is true that Mr M did mention that his wife had some savings. But he was very clear these belonged to his wife. He also said he'd discussed his situation with the CAB but to Mr M it was inconceivable to enter into a debt management plan as it was "*morally wrong, and that it will affect my ability to re-mortgage*".

Mr M also completed a fact find document. I've seen evidence that a blank template was emailed to Mr M and he completed and returned this independently. And in the fact find Mr M was clear that his outgoings exceeded his income at the time – but that this situation would be rectified if debt was cleared.

Mr M has said that he doesn't remember making a number of statements from the time of the advice. And has questioned if they were actually made by him. But I've seen evidence that these documents were sent from his email address and authored by him. So, I'm satisfied they do reflect what he told Tideway at the time.

While he might not have missed any payments prior to seeking advice from Tideway, I don't think there would've been a discussion with an organisation such as the CAB without there being a need to address a potential issue. And again, Mr M had been clear that his outgoings exceeded his income. I'm also conscious that Mr M initiated contact with Tideway and said it was because colleagues had discussed releasing funds from his pension.

Taking all of this into account, while I appreciate that Mr M feels strongly about this, I'm satisfied on balance from the evidence available that he did have a need to address his outstanding debt at the time of the advice. And while I've taken on board what he has now said about having potential other means to do this, the information from the time doesn't in my view support that these were viable options. So, I remain of the opinion that he did have a need to access his pension.

But I also remain of the opinion that the advice provided by Tideway was not in Mr M's best interests.

Firstly, I don't agree with what Tideway has said about a sensible plan for investment having been agreed at the time of the advice. General comments were made about the level of return that would be targeted. But the advice to transfer did not include a recommendation on how the funds would subsequently be invested in order to achieve that target. As there was no specific recommendation and no agreement to this, I don't agree that an 'appropriate plan' was put in place. So, the advice in my view was incomplete. I don't think further advice being offered at a later date makes up for this. And, for all of the reasons I explained in my provisional findings, I still consider that the advice was unsuitable.

Tideway has said that Mr M could not have repaid his unsecured debt in full by taking benefits early under his DB scheme – as the figures it had previously calculated and I'd relied upon in my provisional findings were incorrect. It also said taking benefits early under the DB scheme this would've committed Mr M to taking an income below what it says he had identified that he needed in retirement. So, it disagreed with my finding that this was a viable and appropriate recommendation. And as a result, still felt the recommendation to transfer was suitable.

As I've explained, I'm satisfied that Mr M had a need to address and reduce his unsecured debt. But as I said in my provisional findings, I've seen nothing to suggest that an additional income being received from the DB scheme from age 55 would've been unwelcome – as it would've allowed Mr M to meet some additional objectives. I accept what Tideway has now said – that this would've started at around £6,043 per year, as opposed to £7,600. But I don't agree that this would've committed Mr M to a lower income than he needed in retirement.

Mr M intended to continue working until age 67. So, would've continued to receive a salary to that point, plus the income from the DB scheme. He estimated that at age 67, he and Mrs M would need a combined income of around £19,000 after tax – and this was explained to Tideway in the emails he sent at the point of advice. But the state pension forecast he summarised to Tideway at the time indicated that he and Mrs M's state pension alone

would've met a large portion of this requirement (over £17,000). And the income from the DB scheme would've continued to escalate while in payment, between age 55 and 67. So that guaranteed income, on top of their state pension would've been enough to meet his and Mrs M's income requirements in retirement – before even considering any other provisions. So, I don't agree with Tideway that this justified not recommending taking benefits early under the DB scheme.

I accept that by transferring Mr M was able to obtain a larger TFC sum. And I also acknowledge that it appears, taking benefits under the DB scheme early would only have provided a sum of just over £40,000, as opposed to the £50,600 I mentioned in my provisional findings. But having considered this again, I still don't think that Mr M needed the amount that was released by transferring. And I think recommending he take his DB scheme benefits would've allowed Mr M to address his needs and would've been in Mr M's best interests.

As I've said, Mr M said in the fact find, that his outgoings exceeded his income. So, he had a need to address this. And he confirmed that he had unsecured debt totalling £47,000 – so repaying that was the most logical way to address his income deficit. Taking the TFC from the DB scheme wouldn't have cleared this in full and would've instead resulted in an outstanding balance remaining of just under £7,000. But, taking everything into account, I think that would've still been suitable in the circumstances.

The credit file Mr M has provided shows, not only that he wasn't in arrears, but details of some of the accounts he settled in 2016, with money released. It confirms he settled two loans and a credit card totalling in excess of £31,000 in full – while also apparently reducing other credit card debt but leaving the accounts open. The credit file also shows that the monthly payments to these three settled accounts alone totalled almost £800. So, by settling these three debts, Mr M already freed up a large amount of income.

Using the TFC from the DB scheme would've allowed Mr M to settle the same balances. He wouldn't have been able to reduce his other unsecured debt entirely. But the income freed up by settling those three accounts and at least reducing the balances elsewhere would likely have been enough to address the income imbalance (as Mr M noted in the fact find reducing unsecured debt would do this). The additional income freed up could've then been used to clear the remaining indebtedness over a period of less than a year - particularly when combined with the additional income Mr M would've been receiving in the form of the annual DB scheme pension.

Taking DB scheme benefits early would've meant a slightly different approach than Mr M could take by transferring – clearing most of the unsecured debts and reducing the remainder over a period of months as opposed to fully clearing it immediately – because he'd receive less TFC. But I think it would still have been appropriate as it would've likely addressed the significant issue – the income imbalance. And this would've resulted in Mr M receiving a guaranteed escalating income from that point forward, initially to supplement his salary and later his state pension and other retirement provisions, without risk. So, I remain of the opinion that this was a viable and appropriate solution in Mr M's specific circumstances and that this option would've been in his best interests. And, had his been explored properly and fully and correctly explained to Mr M, on balance I'm still of the opinion that this is what he would've agreed to.

With that in mind, as I consider the advice provided by Tideway was unsuitable and I think Mr M would've acted differently but for this advice, I remain of the opinion that Tideway should compensate Mr M.

Tideway has made some arguments regarding the proposed method for doing so.

It has said that it doesn't think it is fair that it should be responsible for Mr M subsequently making withdrawals from the SIPP, as it wouldn't have advised him to do so. But my understanding is that the regulators redress methodology provides for withdrawals from the pension – as these are factored into the calculation and Tideway wouldn't be required to repay Mr M principle sums he has taken and had the use of.

Tideway has also said that the redress calculation should be based on a comparison with how it intended to recommend that Mr M invest his SIPP – but for him not responding after the transfer had taken place. But I don't agree that this would be fair. As I've explained there was no recommendation made regarding the investment. This should've formed part of the advice to transfer. And this is part of the reason that the advice was unsuitable. It would not be reasonable in my view to base redress for addressing the unsuitable advice on a hypothetical scenario that did not occur. And the redress should therefore be based on what did happen, because without the unsuitable advice, there would've been no transfer.

Tideway also argues that the redress should be provided in the form of an annuity as to do otherwise would not return Mr M to the position he would otherwise be in. It is evident that Mr M will benefit from flexibility by virtue of the position he is in now, but that has only arisen because of the unsuitable advice. And ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

So, while I've considered Tideway's arguments, I remain of the opinion that using the regulator's defined benefits pension transfer redress methodology is a fair way of addressing this complaint.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for Tideway's unsuitable advice. I consider Mr M would have most likely remained in his DB scheme if suitable advice had been given, but would've taken benefits under the scheme, including the maximum allowable TFC, at age 55.

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 M 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.

Mr M 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 M. Tideway 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 M's acceptance of my decision.

Tideway may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M'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 M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M'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.

I understand though that Mr M's SIPP has been depleted and may well now be closed. So, if a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M 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'. This amount must where possible be paid to Mr M within 90 days of the date Tideway 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 Tideway to pay Mr M.

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

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 require Tideway Investment Partners LLP to pay Mr M

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 Tideway Investment Partners LLP to pay Mr M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Tideway Investment Partners LLP to pay Mr M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Tideway Investment Partners LLP pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award would become binding on Tideway Investment Partners LLP.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my final decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 15 November 2022.

Ben Stoker  
**Ombudsman**