DRN-3779283

The complaint

Mr M complains about the advice given by Pareto Financial Planning Limited (Pareto) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr M is represented by a Claims Management Company, but for ease, I'll refer to the complaint as being brought by Mr M.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr M was concerned about what the announcement by his employer meant for the security of his DB scheme. Mr M met with an Independent Financial Advisor (IFA) in May 2016 to discuss accessing his pension for the purpose of purchasing a property. Mr M had already left the DB scheme and was contributing to his employers new defined contribution (DC) scheme.

Mr M was referred by the IFA to an appointed representative of Pareto. A fact find was completed to gather information about Mr M's circumstances and objectives. Mr M says this was completed by the IFA and passed to Pareto.

Pareto also carried out an assessment of Mr M's attitude to risk (ATR), which it deemed to be balanced. However, following further conversations, a fund was recommended assessing Mr M's ATR as conservative.

On 30 August 2016, Pareto advised Mr M to transfer his DB pension benefits into a personal pension, take 25% as tax free cash (TFC) and invest the proceeds into a Flexible Access Income Draw Down plan. The suitability report said the reasons for this recommendation were:

- Mr M was concerned around the security of his current occupational scheme and Mr M didn't want to risk scaled down benefits or losing the current transfer value if it defaulted into the PPF.
- Mr M was concerned that his partner may not benefit from his occupational scheme in the event of his death given that they were not married.
- Mr M wished to access the TFC offered by the personal pension to purchase his existing property under the right-to-buy scheme (RTB) and repay a loan. However, he planned to continue working to age 67. The personal pension allowed him to take the TFC but keep the remaining funds invested in a pension plan.

Mr M complained in October 2020 to Pareto about the suitability of the transfer advice because he said he realised he'd be worse off having transferred his pension.

Pareto didn't uphold Mr M's complaint. It said, in summary, it had discounted the option of allowing the plan to default into the PPF or switching to his employers new DB scheme as neither allowed him to take the TFC unless he took an income as well, which he didn't want to do given his plans to continue working. It said it had discounted borrowing money for the RTB purchase as it didn't think it would leave Mr M with enough disposable income.

Mr M referred his complaint to our Service. An Investigator upheld the complaint and required Pareto to pay compensation. He thought that Mr M should've been advised to take his DB pension benefits at the time as this would've given him access to the TFC. Whilst this meant he would've had to draw an income immediately, our investigator said this outweighed the benefits of transferring to a personal pension given the amount the pension would be required to grow to achieve similar benefits at age 67.

Mr M accepted our Investigator's opinion. Pareto disagreed, saying:

- Mr M was aware of what was being proposed and this met his objectives.
- The amount of TFC available from his DB scheme had he taken the benefits wouldn't be enough for the RTB purchase and to repay his loan.
- Mr M wasn't dependent on this pension income and was prepared to accept some risk.
- Mr M had a state pension which he could rely upon in retirement.
- Pareto had made it clear that the advice would result in Mr M losing pension benefits but still met his main objectives.

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

I issued a provisional decision on 14 October 2022. In this, I said the following:

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 Pareto'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. However, the redress I'm requiring Pareto to pay is different to that recommended by the Investigator.

First, I'd like to note that Pareto has responded to our Investigator in great detail. I've thought about everything it has said. However, I won't respond to each and every point Pareto has made. Instead, I'll be focussing on the crux of this complaint – the advice to transfer the DB pension and the main objections Pareto has made to the investigator's view. This doesn't mean I haven't considered all of the arguments; it simply reflects the informal nature of this service.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pareto should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Pareto accepts that the critical yield required for the recommended transfer to match the guaranteed benefits offered by the DB scheme was unachievable. But it says that the transfer achieved Mr M's key objectives of releasing cash without needing to take an income at the time and providing for his partner in the event of his death. I agree that the critical yield was unachievable, and Mr M was very likely to be significantly worse off in retirement if he transferred out of the DB scheme. So, I've focussed this decision on whether it was right for Pareto to recommend the transfer in spite of this for other reasons.

Flexibility

Mr M didn't want to retire early, but it's clear Mr M was motivated by the idea of taking TFC to help purchase his RTB. However, I'm satisfied he could have achieved this by staying in the DB scheme. There were two alternative options from what I can see.

The first option would've been for Mr M to borrow the full amount he required to purchase the property - £36,500. He could've done this by taking a mortgage until his expected retirement age. A basic mortgage calculator shows that a mortgage of £36,500 taken over 10 years with an interest rate of 5% (a rate most likely higher than the one Mr M could've obtained at the time) would result in monthly payments of £387. Given that Mr M would no longer be paying rent, I think this would've likely been affordable for him. And as Pareto recorded, the property was worth approximately £80,000, so I don't think it's likely the mortgage would've been denied.

Pareto has calculated that this would've reduced his net disposable income (NDI) to around £280 per month. However, this doesn't seem to take into account that the mortgage would've replaced the rent he was paying. So, I'm not persuaded that his NDI would've reduced to this level and I'm not persuaded that Pareto fully investigated this option. It's also possible that Mr M could've lived with an NDI of £280. He was living with his partner and there were no details of any income she was contributing to the household. Mr M says she was working at the time, so I think this should've been a consideration as well.

Mr M could've also been asked whether there was any other way he could've borrowed the funds. Given the low amount, a personal loan could've been an option. And Mr M has since told us he didn't use all of the TFC towards the property purchase as he was able to borrow funds from family. I think Pareto should've explored all of these options first before recommending an irreversible transfer out of his DB scheme. Had it done so, I think it would've become clear that the transfer wasn't necessary or suitable as there were other options available to Mr M rather than taking the TFC.

The other option available to Mr M would've been to take the benefits from the DB scheme at the time of the advice. According to the retirement quote dated 27 July 2016, if Mr M took his benefits immediately, he would be entitled to take £23,237 as TFC. This would've been sufficient to cover the £18,250 Mr M said he needed for his deposit and the £1,500 he expected to need to cover the cost of the house purchase.

Pareto says that in order to secure and be able to afford the mortgage of £18,250 Mr M needed to also pay off his car loan of £6,000. But I haven't seen evidence to this effect. The suitability report says:

"My understanding from the information that you have provided is that accessing the maximum tax free cash from the pension scheme now is your only viable option as you require £18,250 for deposit, £1,500 for costs and £6,000 to clear your car loan to enable affordability on the mortgage. This would come to £25,750 which exceeds the tax free cash offered by the pension scheme as you do not have other assets which you could reasonably use to make up the difference."

But I don't think this demonstrates that Mr M obtaining the mortgage was contingent on him clearing the car loan. I also can't see any evidence to demonstrate that Mr M wouldn't have been able to afford both the car loan and the mortgage. The mortgage calculator shows that a mortgage of £18,250 taken over 10 years with an interest rate of 5% would result in monthly payments of £194. I don't know what Mr M's monthly car loan repayment was because Pareto didn't record these details. But I find it hard to believe that Mr M wouldn't have been able to afford both the mortgage and the car loan, particularly as by taking his benefits early from the DB scheme he'd be receiving around £3,500 per year in income. This increased his annual income to £30,000 and after tax, this meant an increase to his monthly pay of over £250. This was more than enough to cover the cost of the mortgage.

And in any event, after covering the costs associated with the house purchase, Mr M would've been left with just under £3,500 of his TFC. The fact-find completed by the first IFA said Mr M had £2,200 in savings. The two together would've more or less enabled Mr M to repay the car loan, if in fact he needed to do so, to be able to secure the mortgage. So, I'm not persuaded by Pareto's argument that transferring Mr M's pension was the only way he could achieve his objective of purchasing his home.

According to the information gathered by Pareto, Mr M said he needed approximately £12,000 per year in retirement. As I've said above, if Mr M took benefits from the DB scheme at 56 he would be entitled to an annual income of around £3,500 per year. However, this pension would've increased annually in line with the scheme rules – so I'm satisfied that this would've increased to at least £4,500 by the time Mr M reached age 67. Pareto has recorded that Mr M was expecting a state pension of approximately £8,000 per year at age 67. These two sources of income combined would have been sufficient to meet Mr M's requirements. It was also noted that Mr M planned to contribute to his employers new DC scheme, so he would've had additional funds to rely on, which would've given him extra flexibility.

Overall, I don't think it was suitable advice for Pareto to recommend that Mr M transfer his DB benefits to a personal pension to facilitate the purchase of a house. As I've demonstrated above, I think borrowing money by another means, or taking the DB pension benefits at the time, would've enabled Mr M to meet his objective.

On balance, I think Pareto should've advised Mr M to remain in his DB scheme and take his benefits from the scheme instead. I say this because I don't know if Mr M's RTB offer precluded him from taking a mortgage for the full purchase price. I'm also mindful that Mr M *approached Pareto because he was only interested in taking a mortgage for 50% of the sum he needed.*

I think it would've been suitable advice for Mr M to access his benefits because he could've used the TFC to cover his property deposit and associated fees and used the remainder to part pay down his car loan or boost his savings. While this would mean Mr M would've also started receiving income that he didn't strictly need, I think this additional income would've given him scope to pay off his new mortgage or car loan sooner. In any event, I don't think the fact Mr M would've had to pay income tax on this extra income should've been a barrier to him taking the benefits. Pareto's suitability report said Mr M wasn't relying on this income in retirement as he thought his and his partner's state pension would be sufficient. So, the fact Mr M would be paying extra income tax on this pension wouldn't have mattered to him, particularly as he would've still been a basic rate taxpayer. And in my view, this was a small price to pay for Mr M's security in retirement.

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 was likely an attractive feature to Mr M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pareto explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

Pareto says that it's unlikely that Mr M's partner would've been entitled to the spouse's benefit through the DB scheme because they weren't married. But the spouse's benefit could've been paid to Mr M's partner even if they weren't married. And I think the value of this benefit was underplayed. I think it would've been useful if Mr M predeceased his partner – it was guaranteed and it escalated, whereas the sum payable on Mr M's death depended wholly on investment performance and how much of the funds remained.

Furthermore, if Mr M genuinely wanted to leave a legacy for his partner, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Pareto should've instead explored life insurance. If explored on a term assurance basis, this was likely to be affordable.

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

Concerns about financial stability of BSPS

Mr M was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and thought he'd he preferred to have control over his pension fund.

So, it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and the PPF. However, it was Pareto's obligation to give Mr M an objective picture and recommend what was in his best interest.

And given that I think Mr M should've been advised to take his benefits immediately, I think that Pareto should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. Mr M's TFC wouldn't have been affected because he'd have taken it before the scheme moved. And although his annual pension was likely to be reduced once the move completed, I don't think the reduction would've been significant because the early retirement factors were more favourable under the PPF particularly where TFC had been taken. So, I don't think that these concerns should've led to Pareto recommending he transfer out of the DB scheme.

Summary

I don't doubt that the access to the TFC and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But Pareto 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. Overall, I don't think that transferring out of the DB scheme was in Mr M's best interests as he had other options available to him to meet his objectives.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M was very likely to obtain lower retirement benefits and, in my view, while Mr M could have transferred his benefits to facilitate his house purchase, I don't think that was in his best interest. As I've said above, I think suitable advice in Mr M's circumstances would've been to take his DB scheme benefits. This would've meant Mr M remained in the scheme and moved with it to the PPF.

Of course, I have to consider whether Mr M would've gone ahead anyway, against Pareto's advice. Pareto argues that Mr M had already taken the decision to leave his previous employer's scheme and would've done so even if it had advised him against this. It says Mr M was very engaged throughout the process, knew what he was giving up and wanted access to the TFC.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against Pareto's advice. I say this because, whilst Mr M may've been engaged in the process, he was an inexperienced investor with a balanced attitude to risk and this pension accounted for the majority of his retirement provision other than state benefits and pensions. So, if Pareto had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and how he could meet his objectives by instead taking his benefits from the scheme, I think he would've accepted that advice.

I've thought about Mr M's concerns about the security of the scheme. But I am not persuaded they were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he was paying for, didn't think it was suitable for him or in his best interests. Especially given he would've already been able to take his TFC before the scheme moved to the PPF and his annual income was unlikely to have been reduced by that much.

In light of the above, I think Pareto should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the PPF that should be used for comparison purposes.

Our investigator felt that an award for distress and inconvenience was warranted in this case. I've thought about this, but I disagree. I do think the advice met some of Mr M's objectives as it allowed him to purchase his property. And it was explained to Mr M what he *was giving up. This doesn't mean the advice was suitable. But I think it's only recently that Mr M has found out that the advice was unsuitable. Because of this, I don't think the advice has caused a significant amount of upset to warrant further compensation above what I am already recommending.*

I went on in my provisional decision to set out how I thought Pareto should put matters right. I won't repeat this here as I'll cover this again later in this decision.

I invited both parties to respond to my provisional decision before 28 October 2022.

Mr M's representative responded on his behalf in great detail. In summary, it said:

- Evidence suggested that Mr M wouldn't have retired until age 65 had he been properly advised and the redress I was proposing based on him retiring earlier than this means he would be under compensated. It pointed out that he still hasn't retired.
- Mr M could've easily obtained a mortgage to purchase the RTB property. It felt I had confused a RTB with a shared ownership mortgage when saying he may not have been able to obtain a mortgage for the entire amount he needed.
- Ultimately Mr M didn't proceed with purchasing the RTB and purchased a separate property using the TFC to fund the deposit and a mortgage and funds from family to fund the balance.
- It said that Mr M's actions showed that he would've remained in the scheme and ultimately joined its replacement scheme when it was finalised.
- It asked that I revisit the proposed redress and base it on Mr M retiring at age 65.

Pareto responded saying, in summary:

- It believed Mr M would've transferred his pension, regardless of the advice he was given.
- It questioned my decision to calculate compensation from Mr M's 55th birthday given that he opted out of the scheme some months after this.
- It maintained that it felt Mr M wouldn't be financially disadvantaged by the transfer and that he can still afford to meet his expenditure requirements in retirement.

I've now decided I have enough information to proceed and issue 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 won't be responding to each and every point that Pareto and Mr M have made, nor in the detail in which they've responded to my provisional decision. That's not because I haven't thought about everything they've said. It simply reflects the informal nature of this service.

Having considered both parties submissions, I find myself coming to the same conclusion that this complaint should be upheld for largely the same reasons. And I maintain that the redress I proposed within my provisional decision remains suitable in this particular case for the same reasons. I will address some of what I consider the key points that both Pareto and Mr M have raised in their responses to my provisional decision.

Mr M's key point is that he says he would've retired from the scheme at age 65 and the fact that he is still working evidences this. Mr M also says that he didn't need access to the TFC.

I’ve thought about both of these points and it seems to me that this argument is being made with the benefit of hindsight. And this isn’t something I can take into account when making my decision. I need to consider what I think was suitable advice for Mr M at the time and what he would’ve likely done knowing what he knew then, not now.

It's clear Mr M was concerned about the viability of his employer’s pension scheme. And this on its own was a reason for him to at least consider his options with the pension. Furthermore, at the time it seems Mr M had clear plans of what he was going to do with the TFC. Pareto argued that the TFC available under the DB scheme wasn’t sufficient to meet his needs. I explained why I didn’t agree with this. But that doesn’t mean I think Mr M would’ve simply left his pension as it was and remained in the scheme. Whilst he may not have used the TFC in the same manner he expected, I note he still did use some of the TFC to put towards the purchase of a different property. So, it seems likely to me that he would’ve used the TFC available from the scheme in the same way.

Mr M has argued that he could’ve easily arranged a mortgage which was what the bulk of the TFC was planned for. And he says he believes I may be confusing a RTB with a shared ownership. I’m aware of the difference between these two products. Whilst some lenders will allow a tenant to borrow 100% of the cost on a RTB purchase, not all will. Many still require a deposit from the borrower as well. Of course, I can’t know what type of mortgage Mr M would’ve been eligible for. But he may well have needed a deposit, and, even if not, he would’ve needed to pay some upfront fees. I can’t see Mr M had access to funds to be able to provide this at the time. I’m also mindful that Mr M first approached Pareto wanting to only take a mortgage for 50% of what he needed to purchase the RTB. Keep mortgage costs lower would likely have been appealing as well. When taking into account paying off the car loan, I think Mr M had clear and committed plans for the TFC and wanted to access a lump sum in some way.

Overall, I think the concerns of the viability of the DB scheme at the time, coupled with the need and appeal of taking the TFC available under the existing scheme means that Mr M was always likely to take action here rather than simply remain in the scheme and working.

However, for the reasons I set out in my provisional decision, I think the right advice at the time was for Pareto to tell Mr M to take benefits at the time instead of transferring. And I think, on balance, had Pareto advised Mr M to do this, he would’ve done so. He’d sought expert advice from them and, as he followed the advice to transfer, I think he would’ve followed advice to take benefits at the time. Especially considering it met his objectives of releasing TFC and leaving his existing scheme.

While not an issue raised by either side in response to my provisional decision, I’d like to clarify I point I made in that decision relating to the DB scheme death benefits. As I understand it, a common law partner would not benefit from the spouse’s pension under the DB scheme. However, this doesn’t make a difference to my findings as I think Mr M’s key reason for seeking advice was to determine how he could access some cash to purchase his RTB property. And for the reasons I’ve already given, I don’t think he should’ve been advised to transfer to meet that need – he should’ve been advised to take the scheme benefits instead. I don’t think any concerns Pareto said Mr M had about his partner not benefitting from the spouse’s pension was such a priority that transferring out of the scheme would’ve been in his best interests or suitable advice.

Pareto has said that it believes Mr M would’ve transferred his pension regardless of its advice. I’ve already explained why I don’t think this is the case. I agree Mr M was concerned enough that he no longer wanted to be a part of the existing DB scheme. But transferring wasn’t the only option. I think it should’ve advised him to take his benefits at the time and I think he would have.

I also recognise Mr M opted out of the existing scheme. But I think this is likely due to his concerns over the viability of the scheme and the fact that it was likely to close. So, this doesn't affect the outcome of my decision which is considering the advice to transfer as a whole.

Pareto has questioned why I am asking it to base compensation on Mr M retiring on his 55th birthday. I think this is a misunderstanding on Pareto's part. But for clarity, I'm saying that compensation should be based on Mr M having taken the benefits from his DB scheme at the time the advice was given and when the transfer in fact occurred. Mr M was 55 at the time, hence my reference to this. But this doesn't mean I'm suggesting compensation should be based on the date he turned 55.

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) 17/9 (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 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. 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 M.

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 Pareto's unsuitable advice. If suitable advice had been given, I consider Mr M would have most likely remained in his DB scheme, taken his benefits immediately and subsequently moved with it to the PPF.

Pareto 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.

As I think Mr M would've taken his DB scheme benefits immediately if he'd been given suitable advice, compensation should be based on him having retired 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 Mr M's acceptance of the decision.

Pareto 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.

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 Pareto 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 Pareto 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.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out was expected to be completed by late summer 2022.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

If Mr M had received suitable advice he'd have taken his benefits from the scheme before it had entered the PPF assessment period. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr M. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason I require Pareto to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr M accepts my final decision, he will be doing so on the basis of my understanding as set out above. It's important that Mr M is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

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 Pareto Financial Planning Limited 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 uphold this complaint and require Pareto Financial Planning Limited 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 Pareto Financial Planning Limited 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 Pareto Financial Planning Limited 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 Pareto Financial Planning Limited 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 any final decision I issue, the money award becomes binding on Pareto Financial Planning Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my 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 1 December 2022.

Rob Deadman
Ombudsman