

## **The complaint**

Mr B complains about advice he was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme (OPS) to a type of personal pension arrangement known as a SIPP, in November 2017. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr B originally dealt with a differently named firm during the advice process, but Chequers Wealth Management Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "CWML".

CWML is now represented by a liquidator although my understanding is there are still assets in the business. Even though much of the responses we've had are from the liquidator, as it is representing the business, I'll still refer to it as CWML for ease of understanding.

## **What happened**

Mr B was a deferred member of the OPS which was operated by his previous employer. He'd accrued over 13 years' worth of benefits. The information gathered about Mr B at the time of the advice was as follows:

- Mr B was 38 years old, married and with two dependent children. He and Mrs B were in good health.
- They lived in a home valued at approximately £180,000, which had an outstanding mortgage of around £125,000. The mortgage had over 20 years left to run. They also had an unsecured loan of £8,000 with three years left to run.
- Mr B earned £22,000 per year and Mr B's earnings were around £9,000 per year. They had only a small amount of savings. They had no other major assets although Mr B was a member of a pension scheme with his current employer. This other pension isn't the subject of any complaint.
- The cash equivalent transfer value (CETV) of Mr B's DB pension was approximately £156,675. The normal retirement age (NRA) of the scheme was 62.
- Mr B had since moved on to a different employer where said he expected to eventually retire at the age of 65, although CWML said he'd told it he would try to wind down to part-time work if possible before that.

CWML set out its advice in a recommendation report in November 2017. It was recommended he should transfer out and invest the funds in a SIPP. CWML said this would allow Mr B to achieve his objectives.

Mr B accepted this advice and so transferred from his DB scheme to a personal pension arrangement. In 2022 Mr B complained to CWML about its advice, saying he shouldn't have been advised to transfer out of his DB scheme. In response, CWML said it hadn't done anything wrong and was acting on the financial objectives Mr B had at the time.

Mr B referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. CWML still doesn't agree with this.

As the complaint couldn't be resolved informally, it's come to me for a final decision.

### **What I've decided – and why**

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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 CWML'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.

I have further considered that 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, CWML should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests.

I've used all the information we have to consider whether transferring away from the DB scheme was in Mr B's best interests.

I don't think it was, so I'm upholding his complaint.

#### *Financial viability*

As required by the regulator, to demonstrate the financial comparisons between his current scheme and transferring out to a SIPP, CWML referred in its transfer analysis to 'critical yield' rates.

The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same benefits as the DB scheme. It is therefore part of a range of different things which help show how

likely it is that a personal pension arrangement could achieve the necessary investment growth for a transfer-out to become financially viable.

CWML said the critical yield required to match Mr B's full DB scheme benefits at the NRA of 62 was 6.62% (if taking no lump sum) and 5.93% (with a lump sum). The critical yields for a retirement at the age of 55 were somewhat similar, at 6.86% and 5.88% respectively.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. At the time, CWML assessed Mr B's attitude to risk (ATR) as balanced.

The relevant discount rates closest to when the advice was given which I can refer to were published by the Financial Ombudsman Service for the period before 1 October 2017 were 4.5% per year for a retirement at the age of 62, and 4.3% (for a retirement at age 55), which are both below the critical yield figures I've set out above.

However, the SIPP provider's own mid-rate growth assumption was only 2.44% per year, again well below the critical yield rates. I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. So even if I consider the highest of these mid (or balanced) rate assumptions to be the most relevant, this would be no more than the regulator's 5% mid-growth assumption, which hadn't been changed for some years. And all this means none of the above growth assumptions came close enough to the critical yield rates. From a financial comparison perspective therefore, no case was made out by CWML for transferring. Mr B would be likely to obtain pension benefits of a lower overall value than the scheme he was in, over the longer term.

I've also noted that CWML said that in order to purchase an annuity to provide benefits of equal value to the existing scheme at a retirement age of 62, the funds required would be around £452,104 (£388,291 if taking a lump sum). These figures were well above Mr B's CETV and so they provide a revealing window, in my view, into the true value of the DB scheme Mr B was being advised to leave.

I've also taken account of certain age projections that CWML said Mr B's pension funds could last to, if he transferred away. These were included in the transfer analysis CWML commissioned. This said that in some circumstances, if Mr B transferred away, his funds could last until he was up to 120 years old. However, I think these estimations needed to be seriously contextualised; they were certainly not comparing like with like against the scheme Mr B was being recommended to leave and he'd have lost the substantial guarantees and benefits this scheme contained for himself and his family members. These were not credible comparisons.

In my view, there was simply no reliable evidence from CWML here that Mr B's transferred funds could confidently exceed the critical yields compared with Mr B remaining in his existing scheme.

Of course, CWML's recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, CWML said Mr B also had other reasons to transfer away, so I've thought about all the other

considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned above. I've considered these below.

### Flexibility and income needs

I've used a combination of what was in CWML's recommendation report and the various client information forms it completed about Mr B to help determine what CWML said were the main objectives for transferring out of the DB scheme. A full recommendation report was produced on 29 November 2018. Our investigator pointed out previously that there was an 'objectives' section in the report in which Mr B evidently said that he:

- Wanted to be in control of where his pension was invested.
- Wanted to potentially look at going part time at age 55 before retiring at age 62.
- Wanted to take advantage of the flexibility afforded by pension freedom legislation, specifically the ability to take tax free cash as and when he wanted, and the ability to adjust income to suit his needs.
- Was attracted to a personal pension as surplus monies in the fund could be passed to his children in the event of his death, rather than providing a reduced pension for his wife.

So, it seems the supporting reasons that CWML recommended the transfer out to a personal pension arrangement was for the flexibility and control it offered to Mr B. I have therefore considered all these issues in turn.

- *Control of where his pension was invested*

CWML implied that Mr B would be able to have control over the pension and where the money was being invested, if he transferred out. But I've seen nothing which shows Mr B had either the desire or capacity to exercise personal control over his pension. Mr B's previous exposure to investing was not really known and the 'fact-find' had no details of any such investments at the time. Mr B also says he wasn't – and has never been – a sophisticated investor and there is no evidence to contradict this. And to grow the transferred funds in the way CWML later said he could, a much higher degree of knowledge and indeed risk exposure would have been required.

So I think this was no more than a 'stock' objective used in an attempt to help justify the transfer-out recommendation. In my view, there's no persuasive evidence Mr B ought to have irreversibly transferred away from his DB scheme on this basis.

- *Semi-retiring early / taking tax-free cash*

CWML has mentioned several times that Mr B wanted to reduce his working hours at the age of 55 and retire at 62. However, there's conflicting information about this as there's also a clear indication from documents at the time showing Mr B expected to retire at 65. An example of this can be found in the pension transfer document where it clearly says his intended retirement age is 65. CWML's reference to retirement is therefore inconsistent, and in my view unreliable.

I don't doubt that Mr B might have genuinely hoped to reduce his working hours at an early age. But I've seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr B was

only 38 years old at the time and it's simply not credible that he had any concrete plans for retirement or semi-retirement at that point.

CWML also promoted to Mr B that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But CWML should have been telling Mr B at the time that extra tax-free lump sums being removed from a personal pension, potentially from mid to late fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

Even if I were to consider the unlikely scenario that Mr B's retirement plans were more fixed than the mere aspirations set out by CWML - and he really did want to retire or semi-retire early - I think CWML should have assessed the possibility of achieving this goal whilst being a member of his current scheme. Early retirement under the existing scheme he was already in would still have been an option for Mr B, although this would have meant Mr B's pension benefits would have been somewhat different due to him accessing the pension earlier and for longer. But I think this was discounted by CWML as I've seen no evidence it was realistically discussed with a view to assessing whether it was more in Mr B's best interests. The advice simply focussed on him transferring away completely.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other options Mr B faced, including opting for remaining in the DB scheme.

I also can't see that Mr B required flexibility in retirement in the way CWML suggested. CWML said that Mr B's estimated annual pension upon his NRA (62) was £8,310 per year or £5,998 together with a tax-free lump sum of £39,926. As a DB pension this was guaranteed and index linked.

However, as he was so young, it wasn't possible to say what Mr B's financial and income needs were likely to be in retirement. He couldn't even yet be described as 'mid-career'. And I haven't seen anything to persuade me that Mr B wouldn't have been able to meet his likely retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan. This is because, as well as retirement being a long time away, we know Mr B had already joined his employer's new pension scheme and could have been making contributions to it for up to twenty-six years more, until he retired. CWML referred to this pension when it disagreed with our investigator's 'View' letter but it clearly knows very little about it. Nevertheless, it implies it was a defined contribution (DC) scheme and I think at least part of it probably was. However, I think Mr B's contributions to this 'second' pension were most likely being added to by his employer and so I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this second pension to complement his existing deferred DB scheme. CWML failed to take this into account.

I think therefore, that by retirement, Mr B could have been in a good position if he'd remained with his DB scheme. On one hand he'd have had a long-standing and solid DB pension - one with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial second pension over many years, which, if he later found he did require flexibility, this pension could have probably provided it.

I have therefore considered what CWML said about retiring early and the potential flexibility brought about by transferring to a personal plan: it said this would include how funds were

invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element. However, I don't think recommending a transfer-out based on these reasons was suitable because so little was known about what his retirement would look like as he was far too young.

So, I think Mr B's circumstances were much more aligned to him remaining in the DB scheme and retiring from that when he felt he was ready to do so, and then drawing a DB pension. Because he also had a second pension, this supported that strategy, in my view.

I therefore think the much more suitable option was for Mr B to access his DB pension in the way it was originally intended.

- Death benefits

CWML says that death benefits were discussed at the time and the personal pension would more flexibly enable the retention of the value of the funds if Mr B died. But I'm afraid I think this too was no more than a 'stock' objective with no real relevance to Mr B's situation. In fact, I think the opposite was true.

The lump sum death benefits on offer through a personal pension was probably *made* to look like an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer the DB scheme to a SIPP because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I think saying Mr B's death benefits would improve in a personal pension because he could pass over all his funds to his wife / children needed putting into context. Only in his thirties and in good health, he and Mrs B had two young children. His wife could have been supported financially in the event of his death by accessing generous death benefits contained within the scheme. Similar provisions related to his children whilst they were in full time education – and the youngest was still pre-school age. In my view, the likely death benefits attached to the new DB scheme were highly relevant to Mr and Mrs B and they were also substantially underplayed.

The spouse's pension provided by the DB scheme would have been useful to Mrs B if Mr B predeceased her and I don't think CWML made the value of this benefit clear enough. As a father, I think the child specific benefits would also have been meaningful to Mr B. These were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, there may not have been a large sum left anyway in a personal pension upon Mr B's passing, particularly if he lived a long life; this could have been decades away. CWML should therefore not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

It also doesn't appear that CWML took into account the fact that Mr B could have nominated Mrs B as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr B had already ensured part of his pension wouldn't 'die with him'.

I can't see whether, or the extent to which, life insurance was discussed in this case. But at 38 years old, this would have been a reasonably affordable product if Mr B really did want to leave a legacy for Mrs B and their children.

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 B. I think this objective was no more than a generic comment and not meaningful to Mr B's situation.

### Other issues

CWML has asked me to consider the fact that Mr B's CETV was evidently at a high and agreeable level. It said, for example, that the CETV represented over 33 times (x 33) the pension at NRA.

In fact, it seems to me that following our investigation, CWML is now using this valuation as its main reason justifying the transfer in the first place. So, I've thought carefully about this.

We know there was indeed a sustained period of higher CETV valuations in DB pensions. This was caused, in the main, by very low interest rates and corresponding bond yields. But firstly, at the time this advice was given to Mr B, I don't think there was any real expectation that these macro-economic conditions would change for some time. And as I've said, Mr B's pension was there for his retirement, not to speculate with; and in my view he could ill afford to lose this substantial part of his retirement provision.

So again, CWML makes no more than a generic point here, without specific reference to Mr B's personal circumstances of the time.

CWML also asked me to consider that no loss has been suffered by Mr B. It provides no substance to this, but of course, we will find out how much loss, if any, was incurred through the redress calculations I've directed below.

### Suitability of investments

CWML recommended that Mr B invest in funds within a SIPP. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr B, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr B should have been advised to remain in the DB scheme and so the investments in the SIPP funds wouldn't have arisen if suitable advice had been given.

### Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr B. But CWML wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests. There were comprehensive failings in CWML's advice.

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income within the DB scheme. By transferring to a personal pension arrangement, the evidence shows Mr B was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. CWML ought to have advised him against transferring out of his DB scheme for these reasons, particularly as it meant he'd probably be worse off in retirement.

So, I don't think it was in Mr B's best interests for him to transfer from his DB scheme to a personal pension plan when he was unlikely to be able to improve on his existing scheme benefits.

I have considered, given the circumstances of the time, whether Mr B would have transferred to a personal pension in any event. I accept that CWML disclosed some of the risks of transferring to Mr B, and provided him with a certain amount of information. But ultimately it advised Mr B to transfer out, and I think Mr B relied on that advice.

I'm not persuaded that Mr B would have insisted on transferring out of the DB scheme, against CWML's advice. I say this because Mr B paid to have advice and this pension accounted for most of his retirement provision at the time. So, if CWML had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

Mr B still had a over 23 years before he reached his DB scheme's NRA. But this might have been longer as he'd said he intended to work until he was 65. In my view, with a young family, a mortgage and his life largely ahead of him he simply couldn't yet know what his needs in retirement would be. By remaining in his DB scheme, Mr B would have retained the ability to transfer out of the scheme nearer to his retirement age if he really needed to. By leaving, he lost valuable benefits and guarantees.

On this basis, it was far too soon to transfer away. I think Mr B would have chosen to remain in his current scheme if he had been properly advised. So, I think CWML should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-<https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr B, through his representative, whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He didn't specify a preference, so I am therefore satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr B.

Compensation should be based on his scheme's normal retirement age of 62, as per the usual assumptions in the FCA's guidance. 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 B's acceptance of the decision.

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



If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B'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 B 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 B within 90 days of the date CWML 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 CWML to pay Mr B.

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 CWML 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 am upholding this complaint.

I now direct Chequers Wealth Management Limited to pay Mr B 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 Chequers Wealth Management Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Chequers Wealth Management Limited to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Chequers Wealth Management Limited pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my final decision, the money award becomes binding on Chequers Wealth Management Limited.

My recommendation would not be binding if he doesn't accept. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 19 April 2023.

Michael Campbell  
**Ombudsman**