

The complaint

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

What happened

Mr M had two pensions linked to his employment.

He was a deferred member of one occupational pension scheme ('OPS'). I understand he had accrued benefits in this plan between 1989 and 2012. This pension included the provision of guaranteed pension amounts, similar to the benefits of a defined benefit ('DB') pension scheme. But the scheme was different to a standard DB scheme. The trustees of the plan explain it as being *"an occupational money purchase pension plan with a Contracted-out defined benefit underpin"*. Benefits accrued in the scheme prior to April 1997 had to be used to secure a guaranteed minimum pension ('GMP'). Benefits accrued after April 1997 also had a 'Money Purchase underpin'. Information from the trustees explained this meant the scheme benefits Mr M would be due for the relevant period would be the better of either a defined benefit pension or a money purchase (defined contribution scheme) pension. The defined benefit income was based on a 'reference scheme test' ('RST'). And essentially the benefits accrued after April 1997 would need to be used to purchase guaranteed RST benefits as a minimum. The pension also provided Mr M with the ability to potentially take an enhanced level of tax-free cash ('TFC') in excess of the usual 25%. And if there were sufficient additional value within the pension, further benefits could be provided. But the 'underpin' benefits (the GMP and RST) had to be secured first, before TFC or other benefits. And in the event of a shortfall other benefits may be restricted, and the pension scheme would be required to meet the cost of providing the 'underpin' safeguarded benefits.

Mr M was also an active member of a group personal pension ('GPP'), established by his employer. This was a standard defined contribution scheme and was operated by a large pension provider.

Mr M was referred to PFPL by another business, which I'll call 'Firm R', in June 2016. The referral email indicates that he was interested in potentially transferring the benefits from his deferred OPS to the GPP he was a member of. The email noted that this was because Mr M considered the cash equivalent transfer value ('CETV') he was being offered was favourable. Mr M had gotten a transfer quotation from the scheme trustees of the deferred OPS in April 2016, which was guaranteed for three months, and the CETV was £226,258.02. The summary explained this was made up of £204,425.42 which was guaranteed, with the remaining £21,832.60 variable, in line with market conditions.

On 26 June 2016, PFPL completed a fact-find to gather information about Mr M's circumstances and objectives. This noted he was 57, married with one financially dependent daughter, in good health and employed full time. It said Mr M had a mortgage of £15,000 which was due to be repaid within the next year. But it also noted he had an endowment, due to mature in January 2017, that would cover the repayment of this. He and Mrs M's income exceeded their expenditure. And he expected his monthly expenditure to be

approximately £600 after his mortgage was cleared.

Mr M expected redundancy to be offered by his employer within the next two years. He estimated he'd receive a redundancy payment of approximately £125,000. The fact find said he intended to retire when redundancy was offered. PFPL again recorded that Mr M was interested in potentially moving his benefits from his deferred OPS to his employers GPP.

The fact find also included questions about Mr M's capacity for loss and tolerance for risk to allow PFPL to assess his attitude to risk. The written notes said Mr M was suitable for the "cautious or defensive portfolio" offered by the GPP provider.

A letter was sent from the trustees of the OPS on 13 July 2016 which appears to be in response to a request for information about whether early retirement was possible. This set out the current fund value of Mr M's benefits and explained how this value was broken down between pre and post 1997 accrued values. The letter said that the trustees could only permit early retirement if the pre-April 1997 fund value was sufficient to provide the GMP the policy entitled Mr M to. And if the post-April 1997 fund was sufficient to provide the underpin RST benefits. The trustees said that, based on current values, there was a significant shortfall in both parts of the fund, totalling over £170,000, so Mr M was not entitled to be considered for early retirement.

On 27 September 2016 PFPL advised Mr M to transfer his pension benefits to a personal pension with the same provider that operated his GPP. It said early retirement could've been restricted under the existing OPS as the trustees had indicated there was a shortfall. And the amount of TFC payable under the OPS was also likely to be restricted as the trustees were required to ensure there was sufficient funding to meet the guaranteed benefits first before paying TFC. PFPL said Mr M's priorities were to have flexibility to be able to take his pension early and draw his benefits how he wanted to and to be able to access to the maximum possible TFC. As a result, it recommended a transfer as it felt this met his needs. The report also said that a transfer meant the fund could be passed to his wife and daughter in the event of his death and said Mr M's *"priority is to leave 100% of the fund to your wife and daughter if possible"*. PFPL recommended a personal pension, rather than joining the GPP, as it said the GPP wouldn't have provided full flexibility. But it said the new pension could be linked to the GPP, meaning Mr M could easily move his GPP benefits should he wish to take them through the new plan. It said it had assessed Mr M's attitude to risk as 'conservative' and that he had a medium capacity for loss, so recommended a managed portfolio that it said met this attitude to risk. Firm R was to provide ongoing servicing.

The transfer did not immediately proceed in line with the advice. And I can see that PFPL emailed the trustees of the OPS for further details about Mr M's TFC entitlement in December 2016. A new transfer quotation was also obtained from the trustees of Mr M's OPS. The CETV at that time was £255,365.77.

In January 2017, PFPL issued an addendum to its advice. It said it had decided it would now be in Mr M's interests to transfer to a different pension provider. It said it understood Mr M had now left his employer so was *"better placed to make a transfer to the whole of the market"* rather than the GPP provider. But the main reason for the change to its advice was that, if a 'buddy transfer' could be undertaken – where the transfer was paired or buddied with a similar transfer by a different consumer – Mr M could protect the enhanced TFC level (approximately 39%) he'd have potentially been entitled to under the OPS. It recommended a different governed portfolio with the alternate provider, which it still felt was in line with Mr M's attitude to risk. PFPL said the other reasons for its advice remained unchanged.

Mr M has confirmed he was made redundant by his employer prior to this addendum. And he said he received a redundancy settlement of approximately £120,000 - £125,000.

An application was completed on 26 January 2017, and I understand the transfer was completed on 9 March 2017, on a 'buddy transfer' basis, as per the addendum to the advice.

In January 2022, PFPL sent Mr M a letter. This explained that it had decided to undertake a review of the suitability of the transfer advice it had given to its clients in regard to DB schemes between April 2017 and September 2018. And the letter asked Mr M to confirm if he wished to be included in the review.

Mr M said he wished to take part in the review as the letter he'd received had led him to become concerned about the advice he was given. But PFPL explained that he'd been sent the letter in error as the advice he'd received didn't fall within the scope of the review. It agreed though to treat his concerns as a complaint about the advice he'd received.

PFPL considered the advice but didn't think it was unsuitable. It noted the OPS Mr M had transferred from was a 'hybrid pension scheme' rather than a DB scheme. PFPL said that the scheme had a shortfall at the time of the transfer meaning early retirement wasn't possible and TFC entitlement was not guaranteed. The transfer had allowed Mr M the flexibility to draw benefits before the normal scheme retirement age and protected his TFC, so it still considered the transfer was in his best interests. PFPL did offer Mr M £250 for the distress caused by him having been incorrectly sent a review letter.

Mr M did not accept this offer and referred his complaint to our service. Mr M said he was considering retirement when he spoke to PFPL because of his circumstances at the time. But he said having the enhanced level of TFC wasn't particularly important to him. And while he had thought about retiring at the time of the advice, he had no real need to do so. In fact, he was now planning to return to employment as he was concerned about the sustainability of his pension, although added that he still felt young and also wanted to return to work. So, Mr M said if PFPL had presented him with other options or advised him against transferring, he wouldn't have gone ahead.

Our investigator upheld the complaint and said PFPL should compensate Mr M for any loss the transfer had led to. This was because she didn't think Mr M had a pressing need to transfer and was always likely to receive lower pension benefits as a result of doing so, so she didn't think the advice was in his best interests.

PFPL disagreed. It said that the Investigator had not understood the nuances of the OPS, the benefits it provided or the risks that would still have been present by remaining invested. It also said it disagreed with how our service generally viewed whether a transfer was suitable from a financial viability perspective. In any event though, PFPL still felt the advice was in Mr M's best interests as it met his objectives of having flexibility and providing the maximum possible TFC. PFPL added that alternate death benefits were not important to the recommendation.

I issued a provisional decision in April 2023 explaining that I intended to uphold Mr M's complaint. Below are extracts from my provisional findings, explaining why.

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 PFPL'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 relate to a DB pension transfer.

PFPL has argued several times that Mr M's OPS was not a DB scheme but rather was a hybrid arrangement. And has suggested that the Investigator has incorrectly considered regulations from today, rather than those applicable at the time of the advice.

As I've set out above, Mr M's OPS was not a typical DB scheme. The trustees described it as "an occupational money purchase pension plan with a contracted-out defined benefit underpin". And the benefits that might be provided would be the better of two possible alternatives. But the policy did have safeguarded benefits. The trustees were required to provide a GMP in respect of contributions prior to April 1997. And they had to at least provide a DB style pension in respect of later contributions, using the RST. There was also a 50% spouse's pension (of the underpin benefits) attached to the policy. And the 'underpin' GMP and RST benefits – which the trustees had to provide, even if there was a shortfall in the amount needed to do so – were also to be revalued until the pension was drawn and would escalate while in payment.

So, while the OPS wasn't entirely the same as a typical DB scheme, it did share a lot of the same features.

And COBS 19, relating to the obligations on a business giving advice, refers to not only defined benefit pensions but also covers other pension schemes with safeguarded benefits. Which Mr M's OPS had. And the regulations said the same at the time PFPL gave advice. So, I'm satisfied that these regulations are still relevant considerations here.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme, or other scheme with safeguarded benefits, is that it is unsuitable. So, PFPL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And, for the reasons I'll now explain, I don't think it was.

Financial viability

When referring to financial viability, I mean how likely it is that Mr M would be better off in terms of the retirement income he would receive, by transferring. As, in my view, there would be little point in Mr M giving up the safeguarded benefits available through his OPS only to achieve, at best, the same level of benefits outside the scheme.

PFPL says Mr M didn't want to take an annuity, so wasn't aiming to take a guaranteed income that exceeded his OPS benefits, and that there were other reasons he wanted to transfer. I'll come onto the other reasons referred to shortly. But a pension's primary role is to provide income in retirement. And where a level of income was safeguarded, as was the

case here, I think whether a consumer could expect to receive more or less than that amount as income as a result of transferring is a relevant consideration when looking at whether advice to transfer was in their best interests. Particularly as, in the suitability report, PFPL recorded maximising income as one of Mr M's objectives.

PFPL has also questioned and disputed some of the things our service generally considers when looking at financial viability. While I've taken on board these comments, and addressed what they mean for this complaint, I'd like to make it clear again that I'm looking at the specific circumstances of Mr M's complaint.

One of the things PFPL has raised issue with is our considering the critical yield – the rate at which Mr M's pension fund would need to grow by each year in order for him to be able to use this to secure the same benefits the existing scheme guaranteed at retirement. PFPL has argued that this figure is to show the worth of the pension being given up, is often high and likely unachievable and has become irrelevant as it is no longer required in pension transfer advice. But at the time PFPL gave advice here, the regulator required it to carry out a transfer value analysis ('TVAS') report and to calculate the critical yield as part of this. So, I still think this is a relevant consideration.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. PFPL has also questioned the relevance of comparing this to the critical yield, has argued in its experience this doesn't correlate to the performance of the investments it recommends, and pointed to this not being required by the regulator. But I think it is a reasonable additional consideration when seeking to determine what level of growth would've been reasonably considered as achievable at the time of the advice.

Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a pension scheme with safeguarded benefits with those payable under a personal pension by using reasonable assumptions. In my view, the discount rate would be considered a reasonable assumption of likely returns. Businesses were free to refer to it. And while I've taken on board its comments about how the recommended scheme had previously performed and this not corresponding with the discount rate, as PFPL will know, past performance is no guarantee for future performance. So, whilst I agree businesses weren't required to refer to discount rates when giving advice on pension transfers, they were able to do so, and I consider they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr M was 57 at the time of the advice. The normal scheme retirement age of the OPS was 65. The critical yield required to match Mr M's safeguarded benefits at age 65 was calculated, at the time of PFPL's first suitability letter, as being 7.29% if he took a full pension (although this was based only on the guaranteed portion of the transfer value, £204,425.42, being invested).

This compares with the discount rate of 3.4% per year for 7 full years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

PFPL assessed Mr M's attitude to risk as 'conservative' or 'cautious'. Based on this attitude to risk, the critical yield, discount rate and its composition of assets and the time to retirement, I think Mr M was always likely to receive benefits of a lower overall value than the safeguarded underpin benefits the OPS would've provided at retirement at age 65, as a result of investing in line with that attitude to risk.

PFPL has said that its cashflow model, which was included in the suitability report, showed that Mr M would've been able to meet his income need (£7,200 per year based on his estimated expenditure being £600 per month after his mortgage was cleared) despite the high critical yields. I've considered this. But I think there are some flaws in the model.

Firstly, it doesn't seem to account for Mr M potentially withdrawing TFC at retirement. Even though PFPL said maximising TFC was an objective of Mr M's. And the model wasn't later revised to account for the enhanced TFC Mr M's buddy transfer made him eligible for either. Even though this would've resulted in the underlying fund balance being reduced even further. I accept that PFPL's advice doesn't seem to have been for Mr M to take the maximum available TFC. But, given what it recorded about access to this being apparently important, factoring this scenario into its modelling would in my view have been appropriate.

The model also assumes a rate of 5% growth would be achieved, which based on what I've already explained above was not guaranteed. And while again I understand PFPL considers past performance meant this was achievable, this is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

At the same time, while the model notes the point at which Mr M would be entitled to receive state pension, the impact of this on the income he'd be drawing from this pension also wasn't factored into the modelling. So, I'm not sure that the model provided an effective or accurate analysis.

And in any event though, these flaws notwithstanding, the model still doesn't, in my view, demonstrate that Mr M could expect to receive benefits of a greater overall value as a result of transferring. So, from a financial viability perspective, in terms of achieving greater benefits from age 65, I still don't think a transfer was in Mr M's best interests

But financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

PFPL says Mr M intended to retire within a couple of years, as he expected to be able to take redundancy. And Mr M has agreed he was considering this. Although he now argues he didn't need to retire at that time as he was in good health and indeed, he is now looking at potentially returning to work.

The initial email from Firm R to PFPL, referring Mr M to it, didn't talk about him wanting to retire early. Rather it said he was interested in transferring his OPS benefits to his GPP because he thought the CETV was potentially good value. Something Mr M has repeated to us. But the fact find PFPL subsequently completed referred to Mr M expecting to be offered redundancy within the next couple of years. It was recorded that he expected to draw benefits in less than three years. And the notes said Mr M intended to retire when he left his employer – which again he expected to be within 2 years. The advice also reiterated these circumstances, and I can't see that Mr M disputed this objective when proceeding. So, I'm satisfied on balance that not returning to work, in the event of being offered redundancy, was a genuine objective of Mr M's.

At the time of the initial suitability report PFPL issued in September 2016 though, it wasn't confirmed that Mr M would be leaving his employer. It was only at that stage a possibility. So, I think it can be argued that at that time, advice to transfer for the purposes of flexibility

was premature. It wasn't set in stone at that time that Mr M would be leaving employment. And Mr M could've revisited a potential transfer when this became a need.

By the time of the addendum to the advice though, Mr M's circumstances had changed. He has confirmed he had been made redundant. So, this uncertainty was removed. But, as I'll explain, I don't think that meant he needed flexibility in respect of his OPS benefits.

I've seen evidence that PFPL asked the trustees of the OPS for information about Mr M's pension, including about potential early retirement. But the trustees said, due to the value of the pension not being sufficient to provide the safeguarded benefits Mr M was entitled to under the policy, he couldn't take early retirement under the existing scheme at that time. The information the trustees provided also indicated that this deficit was quite significant – in excess of £170,000. So, I think it was reasonable for PFPL to conclude that early retirement under the scheme seemed unlikely to be offered to Mr M. But I don't think his circumstances meant he needed to access his OPS scheme benefits early, to meet his objective of not returning to work after being offered redundancy.

The fact find noted that Mr M expected to have expenses of £600 per month once his mortgage was repaid, which was due to happen in January 2017 according to the fact find. PFPL based his expected income need in retirement, of £7,200 per year, on this. And its advice was given on the basis of this being the income level that he needed.

Mr M has confirmed he received a redundancy payment of £120,000 - £125,000 when he left his employer. The fact find PFPL completed in June 2016 noted that Mr M expected to receive a payment around this level. But I can't see that PFPL confirmed with Mr M what he had received, even though it was aware at the time of the addendum that he had been made redundant. And I think it should've done because I think this redundancy settlement is important to whether he needed to access his OPS benefits early.

The fact find didn't record any purpose, such as outstanding liabilities, for which Mr M needed access to a lump sum. It was noted that Mr M had a mortgage of approximately £15,000 remaining. But it also recorded that he had an endowment, with a value in excess of this, that's purpose was to clear that balance. But even if the endowment hadn't matured as planned, Mr M could've used a portion of his redundancy settlement to clear the mortgage and still had in excess of £100,000 left.

Mr M was 57 at the time of the advice. So, based on this and the expected income in retirement PFPL recorded him as having, it appears he could've comfortably met the recorded income need from the redundancy lump sum he received until the normal retirement age of the OPS (65) and had a surplus left over.

At that point he could've begun drawing benefits from the OPS, at least at the level of those safeguarded. The safeguarded benefits at the date Mr M stopped accruing benefits in the OPS in 2012 were £7,407.40 per year. Which exceeded the income requirement noted by PFPL. And the amount he would've actually been entitled to at age 65 would've been greater than this – as the safeguarded benefits continued to escalate in deferment. And they would've then also continued to escalate while in payment. So, these benefits appear to have been sufficient to then meet his income needs in retirement.

And Mr M would then have become eligible for the state pension, which he'd have received in addition to his safeguarded benefits from the OPS. And in addition to this, and the surplus that would've been left from the redundancy settlement, Mr M held benefits in his GPP, which was valued in May 2016 at around £27,000, and another small personal pension, which was estimated to have a value of approximately £8,000. Taking all of this into account, I don't think Mr M needed flexibility in order to meet his recorded income needs from when

he became redundant. So based on the information that was relied on at the time, could've achieved his objective of not returning to work without having to access his OPS benefits.

PFPL has said that Mr M also wanted to maximise the TFC he could access. And that transferring meant he was able to retain access to an enhanced level of TFC. Mr M has said maximising TFC wasn't particularly important to him.

Retaining access to a higher entitlement to TFC would've been beneficial to Mr M from a taxation planning perspective. But as I've explained above, there was nothing recorded about any liabilities or plans at the time of the advice that required access to a lump sum. I don't doubt, when PFPL discussed this with him, Mr M would've indicated a preference to potentially access as large a part of his pension on a tax-free basis as possible. I think most consumers would when this was discussed. But I can't see that Mr M needed access to a higher level of TFC at the time PFPL advised him to transfer.

The information from the trustees of the OPS does suggest that Mr M might've been restricted in terms of the TFC that could be accessed if the value of the fund was not enough to meet his safeguarded benefits when he did eventually come to take them. And I can understand that this might've been a concern for Mr M. But again, there was no recorded objective that suggested he'd need to access TFC. And, as I've mentioned, he had some other pension benefits that lump sums could've been accessed from – albeit smaller sums. And the primary purpose of a pension is to provide for the holder's income needs in retirement. So, I don't think transferring for the purpose of avoiding this potential restriction was in Mr M's best interests. And in any event, he could've revisited transferring closer to taking benefits, if this had still been a concern.

So, while flexibility might've sounded appealing to Mr M, I don't think he needed it or to be able to take TFC at the time PFPL advised him to transfer. And so, I don't think transferring for these reasons were in his best interests, particularly bearing in mind he appears likely to have received benefits of a lower overall value by doing so.

Death benefits

PFPL said in response to the complaint that the alternative death benefits that a transfer offered wasn't a driver for its recommendation or a significant consideration. And for this reason, comparing them to life insurance options was not necessary. But the suitability report said under a section called 'pension transfer attitude' that Mr M's "priority is to leave 100% of the fund to your wife and daughter if possible". And in the 'recommendation' section of the report death benefits were referenced across several bullet points and PFPL stated "On the basis of your requirement for death benefits, the transfer option is most suitable". So contrary to what PFPL has stated more recently, this does seem to have been a consideration at the time.

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 might've been an attractive feature to Mr M. But, whilst I appreciate death benefits are important to consumers, 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 PFPL explored to what extent Mr M was prepared to accept a lower retirement income in exchange for alternative death benefits.

The OPS already offered death benefits by way of a spouse's pension. Mr M was married so this would've been useful to his spouse if Mr M predeceased her. I understand this was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr M drew in his lifetime. Mr M was recorded as being in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy. So, the pension may not have provided the legacy that Mr M may have thought it would.

And if Mr M genuinely wanted 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, I think PFPL should've instead explored life insurance. I note what it has said about why this wasn't done but as I've already explained I'm satisfied that death benefits were a consideration at the time. So, I think these alternative options should've been looked at when giving this advice, particularly bearing in mind the requirement on PFPL to demonstrate the transfer was in Mr M's best interests.

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 over financial stability of the scheme

PFPL has said that there were still significant risks to Mr M's retirement provisions by remaining in the OPS and repeated that it was not a true DB scheme. But as I've explained, it included safeguarded benefits that the scheme was required to provide.

I do note that the trustees of the OPS did indicate that Mr M's pension was effectively underfunded – that its value wasn't great enough to pay the safeguarded benefits Mr M was entitled to. The scheme would need to cover the shortfall. And if it needed to meet similar shortfalls for other customers, this raised the possibility that it could fail.

But there isn't enough information about the overall funding position of the pension scheme to know how likely this was, as this wasn't gathered by PFPL. The scheme summary information the trustees shared at the time only reflected Mr M's individual pension. And it said specifically that the scheme wasn't under review.

So, I don't think I can reasonably say that the funding of Mr M's OPS was in a position such that he should have genuinely been concerned about the security of his pension. And transferring for this reason wouldn't, in my view, have been in Mr M's interests.

Suitability of investments

PFPL recommended a specific provider and investment strategy to Mr M. As I'm upholding the complaint on the grounds that a transfer out of the OPS wasn't suitable for Mr M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the OPS and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility and the potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But PFPL 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. He was giving up safeguarded

benefits that the trustees indicated were guaranteed and would increase in payment. As well as the potential, in the event of the value of the fund recovering in the intervening period to retirement, for benefits on top of this. By transferring, Mr M was very likely to obtain lower retirement benefits, which were entirely dependent on investment performance and subject to market risk. And in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr M's situation, in particular him receiving a significant redundancy settlement meant, based on the income need PFPL says he had, that he could've met his objective of not returning to work post redundancy, without transferring. And as I've explained, in my view he had no other genuine need that made transferring in his best interests.

So, I think PFPL should've advised Mr M to remain in his OPS.

Of course, I have to consider whether Mr M would've gone ahead anyway, against PFPL's advice. And I've considered this carefully. But I'm not persuaded that Mr M would've insisted on transferring against PFPL's advice. I say this because Mr M was an inexperienced investor with a 'conservative' or 'cautious' attitude to risk and this pension, as documented in the fact find, accounted for the majority of his retirement provision. So, if PFPL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded he would've insisted on the transfer knowing that a professional adviser, whose expertise he had been referred for, didn't think it was suitable for his or in his best interests. And if PFPL had explained that Mr M could meet his objective without risking his safeguarded benefits, I think that would've carried significant weight. So, I don't think Mr M would have insisted on transferring out of the DB scheme.

In light of the above, I think PFPL should compensate Mr M for the unsuitable advice.

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 the unsuitable advice. I consider Mr M would have most likely remained in the occupational pension scheme if suitable advice had been given.

As I've mentioned several times, this wasn't a typical defined benefit scheme. And the trustees described it as a money purchase scheme with a defined benefit underpin. The scheme did though, through that underpin, provide safeguarded benefits as a guaranteed minimum.

Based on what we know about the policy, not least the value at the time and how this compared with the anticipated cost of providing the safeguarded benefits, it appears likely the safeguarded benefits would've represented the retirement benefits Mr M would've been entitled to under the OPS at the normal scheme retirement age. But PFPL should check with the trustees of the scheme that there would have been no additional benefits payable than the guaranteed minimum at normal retirement date. And if there would have been then the value of these needs to be paid in addition to the calculation set out below. But if the scheme is unable to confirm that there would be additional benefits then I think it is fair, in the circumstances, to assume that no additional benefits would've been provided. And so, with that in mind, I think the most appropriate way to put things right would be for PFPL to use 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.

Mr M was grateful for the outcome of my decision and indicated he was happy with it.

PFPL did not provide any further comments for me to consider.

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.

Having done so, as neither party have provided anything further for me to consider, I see no reason to depart from my provisional findings. So, for the reasons summarised above, I think PFPL should've recommended that Mr M remain in his OPS. If it had done, I think Mr M would've accepted that advice. So, I think PFPL should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely remained in the occupational pension scheme if suitable advice had been given.

PFPL should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, had Mr M been provided with suitable advice by PFPL, I think he would've remained a member of his OPS and not drawn benefits until the normal scheme retirement age of 65. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried using the most recent financial assumptions in line with PS22/13 and DISP App 4. 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.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, PFPL should:

- always calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
 - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts PFPL's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, PFPL may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, 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 £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Pareto Financial Planning Limited pays Mr M the balance.

If Mr M accepts this decision, 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 9 June 2023.

Ben Stoker
Ombudsman