

## **The complaint**

Miss K says Lycetts Financial Services Limited (LFS) failed to advise her to switch her personal pensions into her defined benefit (DB) pension scheme when she had the opportunity to do so. She says this has caused her financial detriment.

## **What happened**

The background to this complaint isn't in dispute. In summary, in 2017 Miss K engaged LFS to provide her with advice about her pension arrangements and retirement planning. An objective she had was to retire in 2041 with an annual income of around £18,000.

At the time of the advice Miss K worked for a university. She told LFS she'd started working there in June 2017 and that she had the option to move her personal pensions into its DB scheme - effectively buying added benefits.

LFS wrote to the university about her intention to switch pensions and it obtained estimates of what level of scheme benefits her existing pension funds could buy. In September 2017 the university suggested that based on total funds of around £69,500, she might be able to secure an additional fixed pension at her normal retirement age of about £14,360 per annum.

In May 2018 LFS recommended that Miss K switched her two personal pensions, which together were worth around £73,000 into a Royal London Pension Portfolio plan. It recommended she invested her funds in line with her assessed appetite for risk. Miss K accepted LFS's recommendations and the new plan was established.

By March 2021 Miss K had become concerned LFS's advice hadn't been suitable, so she wrote to it complaining. She said she thought it should've advised her to switch her previous personal pension funds into the university's DB scheme. She still hadn't received a response to her complaint by July 2021 and so she contacted this Service.

LFS explained that it was late in responding to Miss K because it had been trying to get information from the administrator of her university's DB scheme. But this wasn't forthcoming.

Ultimately, LFS decided that it would be upholding Miss K's complaint, as it should've advised her to switch her existing personal pension funds into the scheme. In the absence of the information it had requested from her former DB scheme it formulated an offer which it said showed that she hadn't lost out because of what it had done. It also offered her £250 for the trouble and upset it had caused.

An Investigator considered LFS's offer and concluded it was reasonable.

Miss K disagreed, for example she considered the projections used by LFS for fund growth of her personal pension were unrealistic. This was important because the calculations were used to compare with the estimated benefits she'd have received from the DB scheme.

LFS said its calculations were reasonable given long-term historic patterns of growth for her portfolio and it noted it had made certain assumptions, such as adding in ongoing costs of advice under her existing arrangement, which she didn't pay for, which meant its calculations had been weighted in her favour.

Both parties are in broad agreement about what happened and the impact of LFS's failings on Miss K. But they haven't been able to bring matters to an agreement on redress and so her complaint was passed to me to review afresh.

I issued my provisional decision earlier this month. Miss K provided further evidence in relation to her former DB scheme. I've received no other submissions and therefore see no reason to depart from my initial assessment.

### **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'm upholding Miss K's complaint.

The first thing I've considered is the extensive regulation around transactions like those performed by LFS for Miss K. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to 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.

The Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like LFS. As such, I need to have regard to them in deciding Miss K's complaint.

I've reviewed the evidence in this case and agree with LFS's conclusion to uphold Miss K's complaint.

So all that remains is to set out what would be fair redress in this case, and the approach to take, so that matters can be brought to a conclusion.

### **Putting things right**

The aim of redress is to put Miss K, as close as reasonably possible, into the position she would've been in now but for Lycetts Financial Services Limited's failings. It's accepted she would've switched her personal pension plan funds into her university DB scheme and bought more benefits from that.

This isn't a situation where Miss K has been provided with unsuitable advice to transfer out of her DB scheme. But I'm mindful the situation she's found herself in is analogous to where firms have failed to advise clients not to buy added years from an employer pension scheme when this was available.

I understand Miss K left her employment at the university in question with less than two years of service, triggering a refund of her contributions and ending any future entitlement to benefits under the scheme. But had she switched her personal pension funds into the DB arrangement in 2018, she'd have been entitled to remain in the scheme with deferred rights. I can see LFS will need evidence of all these matters, elements of which she has recently provided to this Service.

I recognise LFS has been hampered by the administrator of Miss K's former DB scheme in trying to obtain other information about the scheme and her rights under it, which it clearly needs in order to conduct a proper assessment of any loss. Any leverage she can also bring to bear on the scheme to ensure LFS is able to access such will be helpful.

Allowing for the proper gathering of necessary information by LFS, I consider a fair and reasonable framework for Lycetts Financial Services Limited to use as a basis to undertake a potential loss calculation is the guidance set out by the Financial Conduct Authority ("FCA") in its Finalised Guidance (FG) 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

On 2 August 2022, the FCA launched a consultation on changes to this guidance and has set out its proposals in a consultation document - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>.

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 Miss K whether she preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. She would like her complaint to be settled in line with new guidance /rules. I consider it's fair that Lycetts Financial Services Limited calculates Miss K's redress in line with new guidance and rules when they come into effect.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised appropriately with regard to the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Miss K.

So, Lycetts Financial Services Limited should undertake a redress calculation taking into account the regulator's FSAVC review methodology on an added years basis. This involves using, in part, the Pension Review methodology as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision along these lines, 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 Miss K's acceptance of the decision.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Miss K'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 appropriate, it should be paid directly to Miss K as a lump sum after making a notional deduction to allow for income tax that would've otherwise been paid. 25% of the loss would be tax-free and 75% would've been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Miss K within 90 days of Lycetts Financial Services Limited receiving notification of her acceptance of my final decision. This is subject to it receiving the necessary information from her former DB scheme administrator. Further interest must be added to the compensation amount at the rate of 8% per year simple for the time in excess of 90 days that it takes LFS to pay Miss K.

Income tax may be payable on any interest paid. If Lycetts Financial Services Limited deducts income tax from the interest, it should tell Miss K how much has been taken off. LFS should give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

In addition, I'm satisfied the award of £250 made by Lycetts Financial Services Limited for the distress and inconvenience it caused Miss K is reasonable.

### **My final decision**

I'm upholding Miss K's complaint for the reasons I've set out. I now require Lycetts Financial Services Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 24 March 2023.

Kevin Williamson  
**Ombudsman**