DRN-4037181

The complaint

Ms W as Executor of the estate of Mr B, her late brother, says the advice given and the arrangements made by Pension Advice Specialists Limited (PAS), to transfer his defined benefit (DB) pensions into a Self-invested Personal Pension (SIPP) with Davies & Co Pensions Limited (DAC) and the associated investments was unsuitable.

Mr B's estate is represented by Rightside Financial Services Limited (RFS).

What happened

Mr B had been considering his pension arrangements in 2018. He was 54 at the time and his health meant he was no longer able to work. He was introduced to Walker Murray Limited (WML) to get advice about his pensions.

WML advised Mr B to switch two of his personal pension plans into a SIPP with DAC and invest the funds according to his assessed attitude to risk. He accepted the recommendations and in June and July 2018 a total of about £52,500 was moved into his new pension.

Mr B was also a member of a DB scheme with a former employer. He'd joined that company in 1980, but his pensionable service appears to have begun in 1991 and ended in 1994 when he left the organisation. The scheme had a normal retirement date (NRD) of when he reached 60.

WML wasn't qualified to provide Mr B with advice about transferring from a DB scheme pension. So, after a failed referral to another firm which was in regulatory difficulty, it put him in contact with PAS.

PAS began to gather information from Mr B about his objectives, circumstances and attitude to risk in August 2018. It's recorded that his top three priorities were: the ability to retire early; maximising tax-free cash (TFC); and having the opportunity for investment growth. He also ranked highly, flexibility to control his retirement income, tax-planning and consolidation of his pension provision.

Mr B was in poor health. He was on medication for his conditions, but was no longer able to work. He said he didn't have much choice other than to retire early. And he said his life-expectancy was reduced as a result of his chronic conditions.

Mr B was single. He had no financial dependents. Mr B was expecting to move to Spain. He was already spending more time there. He hoped that the change in lifestyle and climate would help with his health.

Leaving aside his accommodation costs in Spain (which he said would be met by renting out his home in the UK), Mr B wanted about £2,000 a month to live on. Half of this he was receiving from his portfolio of rental properties. But the other half which came from surplus cash in his limited company, wouldn't be available after March 2019. He had an income gap to fill of around £1,000 a month.

Mr B's pension provision at the time he received advice from PAS included his DAC SIPP, which he'd switched £52,500 into from his personal pensions. To this, in August 2018 he made contributions of £40,000.

In November 2018 Mr B wrote to his DB scheme administrator asking for a transfer valuation. It informed him the value of his annual pension on 5 April 2019 would be £2,600. It offered him a cash equivalent value (CETV) if he were to transfer his pension, of just over £101,000.

PAS produced a suitability report for Mr B dated 25 January 2019. This recorded his assessed attitude to risk (ATR) as high-medium or 6 out of 10 where 1 would be lowest and 10 highest. And his capacity for loss, when considering his income requirements in retirement and his overall assets was said by PAS to be low/medium.

PAS went on to recommend that Mr B transfer his DB pension into his DAC SIPP and to invest the funds according to his ATR, specifically through the Cornhill Moderately Adventurous fund.

Mr B accepted PAS's recommendations. On 11 February 2019 his DB funds were received by his SIPP. And on 22 February 2019 he started taking benefits from his pension. He took TFC of around £51,000.

RFS complained to PAS in July 2021 about what had happened to Mr B in 2019. It raised several concerns, including in the following terms:

"You recommended he sacrifice the invaluable guarantees his existing pension provided for a high risk speculative approach with assets that were not fully protected, potentially esoteric and illiquid."

"Similarly, whilst identifying that Walker Murray were not UK authorised to advise Mr B in respect of pension transfer business it is apparent that you did not consider the funds that they were recommending. In so doing appropriateness of the transfer could not be reasonably determined as being suitable advice."

"It is accepted that transferring a defined benefit pension should be regarded as unsuitable and whilst your suitability report attempts to outline all considerations Mr B [should] make before transfer there appear to be several key considerations that have been overlooked making your recommendation unsuitable."

"Regulatory principles of business 2 & 4 & 6 require you to ensure your clients best interests are catered for. Without sight of the recommended fund details being recommended or Mr B's tax position as an ex Pat it is impossible to determine whether the advice met his needs and objectives."

PAS rejected the complaint brought by RFS. It outlined how it worked with WML and their respective roles. It considered the advice it had given Mr B was suitable given his objectives and in his circumstances. RFS disagreed and brought the case to this Service.
An Investigator considered Mr B's complaint and recommended it should be upheld. He didn't think PAS had made a case that there were compelling reasons for him to transfer his DB pension. He concluded Mr B was likely to receive a substantially lower overall value from his new arrangements than his DB scheme provided for in retirement.

Sadly, Mr B passed away in September 2022. His estate decided it wanted to continue to pursue his case. After this PAS made an offer of £5,000 in order to bring matters to a full and final settlement. It said that in the circumstances, even if it accepted the Investigator's view, the position was one of nil loss. RFS on behalf of the estate rejected the offer and requested a loss calculation using the proper FCA methodology.

As both parties couldn’t agree with the Investigator, the complaint taken on by Mr B’s estate was passed to me to review afresh. I issued my provisional decision earlier this month. I’m grateful to both parties for their further submissions, which I’ve considered in arriving at this 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.

Where there’s conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what’s most likely to have happened.

I’ve not provided a detailed response to all the points raised in this case. That’s deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I’ve taken into account all submissions, I’ve concentrated my findings on what I think is relevant and at the heart of this complaint.

I’m upholding this complaint. I’ll explain why.

How does the regulatory framework inform the consideration of Mr B’s case?

The first thing I’ve considered is the extensive regulation around transactions like those performed by PAS for Mr B. The FCA Handbook contains 11 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 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 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

So, 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 PAS. As such, I need to have regard to them in deciding this complaint.

At the time of the advice PAS gave Mr B, COBS 19.1.6 made the following specific point about advising on a transfer from a DB scheme:

(2) When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.

(3) A firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the retail client's best interests.

To do this PAS had to take into account a range of factors including Mr B's intentions for accessing his pension benefits; his attitude to and understanding of the risks of both giving up his safeguarded benefits and of making investments; his realistic income requirements in retirement; and alternative ways in which his objectives could be achieved without transferring from his DB scheme.

Under COBS 19.1.2B, PAS was required to conduct an appropriate pension transfer analysis. It had to:

(1) Assess the benefits likely to be paid and options available under the ceding arrangement;

(2) Compare (1) with those benefits and options available under the proposed arrangement; …and

(4) Undertake the analysis in (1), (2) and (3) in accordance with COBS 19 Annex 4A and COBS 19 Annex 4C.

COBS 19.1.3A required PAS to compare the transfer valued offered by Mr B's DB scheme with the estimated value needed at the time of the advice to purchase the future income benefits available under his existing scheme using a pension annuity. It had to inform him of such.

COBS 2.1.1 R required a firm to act honestly, fairly and professionally in accordance with the best interests of its client, in relation to designated investment business carried on for a retail client. The definition of "*designated investment business*" includes "*arranging (bringing about) deals in investments*".

COBS 9.2.1R set out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in April 2014 it issued an industry alert which said:

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

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole."

Did PAS meet the regulatory obligations placed on it in its dealings with Mr B?

This is a finely balanced decision. But I've concluded PAS didn't meet the regulatory threshold in this case. I'll explain why.

There are a number of documents relating to PAS's transaction with Mr B that are important to my consideration, these include the fact-find, the attitude to risk questionnaire, the pension transfer analysis report, pension illustrations and the suitability report. I've also listened carefully to the telephone conversation Mr B had with PAS in January 2019.

Mr B's top three priorities for retirement planning were: the ability to retire early; maximising his tax-free cash (TFC); and having the opportunity for investment growth.

In a telephone conversation Mr B had with PAS in January 2019 he reported that he was in poor health. He'd suffered rheumatoid arthritis from an early age, he had heart disease, hypertension and fibromyalgia. He was on medication for his conditions, but was no longer able to hold down a job. He had reduced mobility and found it difficult to drive. He said he didn't have much choice other than to retire early. And he said his life-expectancy was 15 years less than it would otherwise have been.

Mr B was single. He had no financial dependents. He was expecting to move to Spain. He was already spending more time there. He hoped the change in lifestyle and climate would help with his health.

Although Mr B had stopped working, he had monthly income from three rental properties of £1,050. He was expecting to rent a property in Spain, but considered the cost of this would be offset by his plan to rent out his own home. He was also taking around £1,000 a month from his limited company which still had a cash balance. He expected this to continue until March 2019.

As Mr B wanted a monthly income of around £2,000 to live on (excluding his accommodation costs, as already taken into account), he needed to plug an income gap of around £1,000 a month as part of any pension arrangement proposals.

Mr B's home was worth £145,000 and this had an outstanding repayment mortgage of about £95,000 which was due to be repaid by 2030. He had three rental properties which it seems were unencumbered. These had a combined value of £290,000. He had a credit card debt of £2,000. He had savings of £10,000. And he had around £20,000 residual cash in his business.

PAS needed to have analysed, tested, challenged and advised Mr B about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for an income in retirement. And when early access and a transfer is recommended, there need to be compelling reasons.

It was PAS's role to discern what Mr B's wants and needs were and why. Its role wasn't simply to facilitate what he wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in his best interests. I don't think it demonstrably met these obligations because it ended up recommending the transfer to him.

From the information I've seen and having listened to the call between PAS and Mr B, I'm satisfied the objectives recorded for his retirement were genuine and specific to his circumstances at the time. I think that generally it did a reasonable job. However, there were some weaknesses which ultimately undermined its approach. I'll explore these in more detail.

Concerning Mr B's health. I think this is a key issue in this case. The information he gave PAS about his chronic health conditions was important. And it's proper for this to have been considered in arriving at its recommendation for his retirement arrangements. But I think it needed to get to the bottom of his situation.

In responding to my provisional decision PAS said:

"Whilst we accept hindsight cannot be used to justify our advice, the passing of Mr B is clear evidence that our assessment of Mr B's position was correct and accurate. We feel that, not obtaining medical evidence or an expert opinion, does not make our advice unsuitable. Mr B was in poor health and, the lack of an expert opinion, does not change that fact, which has sadly played out in the events following the advice that we provided. We provided what we deem to be, suitable advice, based on the client's position at the time of the advice, which later proved to be correct."

I agree with PAS on the need to avoid hindsight. It's interesting that in responding to RFS's complaint letter, specifically concerning the matter about whether it had explored what early and ill-health retirement options were available from Mr B's DB scheme, PAS said:

"Whilst the client had disclosed health conditions, which we acknowledge could impact quality of life, there was no medical evidence provided by the client to indicate that he was terminally ill or had a reduced life expectancy. It is unlikely that a scheme trustee would provide an ill-health pension or payment without medical evidence from a medical practitioner that the client had a reduced life expectancy or was terminally ill."

I agree with PAS's response on this matter. We know Mr B thought his life expectancy had been reduced by 15 years because of his health conditions. It follows I remain of the view PAS should've sought his authority to gain expert opinion from a health professional involved in his care - if such wasn't already available to hand - about whether his understanding of his outlook was accurate. Instead it simply noted it hadn't seen any medical evidence for what he'd told it.

I've no doubt Mr B had a good understanding of his medical conditions. He'd been living with some of them for many years. But it wasn't safe for PAS to accept his interpretation of what it meant for his life expectancy. It needed to have done more due diligence on what it was being told.

Getting to the bottom of this was key to weighing matters such as how long any transferred benefits would likely need to last. Achieving an understanding of the value to him of the CETV on offer from his DB scheme. How these matters compared with any ill-health and early retirement provisions available through the scheme. And the relative merits for different options on death benefits in the event of his passing.

For example, Mr B thought the CETV of £101,000 he'd been offered by his DB scheme to transfer his pension looked very attractive. It represented around 39 times the annual pension he would've accrued up until April 2019. But this didn't take account of the fact that his pension would be increased each year. And transfer values can fluctuate significantly, it wasn't possible to know whether a future offer would be more or less.

The way PAS tried to describe the value of the CETV to Mr B was better. In its suitability report it said:

"Your scheme is offering an income of £3,274 at age 60, and when I consider weighed escalation of 3.28% it'll take until year 21 to receive the value of the CETV. You'll be 81 which is your estimated life expectancy from the ONS, however health hasn't been factored into this age, and you have stated your life expectancy has been reduced by 15 years, which means you may not benefit from the value of the CETV when paid as income. Our cash flow forecasts also support this."

This makes clear how crucial understanding Mr B's life expectancy was.

Another example of why PAS needed to do more to get to the bottom of Mr B's health situation relates to death benefits. The terms and conditions of his DB scheme state:

"Death after leaving but before retirement - Your deferred pension is cancelled if you die before payment begins. However, a dependant's pension and/or child allowances may be paid. If there are no dependants or children, a lump sum representing your contributions, plus interest, will be paid. Interest is based on inflation, up to a maximum of 5% p.a…"

"Death after retirement - Your pension is only paid for your lifetime, so it ends when you die. However, a dependant's pension and/or child allowances may be paid. If no dependant's pension or child allowance is payable, a lump sum may be paid if you die within 5 years of retirement. The lump sum is the balance of the payments that would have been made to you up to age 75, if you had been retired for five years. We take your annual pension on the day you retired, ignoring any amount you swapped for a lump sum, and multiply this by five. We then deduct the total of the pension instalments actually paid to you and the lump sum you received at retirement. The balance, if any, is paid as a lump sum…"

We know Mr B didn't have a partner, nor any financial dependents. So this wasn't a priority area for him. That said he told PAS that in the event of his passing he would like his mother and/or sisters to benefit from any residual funds. If his health conditions had impacted on his life expectancy to the extent he thought, the transfer out of the DB scheme would have been the only way he could've passed benefits to them.

Mr B wanted any residual benefits from his pension pot to be available to close relatives. Normally this would be a second order consideration – pensions are to provide an income in retirement. But if he had a significantly reduced life expectancy then this matter can assume more significance. The problem for PAS remains its lack of due diligence about his situation.

Turning to the financial case for transferring Mr B's DB pension. The critical yield is the level of return his new pension plan would've needed to have achieved in order for the transfer of his DB scheme to match his pension benefits at his NRD (aged 60). The pension transfer report indicated that an annual return of between 11.3% and 14% would be required (depending on whether he took TFC).

PAS's advice was given during the period when this Service published 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in Mr B's case.

So, the critical yield required to match Mr B's DB scheme was 11.3-14%. When the advice was given, the relevant discount rate was 5.6% for someone with 4 years to retirement. The comparable growth rates this Service used were based on a typical investment spread across shares and bonds.

While its arguable, given Mr B's assessed medium-high attitude to risk, reaching a return higher than the discount rate was achievable, I don't think that would've been to the extent required to meet the critical yield here. It's of note at the time industry projection rates for growth were 2% (lower), 5% (medium) and 8% (upper).

PAS also obtained a transfer value comparator. This showed s a comparison of the Cash Equivalent Transfer Value (CETV) and the estimated cost of acquiring the same promised income in a Defined Contribution scheme. This suggested it would cost Mr B £166,000 to secure a comparable pension from an insurer. This was about £65,000 less than the CETV on offer.

There clearly wasn't a sound financial case for transfer in normal circumstances. And in responding to the Investigator's view PAS noted that Mr B's situation wasn't normal:

"Mr B wanted to retire at age 55, therefore the benefits from the company scheme would likely have seen a 20% reduction in benefits due to the early retirement factor. I believe Mr B was fully aware in the telephone call of the implications of the pension transfer."

""We would like to highlight some key direct quotes from this telephone call, regarding Mr B's health:

- *"I'm no longer fit enough to hold down a full time-job"*
- *"It is very early to retire, but I've not really got much choice"*
- *"I do have a significant reduced life expectancy with the health conditions that I've got"*
- *"In relation to a guaranteed income for life; "Yeah, I do understand that but, in my circumstances, I don't think it's a good fit, I really don't".*
- *"In relation to his life expectancy; Well, it's a fact of life, isn't it? Fifteen years they reckon. Yeah. Well, its, because its, well I have a heart condition and rheumatoid arthritis and hyper-tension and fibromyalgia."*

"Given the importance of the above, we do not feel this has been given due consideration when forming your opinion. Mr B's health was an important factor in the recommendation made."

I think there's merit in PAS's central argument here. Mr B''s health status was an important factor. The problem it has is that it failed to explore this fully. It didn't have an expert view of the impact of his health conditions on his life expectancy. And so it couldn't advise him properly about his income requirements for retirement.

Turning to PAS's assessment of Mr B's attitude to risk. I think there are problems with its approach. His responses to the questionnaire led to the rating of 6 out of 10 (high-medium). It defined this in the following terms:

"A 'high medium' risk profile shows that your willingness and ability to accept investment risk is slightly above average. A portfolio that matches this risk profile is likely to experience some significant rises and falls in value. So while there is good potential for returns from your investment to match or go above the rate of inflation (in other words, the rate at which the prices of goods and services rise), you also need to accept that your investment is likely to fall in value from time to time, particularly in the short term."

"A portfolio for this risk profile is most likely to contain mainly medium- and high-risk investments, including Sterling corporate bonds and global bonds including higher income types as well as Property and shares. The shares are expected to be held mainly in the UK and other developed markets, but there is also likely to be some in higher-risk emerging markets. As a result, you should always check that you are comfortable with what's included."

While I don't doubt his responses as fed into the risk outlook process generated this rating, I would've like to have seen evidence of test and challenge here. I note the majority of his responses were neither agree nor disagree. When exploring matters such as his outlook on investment fluctuation, incurring losses, choosing steady returns over investments with potential to rise significantly in value and a preference for certainty, it needed to get under the skin better of what Mr B was saying.

In the conversation between Mr B and PAS's adviser in January 2019, he does openly question whether the risk assessment conducted earlier still represented his outlook. PAS captured part of that conversation in its suitability report in the following terms:

“You agreed with your ATR being 6, however may wish to reduce your stock market exposure over the years to reduce the volatility and would discuss this each year during your annual reviews. You are wary in relation to having all your 'eggs in one basket'

The conversation PAS had with Mr B was a good opportunity for it to have delved deeper. I think the conversation made clear he was somewhat uncertain about his investment exposure. But the adviser didn’t explore this in the depth I think would’ve been appropriate. So it failed in its duty of care towards him.

Further, I note that the investment portfolio Mr B ended up with holdings in was classified as moderately adventurous. This meant his pension pot was targeting an equity content of around 77%.

On the other hand, it’s clear from the conversation Mr B had with PAS he had a clear idea about how he was offsetting some of his investment risk through taking maximum TFC (25% of his pension provision) and using this for 3-4 years to help meet his monthly retirement income gap. He noted as well as being used to support his expenditure, any balance could be placed in liquid and low risk near cash assets, such as an Individual Savings Account (ISA).

PAS assessed Mr B’s capacity for loss as low/medium. This strikes me as a somewhat broad rating. His recorded requirements in retirement were relatively modest. He had a property portfolio, from which he derived half his income. He owned his own home, which he planned to rent out to offset his rental costs in Spain. Looking forward his mortgage was due to end in 2030 and he was also entitled to a state pension at 67. So, I think he had a limited capacity for loss.

PAS says it gave Mr B all the necessary risk warnings indicating he was required to take responsibility for the decision to transfer. While I think he would’ve understood those warnings, disclosure of risks doesn’t of itself make the advice suitable.

Given the available evidence, I think PAS’s recommendations on investment exposed Mr B to too much risk given his outlook and capacity for loss.

I also have concerns about PAS’s recommendation for Mr B to place his DB funds in a SIPP with DAC. It said of the provider:

“DAC Pensions Limited (Davies & Co) is a boutique pension firm based in Cambridgeshire. They are authorised by the Financial Conduct Authority to operate Self Invested Personal Pensions (SIPPs) and they also provide specialist Trustee and Administration services for Small Self-Administered Schemes (SSASs).”

“Davies & Co provide solutions and expert guidance to help customers make the most of their pensions. Their mission is to guide customers on their journey to an enjoyable retirement. They are committed to providing our customers with an exceptional, personal service, second to none in the industry.”

“Davies & Co work closely with customers and their advisers to understand their unique requirements and create a bespoke arrangement, taking advantage of all the benefits that current legislation allows. Their dedicated and knowledgeable team of pension professionals are there for customers at every turn and help them stay on track.”

DAC had only been a regulated provider since September 2017. It didn’t have a track record. I’ve seen no evidence of the due diligence PAS was required to have carried out on DAC. It’s unclear why a boutique pension firm was suited to Mr B’s standard requirements. It was likely to be a more specialist and expensive SIPP provider compared to more established and mainstream providers.

Whatever the answers here, I don't think it was sufficient for PAS to simply endorse WML's previous recommendations to Mr B to use DAC. This was an opportunity for it to have highlighted potential issues with, and alternatives to, the SIPP that had already been established.

I note that PAS hasn't addressed these matters in its response to my provisional decision. And I've found that its recommendations to Mr B to transfer his DB pension to a DAC SIPP and invest in line with its assessment of his attitude to risk was unsuitable.

RFS has also questioned the suitability of PAS's advice given Mr B's intention to reside in Spain. From correspondence at the time, and when he brought his complaint to this Service Mr B gave a UK address. But it's also clear from the conversation he had with PAS at the time of the advice he was planning to spend a significant amount of his time overseas. So, the evidence on file looks both ways. And perhaps this is reflective of a situation where he hadn't made up his mind fully.

Clearly the UK and Spain have different tax regimes, as well as 'double-taxation' agreements. The pros and cons of taking his pension in the UK versus Spain and the associated arrangements were not explored in the suitability report PAS produced for Mr B. I'm also conscious that elements of Brexit and the status of overseas nationals was still being finalised at the time.

While PAS didn't explore these matters, I think Mr B would've been aware of the limitations of its advice. I say this because on the first page of its suitability report it said the following in bold type:

"Please note however that PAS are not overseas tax specialists and are unable to advise on the tax considerations of a DB pension transfer if you are resident outside the UK. You should seek further advice in this area from Walker Murray or a tax specialist in your country of residence."

I think this was a clear statement about the scope of the advice PAS had provided.

In summary, I've concluded PAS's failure to get to the bottom of Mr B's health situation and secure an expert opinion about the impact on his life expectancy was a fundamental flaw in its advice. Without such information it didn't reach the threshold, based on contemporaneous evidence, to clearly demonstrate that the transfer of his DB pension was in his best interests.

I've also set out my concerns about PAS's approach on assessing Mr B's attitude to risk and the consequent investments it recommended. And the appropriateness of the SIPP provider it said he should use.

So, on balance, taking all the circumstances of the case into account, it's fair and reasonable to uphold this complaint against PAS and for it to put things right.

Putting things right

I'm upholding this case. So, the estate of Mr B would need to be returned to the position it would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Pension Advice Specialists Limited responsible for.

I'm grateful to Pension Advice Specialists Limited for supplying its own redress calculations, which it says evidence that in the circumstances there's been no financial loss to Mr B's estate as a result of its advice. It acknowledges the calculations weren't carried out in accordance with the relevant FCA guidance. I understand a copy of those calculations were shared with RFS but it wanted an assessment completed using the appropriate FCA provisions.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and 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. RFS has indicated a preference for redress to be calculated according to the new rules. And in any event these come into effect on 1 April 2023.

I consider Mr B would've remained in his DB scheme. Pension Advice Specialists Limited should therefore undertake a redress calculation in line with 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, 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 the estate of Mr B's acceptance of the decision.

I should manage the expectations of Mr B's estate at this point. As has previously been established, Mr B didn't have a partner or any financial dependents. And in the sad circumstances of his passing, the flow of benefits he would've received from his DB scheme would necessarily have been limited. He also took benefits from his new arrangements, which will need to be taken into account.

I think it's fair to assume Mr B would've taken his DB pension benefits early from February 2019, consistent with his established needs at the time of the advice and with what he actually did with his transferred benefits.

RFS and the estate of Mr B will need to provide Pension Advice Specialists Limited with any information it reasonably requires about Mr B's SIPP transactions and status in order to ensure its calculations can be completed accurately. It will not be responsible for any delays in achieving such.

Pension Advice Specialists Limited 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 DB scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation amount should be paid to Mr B's estate. It should be paid 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 would be tax-free and 75% would have been taxed according to Mr B’s likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from any loss adequately reflects this.

Any compensation amount must where possible be paid to the estate of Mr B within 90 days of the date Pension Advice Specialists Limited receives notification of its 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 PAS to settle.

Income tax may be payable on any interest paid. If Pension Advice Specialists Limited deducts income tax from the interest, it should tell Mr B’s estate how much has been taken off. It should give it a tax deduction certificate in respect of interest if it asks for one, so it can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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.

My final decision

For the reasons I’ve set out, I’m upholding this case. I require Pension Advice Specialists Limited to carry out a calculation as directed and if a loss is established to pay such to Mr B’s estate.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mr B to accept or reject my decision before 19 April 2023.
Kevin Williamson
Ombudsman