

The complaint

Mr B who is professionally represented complains that Core Financial Services Ltd (Core) gave him unsuitable advice to transfer out of his Occupational Pension Scheme (OPS) in 2013. The complaint also states that the charges were too high and it failed to take into account Mr B's vulnerability and the state benefits he was receiving.

What happened

I set out the background to this complaint and my provisional findings in my provisional decision dated 17 March 2023. This is included below and forms part of this decision:

'In August 2013 Mr B met with an adviser from Core to discuss his options regarding his OPS. The adviser said he had an external pension consultant who could carry out a review and advise Mr B on his options.

They met again on 2 September 2013 and it was recorded:

"We discussed (Mr B's) options and I again explained that I could not provide advice on the (OPS)."

"(Mr B) wanted to take advantage of the free review via Susan Fleck Associates."

"I explained the review system and the fact that all of (Mr B's) details including my file notes will be passed to Susan Fleck Associates in order for them to carry out a review, I also explained that as (Mr B) would receive his report via the post, any questions on the advice received from Susan Fleck Associates should be directed to them as I am unable to give advice in this area."

On 12 September 2013 Susan Fleck Associates sent Mr B a pension transfer report – which recommended a transfer. Within this it was recommended Mr B transfer to an Aviva wrap as this product had been previously discussed with Core. Although it was agreed for administrative purposes the initial transfer would be made into a personal pension and then Core would arrange the internal transfer and investment of funds.

In November 2013 following the transfer of the OPS into the Aviva Personal Pension Mr B met with Core and it was recommended Mr B transfer internally to an Aviva Wrap and invest into a portfolio which Core felt was suitable for Mr B as a moderate risk investor.

Mr B also said that Core failed to treat him as a vulnerable client. Mr B had suffered an accident that caused him symptoms such as loss of memory and it meant he wouldn't work again.

Furthermore in 2017 Mr B started taking benefits and complains that Core didn't advise him that in doing so he'd lose out on benefits he was receiving.

Core responded to the complaint in some detail and said it wasn't responsible for the advice to transfer his benefits. That it had treated Mr B as a vulnerable client and that it had told Mr B in 2017 it was its advice not to take benefits at the level that he wished to do so. And that it had told him, it couldn't advise on his benefits situation as it didn't have authority to get this information.

Our investigator looked into matters and upheld the complaint. He said that whilst Core didn't give the advice to transfer Mr B's pension, it did introduce him to the adviser that did. And Core already had an investment strategy in mind before introducing Mr B to Susan Fleck Associates

for the transfer advice. He concluded that the transfer wouldn't have gone ahead without Core's involvement. And so it should take responsibility for this reason alongside the fact that a complaint couldn't be brought against Susan Fleck Associates as it was no longer trading.

Core responded to say it disagreed and the investigator's view and reasoning was not consistent with our approach on other similar cases it had at our service.

What I've provisionally 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 I've reached a different conclusion to that of our investigator, I'll explain why.

I have considered everything that Mr B's representatives and Core have said but I have not covered every point in detail that has been raised. This simply reflects the informal nature of our service and that our role is to get to the heart of the complaint.

It should also be noted that the complaint points cover quite a period of time whilst Core was advising Mr B. I've considered the specific complaint points raised, but I've not carried out a full review of every single piece of advice that Core has given Mr B nor have I considered if Core met all of its responsibilities to Mr B in terms of their client agreement under the Platinum package. It is not my role to carry out a root and branch review of everything that occurred. I can only consider as part of this complaint the points raised with Core already.

Are Core responsible for the advice to transfer out of the OPS?

It is clear from the evidence provided that Core did not provide the advice to transfer Mr B's OPS benefits. It explained to Mr B that it wasn't able to provide advice in this area but that they had access to another firm that could provide advice - Susan Fleck Associates (SFA). Core passed the information they had ascertained in their meetings with Mr B to SFA who then produced a report for Mr B.

It recommended a transfer and said in its report:

'for the reasons outlined in your Current Situation and Objectives a transfer to a Personal Pension may be appropriate for the objectives you have stated. If the recommendation was made on the basis of a comparison of retirement benefits only I would not be in a position to recommend the transfer ...

I have carried out my overall assessment of your OPS and can only recommend that you proceed with the transfer once you have had time to digest my findings and fully understand the risks involved and the guarantees you are forfeiting ...

I trust that this letter provides an accurate summary of our discussions, however, should you have any concerns or wish to discuss any of the Issues raised in more detail please do not hesitate to contact me.'

So I think it's clear that the advice in regards to transferring his OPS came from SFA. A transfer then occurred to Aviva, and Core then provided advice about where the funds should be invested.

I appreciate that Mr B is unhappy that he was advised to transfer out of his OPS scheme, however the firm responsible for this advice is SFA. They had the relevant permissions and provided the transfer analysis, suitability report and formal recommendations to Mr B.

I think it's clear here there was obviously an introducer relationship between the parties - Core set this out in its communications with Mr B. However this isn't evidence in my view that Core gave Mr B advice to transfer. I appreciate it had already discussed with Mr B an investment

strategy for his OPS funds if transferred, but this was subject to the result of the advice given by SFA, as Core said it couldn't advise him on this aspect.

It was ultimately SFA's obligation to provide Mr B with independent and suitable advice. And if it wasn't suitable for Mr B to transfer, SFA should have clearly told him so and provided reasons why. So it wouldn't be fair to hold Core responsible for advice it did not give.

Mr B's representative has said that Core should've known the advice was unsuitable as the yield required wouldn't be met, especially considering Mr B's moderate attitude to risk. And it failed to respond to Mr B's queries regarding the transfer. However, Core was unable to advise on this and advice had already been given by a firm which held the permissions to do so. Its advice was only in relation to the investment strategy within the personal pension arrangement. And as was set out by SFA, any queries in relation to the advice to transfer ought to have been directed at SFA and not Core.

Was Core's advice after the transfer unsuitable due to the lack of opportunity to achieve the critical yield?

Mr B's representative has said the advice given in November 2013 showed he was considered as a moderate investor but it wasn't explained this meant the critical yield of over 17% wouldn't be achieved. As returns would likely be between 4 % and 5%. The complaint goes onto say Mr B will run out of money before the end of his life expectancy which wouldn't have occurred if he'd remained in the scheme. However, again this is in relation to the transfer of benefits, of which advice was given by SFA and not Core. And as Core's advice was given after the transfer had taken place, I wouldn't expect Core to have referred back to the OPS scheme.

Core's Fees

Mr B's representatives have complained about the fees Core charged as they were significantly above the market rate. Having looked into this, I agree the fees were substantial and above the market going rate. However, there is no regulatory limit on the amount that an adviser can take by way of charges or fees.

When we have a complaint about fees, we usually look first at whether the charges were brought to the consumer's attention. It won't usually be fair to impose charges (especially if they are substantial) which haven't been clearly communicated. But here, I think the charges were made very clear to Mr B. The fees were given as a percentage and as an estimated figure. Furthermore, the impact of these fees were also shown in the illustrations of future benefits. Mr B signed to agree to these fees. And the fees were covered in the suitability reports.

So, I can't say that Mr B wasn't properly informed about the fees because of any lack of transparency about the fees, whether it was the initial advice fee, the ongoing advice fee or the product charges, these were all set out.

The service and payment agreement also set out the different service levels for the Navigator proposition - Platinum, Gold and Standard - and what each covered. The standard option for example was significantly cheaper than Platinum but with reduced offerings in terms of services, but Mr B chose to go with the more expensive but more complete Platinum package.

Mr B also would've had the opportunity prior to signing with Core to look at the rest of the marketplace and what was being offered. For whatever reason, Mr B chose to go ahead with Core and pay for their most expensive offering. Because Core were clear and fair and not misleading in the information provided about their costs, I cannot say it acted unreasonably as the rules under which it operates don't restrict the amount that can be charged for its services. It was Mr B's choice to agree to their fees and I don't think he was misled about the fees he would be charged.

My findings about the fees charged only relate to level they were charged at, as this was the complaint brought to Core and this service.

Was the advice in 2017 to drawdown Mr B's pension unsuitable due to loss of benefits?

Mr B's representatives say that in 2017 Core didn't do any analysis of Mr B's benefits of approximately £13,000 a year. It says Mr B was advised to withdraw £17,000 from his pension a year and bearing in mind the loss of benefits, Mr B is actually worse off for doing so.

The evidence from the time shows that Mr B was in receipt of Employment Support Allowance of £437 a month and Personal Independence Payments (PIP) of £691 a month, this makes up the approximate £13,000 a year Mr B's representative refers to. However, I've researched these payments and PIP is paid independent of income and so I don't think the increase in income would've had any effect on this. ESA, on the other hand was subject to income, the first £85 a week was discounted but after that, any excess is halved and then deducted from the ESA payable. So, Mr B in taking £17,000 out in income across the year would equate to approximately £326 a week, which would've wiped out any entitlement to the ESA.

Core were aware of the potential for income to affect his ESA as this was discussed in a meeting when Mr B was advised to enter drawdown and take his tax-free cash. But it concluded this wouldn't be an issue at this point because Mr B wasn't looking to take any income.

When Mr B came to it asking for advice as he was looking to increase the amount of money he could contribute to the family income, Core in its fact-find noted that he was in receipt of both PIP and ESA. However, it appears they negated to look into or consider the effect taking income would have on Mr B's benefits. Given the fees it was being paid for advice and it had been made aware of this potential issue, I think it ought to have given Mr B advice taking into account his benefits already in payment.

Mr B wanted additional funds to meet a shortfall in planned payments into two separate joint accounts, one for household bills and one for holidays and leisure. Alongside his other costs it was worked out that he had a £16,000 per annum shortfall.

At around the same time, Mr B was also advised by, and paid fees to, Core to invest £50,000 worth of savings into the same Aviva Wrap that he was also using to withdraw his income from. And he incurred substantial costs by the way of payments to Core for doing so. It also looks like this £50,000 came from the tax-free cash that Mr B withdrew about 10 months before - which again came at substantial cost to Mr B due to the fees Core charged for this advice.

Leaving aside the fact that I think Core ought to have questioned whether Mr B's income plans were sensible and workable (Mrs B was also a customer of Core's and present in this meeting and the income plans joint) - especially given 10 months ago it was agreed after the tax-free cash payment he wouldn't need to take income as his mortgage would be paid off. And their joint income was sufficient to meet their ongoing expenditure. I think the advice was unsuitable as Core failed to take into account the impact any additional income would have on Mr B's benefits. There was no discussion of this. Furthermore Core advised Mr B to withdraw income, that would affect his benefits, to meet a shortfall, whilst at the same time investing funds (and charging him to do so) that could've helped meet that shortfall.

Whilst Core was permitted to charge at the cost it did and Mr B agreed to these costs, it still has to take into account the principles of acting in a client's best interest. And Core in taking substantial fees for (whilst not considering key information, nor giving best advice) a withdrawal and then again to re-invest that same money wasn't acting in Mr B's best interest.

Core has said after the advice and the withdrawal that Mr B confirmed he was still in receipt of the ESA. But I suspect this was just because the Department of Work and Pensions simply hadn't caught up to the fact his income was in excess of its eligibility criteria at that point. Mr B's representatives have confirmed Mr B later lost his entitlement to ESA.

Looking at the impact this advice had on Mr B's situation it appears that in taking the

£17,000 in income a year, his ESA allowance of approximately £5,244 would've been taken away. After tax his £17,000 income withdrawal would give him approximately £15,100 but this also came at the cost of the ESA.

Therefore, he would only be about £10,000 better off in terms of income for his withdrawal of £17,000 - and his pension would be reduced by this amount and any potential growth on these funds would be lost as well.

I've considered what Mr B could've done at the time compared to Core's advice, I think Mr B could've withdrawn about £4,400 a year without his ESA being reduced, this is £85 a week for a year. So instead of £10,000 in his pocket at a cost of £17,000 being withdrawn from his pension, he could've had almost £10,000 at a cost of £4,400 from his pension - with the £5,244 from his ESA still in place.

I think a fair and reasonable solution to this is Core should compare the difference between the amount actually withdrawn (the £17,000 a year paid monthly) and the amount Mr B could've withdrawn without reducing his ESA benefits (£4,400). The difference represents money Mr B could've had in his pocket from his pension at a later date once withdrawn and so interest should be paid to date at 8% simple for the loss of use of this money.

Core should also refund any fees taken between April and September of 2017, both initial and ongoing, with 8% simple interest added (as these were taken from the pension value). This includes the advice given for the income withdrawal of £17,000 and the advice to Mr B to make the £50,000 investment into the General Investment account.

However, the period for which to calculate the loss in terms of withdrawal amounts should be capped when Mr B decided against advice to make further substantial withdrawals.

I say this because in September 2017 Mr B emailed Core to say that he wished to increase his income from his pension. Core responded to say (as it set out in its final response):

"As discussed the pension fund available to you is, under flexible drawdown, available to you as and when you want however as your /FA I believe that it is my responsibility to advise you in a way that I believe best for you and your family over the longer term. A pension fund is designed and in my opinion should be used to provide an income for your lifetime, based upon the fact that you are only 56 years old your pension should be assumed to last you until at least age 85 and as such provide you with an income over and above your state pension when received ...

Another benefit of the pension is that should you die before the age of 75 H (Wife) would receive the balance of your pension fund as a tax free lump sum which would allow her the funds to replace the income lost, different tax implications apply after age 75 but H (Wife) would still benefit ...

Whilst I fully understand your wish to increase your income and understand your reasons for wanting to do so I feel that on this occasion I would have to recommend that you reconsider your intentions as in my opinion to use your entire pension fund over a period of 7 years on the basis that you will be able to replace the funds used from a compensation payment is too much of a risk to take and as such I cannot recommend that you proceed. Despite my recommendation not to proceed the pension fund available is yours to decide what to do with and if you do wish to proceed I would be grateful if you would please let me know in writing how you wish to proceed."

Mr B in response said:

"For reasons of my acquired cognitive disability I my condition since 2010 and as confirmed by many medical assessments, reports, experts includes my difficulty to quantify I understand financial and other daily living activities.

I continue to take appropriate medication as prescribed by my GP. My £17,000 agreed gross I post tax Aviva income I yr+ my additional £25K spend (£42K total). This additional amount in my

view, is needed to help prevent unwanted I unsupportive, uncaring comments that I have documented many times in my cries for help from about 2013 and for several years since.

The figure you attached I provided, showed my increased annual spend amount of £49k. I agree, based on reasonable assumptions you make, spending this additional amount for a period of about 7 yrs (does not include PA I treatment I counselling I disability I recovery costs etc) or so, will eventually mean my pension will be exhausted before I reach pension age. I also agree, it will be likely, I will have to continue to work hard, be proactive, continue to seek support, justice that has involved since my accident, taking mitigating actions against financial I other losses as well as unmet needs.

My actions, include for example for more than 3.5 years, me writing and or responding to nearly 3,000 legal I health I wellbeing emails I matters, with little I no help or support at home. Despite your good advice, due to my mitigation and trying my best to avoid unwanted comments and for other reasons previously given, my aim will be to continue to try and be proactive and spend my personal income on preventative I recovery I wellbeing services I activities that I feel are necessary, been promised and or documented and or advised by significant others.

This additional income, I also intend to spend in order to provide a home I standard of living to my children that I consider would have been likely, had I remained or been given reasonable adjusted employment. I also accept and agree, for financial reasons you give, taking this action is a risk, however, from my perspective, not spending on safeguarding I preventative I recovery activities as mentioned, based on my experience, not spending this amount as described, is highly likely to result in me being subjected to unwanted comments I low self esteem, that I know triggers my challenging behaviour, makes me feel bad I ill that I have communicated to my GP and significant others.

Tomorrow I have my regular weekly 1hr session with my counsellor and hope to be able to mention I communicate some of my anxieties I mention here. If ok, I will finally let you know my decision when I have had some time to think over the weekend and get back to you by early next week at the latest."

And then a week later Mr B emailed to say:

"I fully understand the risk involved taking this approach, that is likely to result in overspend before me reaching pension age. However, for reason given, I feel this is a risk worth taking and given continued advice /support from (adviser), and others, my hope is that any health detriment to myself may be reduced but will have to wait and see."

It's clear that Mr B's situation at the time was complicated and I'm sorry to hear of the struggles he's faced. But based on the evidence I've seen, I think its likely he would've gone ahead with his plans to take more income regardless of what Core said at this point. As it was, it looks like there had been some conversations about his ESA allowance prior to this second withdrawal. And whilst Core should've done more to discuss this with Mr B, I think Mr B was set on withdrawing income at the level he did regardless. As an aside, I think the earlier withdrawal had already extinguished his right to ESA but the DWP hadn't at the time stopped his benefits.

A withdrawal at the level of £42,000 per annum compared to £17,000 as before, means that the loss of £5,200 a year in ESA benefits is much less significant. I think Mr B's perceived requirement for income well above what he was receiving in ESA would've meant he would've gone ahead with his plans regardless of what Core had said at this point in terms of his benefits in payment.

So I think at this point the impact of Core's unsuitable advice prior would've ended because Mr B would've withdrawn money that extinguished his ESA regardless.

Was Mr B treated appropriately as a vulnerable client?

Mr B's representatives say Mr B was a vulnerable person but Core didn't treat him appropriately in relation to this. It argues that some of the meetings Mr B attended on his own and documentation was signed the same day, which is an issue for Mr B as he has difficulty retaining and processing financial information. In response, Core has said Mrs B was present in all face to face meetings and it had recorded Mr B's circumstances in regard to his accident - and the struggles this caused him. Furthermore, it had recorded all meetings for Mr B's benefit.

In terms of our service's purpose and getting to the heart of the matter, it's not for me to investigate all of Core's communication with Mr B and make a finding on whether Core always made appropriate adjustments for Mr B. We cannot punish businesses for poor conduct or instruct future changes, this would be the role of the regulator. What's important here is considering whether the alleged lack of bespoke care, would've made a difference to Mr B's position.

As I've explained, I don't think Core are responsible for the advice to transfer out of his OPS (which represents the crux of the complaint), but it was responsible for the information passed to SFA. I can see Mrs B was present in the fact-finding meeting. Mr B's representatives say there's no evidence Core told SFA of Mr B's vulnerability but I can see SFA began the report by setting out Mr B's circumstances including his accident and injury. And it also said: 'These recommendations are based on the information that you have disclosed to Core Financial Services. If you do not feel that this letter accurately reflects your personal circumstances, please contact me immediately.' So Mr B had the opportunity to reflect on the information in the report and if he felt something was amiss, he could've raised this. So I don't think Core did anything wrong here in its treatment of Mr B that influenced his decision to transfer.

In subsequent meetings and communication where important decisions were made, this came at Mr B's request, usually via email. And I can see mention of Mr B needing time and mention of his circumstances in the responses, so it does look like Core was aware of his needs. For example the telephone meeting of 4 September 2017 doesn't make any mention of Mrs B also being on the call - but the adviser wrote to Mr B by email to confirm the details of the conversation - so that he had a record. When Mr B asked to make withdrawals, the suitability reports make reference to Mr B's condition, previous face to face meetings occurring and there are records of other communications leading up to the decisions being made. So I don't think the way Core treated Mr B in terms of his vulnerability will have changed anything. And where it may have done, I've already found that Core's advice was unsuitable and its fees should be refunded.

Conclusion

I can't hold Core responsible for the advice to transfer his OPS pension as it did not give that advice, another firm is responsible. Mr B may be able to raise a claim against it with the FSCS.

Core has charged at an extremely high fee rate but it made Mr B aware of these fees and the impact they would have and he accepted them, so I cannot make an award purely for them being expensive. However, I have identified a period where Core's advice was poor and as a consequence I think the fees for that advice should be refunded with interest. And had suitable advice been given I don't think Mr B would've made the withdrawals at the level he did, so the losses that occurred from this should also be refunded.'

In response to my provisional decision, Core asked if I would reconsider my position as to when Mr B would've started withdrawals regardless of its advice. It says the advice in February was following Mr B meeting with his councillor and it was decided then he needed financial independence. So it believes Mr B would've gone forward with his plans regardless and made withdrawals then that would've ended up with his ESA being lost even if it had advised him of this.

Mr B's representatives in summary said the following in response to the provisional decision:

- Notwithstanding the assessment that Core is not liable for the advice given by SFA – Core’s actions were a dereliction of duty to a very vulnerable client who was recovering from a severe injury which impacted his ability to understand financial matters.
- Core instigated the idea of transferring Mr B’s pension. Had it not been for Core’s initial advice Mr B wouldn’t have transferred his pension. It should’ve known that transferring his OPS was poor advice and should’ve left it where it was. By referring Mr B to SFA, Core acted negligently.
- The submissions to SFA were made by Core. Mr B never met with SFA. Mr B asked Core for illustrations of how the 17.5% yield would be met before he signed the transfer papers. Core will have known that yield was unachievable. Had Core explained this, Mr B wouldn’t have transferred. It fails to understand how Core did not give advice regarding the OPS transfer when it initiated the events.
- I appear to have overlooked that SFA concluded it would not usually recommend a transfer but would recommend it based on the submissions made by Core on Mr B’s behalf. This is particularly relevant as Mr B never met with anyone at SFA and the report was entirely based on information provided by Core.
- With regard to my findings regarding the loss of ESA. It considers the fact Mr B asked for further monies irrelevant. As his ESA benefits were lost when Core advised Mr B to go into drawdown initially. But for the negligent advice Mr B would be receiving ESA on a yearly basis for the rest of his life. Mr B should have redress for this negligent advice to present day and beyond and not just until September 2017.
- Core didn’t make Mr B adequately aware of their charges. Putting charges in percentage terms did not provide Mr B with any real clarity or understanding of what the costs were in real terms. Core due to his vulnerability should have set out the costs in real terms and figures. It is firmly of the belief that had Core told Mr B it would be charging him over £100,000 for their advice regarding a original pension pot of £450,000 (including all the advice on the transfers) he would never have agreed to proceed with them.
- Mr B cannot pursue a claim against SFA as they have been liquidated. The chance of FSCS compensation remains open but this is limited to £85,000 which is substantially less than his loss. For the reasons its set out although Core may not have given the advice about transferring his OPS, it did act negligently in assisting Mr B to enable the transfer to happen.

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.

And having done so I see no reason to depart from the findings I reached in my provisional decision. The points raised by both parties following my provisional decision, I have largely already covered in my provisional findings. However, I’ll explain why my decision has not changed in a bit more detail below – but my reasoning in the provisional decision stands.

Should Core be held responsible for the transfer of Mr B’s OPS

I've already set out in my provisional decision why SFA and not Core are responsible for the advice to transfer from the OPS and any losses flowing from that. However I will add that I had not overlooked that Core acted as an introducer and initiated the contact between Mr B and SFA. It did this as it did not have the relevant permissions to advise on Defined Benefit Transfers. The process that took place here is not unusual, it is not unusual for a firm to pass over the details collated with a customer to another firm to provide advice on an area they cannot advise upon.

The responsibility for suitable advice regarding the pension transfer was on SFA, it was the firm with the relevant permissions, and it gave the advice to Mr B. Had it advised Mr B not to transfer with all the relevant information set out as to why he shouldn't, then I've got no reason to believe Mr B would've still gone ahead with the transfer. However, its recommendation which it said was based on the information provided by Core was to transfer.

I appreciate Mr B did ask Core about the yield involved and we've no evidence of a response. But as I set out in my provisional findings, SFA in its report said any questions relating to its advice should be directed at it. Core didn't have the permissions to give Mr B advice about the transfer and so it couldn't give him advice on it.

Mr B's representatives believe Core should've stepped in and told Mr B to ignore the advice given by SFA. And that as it provided the information for SFA to act upon it is still responsible. As I've said it is not an unusual process for information to be passed to another party to complete aspects of advice that the original firm did not have permissions to advise on. This is recognised in guidance – for example COBs says on this matter:

“COBS 2.4.6(2): A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information if it can show it was reasonable for it to rely upon information provided to it in writing by another person.

COBS 2.4.8: It will generally be reasonable (in accordance with COBS 2.4.6R(2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional person, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information.”

Core carried out a fact-finding exercise and potential investment advice that could come into place if Mr B chose to transfer. I appreciate Mr B was a vulnerable individual due to his accident but Mr B's wife was present and also a client of Core. And I've not been made aware of any information that Core collated and passed to SFA that is disputed. Furthermore Mr B, as I set out in my provisional decision was given the opportunity to go back to SFA if he felt any of the information within the report was incorrect (which was based on the information provided by Core).

Mr B's representatives have also said Core initiated the pension advice and is therefore negligent. However, I understand it was Mr B who came to Core, referred by his accountant, and he came looking for advice on his pension following his redundancy. As I've said Core could not advise Mr B on his OPS, so passed this onto another firm to give this advice – SFA. I don't think this was negligence, it couldn't give Mr B advice on his OPS. I appreciate there is a lot of focus in the industry on the suitability of DB transfers (but not all are unsuitable) and given another firm gave the advice I cannot fairly make a finding that Core ought to have given advice not to transfer on something it was not regulated to advise upon.

I also understand its very frustrating for Mr B that SFA have been liquidated and so any claim against it will be subject to the FSCS's limits. However, I cannot take this into account when looking at a complaint against Core. I can only look at the advice Core is responsible

for.

The advice given to drawdown Mr B's pension in 2017 that caused the loss of Mr B's benefits

I set out my reasoning in some detail in my provisional decision as to what I thought would've happened had Core given suitable advice during this period. And I see no reason to change my view of events.

Core has asked that I reconsider whether Mr B would've chosen to take his money out in February 2017, even if it had told him not to. It says this was as a result of a conversation with his councillor and he was determined to take his money out and he would've lost his ESA in any event. However, I will refer back to my provisional findings, where I explained why in terms of the options that were available to him and if Core had given suitable advice and looked into his benefit situation properly – how Mr B could make a withdrawal without losing his ESA at that point. I agree that Mr B was intent on increasing his income as shown by his later disregard of its advice not to take further income. However, as I set out in my provisional findings, Core should've advised him taking into account his ESA benefits to lower the withdrawal amount to achieve a very similar result in terms of income without the loss of benefits.

The original complaint related largely to the transfer of the OPS being unsuitable, however I considered suitability of advice given in 2017 in relation to Mr B's loss of benefits as this was also raised as part of the original complaint. Mr B's representatives have said Core's advice to drawdown at all was negligent and it was the advice given in February 2017 that caused Mr B's loss of his ESA. So therefore, he should be refunded to date.

However, I have to consider what would've happened if Core had given suitable advice in relation to his benefits. And Mr B went against Core's advice in September 2017 when he made further substantial withdrawals. So as I explained in my provisional decision in more detail, I think Mr B would've made these withdrawals regardless of Core's advice due to his strongly held belief that he required income to help his independence and recovery. Furthermore the fees charged in the period I set out will be refunded in full and receive interest to date to compensate Mr B for the loss of use of this money going forward.

Mr B's representatives also say that as a result of Core's advice Mr B's pension will be extinguished before he reaches his 75th birthday and he would've been receiving ESA for the rest of his life but for its advice. However, as I've explained Mr B clearly wished to take income and went against Core's advice to do so. I don't think the quite insignificant amount of ESA income compared to the income Mr B felt he required in September 2017 would've been enough to change his mind given what Core had already said about the risks of taking this action.

Core's Fees

Mr B's representatives say that Mr B wouldn't have accepted the charges if Core had set them out as actual amounts and not percentages. And that because of his accident his understanding of financial matters wasn't at the standard of your average individual. And so he wouldn't have understood the impact of the charges when set out as percentages.

However, the evidence shows Mr B's wife was present in the first meeting where the initial charges were set out and she was also a client of Core's and so would've been aware of the level of fees it charged. But more importantly, Core did set out its charges as a amounts to Mr B. For example in the 2013 advice it said:

'You were given the option to pay us by fee either direct or via your pension fund. You have chosen to pay us by your pension fund, although this means that you pay nothing direct, this does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider's own costs and any fees. These charges reduce the amount left for investment. For this recommendation, an amount of £29,334.89 will be deducted from your pension funds and paid to Core Financial Services as a fee. This figure can alter depending on the transfer value which is paid to Aviva.'

The advice given in 2016 to transfer to drawdown and take tax-free cash said:

'You were given the option to pay us by fee either direct or via your pension fund. You have chosen to pay us by your pension fund, although this means that you pay nothing direct, this does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider's own costs and any fees. These charges reduce the amount left for investment. For this recommendation, an amount of £23,146.67 will be deducted from your pension funds and paid to Core Financial Services as a fee. This figure can alter depending on the transfer value which is paid to Aviva.'

This wasn't the only information given about the charges, as I set out in my provisional findings. And on each occasion, it appears Core gave clear information about how much Mr B would be charged for its advice. So I cannot agree that it misled Mr B about the fees it would take for advice.

Mr B's representatives have said had Mr B known the amount he would be charged overall as a client of Core, he wouldn't have chosen to be their client. As I explained in my provisional decision, my findings relate only to the complaint issues brought by Mr B's representatives to this service and which Core have had the opportunity to respond to. I've not considered each individual bit of advice and whether it was suitable as this wasn't part of the complaint raised with Core but I have looked at whether the charges were clearly set out.

Whilst the charging level applied was very high and well above the market rate, Mr B was given clear, full and not misleading information about the charges applicable. He also chose to go with Core's most expensive charging proposition when the option was given to choose a cheaper package. So I cannot say that Core was unfair or misleading in fees it applied to Mr B's plan.

Conclusion

For the reasons explained in my provisional decision and above, I can't hold Core responsible for the advice to transfer Mr B's OPS pension as it did not give that advice, another firm is responsible.

Core has charged at an extremely high fee rate but it made Mr B aware of these fees and the impact they would have and he accepted them, so I cannot make an award purely for them being expensive. However, I have identified a period where Core's advice was poor and as a consequence I think the fees for that advice should be refunded with interest. And had suitable advice been given I don't think Mr B would've made the withdrawals at the level he did, so the losses that occurred from this should also be refunded.

Putting things right

I recognise that the redress I have set out is a somewhat simplified version of events and relies on some assumptions I've made in terms of benefit payments. And a simplified version of what Mr B could've done instead and the potential

position of those funds going forward. But this is necessary given this information wasn't considered or properly investigated at the time of advice – and neither party has disputed any of these assumptions. I am satisfied the refund of fees is fair considering the level of fees Mr B was paying for advice and the service he ought to have been able to expect for that level of cost. And my conclusions are based on the information available in terms of how Mr B's benefits ought to have been paid.

The advice given in 2017 to take £17,000 per annum in income paid monthly

Core should compare the monthly payments actually taken with the amount he could've withdrawn without losing access to his ESA (£85 per week). It should then refund the total difference in amounts until Mr B increased his withdrawals in September 2017 - it should use the date Mr B was in receipt of the significantly increased funds as the end date for the loss assessment. The loss amount should have interest added at 8% simple from that date until the date of settlement. This will have the result of compensating Mr B for the loss of use of this money to date.

Core's fees charged for the unsuitable advice in 2017

Core should also refund any fees both upfront and ongoing that it took between February 2017 and September 2017 together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. This covers the period of unsuitable advice and redresses Mr B for the loss of funds that he would've eventually received as income.

Payment of redress

Core should pay the redress direct to Mr B. But had it remained in the pension, when it came to be withdrawn, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.

It's reasonable to assume that Mr B is likely to be a basic rate taxpayer - given the amount of income it appears he is taking from the pension, so the reduction would equal 20%.

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

A copy of Core's calculations should be supplied to Mr B and his representatives clearly setting out its calculations.

My final decision

I uphold Mr B's complaint and require Core Financial Services Ltd to put things right as set out above upon notification of Mr B's acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 April 2023.

Simon Hollingshead
Ombudsman