

## The complaint

Mr S complains about the advice Sovereign Private Clients Limited gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr S to bring this complaint. But for ease of reading I will refer to the representatives' comments as being Mr S'.

## What happened

We made several requests to Sovereign for its business file. But it didn't reply to those. So the events set out below are summarised from the evidence Mr S provided.

Mr S was a deferred member of his former employer's DB scheme. In 2017 he says he met Sovereign to discuss his pension provision. As Sovereign hasn't provided its file, we have very little detail about the information it gathered from him or about the advice process itself. However Mr S has told us that at that time:

- He was age 49, married, working and in good health.
- He had one other small pension from another employer.
- He owned his home which was secured with a mortgage.
- He had a medium attitude to risk.

Mr S said Sovereign recommended he transfer his DB scheme funds to a SIPP because:

- He would be better off by doing so.
- According to Sovereign, his DB fund was sat "*doing nothing*".
- The DB scheme was in deficit. His pension would suffer as a result and he could lose it.
- His wife wouldn't benefit from the DB scheme in the event of his death.

Mr S accepted Sovereign's recommendation to transfer. I've seen evidence that the transfer completed in December 2017. £176,589 was transferred from his DB scheme together with a further £7079 in additional voluntary contributions ('AVCs') into a SIPP.

Mr S complained to Sovereign in September 2022. In short he said Sovereign's advice to transfer out of his DB scheme wasn't suitable for him. Sovereign didn't reply.

Mr S brought his complaint to us. One of our investigators looked into it. She upheld the complaint on the basis that Sovereign's advice wasn't suitable for Mr S. She said Sovereign should pay him compensation.

Sovereign didn't reply, so the complaint's been passed to me to make a final decision.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

As I've said, Sovereign hasn't provided its file. Mr S has given us some evidence, which confirms that Sovereign advised him to transfer his pension. That evidence includes Sovereign's signed declaration that it had given Mr S regulated transfer advice. So I'm satisfied that Sovereign did give Mr S advice to transfer his DB funds to a SIPP.

When looking into Mr S' complaint I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Sovereign's actions here.

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Sovereign should only have considered recommending a transfer if it could clearly demonstrate it was in Mr S's best interests. And having looked at the evidence available, I'm not satisfied it was in his best interests.

#### *Financial viability and risk*

Before making a personal recommendation to Mr S to transfer his DB scheme benefits the regulator required Sovereign to carry out a transfer value analysis report (TVAS). That would have shown how much Mr S' pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). But I haven't seen a copy of that report and so I don't know what the likely critical yield was or whether it could realistically have been met.

At the time of Sovereign's advice the regulator's growth projection rates had remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. And given Mr S' medium attitude to risk, the most his SIPP was realistically likely to grow by was the mid-rate of 5%. But, Sovereign's provided no evidence to demonstrate whether that level of growth was sufficient

to enable Mr S's pension to exceed the level of income his DB scheme would have provided at retirement. So, for this reason alone, the evidence I've seen doesn't support that the transfer was in Mr S's best interests.

Also, Mr S had no other savings to rely on and only had one other small pension. So his DB scheme would have provided the majority of his pension provision. And as such I don't think he would have had the capacity to bear investment losses.

Further, Sovereign hasn't shown that it made it clear to Mr S what the risks, advantages or disadvantages were of him transferring. And I've seen no evidence it pointed out that by transferring out of his DB scheme he would be giving up a guaranteed and index linked income in retirement and instead would be investing in a product that was subject to investment risk and the volatility of the financial markets. So I'm not satisfied that Sovereign did all it needed to do to ensure that Mr S was aware of the consequences and potential disadvantages of transferring out of the DB scheme. It follows that I haven't seen evidence that Sovereign gave Mr S all the information he needed in order to make an informed decision about whether or not he wanted to transfer out of the scheme.

### *Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a SIPP was likely an attractive feature to Mr S. That's because whatever was left within it at the date of his death would be passed on to his family. And, if that happened before his retirement or soon after, then that would likely be a significant sum.

But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer his DB scheme to a SIPP because of this, the priority here was to advise Mr S about what was best for his retirement provision. A pension is primarily designed to provide income in retirement. And I've seen no evidence Sovereign explored to what extent Mr S was prepared to accept a lower retirement income in exchange for higher death benefits.

Further, Mr S said that Sovereign advised him his DB scheme wouldn't offer any death benefits. But, his DB scheme would pay his wife a spouse's pension if Mr S predeceased her. So, from the available evidence, Sovereign didn't point out the value of this benefit to Mr S. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a SIPP would be. And a period of poor performance, particularly if the invested fund suffered losses, could reduce the sum available as a death benefit. Also, the fund would reduce as Mr S drew down money from it. So if he took higher sums from it in the early years of his retirement, then that could significantly reduce the amounts available to live off, let alone to leave as a legacy for his family on his death. But Sovereign's not shown us any evidence that it made this clear to Mr S.

And, in any event, Sovereign should not have encouraged Mr S to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

### *The financial stability of the DB scheme*

Mr S' evidence is that Sovereign told him the DB scheme was in deficit and that his pension could suffer or be lost as a result. I can understand why Mr S would have found this a concern. However, the funding of his scheme was not in such a perilous position that Mr S should have genuinely been concerned about the security of his pension. I think this is something Sovereign should have been aware of and should have advised Mr S about. It's certainly not unusual for DB schemes to show a balance deficit, but that doesn't mean they

can't cover their liabilities when they need to -as employers find ways to plug the gaps. Further, the scheme also had the added security of the Pension Protection Fund (PPF)<sup>1</sup>, which would have preserved most of Mr S' guaranteed benefits from the DB scheme had it become insolvent.

So, I think Sovereign should have explained that the scheme deficit was not as concerning as Mr S thought. And as such it wasn't sufficient reason to transfer out of his DB scheme.

### *Summary*

Sovereign should only have advised Mr S to transfer his DB scheme funds if it could clearly demonstrate it was in his best interests. But Sovereign's provided no such evidence that a transfer was in Mr S' best interests.

Of course it's possible that if Sovereign had given Mr S all the appropriate information he needed in order to make an informed choice he might have decided to transfer. But I've seen no evidence that it did give him all of the information he needed in order to make an informed decision. Further Mr S was an inexperienced investor with a medium attitude to risk and this pension accounted for the majority of his retirement provision. So, if Sovereign had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think Sovereign should compensate Mr S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

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

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

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

For clarity, Mr S has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 60, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S' acceptance of this decision.

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

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:

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<sup>1</sup> The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes, for their lifetime. The compensation levels are, generally, around 90% for deferred pensions although PPF scheme rules and benefits may differ from the original scheme

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

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

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Sovereign Private Clients Limited to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Sovereign Private Clients Limited pays Mr S the balance.

If Mr S accepts this decision, the money award becomes binding on Sovereign Private Clients Limited.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. He may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 July 2023.

Joe Scott  
**Ombudsman**