

The complaint

Mr S complains about the advice given by Chequers Wealth Management Limited (Chequers) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme ('OPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Chequers is now in administration, and the administrators are acting on its behalf in respect of this complaint. I'll refer to all of the respondent parties here as Chequers for ease of reading.

What happened

Mr S approached Chequers in 2015 to discuss his pension and retirement needs. Chequers says that Mr S wanted advice about his pension provision, in particular he wanted to know about transferring the deferred benefits he had in his OPS schemes to a personal pension. He wanted to transfer to the stakeholder scheme provided by his current employer.

Chequers may have completed a fact find to gather information about Mr S' circumstances and objectives. But it hasn't been able to provide this. There is some documentation from the time of sale, such as advice reports and notes, these show that Mr S:

- Was 50 years old, in good health and married with three children. One of their children was dependent.
- He was employed as a financial adviser and had been for some time.
- Owned some property overseas, but he was thinking of selling this to purchase another property

Mr S had three OPS schemes, two of which were transferred due to the advice he received from Chequers:

- A DB scheme in which he had accrued ten years service. I'll call this DB1. This had a transfer value of around £434,000.
- A DB scheme in which he had accrued five years service, I'll call this DB2. This had a transfer value of around £51,000.
- Mr S was also a current member of his employers defined contributions (DC) scheme. This wasn't transferred and doesn't form part of this complaint.

Chequers also carried out an assessment of Mr S' attitude to risk, which it said was 'adventurous'. Mr S now says he had a medium attitude to risk.

In 2015, Chequers advised Mr S to transfer his two DB pension schemes into a personal pension and invest the proceeds. The suitability report said the reasons for this recommendation were:

- Mr S was interested in transferring his DB schemes so he could access his funds at his age 55 and possibly buy an overseas property. He didn't want an income straight away, but he did want control over whatever income he eventually took.

- He wanted his spouse and children to benefit from his pension savings.

The suitability letter said that the growth rates needed to make the transfer beneficial were high. But given Mr S' adventurous attitude to risk, and his knowledge of investments, it was suitable to recommend that he take the risk of the pension transfer not performing as well as expected and that he may receive lower pension benefits.

Mr S proceeded with the transfers in August 2015. Around £506,000 was invested in Mr S' current employers stakeholder scheme. I understand Mr S administered this transfer.

In 2021 Chequers wrote to Mr S as it had been instructed to by the industry regulator to review its past pension sales. It asked Mr S for some further information. Chequers later on said that it was unable to reach a conclusion about whether the advice was suitable or not, based on the information it had. But that Mr S could refer a complaint about the advice he was given to the Financial Ombudsman Service.

Mr S referred his complaint to the Financial Ombudsman. An Investigator upheld the complaint and recommended that Chequers pay compensation. He said that the transfer was likely to leave Mr S worse off in retirement. And that the motives given for the transfer didn't seem to be fully based on Mr S' circumstances, rather they were generic. His need to purchase an overseas property was not properly considered and the information Chequers provided wasn't compete.

Chequers disagreed, saying that:

- The Investigator hadn't placed enough weight on the fact that Mr S was a financial advisor and that he had an adventurous attitude to risk. And this was particularly evidenced by the fact that he invested in overseas property with a partner.
- Mr S wanted to access his funds early to purchase an overseas property at 55, which he has done.
- So, he had a clear reason to transfer and, essentially, he knew what he was doing. The transfer has allowed him to meet these aims.
- The Financial Ombudsman shouldn't just rely on critical yields as the regulator has said that over reliance on these is inappropriate when giving advice.
- The fact that Mr S was an advisor himself and had an adventurous attitude to risk made the transfer suitable.
- And whilst the cashflow models showed that his pension fund may run out past his age 95 this was well past his life expectancy.

The Investigator considered what Chequers has said but he wasn't persuaded to change his opinion. Much of the considerations were the same, but it is relevant to note that Mr S says he only retired at age 55 as he was made redundant, and he felt he had no option but to do this at this time.

As no agreement has been reached the complaint was referred 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.

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 Chequers' 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, Chequers should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S' best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Mr S' employment

Mr S was employed as a financial adviser and Chequers thinks that he should have been able to understand, and evaluate, the advice he was provided. However, pension transfer advice is a specialist area and requires the relevant permissions and qualifications before advice can be given. Mr S didn't have these.

So even though Mr S was able to give financial advice himself in some areas, he wasn't an expert in pensions. Chequers did give advice and it is responsible for ensuring the advice it gave was suitable for Mr S. And that he understood it. Mr S clearly would start with a greater understanding of financial matters here, but the advice must still have been suitable for him. Essentially the responsibility for the advice doesn't transfer to Mr S because he worked in a similar area to the Chequers adviser. I still have to consider if the advice Chequers gave was in Mr S' best interests.

Financial viability

Chequers carried out a transfer value analysis report (as required by the regulator) showing 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).

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer

to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr S was 50 at the time of the advice and wanted to retire between his ages 55 and 60. For the DB1 scheme the critical yield required to match Mr S' benefits at age 60 was 10.68% if he took a full pension and 9.23% if he took tax free cash and a reduced pension. The same percentages at his age 55 were 17.73% and 14.17% respectively.

For the DB2 scheme the critical yield required to match Mr S' benefits at age 65 was 4.82% if he took a full pension. There wasn't an analysis done at different ages for the DB2 scheme.

This compares with the discount rate of 4.1% per year for 9 years to retirement for DB1. For DB2 this was 4.5% for 14 years. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr S' 'adventurous' attitude to risk and the term to retirement. Mr S says that his attitude to risk was not as high as adventurous, particularly for the transfer of the DB schemes. But given his occupation I think he would have been able to determine what his attitude to risk was at the time. And even if it wasn't as high as adventurous, I still think it's reasonable to say that Mr S had the understanding and capacity to take a significant amount of risk.

But even if I accept this, there would be little point in Mr S giving up the guarantees available to him through his DB schemes only to achieve, at best, the same level of benefits outside the scheme. The lowest critical yield was 4.82%, but this was only for around 10% of the transfer. But for the majority of the transfer value the lowest critical yield was above 9% and rose to over 17% in some scenarios. This is above the regulators highest growth rate and far higher than I think it would be reasonable to expect even an 'adventurous' investment to provide. So, I think Mr S very likely, if not almost certain, to receive benefits of a substantially lower overall value than the DB schemes at retirement, as a result of investing in line with his tolerance to risk.

Chequers has said that Mr S would be able to withdraw the same amount as the DB scheme from the fund. And he would be able to do this to around his age 95, for both of the schemes, before the funds would be exhausted. So, it said this shows Mr S would've been able to meet his needs despite the high critical yields.

But, as Chequers will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

For this reason alone, a transfer out of these two DB schemes wasn't in Mr S' best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Chequers has said in this case. I don't disagree that a transfer shouldn't just be assessed on the basis of critical yields and financial viability alone, important though this is. There might be other considerations which mean a transfer is suitable, despite providing lower overall benefits. I've considered this below.

Flexibility and income needs

The suitability letter said that Mr S wanted to transfer straight away to access his benefits at age 55. This was partly as he may want to purchase some overseas property. Given his

higher attitude to risk, and his employment, Chequers says that it was suitable for him to take on some risk to do this. Mr S now says that he went to Chequers to see if any of this was feasible. And he wouldn't have proceeded if it had questioned this properly.

As our Investigator said, the point of sale information is very brief about Mr S' requirements in retirement. And I don't think these aims themselves are robust enough to say it was right to recommend that Mr S transfer his DB schemes. I would expect to see some significant analysis about his retirement circumstances, starting with how much income he thought he would need in retirement and what is expected expenditure would be, and so on. This would determine if the transfer was right for him.

But this doesn't seem to have happened at all. So, I don't think Chequers demonstrated that Mr S required (rather than him thinking it was a nice idea) to have flexibility in retirement. This is because, based on the evidence I've seen, I don't think he had a genuine need to access his tax free cash earlier than the normal scheme retirement age and leave his funds invested until a later date. I also can't see evidence that Mr S had a strong need for variable income throughout his retirement. This doesn't seem to have been discussed at all.

Mr S' DB1 scheme had a normal retirement age of 60 years and would provide a pension of £26,736 at this age. Or tax free cash of £128,000 and a reduced income of £19,000. The same amounts at his age 55 were a pension of £19,239 or tax free cash of £91,965 and a pension of £13,794. And Mr S' DB2 scheme, which had a normal retirement age of 65 years would pay Mr S a guaranteed income in retirement of about £3,000 yearly.

Mr S also had his current employers provision and it was estimated that he would build up significant sums into this over time. And he would also receive his state pension.

So, I'm satisfied Mr S would have been best placed to meet his income needs in retirement through the DB schemes. And if he wanted to retire early, and needed to take tax free cash to purchase a property, he may also have been able to do this.

And whilst I accept there are no certainties about this, I've not seen a persuasive reason as why Mr S should have been advised to transfer away his guaranteed DB scheme benefits and subject the majority of his pension provision to investment risk, I don't think it was in his best interests to advise him to do this.

And added to this even if Mr S did want to look at taking his benefits flexibly there seems to be no pressing reason why he should make an irreversible decision to transfer at age 50. He could have waited to do this until he needs became better defined.

I do note that Mr S did take some of his pension benefits at age 55. But he says he was made redundant unexpectedly and so his plans changed at this point. And so, I don't think this is an indication that he had set plans at the time of sale. Rather that his circumstances changed which 'forced his hand'. I don't think it's reasonable to say that the transfer allowed him to meet the aims he had at 50. I don't think he necessarily had these definite aims at the time of advice.

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 personal pension were likely an attractive feature to Mr S. 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 personal pension because of this, the priority here was to advise Mr S about what was best for his retirement provisions. A pension is primarily

designed to provide income in retirement. And I don't think Chequers explored to what extent Mr S was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr S was married and had a dependent child. And so, the spouses and dependents pension provided by the DB scheme would've been useful to his dependents if Mr S predeceased them. I don't think Chequers made the value of this benefit clear enough to Mr S. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the analysis shows, there may not have been a large sum left particularly if Mr S lived a long life. In any event, Chequers should not have encouraged Mr S to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr S genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Chequers should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr S. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr S' desire for control over his pension benefits was overstated. Mr S did have some investment experience, but the transfer wasn't made on the basis that he wanted to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr S – it was simply a consequence of transferring away from his DB scheme.

And the funding of his employer's DB scheme was not in a position such that Mr S should have genuinely been concerned about the security of his pension. If he was concerned.

Suitability of investments

Chequers recommended that Mr S invest in a range of funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr S, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr S should have been advised to remain in the DB scheme and so the investments in these funds wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr S. But Chequers wasn't there to just transact what Mr S might have thought he wanted. The adviser's role was to really understand what Mr S needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr S was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr S was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr S shouldn't have been advised to transfer out of the scheme just to gain some flexibility, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Chequers should've advised Mr S to remain in his DB schemes.

Of course, I have to consider whether Mr S would've gone ahead anyway, against Chequers' advice. Chequers argues says this is the case, as Mr S was an industry professional.

I've considered this carefully, but I'm not persuaded that Mr S would've insisted on transferring out of the DB scheme, against Chequers' advice. Whilst Mr S was a financial services professional he says he went to Chequers to see if it was feasible to think about taking his benefits at age 55. And this isn't unreasonable given that pensions planning wasn't something he would ordinarily do in his work.

Mr S now says that if Chequers had told him that the transfer wasn't the best option for him he wouldn't have transferred. I think this is likely to be the case.

Overall, I'm not persuaded that Mr S' possible desire to purchase property in the future was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If Chequers had explained that Mr S could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr S would have insisted on transferring out of the DB scheme.

So, if Chequers had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

In light of the above, I think Chequers 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 the business 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 his occupational pension schemes if suitable advice had been given.

Chequers must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, Mr S took the benefits from the new personal pension at age 55. So, compensation should be based on him taking benefits at this age.

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 the decision.

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

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
 - 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 their DC 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 Chequers' offer to calculate how much of his redress could be augmented, 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 will be treated as income for tax purposes. So, in line with DISP App 4, Chequers 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 £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Chequers Wealth Management Limited to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Chequers Wealth Management Limited pays Mr S the balance.

If Mr S accepts this decision, the money award becomes binding on Chequers Wealth Management 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. Mr S 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 30 June 2023.

Andy Burlinson
Ombudsman