

## The complaint

Mrs P complains about the advice given by Chetwood Wealth Management Ltd (Chetwood) to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

## What happened

Mrs P approached Chetwood in 2008 to discuss her pension and retirement needs. I understand she was referred to Chetwood by a friend.

Chetwood completed a fact-find to gather information about Mrs P's circumstances and objectives. This, and the other information from the point of sale showed, that:

- She was aged 51 and in good health. She had two older, but still dependent, children.
- She was recently separated from her husband and expected this to be permanent.
- She was employed, but it was noted that she was struggling financially, partly due to the recent separation.
- She lived in rented accommodation, and she had no financial assets other than £200 in a savings account.

Chetwood also carried out an assessment of Mrs P's attitude to risk, which it said was 'balanced'. This was described as someone who's tolerance for risk would be fairly conservative, but they would be prepared to take a reasonable amount of risk. They would be looking for a good return above inflation.

On 9 May 2008, Chetwood advised Mrs P to transfer her pension benefits into a personal pension and invest the proceeds in a range of funds. A total of £66,336.08 was transferred to a Hawthorn Life Personal Pension. Mrs P took the maximum amount of tax-free cash straight away which I understand was around £16,584.

The pension Mrs P started had the ability to provide a guaranteed income, provided Mrs P didn't withdraw above certain amounts. The illustrations the pension provider produced show this was set at zero. And I haven't seen anything further that shows this guarantee was applied in this case. There isn't a mention of a guaranteed income amount in the suitability letter (this policy feature is described generally).

Mrs P started to take an income from the plan in 2014, and this was increased in 2015. She transferred the pension to a third-party in 2015. It had a value £61,954, Mrs P's representative said the withdrawals she had taken at this point totalled £20,462.99.

The point-of-sale information said the reasons for the recommendation were that Mrs P:

- Wanted to release existing capital from her DB scheme to replace her car and to increase her savings. She has clarified that she thought the car was about to need repairs.

- Wanted to give herself a financial boost as she was finding it difficult to cope financially.
- Had no other way to raise these funds and she had no other pension plans
- Didn't want to take an income from her DB scheme.

Mrs P complained in May 2022 to Chetwood about the suitability of the transfer advice. She said that she was concerned that the recommendation was not suitable for her. This was because purchasing a car and receiving a 'financial boost' weren't good enough reasons for the transfer, and her other financial circumstances did not justify it. The report was long and Mrs P found it confusing. She didn't fully understand the advice.

Chetwood didn't uphold Mrs P's complaint. It believed that it acted in her best interests and that she had no realistic alternative but to access her preserved pension benefits at the time. However, it went on to say that it thought the complaint had been made out of time. This was because it was made later than six years after the event complained about. And she had taken the benefits from her plan in 2017 and so she should have been aware that her income may be reduced. So, it said she should have complained within three years of this time.

Mrs P referred her complaint to our service. An ombudsman has considered the jurisdiction of this complaint and a decision has been issued earlier which found that the complaint is one that we can consider. No issues have been raised about the jurisdiction of the complaint and I've no comment to make about it, other than I agree I can consider the complaint.

An Investigator went on to uphold the complaint and recommended that Chetwood pay compensation. He said that whilst it was likely that Mrs P was going through a difficult, and financially challenging time, he wasn't persuaded that the advice was in her best interests. And Chetwood doesn't seem to have made a full analysis of the benefits she gave up as it was required to do.

Chetwood disagreed, saying that at the time it was clear she was in a difficult situation, and she had no alternative but to transfer her DB scheme to rectify this.

The investigator wasn't persuaded to change their opinion, so 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 Businesses ('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 Chetwood'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, Chetwood should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs P's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

#### *Financial viability*

Chetwood was required to carry out a transfer value analysis (TVAS) by the regulator showing how much Mrs P's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme. This calculation is known as the critical yield. As far as I can see, Chetwood didn't do this. It hasn't said that it did this calculation and none of the information I would expect to see in a TVAS is included in the suitability report.

The illustrations from the product provider do provide some indication of the growth rates needed. Although I don't think it's reasonable to say that they are the same as the information that would be found in a TVAS. I've looked at these when considering if the transfer was financially viable.

The DB scheme information I've seen shows that at the date of the transfer Mrs P had a deferred pension of £4,664.09 per year. I understand this would be increased up to the scheme's normal retirement date, which was her age 60 in 2017. It's not clear if she could take any tax-free cash and a reduced income when she retired.

The illustrations show that if the fund grew at the regulator's lower rate she would receive a pension at age 60 of £3,760, the middle rate amount is £4,100, and the higher rate £4,660. The regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%.

The illustration referred to a critical yield, but it does say this is a comparison with an alternative annuity Mrs P could purchase at the time of sale, which was just over £1,500 a year rather than the benefits she gave up from the DB scheme. The investment return required to match this level of pension income at retirement was around 7.35% per year at her ages 65, 70 and 75.

Whilst this isn't the information that Mrs P should have been provided this does indicate to me that Mrs P's personal pension would need to grow by more than 9% to replicate the benefits she gave up in the DB scheme. Although I don't think this information is very clear and it doesn't readily explain the benefits, and the cost of the benefits, she was giving up.

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. The discount rate was 6% per year for 8 years to retirement in this case.

I've taken this into account, along with the composition of assets in the discount rate, Mrs P's attitude to risk and also the term to retirement.

It was recorded that Mrs P was a 'balanced' risk investor. But I would expect someone who is prepared to take a balanced risk to have some investment experience and the capacity to take some risk. Neither of these seem to apply here. Mrs P doesn't seem to have invested before and, given her vulnerable and changing situation at the time, seems to have a very low capacity to take risk. So, I think her tolerance to risk was likely to be lower than this.

I think Mrs P was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with her likely attitude to risk. As above it appears she needed to receive returns around the regulators higher projection rate or above.

For this reason alone, a transfer out of the DB scheme wasn't in Mrs P's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Chetwood has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. Chetwood has referred particularly to her need for funds. I've considered this below.

#### *Flexibility and income needs*

Chetwood advised Mrs P to transfer the DB scheme so she could access her pension straight away. This was so she could purchase another car and repay some debts she had recently built up. I understand that she did do this. And that she also increased her working hours and received some assistance from family members over the time shortly after the transfer.

Of course Mrs P was clearly in a difficult, and uncertain, situation here. And the DB transfer would have offered a straightforward way to alleviate some of these difficulties.

But whilst I don't want to make light of Mrs P's problems, they do seem to be due to her recent separation. This would be a significant change for her and it's reasonable to say she would need to make adjustments going forward. This wouldn't be unusual and means that the situation she was in may have been temporary. It could be said that this was the wrong time to give advice on pension planning, given the changes she was undergoing with her personal life.

And there are indications that she could have alleviated her problems a different way, such as by increasing her working hours or receiving assistance from her family. And this is what I understand she did, alongside the pension transfer. So, I don't think it was right that Mrs P didn't have any alternatives to the DB transfer as Chetwood now says.

What Chetwood really needed to do was to explore the alternatives that she did have to meet her immediate aims. But I can't see that any reasonable alternatives to this were fully discussed at the time of sale.

And as I've said above, the loss of the DB scheme benefits was a significant cost to Mrs P, and the costs and disadvantages to the DB transfer should have been fully explained to her. To enable her to make an informed decision about whether to transfer. I don't think this happened here.

I think, given what I have been provided, and on balance, that it's reasonable to say that if this had been done this then Mrs P may not have transferred. I think she would have realised that the transfer was not in her financial interests and made other changes. As she did in any event. I'm not persuaded that he had a real and urgent need to access her pension.

Overall, I don't think it's been demonstrated that Mrs P required flexibility in retirement. This is because based on the evidence I've seen, I don't think she had a genuine need to access her tax-free cash earlier than the normal scheme retirement age and leave her funds invested until a later date.

Chetwood didn't properly establish what Mrs P's income needs were in retirement. And it should have done this. But even so I think she would have been better placed to meet her retirement income needs by remaining in the DB 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 suitability letter said that the death benefits were an important consideration here.

The lump sum death benefits on offer through a personal pension could have been an attractive feature to Mrs P, although it's not documented that they were. But the priority here was to advise Mrs P about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Chetwood explored to what extent Mrs P was prepared to accept a lower retirement income in exchange for higher death benefits.

I think the existing death benefits attached to the DB scheme were underplayed. Mrs P was married, although I understand this wouldn't be for much longer, and she had children. And so the spouses and dependent's pensions provided by the DB scheme may have been useful to her dependents if Mrs P predeceased them. And even though Mrs P had recently separated from her husband she may still have wanted to provide for all of her immediate family on her death, to ensure her children's welfare was protected.

I don't think Chetwood made the value of this benefit clear enough to Mrs P. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Chetwood should not have encouraged Mrs P to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

Furthermore, if Mrs P wanted to leave a legacy for her family, which didn't depend on investment returns or how much of her pension fund remained on her death, I think Chetwood 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 Mrs P. 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 Mrs P's desire for flexibility and control over her pension benefits was overstated. Mrs P was not an experienced investor and I cannot see that she had an interest in or the knowledge to be able to manage her pension funds on their own. So, I don't think that this was a genuine objective for Mrs P – it was simply a consequence of transferring away from her DB scheme.

And I've seen no evidence that the funding of her employer's DB scheme was in a position such that Mrs P should have genuinely been concerned about the security of her pension.

### *Suitability of investments*

Chetwood recommended that Mrs P 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 Mrs P, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mrs P should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

### *Summary*

I don't doubt that the flexibility and the ready access to some funds would have sounded like attractive features to Mrs P. But Chetwood wasn't there to just transact what Mrs P might have thought she wanted. The adviser's role was to really understand what Mrs P needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs P was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs P 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. Mrs P shouldn't have been advised to transfer out of the scheme just to repay debts and to purchase, or repair, a car. The potential for higher death benefits wasn't worth giving up the guarantees associated with her DB scheme.

So, I think Chetwood should've advised Mrs P to remain in their DB scheme.

Of course, I have to consider whether Mrs P would've gone ahead anyway, against Chetwood's advice.

I've considered this carefully, but I'm not persuaded that Mrs P would've insisted on transferring out of the DB scheme, against Chetwood's advice. I say this because Mrs P was an inexperienced investor, in a challenging situation, and this pension accounted for the majority of Mrs P's retirement provision. So, if Chetwood had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

I'm not persuaded that Mrs P's need for help with her immediate situation was so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she had sought out, didn't think it was suitable for her or in her best interests. If Chetwood had explained that Mrs P could meet all of her objectives without risking her guaranteed pension, I think that would've carried significant weight. So, I don't think Mrs P would have insisted on transferring out of the DB scheme.

In light of the above, I think Chetwood should compensate Mrs P 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 Mrs P, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs P would have most likely remained in the occupational pension scheme if suitable advice had been given.

Chetwood 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, Mrs P has partially retired, and she has taken a small income from her pension. She wouldn't have been able to do this from the DB scheme. But given her circumstances I think compensation should be based on her taking benefits at the schemes normal retirement date, that is age 60. I think it's likely she would have taken her DB scheme benefits at this time if she had remained in the scheme.

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 Mrs P'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, Chetwood should:

- calculate and offer Mrs P redress as a cash lump sum payment,
- explain to Mrs P before starting the redress calculation that:
  - her 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 her redress prudently is to use it to augment her DC pension
- offer to calculate how much of any redress Mrs P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs P accepts Chetwood's offer to calculate how much of her redress could be augmented, request the necessary information and not charge Mrs P for the calculation, even if she ultimately decides not to have any of her redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs P's end of year tax position.

Redress paid to Mrs P 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, Chetwood may make a notional deduction to cash lump sum payments to take account of tax that Mrs Ps 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 Mrs P'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 Chetwood Wealth Management Ltd to pay Mrs P 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 Chetwood Wealth Management Ltd pays Mrs P the balance.

If Mrs P accepts this decision, the money award becomes binding on Chetwood Wealth Management Ltd.

My recommendation would not be binding. Further, it's unlikely that Mrs P can accept my decision and go to court to ask for the balance. Mrs P 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 Mrs P to accept or reject my decision before 18 August 2023.

Andy Burlinson  
**Ombudsman**