The complaint

Mr A complains about the advice given by Sovereign Private Clients Limited, trading as Sovereign Private Clients ('SPC') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr A is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr A.

What happened

Mr A had deferred benefits in a DB scheme pension from a period of previous employment. He says he was cold called in 2016 and offered a review of his pensions. Mr A says, as he was going through a separation, he thought advice about his pensions and retirement could be useful, so agreed. The review was carried out by SPC.

On 28 September 2016, SPC completed a fact-find to gather information about Mr A's circumstances and objectives. Mr A was 47, in good health, married but separated which he felt was likely to end in divorce and had four children, two of whom were financially dependent. Mr A lived in rented accommodation and said any savings he'd had were used when securing this. He worked full time, earning £24,000 per year. Mr A was recorded as having credit card and personal loan debt – which he said he'd taken on as part of the separation – totalling £37,000, which he was paying under a debt recovery plan. His income covered his outgoings but provided a surplus of less than £20 per month.

In addition to his DB scheme pension, Mr A had a personal pension, valued at £31,687.66. He also had a workplace pension through his current employer, which he'd recently started, but indicated he didn't want to review this as part of the discussion with SPC.

Mr A had no specific plans for retirement. He expected to work to age 65 at least and didn't know how much income he'd need – saying he'd have more of an understanding of this when he got closer to retiring. He said he'd like to be able to cover his outgoings in retirement and would also like to be debt free. SPC recorded that Mr A was interested in the option of being able to leave his pension to his children, split equally, in the event of his death.

SPC discussed Mr A's attitude to risk with him and also completed a risk profiling report. It's notes in the fact find recorded that, at that time, Mr A didn't feel confident taking risk. The pensions mentioned made up all of his retirement provisions and he said he'd like to preserve what he had and had previously had both good and bad experiences with investment, so wasn't happy with the uncertainty of financial markets. But SPC also said, as Mr A had a number of years to retirement, he was willing to take some risk, was happy with a medium investment approach and liked the idea of spreading his investment to avoid volatility. SPC deemed that Mr A had a 'low medium' attitude to risk or 5 on a scale of 1-10.

In December 2016, SPC advised Mr A to transfer his DB scheme benefits, which had a cash equivalent transfer value ('CETV') at that time of £24,890.53, into a personal pension and invest the proceeds in a specific fund with the new provider. The suitability report said the primary reason was to allow Mr A to benefit from higher death benefits. It also said this would enable Mr A to potentially improve his retirement benefits; specifically higher available tax-free cash ('TFC') and income at retirement. It would also give him flexibility in accessing his benefits, more control and would enable SPC to provide ongoing advice and reviews.

The transfer of his DB scheme benefits completed in May 2017.

Mr A complained to SPC in 2022 about the suitability of the recommendation to transfer his DB scheme pension. He didn't think the recommendation was in his best interests. And he said SPC had failed to explain the risks involved and hadn't made clear the value of the guarantees he was giving up.

SPC did not respond to the complaint, so it was referred to our service.

I understand Mr A's existing personal pension was also transferred to the new personal pension SPC recommended. And this was following advice by SPC. But I haven't been asked to consider that advice as part of this complaint and this wasn't raised with SPC as part of the complaint Mr A's representative made on his behalf. So, I'm only looking at the advice SPC gave him to transfer his DB scheme benefits under this complaint.

One of our Investigator's considered the complaint. She thought it should be upheld and SPC should compensate Mr A for any loss the DB transfer had led to. She didn't think Mr A's attitude to risk was as high as SPC had suggested, but in any event, she didn't think he was likely to improve his pension benefits by transferring. She didn't think he had any genuine need for flexibility or control. And she didn't think the alternative death benefits available justified surrendering the guarantees the DB scheme provided. So, she didn't consider a transfer was in Mr A's best interests.

SPC did not respond to our Investigator's opinion. As a result, 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 SPC'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, SPC should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr A's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

When referring to financial viability, I mean how likely it is that Mr A would be better off in terms of the retirement benefits, by transferring.

SPC said it was recommending a transfer because it gave Mr A the potential for better income and TFC at retirement.

SPC was required by the regulator to carry out a transfer value analysis ('TVAS') report when it gave advice and calculate how much Mr A's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme at retirement (the critical yield). I haven't seen a copy of the TVAS that SPC carried out. But the recommendation letter included extracts from it.

The suitability report said that the critical yield to match the benefits the DB scheme would provide to Mr A from age 65 was 6.5% if he was to take a full pension or 5.36% if he took the maximum TFC available and a reduced starting pension.

SPC indicated that Mr A expected to retire around age 65. So, I think using this age when running the TVAS calculations was appropriate. It is worth noting though that the normal retirement age for Mr A's DB scheme was 60. I've seen information that indicates a late retirement enhancement may be applied if the benefits were deferred to age 65. Because I haven't seen a full copy of the TVAS, it isn't clear if that enhancement for late retirement was factored into the calculation. If not, as it would result in higher guaranteed benefits, the actual critical yield would've in fact been higher. But even based on the critical yields that were calculated, I don't think Mr A was likely to be better off by transferring.

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 at the time SPC advised Mr A to transfer his benefits was 4.4% per year for 17 years to retirement, which was the case if Mr A retired at age 65. 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, the term to retirement and Mr A's attitude to risk. Like our Investigator, I'm not sure Mr A's attitude to risk was necessarily at the level SPC said. I say this because of the notes in the fact find of the discussion around this which said Mr A wasn't comfortable taking risks at that time and was unhappy with market volatility. So, even though I agree he had time until he retired which would've given his investments the opportunity to recover from any losses, this doesn't indicate to me that he was necessarily comfortable taking risk. But regardless, even if his attitude to risk was as SPC said, I don't think he'd have been better off by transferring.

There would be little point in Mr A giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.36%, I think Mr A was always likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

So, from a financial viability perspective, I don't think a transfer out of the DB scheme was in Mr A's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and control

SPC said Mr A wanted flexibility in terms of how he could access and use his pension, to maximise the TFC he could take and control over his investments.

But the fact-find was, in my view, clear that Mr A didn't have any confirmed plans for retirement. SPC said Mr A envisaged working until age 65. But it also indicated Mr A understood he might have to work beyond that. A lot of his uncertainty seemed to be based on his financial position at the time which, as he acknowledged, wasn't that good because of the strains the separation had placed on his finances. But this meant he didn't realistically know what his retirement needs would be – something he seems to have acknowledged in discussion with SPC when saying he didn't know what his income requirements were likely to be and wouldn't know until much closer to retirement. So, I don't think he *needed* flexibility with this pension arrangement, because he didn't know what his needs were in general. And he already had a separate personal pension which provided him with flexibility.

I also can't see that he had any confirmed need for TFC, as his retirement plans were unknown. I don't doubt that the prospect of a lump sum being available appealed to Mr A. But he could've taken TFC anyway under the DB scheme. And I don't think it was worth giving up the guaranteed benefits that the DB scheme entitled him to just for the speculative purpose of potentially increasing that lump sum, when he didn't have a specific plan for it. Particularly given, as I've already said, he was unlikely to improve on the benefits he was already entitled to.

Given how long it was until Mr A expected to retire (over 17 years), I think it was too soon to make any kind of decision about transferring out of the DB scheme. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. So, I don't think it was a suitable recommendation for Mr A to give up his guaranteed benefits when he did given he had been clear he didn't know what his needs in retirement would be.

I also think Mr A's desire for control over his pension and how it was invested was overstated. SPC noted that Mr A was not a sophisticated investor. I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And indeed, the recommendation was based on the understanding SPC would continue to provide ongoing advice and servicing, at a cost to Mr A. So, I don't think having control over his pension was a genuine objective for Mr A – it was simply a consequence of transferring away from his DB scheme.

Death benefits

SPC said the ability to leave his pension fund to his children in the event of his death appealed to Mr A.

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 might've been an attractive feature to Mr A. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think SPC explored to what extent Mr A was prepared to accept a lower retirement income in exchange for higher death benefits.

Whilst the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different to that figure – unless Mr A had passed away immediately, which was unlikely. As well as being dependent on investment performance, it would've also been reduced by any income Mr A drew in his lifetime. Mr A was in good health and there was nothing to suggest that he was less likely to live until at least his average life expectancy. And so, particularly given the relatively modest size of the pension fund, it appears entirely possible the fund would've been significantly depleted by the time it was passed on to any dependents. So, the pension may not have provided the legacy that Mr A may have thought it would.

Mr A's existing personal pension also already provided a facility to potentially provide lump sum death benefits. And, if Mr A genuinely wanted to leave a further legacy to his children, I think SPC should've explored life insurance – which could've been considered on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. But I can't see that it considered this alternative.

Ultimately, SPC should not have encouraged Mr A to prioritise the potential for alternative death benefits through a personal pension over his security in retirement. And I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr A.

Suitability of investments

SPC recommended that Mr A invest in a specific fund with the new pension provider. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr A, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr A 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, control and potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr A. But SPC wasn't there to just transact what Mr A might have thought or been led to believe that he wanted. The adviser's role was to really understand what Mr A needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr A was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr A 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. He had no confirmed retirement plans, so didn't have a genuine need for benefits in a different format – particularly as he already had access to such benefits through his other personal pension. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme – particularly as the legacy that may've been provided was unlikely to be in line with what Mr A might've thought at the time of the advice.

So, I think SPC should've advised Mr A to remain in his DB scheme.

Of course, I have to consider whether Mr A would've gone ahead anyway, against SPC's advice. I've considered this carefully, but I'm not persuaded that he would've insisted on transferring out of the DB scheme, if SPC had advised him not to. From what I've seen Mr A didn't seek out advice, this was offered to him. In addition, Mr A was an inexperienced investor and this pension accounted for a significant part of his retirement provisions. So, if SPC 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 SPC should compensate Mr A 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 A, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr A would have most likely remained in the occupational pension scheme if suitable advice had been given.

SPC 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 A 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, 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 A'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, SPC should:

- calculate and offer Mr A redress as a cash lump sum payment,
- explain to Mr A 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 his DC pension
- offer to calculate how much of any redress Mr A receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr A accepts SPC's offer to calculate how much of his redress could be

augmented, request the necessary information and not charge Mr A 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 A's end of year tax position.

Redress paid to Mr A 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, SPC 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 A'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 A 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 A the balance.

If Mr A 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 A can accept my decision and go to court to ask for the balance. Mr A 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 A to accept or reject my decision before 12 October 2023.

Ben Stoker
Ombudsman