DRN-4308785

The complaint

Mr M complains about the advice given by Clifton Asset Management Plc 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.

What happened

Mr M consulted with Clifton in November 2011 as he was considering the option of using his existing pension funds to raise cash for his business. He met with one of Clifton's advisers and it completed a corporate fact-find to gather information about the business and Mr M's circumstances and objectives. It noted the following:

- Mr M was aged 36, married with two dependent children.
- He was a director of his own business and drew an annual salary of £40,000.
- Mr M's wife was employed with an annual salary of just over £17,000.
- Mr M's only pension provision (aside from his state pension) was a defined benefit occupational pension scheme of which he was a deferred member.
- The corporate objectives were noted as being fund expansion plans for the business, easing the company's position with creditors and maintaining the company's financial and operational independence.
- He wanted to raise £28,000 for the company to pay towards its PAYE and VAT creditors.
- Mr M felt his comfort in retirement was linked to the success of his business. There was equity within the business's property.
- Mr M's combined business and personal mortgage exposure was £1.31m and he also had £18,000 of credit card debt and an outstanding personal loan of £12,000.
- Mr and Mrs M aimed to retire in their sixties but precisely when was dependent on how their business developed over time.

Clifton also carried out an assessment of Mr M's attitude to risk which it deemed to be moderate.

After a few meetings with an adviser, Clifton produced a pension transfer report ('TVAS') on 16 November 2011 and a suitability report on 24 November 2011. In summary, the suitability report said that Mr M's objective was to release funds of £28,000 from his pension via a SIPP to assist his business with a short-term cash flow issue it had. He then intended to release the funds to the business to purchase intellectual property. The intellectual property would then be leased back to the company on commercial terms and the funds used to pay towards PAYE and VAT creditors in so doing preventing any further action being taken by HMRC against the business. The suitability report also stated that Mr M was aware of the benefits offered by his DB scheme but placed little importance on them in comparison to the benefits the cash would provide to his business.

Clifton noted that it had been agreed that Mr M's objectives could be achieved by establishing a SIPP and transferring his existing DB scheme pension into it. Notwithstanding this however, Clifton concluded that the transfer of the DB scheme was not in Mr M's best interests on account of the high annual investment return (known also as the critical yield) his pension fund would need to attain in order to match the benefits he was giving up. It asked Mr M to confirm in writing that he had read and understood the report and it also asked him if he would confirm whether he did or didn't want to proceed with the transfer. Mr M confirmed that he wanted to on 6 December 2011.

In January 2012, Mr M's aims and objectives had changed significantly and a telephone call took place between him and an adviser from Clifton. This was followed by an email from Clifton to Mr M to say that it had indicated to him that the transfer of his DB scheme should, if possible, be halted. The email went on to say that because Mr M may wish to inject funds into a new company in the near future he had decided to continue with the transfer.

Clifton then issued Mr M with a further suitability report on 8 February 2012 in which it noted that Mr M's plans had changed and that he had decided to pull out of the business for personal reasons. It went on to state that Mr M had decided to proceed with the transfer of his DB scheme anyway because he thought he might wish to use the funds in the future for a self-investment business transaction. Clifton advised Mr M to transfer his DB scheme to a SIPP to be left in an account for him to use for any future purchase of intellectual property he may want.

The cash equivalent transfer value ('CETV') of Mr M's DB scheme - £25,643.42 – was transferred to a SIPP in 2012. Clifton charged Mr M £6,000 for the advice and the transfer along with an annual management service fee of 1% + VAT of the scheme assets. In addition there were costs associated with the SIPP.

Mr M met with Clifton again in May 2015 by which time he was aged 39. Clifton issued a further suitability report in July 2015 in which it noted that Mr M didn't require the SIPP for any business funding and wished to transfer it to a more suitable arrangement. The SIPP was valued at £16,655.42 and still invested in a cash fund. Clifton recommended that the SIPP was transferred to a global equity portfolio managed by a discretionary fund manager. The SIPP was transferred a couple of weeks later.

In August 2022 Mr M, through his representative, complained to Clifton. Specifically he complained that:

- the 'insistent client' process had not been correctly followed by Clifton;
- the advice he received to transfer his DB scheme wasn't suitable in the circumstances;
- the investment choice was inappropriate for someone with his attitude to risk;
- had he left his DB scheme where it was it would now have a cash equivalent transfer value of £256,450.31;
- Clifton had provided him with negligent advice, as a result of which he had suffered a financial loss.

Clifton looked into Mr M's complaint but didn't think it had done anything wrong. It said it had made it clear to Mr M at the time of the advice that there was a high probability he would be worse off in retirement if he transferred, however, he had ignored its advice and insisted on transferring anyway. It said that when Mr M's aims and objectives changed in January 2012 it had asked him to reconsider the merits of the transfer but that he remained committed to it. And Clifton said that it had made repeated attempts to engage with Mr M in the years that followed the transfer, advising him in the process that he should consider investing the cash he held in his SIPP. It said this eventually took place in 2015 since when the fund had performed well.

Clifton also said that at the point it met again with Mr M in 2015 he raised no concerns about the suitability of the advice he'd received in 2011/2012.

Unhappy with the outcome of Clifton's investigation into his complaint Mr M complained to the Financial Ombudsman Service. Our Investigator looked into the complaint and thought that there were failings in Clifton's 'insistent client' process such that Mr M was provided with insufficient information to make an informed decision about the transfer. Our Investigator also thought Clifton's recommendation in 2012 superseded the one it had made in 2011 because Mr M's circumstances and objectives had changed. So our Investigator thought that the second recommendation should be treated as being separate from the first.

Our Investigator then went on to consider whether Clifton's 2012 recommendation was suitable and she concluded that it wasn't. She thought that the transfer wasn't financially viable and that there were no other sufficiently compelling reasons to justify the loss of the guarantees associated with his DB scheme. Our Investigator recommended that Clifton compensate Mr M in line with the regulator's (the Financial Conduct Authority – 'FCA') guidance for redress for non-compliant pension transfers. Our Investigator also thought Clifton should pay Mr M compensation of £200 for the trouble and upset it had caused him.

Mr M accepted our Investigator's recommendations but Clifton didn't. It said that it was satisfied that Mr M was an insistent client. Clifton said it had only proceeded to arrange the transfer (after the first suitability report) after receiving Mr M's email (dated 6 December 2011) in which he confirmed he wanted to proceed as an insistent client. And Clifton said that the second suitability report was only issued once both Mr M and Clifton had determined he was acting as an insistent client.

Clifton said that the appropriate risk warnings were given in the first suitability report and Mr M's decision to transfer was made subsequent to their receipt. Clifton said Mr M was fully aware of its opinion on the merits of the transfer but expressed his firm view to proceed regardless. Clifton said that in 2012, advisers were permitted to proceed with transfers on an insistent client basis. So Clifton said it rejected our Investigator's view that the second suitability report should be considered in isolation. It said the two reports were intrinsically linked and the second report was written on from the standpoint that Mr M was proceeding with the transfer on an insistent client basis.

Our Investigator thought about what Clifton had said but wasn't persuaded to change her mind. She said that the second suitability report had been written after Mr M's circumstances had changed but the insistent client process hadn't been followed after Clifton gave its revised advice. Our Investigator also said that even so, she also remain unsatisfied that in 2011 Mr M knew and understood the risks associated with giving up his DB scheme.

The complaint was passed to me for 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 Clifton'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, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Clifton should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Was Mr M an insistent client?

Before I consider the overall suitability of the advice given by Clifton to Mr M I'll consider whether or not he was an insistent client. Although there was no definition of an 'insistent client' in COBS at the time, the general understanding of what was meant by one was a consumer that wished to take a different course of action from that being recommended by his or her adviser, and who wanted the business to facilitate the transaction against its own advice. A key aspect in this case is Clifton's categorisation of Mr M as an insistent client.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were Conduct of Business Sourcebook ('COBS') rules in the regulator's Handbook which required Clifton to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS required Clifton to provide information that was clear, fair and not misleading. So, Clifton's recommendation had to be clear and Mr M had to have understood the consequences of going against the recommendation.

Clifton says that it provided suitable advice and acted in Mr M's best interests. It says too that it followed the correct insistent client process, although as I've set out above, there was no prescribed 'process' to follow at that time. Mr M says Clifton's advice was negligent and he's suffered a loss as a result.

Having carefully considered all of the evidence presented, I think the change in Mr M's objectives and circumstances over the Christmas and New Year period of 2011/2012, the issuing of a second suitability report and a new recommendation being made to Mr M were all significant enough departures from the 2011 recommendation as to be classed as a separate recommendation, unlinked to the first. I think the fact it issued a second suitability report taking those new circumstances and objectives into account meant that Clifton likely thought so too. Significantly, however, I don't think that the second suitability report made it clear that Clifton's advice was that Mr M should not transfer his DB scheme and that him proceeding to do so was against its advice.

Clifton says the second suitability report should not be considered in isolation. It said the two reports were intrinsically linked and the second report was written from the standpoint that Mr M was proceeding with the transfer on an insistent client basis. I don't agree.

Mr M's objectives had completely changed and his new objective was to transfer his DB scheme because he had plans for another business he owned for which he *may* wish to utilise his pension funds at some future point. What Mr M's other business was is undocumented as is the nature of, and amount needed for, any perceived future transaction.

Mr M's new, 2012 objective was not, in my view, fully formed and was couched in terms of being a possibility only. And the second report went on to say that other capital-raising options were discussed but dismissed as unsuitable because Mr M didn't have adequate assets to provide security for other forms of lending. Yet no reason is identified in the report for why capital-raising lending was required. Thus, without any context the options for raising capital Clifton said it considered and dismissed are, in my view, meaningless. However, despite the lack of reasoning and context, and having dismissed other capital raising options, Clifton went on in the report to conclude that, *'We subsequently agreed that pension-led funding was your preferred route'.*

The second report then continues with Clifton's recommendation that, *'We agreed that from your original objectives, these would have been best achieved via a new Self-Invested Personal Pension Plan (SIPP) administered by [M]…Due to the change in circumstances…We agreed that these funds will just sit in your individual SIPP account currently, however we agreed that the pension scheme may be utilized to purchase intellectual property owned by one of your companies in the future."*

The second report didn't state that Clifton wasn't recommending the transfer. Nor did the report contain a risk warning (such as in the first report) that there was a high probability that Mr M would be worse off in retirement as a result of the transfer and would lose his valuable dependent's benefits. Clifton says that this because Mr M was already being treated as an insistent client following on from the first report.

I can't agree that the 'insistent client process' Clifton followed after the first report effectively carried forward and was capable of being applied to the second report. That's because Mr M's objective, and the very reason he needed to access the money in his pension, had completely changed. Despite it doing so however, I can't see that Clifton assessed the suitability of the transfer against Mr M's new objective or analysed Mr M's new objective at all. And in any event, if Clifton was treating Mr M as an insistent client, I think it needed to explicitly say in the second suitability report that it did not recommend that Mr M proceed with the transfer and that doing so would be against its advice. To my mind, given the way the report was written, I think Mr M would've believed that Clifton was recommending he proceed with the transfer as it agreed with his course of action.

So, I don't think Clifton was treating Mr M honestly and fairly in this respect nor do I think it was providing him with information that was clear, fair and not misleading such that he could make an informed decision. The recommendation Clifton made for Mr M's funds was for them to sit on cash deposit in an individual SIPP account until he may need them at some future point. Mr M went along with the advice Clifton gave in this respect so there was no need in reality to run the insistent client process after this report. That's because Clifton wasn’t advising Mr M not to proceed nor was he required to go against that advice. On the contrary, it appears to me that Clifton recommended Mr M transfer his DB scheme.

So, I can’t reasonably agree that an insistent client process that followed a recommendation not to transfer which in turn was based on entirely different circumstances should be assumed to apply (or carry across) once those circumstances, objectives and the subsequent recommendation changed.

For these reasons it follows that I think the second report is separate from the first. It follows that I can’t agree with Clifton that the two reports are intrinsically linked or that the second report was written on the understanding that Mr M was proceeding on an insistent client basis.

As Mr M proceeded with his DB transfer after the second suitability report I don’t need to consider here whether or not Clifton followed a fair insistent client process after it issued its first suitability report. That’s because I think it’s fair to treat the second suitability report as Clifton having advised Mr M to proceed with the transfer of his DB scheme. So, I’ve considered the suitability of the advice given in February 2012 as that’s the basis on which the transfer proceeded. I appreciate that Mr M had given the go ahead for the transfer before the new year in 2012 and that Clifton has set the transfer in motion as a result. I also appreciate that there were discussions between Mr M and Clifton in the early part of 2012 where Clifton advised Mr M to halt the transfer yet he instructed Clifton that he wished to continue with it.

It appears to me that the second suitability report post-dated Mr M’s instruction to continue with the transfer, however, by allowing that to happen, Clifton wasn’t acting in Mr M’s best interests. Clifton ought to have reconsidered Mr M’s circumstances and objectives and issued a new suitability report that clearly set out its recommendation. Only then would Mr M have been able to make an informed decision and only then should the transfer have been processed (had he decided to proceed).

Financial viability

Clifton carried out a transfer value analysis report (as required by the regulator) showing how much Mr M’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). At the time of the advice Mr M was 36 years old and had no fixed age at which he wished to retire. His DB scheme’s normal retirement date (‘NRD’) was Mr M’s 55th birthday.

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 critical yield (annual investment return) required to match Mr M's scheme benefits at age 60 was 9.4% if he took a full pension and 9% if he took tax-free cash ('TFC') and a reduced pension. I think it's reasonable to assume that Mr M would have taken the tax-free cash at retirement given that it is a generally tax efficient way of drawing down a personal pension. The critical yield of 9% required to match the DB scheme benefits at a retirement age of 60 compares with the discount rate of 6.5% per year for 23 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate was 7% and the lower projection rate was 5%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's moderate attitude to risk and also the term to retirement. There would be little point in Mr M 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 9%, I think Mr M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. And that appears to be the conclusion Clifton reached in its first suitability report. However, there is no mention of this in the second suitability report and I think Clifton needed to make it clear to Mr M that transferring his DB pension would mean he was likely to be worse of in retirement.

It is also worth mentioning that the DB scheme's normal retirement date ('NRD') was Mr M's 55th birthday. I can however see that the TVAS Clifton prepared assumed that Mr M's NRD was his 60th birthday. Had Clifton used the schemes actual NRD of age 55 in the TVAS then it is likely the critical yield would have been even higher than 9% owing to the fact the funds would be invested for less time.

I've thought too about Mr M's capacity for loss. His DB scheme was his only pension provision at the time so the security of the guaranteed benefits offered by his DB scheme would have been very important to him. The scheme offered valuable benefits with virtually no risk and Mr M was highly reliant on it for his retirement. I note that there were no savings or investments noted for Mr M but that he had a third share in his property (Mrs M and Mr M's father owning a third share each) valued at £315,000 and which appears to have been mortgage free. Mr M also had a 50% share (the other 50% belonging to his father) in the family business valued (including capital assets) at £2.5m. However, I can see too that there was a joint mortgage on the business of £1.31m. So it seems to me that Mr M's capital assets equated to about £700,000.

Whilst Mr M had some capital assets however, these weren't liquid and indeed were largely tied up in his business. Even if I were to agree that Mr M did have some capacity for loss because of his capital assets, the fact he did doesn't make an unsuitable transfer suitable. I say this because the DB scheme was Mr M's only pension provision aside from any state pension entitlement. It was a risk-free scheme and Mr M was highly reliant on it for his retirement. Mr M's retirement was 25+ years away so it was too soon to make any kind of decision about transferring out of his DB scheme.

I'm also mindful that Mr M's circumstances changed drastically between the first suitability report and the second. Mr M had pulled out of the business, so this would've had an impact on his assets and most likely decreased his capacity for loss.

I note too that Mr M's scheme was a member of the Public Sector Transfer Club so had he at some future point recommenced employment and his new employer ran a scheme that was also a member of the club then he would be able to join it and transfer in his former scheme on favourable terms. By transferring his DB scheme however, Mr M lost this option.

So, I don't think it was a suitable recommendation for Mr M to give up his guaranteed benefits when he didn't know what his needs in retirement would be. Had he reason to transfer his scheme at a later date he could have done so closer to retirement. And whilst Mr M may well have believed his business would derive a greater benefit than any benefit he would receive from his DB pension, I don't think this meant he had the capacity to bear the loss of his DB scheme. And I think that Clifton should have made that clear to Mr M when it gave the advice in February 2012.

For this reason alone a transfer out of the DB scheme wasn't in Mr M'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.

Other compelling reasons for transferring

I don't disagree that Mr M approached Clifton in 2011 with the view to transferring his DB scheme to alleviate some short-term credit issues his business was experiencing. However, ultimately it seems to me that Mr M had only one reason to proceed with the transfer of his DB scheme when Clifton gave its second set of advice, which was because he thought he *might* wish to use the funds in the future for a self-investment business transaction. But any specific objectives expressed by Mr M didn't displace the need for Clifton to provide him with suitable advice and to challenge any preconceived intentions or ideas he may have. I've seen no evidence that Mr M had any prior knowledge or experience of making decisions of this sort so he couldn't know if his intended actions were in his best interests.

So it seems to me that Mr M's objective for transferring in the early part of 2012 was essentially non-existent; that there was, in fact, no reason to do so. There certainly exists no information about what business Mr M may wish to use the fund towards in the future and how he might go about accessing his pension funds, given he was so far from the minimum retirement age at the time. Had Mr M genuinely required funds in the future for a business venture then the transfer of his DB scheme could have been considered at that point. And it could have been considered against Mr M's situation as it stood at some future point intime taking any contemporaneous circumstances into account. Thus it seems to me that the transfer in 2012 was premature and un-necessary. And I think that once Mr M's 'objective' changed, Clifton should have explained to Mr M again why the transfer was unsuitable, not in his best interests and recommended that he didn't proceed.

It follows that I've seen no compelling reason why the transfer of Mr M's DB scheme was in his best interests, or outweighed the loss of his guaranteed retirement benefits, particularly given the DB scheme was Mr M's only pension provision.

Use of DFM

Whilst this is a complaint about the advice given by Clifton in 2011/2012 I note that in 2015 it recommended that Mr M use a DFM to manage his pension funds and that prior to this his funds weren't invested at all. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

Summary

Clifton wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests. It also needed to adapt its advice to the change in Mr M's circumstances and objectives.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M 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 M shouldn't have been advised to transfer out of the scheme just because he may, at some point in the future, want to invest in a business. So, I think Clifton should've clearly advised Mr M to remain in his DB scheme.

I have considered whether Mr M would've gone ahead anyway, against Clifton's advice in 2012 had it advised him against doing so. Clifton argues that Mr would have done so given that he had done so once already. In fact, as I've set out above, Clifton argues that Mr M did proceed as an insistent client after its second recommendation. But, as I've also said above, I think the second suitability report contained a positive recommendation that Mr M should transfer. So it is this recommendation that I need to consider whether Mr M would have insisted on going ahead anyway had Clifton's advice been the opposite.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against Clifton's advice. I say this because Mr M was an inexperienced investor with a moderate attitude to risk and this pension accounted for the majority of Mr M's retirement provision. So, if Clifton 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. I've set out in detail above why the reason Mr M wanted to transfer wasn't compelling or urgent. I think Clifton should have taken the time to explain that it hadn't recommended a transfer based on Mr M's original objectives but, given these had since fallen away, and that his new objective was entirely unformed, the transfer was even less suitable than it had been originally.

I'm not persuaded that Mr M's concerns about possibly needing funds in the future were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Clifton had explained that Mr M's unquantified and vague objective wasn't worth risking his guaranteed pension for, and that he should instead revisit the possible transfer of his benefits in the future when his plans were more concrete, I think that would've carried significant weight. So, I don't think Mr M would have insisted on transferring out of the DB scheme.

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

I think that Mr M has been caused some trouble and upset as a result of the concerns he has about his pension and the loss he may have sustained. I think that Clifton should pay Mr M compensation of £200 for the trouble and upset its unsuitable advice has caused him.

Putting things right

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

Clifton 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 M 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 55, 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 M'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, Clifton should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Clifton's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M 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, Clifton 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 M'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.

Clifton should also pay Mr M £200 for the trouble and upset its unsuitable advice has caused him.

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 Clifton Asset Management Plc to pay Mr M 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 Clifton Asset Management Plc pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Clifton Asset Management Plc.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 3 November 2023.
Claire Woollerson
Ombudsman