DRN-4404639

The complaint

Mr A complains about the advice given by PensionHelp, when it was an appointed representative (AR) of Pareto Financial Planning Limited, 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.
Mr A is represented in this complaint by a claims management company (CMC). Except where it's relevant, I'll refer to all submissions as being made by Mr A.

What happened

In late 2016 Mr A was aged 45, with a wife 3½ years older than him, and employed as a Pensions Technical Consultant for a pension provider. He was introduced to a firm of advisers by a colleague who had also effected a pension transfer, and that firm of advisers referred him on to PensionHelp.

Mr A's defined benefit pension had been closed to future accrual in April 2016, leaving him with a pension at that time of £11,902pa. If he took those benefits at the normal retirement age of 60 they could likely be £16,884pa – or from age 50 after early retirement factors, £7,982pa. He's told us that he was aware that the alternative transfer value being offered by the scheme for these benefits was at an historical high.

PensionHelp recorded that Mr A was concerned about protecting his right to retire at age 50, which he wanted to do in the event of redundancy - and was aware that he, and a colleague could transfer together as a 'buddy transfer'. It says Mr A explicitly stated that his income needs of £12,480pa would be fully met by his and Mrs A's state pensions once their debts were repaid, therefore the concern was bridging the gap until the state pension commenced. He also wanted to ensure that his wife and then his two dependent daughters (aged 12) would benefit from the pension in the event of his early death. He would only want to buy an annuity if forced to do so by circumstances at the time.

The firm who referred Mr A to PensionHelp met with Mr A on 22 November 2016 and completed PensionHelp's fact-find for it, to gather information about Mr A's circumstances and objectives. It showed that Mr A earned £39,000pa and his wife £13,000pa. They were both in good health. He held £53,000 equity in his main residence, and investments of £5,000 but debts surpassing this of £12,000. He also had £1,020pm of disposable income.

PensionHelp also carried out an assessment of Mr A's attitude to risk, which it deemed to be 5 (or 'balanced') on a scale from 1 to 10. As part of this assessment, it said he would be concerned by a fall in value of more than 10% of his pension in any single year.

In a suitability report dated 6 December 2016, PensionHelp advised Mr A to transfer his pension benefits into a SIPP. There's no indication in the document that PensionHelp actually met Mr A beforehand. The suitability report explained that Mr A didn't want the restrictive option of a reduced annuity payable to his wife on his death, and wanted to shape the format of income he received as his needs changed throughout retirement. PensionHelp noted that if Mr A simply wanted to replicate the format of the scheme benefits, it wouldn't recommend he transfer on account of the high investment return (or 'critical yield') required to do so. However under the alternative to an annuity of a pension drawdown arrangement, it had concluded that the transfer represented a fair exchange for the benefits given up.

PensionHelp said that it was recommending the transfer alongside one of Mr A's colleagues as part of a 'buddy' transfer to preserve the early retirement age of 50. However its report went on to say that taking benefits before age 55 "is not a priority" for Mr A, and was only relevant if his circumstances changed (I assume in the event of redundancy). Mr A recalls that the buddy transfer was coincidental: the 'buddy' hadn't been selected beforehand. In order to preserve the early retirement age, Mr A was also required to opt out of the replacement defined contribution (DC) section of his employer's scheme which had started in April 2016, and transfer the additional sum in this section (£6,798) at the same time. He was entitled to immediately re-join a different section for ongoing service which PensionHelp said would be on the same terms as the DC section he left.

The advice incurred a 1% initial charge payable to PensionHelp and the transfer proceeds of £350,827 were paid into a SIPP operated by the pension provider that Mr A worked for, on 24 January 2017. PensionHelp recommended it was invested 25% in an Absolute Return Strategies fund and 73% in a Multi-manager fund, with a small balance in cash. The SIPP illustration showed that the total reduction in yield due to charges including initial and ongoing adviser fees was about 1.7%pa (for example for retirement at age 55) – illustrations were also produced to other ages. On the application Mr A nominated that 100% of the death benefits should go to his wife whilst she remained alive.

As part of the transfer documentation, Mr A's DB scheme required Mr A to complete a questionnaire to assess the risk that he might be the victim of a scam, as is good industry practice. Mr A's answers on his questionnaire to the reasons he was transferring were that he wanted to access benefits before age 60 with no penalty; to have full flexibility in investment strategy and income drawdown; and to be able to pass the funds on to his wife and daughters.

PensionHelp's report hadn't mentioned the colleague Mr A was doing a 'buddy transfer' with, but they were mentioned in a covering letter PensionHelp sent to the SIPP provider to request the transfer, as the expiry date of that colleague's transfer value came a month sooner than Mr A's.

Notes that the adviser in the referring firm made on the day the transfer went through seem to support the contention that Mr A was intending to use this sum to repay his mortgage: *"[Mr A] intend [sic] to drawdown a tax free lump sum from his pension in due course to clear the mortgage. I explained to [Mr A] that by drawing down a lump sum his future income levels may be affected. [Mr A] acknowledges this but is keen to be mortgage free and then has the freedom to change his work life balance."*

An ongoing advice fee of 0.6%pa was payable to the adviser who referred Mr A to PensionHelp, which PensionHelp disclosed in its suitability report. It said that Mr A would approach this adviser and not PensionHelp for regular reviews, and when he was ready to start taking benefits. PensionHelp was told of the change of adviser in February 2017. That adviser then seemingly went on to recommend a change of investments, which was effected from 8 February onwards. There also appears to be change to a model portfolio in January 2020, although I'm not aware who the adviser was by that point.

In April 2021 two payments totalling £31,595 were made into the SIPP, before Mr A withdrew a total tax-free cash sum amounting to £117,994. This was a matter of days after he first became entitled to do so at age 50, suggesting his right to an earlier retirement age had been preserved. Mr A remains working at the DB scheme's employer, and hasn't taken any other income from his SIPP.

Mr A's representative complained in January 2022 to PensionHelp about the suitability of the transfer advice. It raised a number of points including:

- The transfer incurred sizeable establishment fees and the added cost of employing two advisers, meaning the critical yield calculated was 'unrealistic'.
- The options of partial transfer, or early retirement directly from the scheme were overlooked.
- Mr A shouldn't have given up the valuable spouse's and dependants' pensions under the scheme.

PensionHelp initially responded to the complaint on Pareto's behalf and didn't uphold it. It said it assessed Mr A's complaint using the Financial Conduct Authority (FCA)'s Defined Benefit Advice Assessment Tool (DBAAT), and his objectives were plausible and clearly thought through, and could not have been met by remaining in the DB scheme. In particular, it said:

- Mr A didn't want to suffer the early retirement penalties on retirement at age 50 directly from the scheme.
- It didn't agree with Mr A that the costs involved represented poor value for money.
- The DB scheme booklet suggested no benefits were payable to Mr A's daughters in the event of his death.
- It had described Mr A in its suitability report as *"an experienced financial professional and [you] felt that you will be able to manage your money in such a way that it will outstrip the scheme pension".*

Mr A referred his complaint to our service, saying that his employment was in technical processes and not a customer facing or advisory role. So, he wasn't fully aware of the loss of guarantees he'd suffer under the DB scheme or their implications.

Over the course of several submissions, the CMC told this service:

- The reason Mr A sought advice was that he lacked the understanding and experience of DB schemes himself.
- Mr A's DB scheme administrator wouldn't have released Mr A's funds if he'd received advice against transferring which he was acting insistently against. That meant the adviser was strongly motivated to recommend a transfer even if it wasn't suitable.
- Many members of Mr A's scheme were targeted by advisers looking to effect transfers and this service has upheld those other complaints.
- The suggestion that Mr A would take income from age 50 was always a 'pipe dream', and the state pension doesn't come close to covering his needs in retirement.
- Mr A had no investment experience or appetite to self-manage his funds, and they had performed well in the hands of his new adviser more by luck than judgement.
- Mr A didn't use up all of the tax-free cash he took at age 50. £95,000 of this has been left unused.
- His wife and children would have received sufficient benefits if he'd remained in the DB scheme.
- Mr A had confirmed that the scheme wouldn't have permitted him to continue as an insistent client. In support of this it provided a document he'd received at the time: the DB scheme's own "Pension Transfers – Your Guide".

Mr A also provided his own comments. He was clear that he hadn't been involved with DB schemes at all, and added:

> *"It's fair to say that working in the pensions industry, I had more knowledge than most.* [But] *Had I been sufficiently knowledgeable, I wouldn't have paid a fee of 1% on the transfer or 0.6% pa fund management charge - I could have saved thousands of pounds. In my role as Technical Consultant, my expertise lay with the administration of DC schemes…and the processes that underpin service…Whilst I had a clear idea of what I*

wanted to do, surely the argument is 'was the advice to transfer in my best interests or not'?"

PensionHelp told us, *"Whilst [Mr A] may not have been a Pension Transfer Specialist, he was absolutely aware of the risks of transfer and the course of action recommended. We find the claim that a pensions technical expert would take a course of action with his pension that he didn't understand to be very surprising."* It said the claim was vexatious, as Mr A ought to be considering the purchase of an annuity if he now considers he should have been advised to retain a guaranteed income.

<u>Provisional Decision of 21 September 2023</u>

Our investigator was unable to resolve the complaint, and my findings differed from his so I issued a Provisional Decision. I will reiterate here the findings I reached in this decision.

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 PensionHelp'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'm minded to uphold the complaint.

The regulator, the Financial Conduct Authority ('FCA'), stated in its guidance COBS 19.1.6G at the time that the starting assumption for a transfer from a DB scheme is that it is unsuitable. However, the section of PensionHelp's suitability report discussing a potential transfer begins by quite comprehensively counteracting this starting assumption. It gives a list of individuals for whom transfers would be suitable, some of which would be understandable (such as members in ill health being able to secure higher benefits on an immediate retirement basis). But others are generalised examples of wanting flexibility or lump sums which reads more like a list of features a pension drawdown plan can provide, without regard for the benefits that would be forgone in the DB scheme:

"Transfer will not be suitable for all scheme members, but will be suitable for some individuals such as those listed below:
- Those looking for options that the scheme cannot provide.
- Those who wish to shape benefits in line with their own personal and financial circumstances
- Those who might have a reduced life expectancy.

- Single people who can purchase a higher pension on the open market.
- Those who require an immediate lump sum.
- Those who wish to retire immediately.
- Those who have or will have alternative income in retirement.
- Those looking to take benefits in a flexible manner.
- Those with a high appetite for investment risk.
This list is not exhaustive and there are other considerations for transfer for immediate annuity purchase / pension transfer."

PensionHelp should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr A's best interests. This means having adequate regard for the benefits he was giving up. And having looked at all the evidence available, I'm not satisfied that it has clearly demonstrated this.

Financial viability

PensionHelp produced a transfer value analysis report (as required by the regulator) showing 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 by way of an annuity (the critical yield). PensionHelp calculated this figure to be 5.62% for retirement at age 60. But for retirement at age 50 the critical yield rose to 7.54%. I can see from the analysis that this was correctly based on a DB spouse's pension after retirement of 67% of the member's pension (although the suitability report refers to this as 50% as well as 67% in different places).

PensionHelp said at the time this critical yield was higher than the average return of 5.6% it expected for the balanced risk investor it had classed Mr A as, but it provided alternative analysis on the basis of Mr A transferring into drawdown instead. It said if he did this, a pension pot growing at 5.6%pa would match the DB pension income, including annual increases, to beyond age 120 if retiring at age 50; and up to age 110 if retiring at age 60. However this involved making a forward-looking assumption that Mr A would be a suitable candidate for income drawdown, because he couldn't take his benefits for at least five years.

Whilst PensionHelp assessed Mr A's attitude to risk as balanced overall, there were some conflicting answers to that questionnaire. In fact, most of his answers fitted in with the second riskiest of the four (or sometimes five) options offered. They indicate that he could only cope with 'infrequent' periods where his investments might fall in value, as opposed to the more likely answer for a balanced investor: *"I want to achieve higher medium term returns than inflation. I understand there may be occasional extended periods where my investments might fall in value."* Despite this, PensionHelp went on to assert as reasons for recommending the transfer in its suitability report that Mr A *"fully expect[ed] periods where the value of your investments might suffer extended falls".*

These assessments are only as good as the questions asked and the relative weightings they give to the answers – and from what I've seen Mr A's attitude to risk specifically in respect of making the transfer and foregoing the guaranteed benefits was somewhat lower than medium. The suitability report also noted that if the investment underperformed, Mr A would have to re-assess his standard of living and make cut-backs, because he had no other savings. Strangely, again, PensionHelp suggested this meant he had a 'high' capacity for loss – which again I don't consider was plausible given Mr A's answers.

I acknowledge that the adviser who referred Mr A to PensionHelp went on to assess Mr A as a balanced risk investor too. Having transferred his pension, he may well have needed to be to avoid losing too much ground against the DB scheme. I also accept that when Mr A ranked his priorities, guaranteeing benefits for himself and his spouse both came last, below his preferences for flexibility and maximising lump sums and income to better meet his needs. However I don't find these answers surprising if Mr A was attracted to the flexibility a drawdown plan could offer – and which PensionHelp had already indicated was a good reason for transferring.

In reality, for Mr A to maximise his income in particular, he would need to get these returns on a sustained year-on-year basis no matter how the markets fluctuated: so he would need to get enough growth in the good years to see him through periods where the markets might be falling, so that he ended up with this average investment return overall. This was not without significant risk, and Mr A was being asked to start accepting that risk about five years before he could actually make any decisions regarding drawing his pension.

In Mr A's contradictory answers to some of these questions I think there are indications he would have become concerned if the investments did not perform to plan – essentially because he didn't have the high capacity for loss that PensionHelp said he had. Whilst I appreciate Mr A would accrue further benefits in his employer's replacement DC scheme, part of the advice contemplated him leaving that employer in the coming years. And as it stood at the time, the DB pension was his main asset, calling into question whether would have had the temperament to manage with that being exposed to risk throughout his retirement.

As our Investigator noted, the estimate PensionHelp gave (or accepted from the referring adviser) of Mr and Mrs A's minimum income requirement appears over-optimistic. Notwithstanding that most of their basic income needs would likely still have been met by both their state pensions combined, the state pension alone isn't generally considered to provide a comfortable standard of living. I find the comments I've quoted above from the suitability report, that Mr A would have been nervous at the prospect of falls in in his investment and that he and Mrs A would have to make cut-backs, more telling here.

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 assessing a critical yield for future annuity purchase.

The relevant discount rate at the time of the advice here was 3% per year for 4 years to retirement at age 50, or 4.2% per year for 14 years to retirement at age 60. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate and Mr A's attitude to risk which in my view was lower than medium when considering his attitude to transfer risk: that is, his ability to accept the risks of exchanging guaranteed benefits for an income dependent entirely on investment returns. I find this makes the critical yield that is based on purchasing an annuity – which mitigates some of those risks – the most relevant measure here. And it was, at the time, the measure the regulator required PensionHelp to use.

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 – so he would need to have reasonable prospects of targeting higher returns than the rates I've quoted. Having considered this, I think Mr A was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with his attitude to and ability to accept this transfer risk.

So, a transfer out of the DB scheme wasn't in Mr A's best interests on the grounds of financial viability alone. But that isn't the only consideration when giving transfer advice, as PensionHelp has argued in this case. There might be other considerations which mean a transfer is suitable despite providing overall lower benefits, if they are contemporaneously demonstrated in a particular individual's case.

Mr A's objectives

On the same day that the referring firm completed PensionHelp's fact find for Mr A, it made a meeting note which explained the background to Mr A seeking a transfer in more detail – and this appears on PensionHelp's file. It made the following points:

- Mr A was concerned about redundancy because of his 20+ year career at his employer.
- He intended to stop working for that employer from age 50 and 'potentially' use tax free cash from the DB pension to either clear his mortgage or to buy a new rental property, and then work 'potentially' as a contractor or in a completely different field.
- Mr and Mrs A would seek to reduce their working hours and 'potentially' work part time.
- Mr A was experienced in the financial services industry and pensions and thought the transfer value of £345,000 was good value compared to the projected pension of £11,500pa from the DB scheme (I note this was the unrevalued pension figure).
- Mr A believed he could significantly grow his fund under a SIPP, and provide income flexibility for himself and his dependants.
- *"[Mr A] explained that the level of income payable in his opinion was not sufficient for what he required and that in the event of his early demise he was convinced that this would not be sufficient for [Mrs A] and the girls."*

Mr A's knowledge and experience

As some of the referring adviser's, and then PensionHelp's, comments refer to Mr A's knowledge and experience as a result of working for a financial services provider, I've considered these first. Mr A has had an opportunity to respond to his comments which PensionHelp highlighted from a social media site. It does appear he'd worked in roles connected to financial services for 25 years, but from what I can see this was on the business development side rather than (say) concerned with the actuarial processes involved in how pension schemes operated.

PensionHelp described Mr A in its suitability report as a 'technical consultant' as was recorded on the fact find, which is not entirely the same thing as it now says a 'pensions technical consultant'. Whilst Mr A did have a financial services background, a full reading of the online profile suggests that he only began his specific role in workplace pensions in 2018. But either way I accept his evidence that these weren't DB schemes. His employer didn't actually administer DB schemes: even its own DB scheme was run by a third-party administrator.

It's likely that the prospect of a transfer was highlighted to Mr A because of people he came into contact with through his role. And he didn't have a free choice about whether to take advice as he was required by legislation to do so. However, I can't safely conclude in this case that he had enough expertise to already understand what he was doing before speaking to PensionHelp. He was just as entitled as the next person to receive suitable advice. He also wasn't required to take the ongoing advice he was getting from the referring adviser; and if – as stated – he was confident that he could make investments to grow the pension pot significantly himself, I don't think he would have needed to take that advice or use the services of a discretionary manager.

Flexibility and income needs

It appears that Mr A's concerns about redundancy were, understandably, prompting him to consider taking steps that maximised the options he had with his pension fund. However, he already had an important option under the DB scheme: the ability to take his pension from age 50. Those benefits would be reduced for early payment, but PensionHelp didn't do enough in my view to prevent this being viewed as a penalty rather than largely just reflecting the fact that they would be paid for ten years longer than if Mr A retired at the scheme retirement age.

In the event Mr A was made redundant, an immediate early retirement pension from the DB scheme would have provided a useful top up to the income they [he and Mrs A] were discussing earning on a part-time basis. In effect, it would already give them some of the flexibility they might need. That level of income could be increased by deferring the age at which it was brought into payment. Although the right to retire this early was preserved by the 'buddy transfer', employers sometimes enhance early retirement pensions in the event of redundancy – and any potential for that would have been lost by transferring.

That's about as much as I can say about Mr A's plans for taking an income, as these weren't at all concrete: they were contingent on things such as redundancy that might not happen. His CMC says that the prospect of retiring at 50 was purely an aspiration and I agree. The word 'potentially' was used several times in the referring adviser's note regarding Mr A's income and tax-free cash plans. Mr A couldn't know that he would actually be made redundant, and if he wasn't he might have remained at the same employer for years to come, with no particular need to think about more flexible income options.

The transfer analysis included basic cashflow modelling for how long a drawdown pot might sustain the DB scheme income. To my mind this downplayed the risks of drawdown because it gave the impression the strategy was bound to succeed (as Mr A's view of life expectancy was likely not as high as ages 110 or 120). It didn't include any indication of the impact a downturn in the markets might have, or the resulting risk of these worser case scenarios meaning he ran out of income. In any event, the projected illustrations for the pension transfer on Mr A's file are not based on income drawdown at all: they assume income being taken as an annuity from either 50, 55 or 60. I think this underlines that it was simply too premature to be making a life-changing decision based on potential and aspirational aims.

I've also considered the possibility that Mr A would want to access just the tax-free cash from his pension, which he had the right to do five years before most people can from the minimum pension age of 55. But again I don't think any plans were concrete here: reference was made only to the possibility he might pay off his mortgage or buy another property. Mr and Mrs A weren't in particular financial difficulty with their mortgage unless perhaps he was made redundant or developed firmer plans, as time went on, to reduce his working hours. Interest rates were at an historic low at the time of the advice, so I don't consider the case for making a pension transfer five years before Mr A could even access this sum has been demonstrated.

I know the Investigator suggested that Mr A withdrawing the tax-free cash as soon as he could in 2021 was evidence of him fulfilling a plan that he had all along. But, having been advised to transfer for the flexibility of this option, I'm not surprised that Mr A went on to do this. It doesn't to my mind say much about whether that was in fact the right advice. The CMC has pointed out that Mr A didn't use much of this sum and that's consistent with his mortgage being under control at the time. I could equally point out that Mr A hasn't gone on to take any income from the SIPP as suggesting that he hasn't utilised the flexibility of accessing some income – for instance if Mr A was made redundant. But there was no need to make a decision to transfer to do that about five years beforehand, and accept the possibility of significant investment losses in the meantime.

The referring firm's note said that the level of income from the DB pension wasn't sufficient for Mr A's needs. So in my view, the income level (which would increase with inflation) was best maximised by remaining in the scheme until and unless there was an overriding need to access benefits in a different form. I've seen no evidence that such a moment would by now have arrived or is likely to arrive.

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. I can see that the lump sum death benefits on offer through a personal pension were attractive to Mr A. But a pension is primarily designed to provide income in retirement. So, even if Mr A might have thought it was a good idea to transfer his DB scheme to the SIPP because of this, the priority for PensionHelp was to advise him about the most suitable way of providing retirement income for him (and Mrs A) whilst he remained alive.

I don't think PensionHelp did enough here to explore to what extent Mr A was prepared to accept a lower retirement income in exchange for higher death benefits – and more importantly to explain the risks he was accepting. I've already highlighted above that the basic cashflow modelling undertaken didn't highlight that there could be worse case scenarios where Mr A potentially ran out of income during his own lifetime.

According to the notes the referring adviser made, Mr A didn't just think the DB scheme income was insufficient for his dependants. He also thought it was insufficient for his own needs, meaning I think it should have been PensionHelp's priority to ensure that Mr A wasn't put in a position where he could have ended up with less income than the DB scheme before his dependants were even considered. Notably this is also at odds with PensionHelp's belief that state pension levels were sufficient for Mr and Mrs A in retirement.

The spouse's pension on death after retirement from the DB scheme (when statistically, Mr A was most likely to pass away) was 67% of the pension he would have been entitled to take before commutation of tax-free cash, with annual increases added up to the date of death. This makes the benefit very generous indeed – such that even in the event of his early demise his wife would be able to make significant provision for their children from it.

I don't think PensionHelp made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. Furthermore, the suitability report correctly said *"The scheme rules allow for the provision of a children's pension however the child must be under age 18 or under age 23 and in full time education. The subsequent pension would stop at age 23 or when the child leaves full time education whichever is earlier."*

I accept that a beneficiary's pension under drawdown wouldn't be taxable if Mr A died before age 75, whereas any spouse's DB pension would be subject to Mrs A's marginal rate of income tax. However a potentially higher pension that was then taxed could be seen as preferable to having to accept the risk of Mr A's beneficiaries ending up with lower benefits if he died later in retirement. Indeed if he died after age 75, which was most likely, there would be no difference in terms of taxation. So I'm not persuaded that there were sufficient grounds here to persuade Mr A to relinquish these potentially valuable benefits.

If Mr A genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think PensionHelp should have instead explored life insurance, so that Mr A could compare the costs and risks. Whatever remained of his pension was likely to be relatively small compared with the initial transfer value by the time he died, and inexpensive to provide through an insurance policy given that he was in good health. In any event, the very generous spouse's pension from the DB scheme would likely prove more valuable because it would be paid for Mrs A's remaining lifetime.

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 A. But PensionHelp wasn't there to just transact what Mr A might have thought he wanted. The adviser's role was to really understand what Mr A needed and recommend what was in his best interests. If PensionHelp had conducted a full meeting with Mr A rather than relying on fact-finding and notes completed by the referring adviser, I think it's more likely it would have established this.

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 likely to obtain lower benefits for the rest of his and/or Mrs A's life with the attitude to risk he held. In my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr A shouldn't have been advised to transfer out of the scheme just to access a potential lump sum in future when his mortgage was affordable, or to give the possibility of drawing income that he didn't yet need. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

Suitability of investments

PensionHelp recommended that Mr A invest in funds which appear to have only been a holding position before the referring adviser went on to give further investment advice. So I haven't considered these in any detail. 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 PensionHelp or the referring adviser recommended wouldn't have arisen if suitable advice had been given.

If given suitable advice, would Mr A have acted insistently?

Of course, I have to consider whether Mr A would've gone ahead anyway, against PensionHelp's advice not to transfer. PensionHelp argues that this is the case, saying that Mr A was convinced of the case of transferring when the transfer value was particularly high and was confident he could grow the pension pot further. But Mr A says that the scheme wouldn't have permitted a transfer to be made on an insistent client basis.

Firstly I should say I think Mr A is mistaken here. Under the Pension Schemes Act 2015, the DB scheme only had to check that Mr A had received advice from an appropriately regulated firm; not what that advice was. If it had refused to release Mr A's funds because of the nature of the advice, that would have run contrary to the law. But I don't think matters would have come to this in any event: I'm not persuaded that Mr A would've insisted on transferring out of the DB scheme, against PensionHelp's advice.

I say this because Mr A was not, contrary to what PensionHelp suggests, experienced in how DB schemes work and what value to place on the benefits he would have been giving up. Yes, transfer values had got to a historical high because of how low interest rates were, but that simply meant that the cost of providing the pension with guarantees outside the DB scheme had also increased.

Although I accept Mr A would have been more familiar than many consumers with the concept of investing the transferred funds on a defined contribution basis, his subsequent actions have shown that he's still reliant on advice and is happier to delegate investment decisions to others. From what I can see, in 2017 he wanted to take at most a medium risk approach with this pot once transferred, and would still have been concerned by moderate falls in value.

Whilst it's fortunate that the pot has benefited from good investment returns, Mr A couldn't know at the time that this was certain to be the outcome. And as I've said above, PensionHelp should have explained clearly to Mr A why the objectives of flexibility and potentially better death benefits shouldn't override the importance of protecting his main source of income in future retirement. So, if the advice which he was reliant on from PensionHelp wasn't in favour of transferring, I'm not satisfied that Mr A would have had the appetite to proceed against its advice.

Even if Mr A had some concerns about redundancy, he wasn't losing any options by leaving his pension in the DB scheme: he could still transfer at a later date. I note that a partial transfer was even available from the scheme, which may have remained a relevant option later if redundancy took place closer to age 55 (as it wouldn't have preserved the protected retirement age). Lastly, it's apparent that Mr A wasn't closely connected with the 'buddy' he was transferring with – so it would have been a matter for PensionHelp to address and not Mr A, if he chose not to transfer and this affected the position of a colleague.

If PensionHelp had explained that Mr A could meet all of his objectives, or leave enough options open, without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr A would have insisted on transferring out of the DB scheme. Pareto Financial Planning Limited (as PensionHelp's principal) should compensate Mr A for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

PensionHelp argues that Mr A should be demonstrating his preference for a guaranteed income now by purchasing an annuity, and his failure to do shows that the complaint is vexatious. I disagree. Mr A is still working for his original employer and evidently not in need of a guaranteed income stream at this time. Whether he buys one in future is a matter for him to decide, in light of the changed position he is now in as a result of a transfer I don't consider should have taken place. Ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

Potential responsibility the referring adviser may have for any losses

I don't know if Pareto Financial Planning Limited will consider that the referring adviser's firm has also separately caused some of Mr A's loss, but it's possible that it might think so. For the avoidance of doubt, in these circumstances I think it fair to make an award for the whole loss against Pareto Financial Planning Limited.

PensionHelp shouldn't have recommended Mr A transfer out of his DB scheme. And it was only as a result of PensionHelp's involvement that Mr A transferred to the SIPP. PensionHelp's role was pivotal, since the eventual investments were fully reliant on the funds being transferred first. If that hadn't happened, Mr A couldn't have invested as he did. So, in my view, the entirety of Mr A's loss stems from PensionHelp's unsuitable advice to transfer away from his DB scheme.

The FCA has also made it clear that in order to give suitable advice on a transfer or switch of pension benefits, the advice has to include the suitability of the underlying investments. Should Pareto Financial Planning Limited now consider that there are any aspects of the referring firm's investment recommendations it wouldn't have agreed with, it wasn't prevented from establishing this at the time and explaining to Mr A that it would affect the suitability of its advice. PensionHelp needed to do enough to ensure that the two firms worked together to give suitable pension transfer advice to Mr A.

So, for these reasons, I think holding Pareto Financial Planning Limited responsible for the whole of the loss represents fair compensation in this case.

Responses to the Provisional Decision

Mr A accepted the Provisional Decision. Pareto did not. I've considered everything that it said. In summary, it made the following main points:

Mr A's background

- No reasonable person would consider that Mr A is not a professional pension technical expert and it was equally clear that he knew exactly what he wanted to do.
- I had dismissed his professional LinkedIn profile using the misleading term 'social media' when it's an accurate reflection of his role and expertise. That involved advising FTSE 100 companies who would surely be in the process of restructuring their DB schemes and therefore required someone with that knowledge.
- His CMC has avoided any mention of what Mr A's job actually involves, and has covered up his expertise in a *"deliberate, ridiculous and obvious way"*.
- *"There is no way that a…specialist in Workplace Pensions would be unaware of how money purchase funds convert into income at the end of the journey…".*
- I should name Mr A's employer in my decision so that it is aware of his professed ignorance of DB pensions.

The situation at Mr A's employer

- Members of the DB scheme had been in the privileged position of obtaining unlimited recalculations of their transfer value, during a period where they were rising to historically high levels. The employer then limited them to one further value for the next 12 months.

Suitability of the transfer

- PensionHelp's assessment of Mr A's attitude to risk has been ignored and claims that he was risk averse are false.
- *"[D]uring discussions Pareto have been involved in with our trade-body and the FCA, we were advised of FCA's confidence that the Ombudsman approach would be consistent with their approach on DB transfer advice. This provisional decision also seems to be out of touch with the FCA causation training that we have seen. We therefore request that you reconsider you view on this."*
- This service had not used the FCA's Defined Benefit Advice Assessment Tool (DBAAT), which is the 'tried and tested' industry tool to give consistency of reviewing defined benefit advice. Pareto invited the comments of a skilled person on the FCA panel for reviewing such advice, who considered PensionHelp's advice to have been suitable.

Causation

- In terms of causation, Mr A explicitly said to this service that he had a clear idea of what he wanted to do, and I had simply dismissed this. The SIPP has 'met every aspect' of what Mr A was looking to achieve.

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.

Having considered what Pareto said, I haven't been persuaded to depart from my provisional findings. Before I explain why, I should state that some of Pareto's remarks were generalised comments about how members of the same DB scheme as Mr A presented as confident investors; frustrated at being required by law to pay for advice at the time PensionHelp advised Mr A. I think this is of no more value in deciding, on the facts of this case, how Mr A presented to PensionHelp than – as Pareto also notes – the CMC's references to widespread mis-selling of pension transfers out of this DB scheme. It's the evidence specific to this complaint that I must consider, and I have done that.

Pareto also said that Mr A cancelled the ongoing advice charge after transferring and managed his own funds. That is not the case and I set out in the background to this case what further fund switches were made whilst an ongoing charge was being collected, including the use of a model portfolio (which is largely the opposite of Mr A managing his own funds).

The ongoing advice charge was always going to go to the firm who referred Mr A to PensionHelp, and the transaction statements for his SIPP provider show that they continued to be collected after Mr A moved to that firm. I'm unable to comment on whether that new firm gave Mr A advice when he later took tax-free cash out of the plan. But I've said in the Provisional Decision that this represented Mr A making use of the flexibility on the basis of which the plan had been sold to him by PensionHelp. I have nothing to add on that point.

Turning to those points Pareto made which I summarised above, in terms of Mr A's background I considered and referred in my Provisional Decision to the evidence which was available. This included Mr A's LinkedIn profile, because PensionHelp had already extracted information from that and highlighted it to this service. I'm not going to debate whether this technically comes under the umbrella of social media or not. But I'd like to assure Pareto that I took the information displayed on that site into account.

This was information that was likely to be visible to Mr A's employer (or other employees at that company) – and, whilst that isn't in and of itself a guarantee of its accuracy, it's likely a fair reflection of the type of work Mr A was doing. However, I also weighed this up against Mr A's submissions (made by his CMC) on this point. I took into account all the evidence, as I'm required to do. And I don't think there is much in Pareto's suggestion that the CMC has painted a picture of a completely different role to that displayed online. The nature of Mr A's role as described is open to interpretation, and where there is ambiguity Pareto and the CMC have provided differing explanations.

Pareto's view seems to be that Mr A is an expert in all matters relating to pensions (taken in its broadest meaning). It also refers in its suitability report to Mr A being an *"experienced financial professional".* However it does concede that, specifically, Mr A claims to be a specialist in workplace pensions. As I noted in my Provisional Decision, Mr A's employer is well-known in the field of DC pension schemes. However I've looked further into what Mr A, through his CMC, has told us – and how this compares to his online profile.

Mr A was candid in saying that he 'had more knowledge than most', but I agree the point he's made that he paid for advice (which wasn't a legal requirement) on the *ongoing* management of his funds, is relevant. This was in the field of DC pensions, which judging by his online profile was the main thing he came across in his day-to-day work consulting on workplace pensions. Not only are the vast majority of workplace pensions these days established on a DC basis, Mr A specifically explains that he had expertise in the administration of this type of scheme. That's supported by his online profile, which names three specific types of pension scheme that are all marketed by his employer on a DC basis.

Mr A says that his day to day role was in the technical processes that underpin how the DC scheme operates. His online profile suggests that he had a wide role covering all matters relating to corporate pensions, particularly covering the impact of legislation and the delivery of projects – in other words, crossing into the management/IT side. It wasn't specialised, for example, in actuarial work or the provision of the sort of advice Mr A received from

PensionHelp. That's consistent in my view with why he would be paying for ongoing advice from the adviser who referred him to PensionHelp.

In my view, Pareto hasn't established an argument that Mr A would plausibly have known enough to advise himself on the even more complex area of pensions which concerns the value in a DB pension arrangement and the transfer of risk involved in replicating this in a DC environment. (That is, of course, ignoring the fact that he was in any event required by law to take professional advice on these matters.) Its point that Mr A being familiar with the decumulation process – taking an income from DC pensions – doesn't speak much to his understanding of all these risks and the prospects of him benefiting from a DB transfer.

I don't find the CMC's suggestion implausible that Mr A would have valued – and relied on – the advice from PensionHelp that he was required to seek. I'm not disagreeing with Pareto, to the extent that even with a role in DC schemes Mr A would have come across and understood a fair bit about DB schemes as well – for instance because he was coming into contact with FTSE-100 companies that were also likely to have those schemes. But Pareto has also made the suggestion that *anyone* in a DB scheme would have an understanding of how it worked. If that's the wider point it's making then I think that, also, falls a long way short of establishing that Mr A had the requisite knowledge to not be reliant on PensionHelp's advice.

There is a reason why, for example, the actuarial profession requires professional qualifications; or why the FCA at the time of Mr A's transfer required those giving DB transfer advice to hold the 'customer-dealing' function (CF30) and 'pension transfer specialist' status (or for the advice to be checked by someone who did). We wouldn't name a complainant's employer in an anonymised decision, for obvious reasons. However I'm satisfied there's enough evidence in this case to demonstrate that Mr A didn't possess the depth of analysis that he was entitled to expect from PensionHelp.

That was the very essence of why the adviser was required to have regulatory approval, and qualifications, that Mr A didn't have. I see no basis for short-circuiting the process through which Mr A should have been given suitable advice by PensionHelp and then deciding, on a fair and reasonable basis, whether he would have followed that suitable advice once given.

Regarding the suitability of the advice, I've checked the CMC's letter of claim and our complaint form and I've found no claim that Mr A was risk averse. They focus on the inconsistencies in PensionHelp's risk questioning process as well as its implausibly high assessment of his capacity for loss, both of which I agreed with in my Provisional Decision.

Pareto hasn't made specific reference to what comments of the regulator or its trade body it considers my decision is inconsistent with. I am of course aware of the FCA's DBAAT tool, which is designed to help establish and guide users as to whether DB transfer advice was suitable in a specific case. Again, it hasn't provided results of the DBAAT tool in this particular case, but I don't need to see these to make the point that the outputs from a tool like this are largely dependent on what is input, and/or if the reviewer accepts the answer they're being guided to.

I'm considering this advice independently and I'm not bound by what another skilled person thought of PensionHelp's advice. As set out at the beginning of the decision I've taken into account COBS 9 and COBS 19 as well as the Principles, FCA rules and guidance and good industry practice. Having done so, I haven't been able to fairly conclude that Mr A could have been suitably advised to transfer his pension.

This doesn't mean I applied different considerations to the regulator. However it is my weighing up, as ombudsman, of the priority PensionHelp should have afforded to the guaranteed, risk-free and increasing income Mr A was already entitled to from the DB scheme. And the fact that there were no compelling reasons to make a transfer in the face of this at the time of advice. I note that much of Pareto's response focused on Mr A's professional background and the situation at his employer - but it has not engaged on the points I made that Mr A couldn't yet access funds from this pension or for that matter need an income; his mortgage was affordable in an environment of low interest rates; and he was entitled to generous death benefits from the DB scheme when they were most likely to be payable – after his retirement.

Finally, to return to Pareto's closing point about causation, I haven't denied that Mr A did approach PensionHelp with a seemingly clear idea of what he wanted to do. But PensionHelp's role wasn't simply to take orders from Mr A. That doesn't of itself show that he would then have ignored the suitable advice he should have received. Rather than dismissing this point, I've explained in the Provisional Decision and in this Final Decision that Mr A didn't have the skill and experience to conclude that a transfer *was* in his best interests, particularly in the face of advice he should have received that it was not.

The information about the prevailing situation at Mr A's employer is of course relevant, but I had already allowed for the potential for 'group think' in my Provisional Decision. That is, other people at Mr A's employer – including the person he says referred him to PensionHelp – encouraging him (by their own actions) to also transfer. But that makes no difference to the quality of advice he expected to, and was entitled to, receive – and gives all the more reason for PensionHelp to caution him against following the seemingly high transfer value to his ultimate detriment. Overall I'm persuaded that Mr A would have acted reasonably, and ultimately in his best interests, in response to Pareto's advice not to transfer his pension. And so he wouldn't have transferred.

Putting things right

A fair and reasonable outcome would be for Pareto Financial Planning Limited 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.

Pareto Financial Planning Limited 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, the calculation will need to involve proportioning-out the further contributions Mr A made to his SIPP, and part of the tax-free cash withdrawn, in line with established practice in the industrywide Pensions Review. And Mr A has not yet retired, and he has no plans to do so at present. So, compensation should be based on the DB scheme's normal retirement age of 60, as per the usual assumptions in the FCA's guidance. The regulator's methodology will give credit for the portion of the tax-free cash Mr A has already taken from his SIPP that relates to the DB transfer.

This calculation must 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, Pareto Financial Planning Limited must:

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

  - the 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 the redress prudently is to use it to augment the SIPP
- 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 Pareto Financial Planning Limited's offer to calculate how much of the 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 the 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, Pareto Financial Planning Limited 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.

My final decision

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.

<u>Determination and money award:</u> I uphold this complaint and require Pareto Financial Planning Limited Limited to pay Mr A the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Pareto Financial Planning Limited pays Mr A the balance.

If Mr A accepts my final decision, the money award becomes binding on Pareto Financial Planning Limited. My recommendation would not be binding. Further, it's unlikely that Mr A can accept my final 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 this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 November 2023.

Gideon Moore
Ombudsman