DRN-4459161

The complaint

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

What happened

Mr C met with Pi in August 2018 to discuss his financial and pension requirements. Pi completed a fact-find to gather information about Mr C's circumstances and objectives. It noted the following:

- Mr C was aged 55 and married with no dependent children. Mrs C was aged 50.
- Mr C was self-employed with a gross annual income of £24,000. No employment information was noted for Mrs C.
- Mr C's monthly outgoings were noted as £1,600. It was also noted that he had no surplus income left each month.
- Mr C owned no property and had no savings or investments save for £500 in his current account. It was noted that Mr C had no previous knowledge or experience with investments.
- Mr C had £12,000 in outstanding credit card debt which it was noted he intended to clear by the end of the year.
- Aside from his DB scheme, Mr C had no other occupational or personal pensions.
- His DB scheme had a normal retirement date ('NRD') of age 60.
- Further, Pi noted that Mr C was not in the best of health. It recorded that, as a consequence, he wanted to take a lump sum from his pension to purchase a property in a cheaper locality. Mr C also said he didn't expect to afford to ever fully retire.
- Both Mr and Mrs C expected to receive the full state pension at age 67.
- Pi also recorded that Mr C was unlikely to be accepted for life cover because of his medical history.
- The form also included a section where Mr C circled numbers one to five signalling whether he definitely or did not agree with a number of statements relating to his investment views and goals.

Pi also carried out an assessment of Mr C's attitude to risk ('ATR'), producing a report a few days after their first meeting. Pi assessed Mr C's ATR as 'high medium' or six on a scale of one to ten. Mr C signed the ATR report in mid-September 2018.

Pi contacted Mr C's DB scheme for information. The information provided by the scheme administrator showed that Mr C had 8 years 10 months of pensionable service in the scheme and that the total cash equivalent transfer value ('CETV') for Mr C's scheme benefits was £143,596. The information also showed that at the date Mr C left the DB scheme on 27 November 1998, Mr C was entitled to a total annual pension at the scheme's NRD of £5,359.69. Pi also enquired about Mr C taking immediate retirement from the scheme and was told he would be entitled to an annual pension of £6,064.14 or tax-free cash ('TFC') of £27,192.89 and a reduced pension of £4,078.93.

On 4 September 2018, Pi produced a transfer value report ('TVC') which stated Mr C's DB scheme was estimated to provide him with an annual pension at age 60 of £9,266 or TFC of £40,770 and a reduced pension of £6,115. At age 67 the figures were £16,185 or £68,244 and £10,236 respectively.

On 5 September 2018, Pi issued Mr C with a suitability report in which it advised him to transfer his DB scheme pension benefits into a personal pension plan. The suitability report said the reasons for this recommendation were, in summary:

- Mr C wanted to withdraw the TFC immediately to purchase a house for himself and his wife as he currently rented his home.
- Mr C wanted flexibility around income withdrawals from his pension in the future because he would need to meet his mortgage repayments.
- He wanted to phase his retirement from age 67.
- Mr C wanted to leave his remaining pension fund to his wife in the event of his death as, due to his health issues, he was unable to arrange life cover.
- He wanted to break ties with his (former) employer and preferred to move his funds to a plan that was under his control.

In contrast to the fact-find, the suitability report stated that Mr C had a net monthly income of £2,033 with monthly outgoings of £440 leaving him with a monthly disposable income of £1,593. It also stated that Mr C intended to partially retire at age 67 and would like a monthly income in retirement of £600. And it mentioned that Mr C was intending to clear his outstanding credit card balance with money he expected to receive from three ongoing personal injury claims. Pi also noted in the report that Mr C's capacity for loss was 10% of the CETV.

Mr C signed the necessary application and discharge forms on 14 September 2018 and the transfer proceeded in October 2018. The amount transferred was £143,596 and Pi charged Mr C, £4,307.88 for the advice plus £750 for producing the TVC and an annual advice charge of 1% of the total fund value. In addition, the pension provider also made service and fund charges against the fund.

In February 2023 Mr C, through his representative, complained to Pi about the suitability of the transfer advice he had received. He said Pi had induced him into transferring his DB scheme and had told him that he would make more money by doing so than his DB scheme would provide him with. Mr C said Pi had breached the duty of care it owed him and had been negligent. Specifically he said that his low salary indicated he wasn't someone for whom a personal pension was suitable and he said he and his wife were dependent on his DB scheme in retirement. Mr C also said that his age and close proximity to retirement also made the transfer unsuitable because there was little time for any losses sustained to be recouped. Finally, Mr C said he was an inexperienced investor, that Pi had failed to correctly assess his ATR, that he had no capacity for loss and had lost a significant amount of money as a result of the transfer.

Pi looked into Mr C's complaint but didn't think that it had done anything wrong. It said that Mr C had bought a property for £116,000 and which had increased in value since purchase by between 18% and 30%. Pi also said that Mr C had withdrawn £151,399 from his pension to help purchase his property and repay the mortgage. It said there was still a mortgage on the property and Mr C was using his pension to make the repayments. Pi said Mr C's pension now had a value of £8,026.64.

Pi said that the risks of transferring had been fully disclosed to Mr C, it had found no evidence of Mr C suffering a financial loss, its advice had been in his best interests and it meant he had achieved his objectives of purchasing a home and providing greater security for his wife. Pi went on to say that it had provided Mr C with suitable advice and provided him with clear information so he could make an informed decision.

Unhappy with the outcome of his complaint to Pi, Mr C complained to this service, Our Investigator looked into the complaint and recommended that it was upheld. He thought that the transfer wasn't financially viable and that Pi had failed to highlight the advantages of the death benefits offered by the DB scheme. And our Investigator thought that Pi hadn't done enough to explore other ways that Mr C could have achieved his objectives. Overall our Investigator thought Pi's recommendation to Mr C that he transfer his DB scheme was unsuitable so he recommended that Mr C be compensated in line with the regulator's (the Financial Conduct Authority – 'FCA') guidance.

Pi replied to our Investigator and asked for the complaint to be passed to an Ombudsman. In reply to our Investigator's findings it said: -

- An important objective for Mr C had been to give his wife security in the form of a home which was something remaining in the DB scheme would not have achieved. He favoured providing her with a home over her receiving a spouse's pension of just £2,679.84, and he favoured providing her with being able to benefit from the full value of his pension in the event of his death.
- It had followed the regulator's guidance when providing Mr C with advice.
- Mr C understood the risks involved and prioritised purchasing a home.
- If Mr C had not received advice from Pi he would have sought it elsewhere in pursuit of his goals.
- The purpose of the transfer was to secure a property and move away from soaring rental costs.
- Mr C had assets – £60,000 saved in one account and £8,500 in another.
- It had made him aware of the risks associated with the transfer and he been provided with sufficient information to make an informed decision.
- It disagreed that Mr C was in a worse position as a result of the transfer.

Our Investigator thought about what Pi had said but wasn't persuaded to change his mind so the complaint was passed to me for a 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

What follows 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 Pi's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pi should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Pi carried out a transfer value analysis report (the TVC - as required by the regulator) showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

Mr C was 55 at the time of the advice and said he never expected to be able to fully retire. He is now aged 61 and says that he is planning to retire at his state retirement age of 67. The TVC stated that the annual investment return/critical yield Mr C's personal pension plan would need to attain to match the benefits of his DB scheme at age 60 was 24.64% if he took a full pension, or 17.97% if he took TFC and a reduced pension. Retiring at age 67, the critical yields were 12.89% and 10.38% respectively. For further comparison the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's high-medium attitude to risk and also the term to retirement. In order to achieve benefits that were better than those offered by the DB scheme he was giving up, Mr C's personal pension fund had to provide a greater annual return than (at best) 10.38% each year.

There would be little point in Mr C 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 discount rate for taking retirement at age 67 was 3.9%, I think Mr C 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 his attitude to risk as assessed by Pi. Indeed I can see from the suitability report that Pi accepted that unless the annual investment returns Mr C's pension fund achieved exceeded the critical yield (of 10.38%) *"your eventual income is likely to be less than that which could have been available via the defined benefits scheme".*

Pi assessed Mr C's ATR to be six on a scale of one to ten but I'm unable to agree with that assessment. There is nothing in the fact-find to support the conclusion that Mr C was an individual whose ATR was bordering on aggressive. I would expect someone whose ATR is assessed at a level six to be able to display some evidence of previous investment experience however, there is no evidence that Mr C had any investment experience; indeed he had no savings (aside from £500 in his current account) or investments at all. So there was nothing in his profile that, in my view, could lead to the conclusion that Mr C, someone with no experience of investing in the stock market, should reasonably be classified as someone whose ATR was bordering on aggressive and who was willing to take the investment risks necessary to achieve the returns needed so that his personal pension fund grew to a point that it was able to match his DB scheme benefits. I'm of the view that Mr C's ATR, given his personal circumstances at the time, should more reasonably have been assessed as no more than low-medium.

And whilst Pi has said it made sure that Mr C understood the risks involved in the investment he was making, transparency on the part of Pi is not the same as suitability. I think that it's unlikely that someone with a low-medium ATR would, if it was fully explained to them, be willing to take the investment risks necessary to achieve an annual investment return in excess of 10.38% just to match the scheme benefits being given up. In any event, there would be little advantage to giving up the guarantees associated with a DB scheme just to be able to match – not even exceed – the benefits being given up.

Nor do I think that the length of time Mr C had to go to retirement means his capacity for loss was significant. The fact find documents that Mr C had no savings at the time of the advice although I have seen subsequent reference by Pi to Mr C having £68,500 in savings – although if that were the case, why it didn't form part of Pi's investment planning is, at best, puzzling. Pi has contended that Mr C's overriding objective was to purchase a property and needed access to the TFC from his pension to achieve it. But if he had £68,500 in savings it is difficult to understand why this wasn't documented on the fact-find (or mentioned in the suitability report) and why the savings were omitted from the financial planning process in assisting Mr C with achieving his main objective.

Mr C was living in rented accommodation and, according to Pi's own information gathering at the time of the advice, had only £500 in the bank. Mr C was also of the view he would never be able to afford to give up work completely. So I am unable to agree with Pi's assessment that Mr C had the capacity to lose 10% of his transferred pension fund (which equates to approximately £14,000). The income he was forecast to receive at retirement from the scheme (if he remained) is, I think, one he didn't have the capacity to lose. Nor can it be assumed that just because Mr C never saw himself retiring that he could afford to 'gamble' by transferring his DB scheme.

So given the critical yield was 10.38%, that Mr C's ATR should more reasonably have been assessed at no more than low-medium and that the regulator's middle projection rate was 5%, I think Mr C was likely to receive benefits of a lower overall value than from his DB scheme at retirement, as a result.

I've also considered Pi's cash flow models which it said it produced in order to provide projections on how Mr C's pension plan could be used (in conjunction with his state pension) to help fund his income requirements in retirement. Pi's models show that if returns were only in line with inflation or there was poor performance for a couple of years, Mr C's financial assets would actually be lower in the long-term than if he had kept his DB pension and that his benefits could run out by age 82.

This is in contrast to Mr C's DB scheme which would have provided him at the scheme's normal retirement date (NRD) of age 60 with an annual pension of £9,266 or TFC of £40,770 and a reduced pension of £6,115. At age 67, the DB scheme benefits were forecast to provide a full pension of £16,165 per year or TFC of £68,244 and a reduced annual pension of £10,236. The DB scheme was a risk-fee indexed linked scheme which was guaranteed for life, unlike Mr C's personal pension plan which was forecast to run out by age 82. The DB scheme was Mr C's only pension plan, aside from his state pension, so he was highly reliant on it for his retirement

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

For this reason alone a transfer out of the DB scheme wasn't in Mr C's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Pi has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

Mr C said he wanted Mr C wanted the flexibility to withdraw the TFC from his pension immediately to purchase a house for himself and his wife as he currently rented his home. He also said that he wanted flexibility around income withdrawals from his pension in the future because he would need to meet his mortgage repayments.

Pi noted that Mr C's monthly income was £2,053 and that his outgoings were £440. The suitability report states that Mr C has a monthly disposable income of £1,593. But I can see no evidence that information was gathered about Mr C's monthly outgoings nor is there any mention of whether Mrs C worked and earned an income. So whilst Pi has said that Mr C was finding his rent unaffordable and that he wanted to move away from soaring rental costs there is no evidence that this was the case and thus no analysis of whether the only way to achieve Mr C's objective of buying his own home was to transfer his DB scheme to a personal pension.

Similarly there was no analysis undertaken in to how much Mr C needed to purchase a property (it has only subsequently come to light that Mr C purchased a house for £116,000) or any insight into possible alternative means for him achieving his objective. Mr C told Pi he intended to keep working at least until he reached age 67 which meant at the time of the advice he had just under 12 years of work (and possibly more) until he retired. But I can't see that Pi looked into whether Mr C could obtain a mortgage and, if so, how much it would cost him per month, whether he could afford it and how he might raise any deposit. So I don't think Pi had due regard to Mr C's information needs. He wasn't given all the information he needed to make an informed decision.

I accept that based on the information Pi collected on Mr C at the time of the advice he didn't appear to have any savings which could be used as a deposit and I accept he had credit card debt of £12,000. But it was known that Mr C intended to clear the credit card debt by the end of the year. And, as I have said previously, Pi failed to properly assess Mr C's then monthly outgoings – indeed it recorded on the fact-find he spent all his income each month but then on the suitability report stated he had over £1,500 spare. If Mr C did have over £1,500 left over from his net monthly take home pay it would have been possible for him to save for a deposit. If he really didn't have any money left over every month then I note he was expecting compensation from personal injury claims. Although Mr C said he intended to use this to clear his credit card debt it isn't known how much he was expecting and whether there would have been any surplus to potentially put towards a deposit.

Even if I were to assume that Mr C truly had no access to any spare income or personal injury compensation in order to fund a deposit I don't think he needed to transfer his DB scheme in order to achieve is primary objective of buying a property. I say this because by the time Mr C received the advice from Pi he was of an age to be able to take his DB scheme benefits. And I can see that at age 55 he could have received TFC of just over £27,000 along with an annual indexed linked pension of over £4,000. The TFC could have been put towards the purchase of a property and the pension could potentially have assisted with the mortgage payments, particularly as Mr C intended to keep working.

But by failing to know its client properly, or to provide Mr C with all the information he needed about the options he had, Mr C wasn't able to make a fully informed decision about what was action was best for him to take. So I don't think that Pi acted in Mr C's best interests in this regard. It should have documented and analysed Mr C's monthly outgoings in full, looked into any personal injury compensation he was due, ascertained how much he needed for a deposit and found out if he could get a mortgage and if so for how much, over what term and at what cost. But Pi didn't do any of these things for Mr C.

When he met with Pi, Mr C's stated plan was to move to another, far more affordable, part of the country (which he has now done). I can see that Mr C's job was not tied geographically to any one area and indeed he continues to work at the same occupation. But if Pi had taken steps to know its client fully it should have explored with Mr C whether rental property in the area he wanted to relocate to was more affordable and thus whether the relocation would lead to a reduction in his outgoings such that he could afford to wait to buy a property until he was aged 60 by which time he would be entitled to TFC of £40,770 and a reduced pension of £6,115 from his DB scheme. The relocation may also have given Mr C the opportunity to start saving to buy a house.

According to the information Pi did gather about Mr C, he said he would need a retirement income of £600 per month. As I've said above, if he took benefits from the DB scheme at age 55, he would be entitled to an annual income of just over £4,000 and if he took benefits at age 60 that increased to £6,115. Whilst this would not have met Mr C's retirement needs as noted in the fact-find, Mr C said he intended to continue working until at least state retirement age at which point his retirement income needs would have been comfortably exceeded.

So for these reasons I'm not persuaded that the only means – as Pi has argued – that Mr C could achieve his objective, was by transferring his DB scheme. Nor do I think that Mr C needed flexibility in the way he drew his pension benefits. As I have set out here, I think there were omissions in Pi's information gathering about Mr C that meant it failed to have due regard to his best interests and to treat him fairly. Mr C wasn't provided with sufficient information by Pi to allow him to make a fully informed (and irreversible) decision.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr C. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pi explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married so the spouse's pension provided by the DB scheme would've been useful to his wife if Mr C predeceased her. I don't think Pi made the value of this benefit clear enough to Mr C. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And whilst Pi has argued that Mr C favoured providing Mrs C with being able to benefit from the full value of his pension in the event of his death, the fact is that the intention at the outset was to drawdown a significant sum to purchase a property and to use the remainder to pay towards the mortgage. As Pi itself has told us, there is now only a little over £8,000 left. So it was foreseen at the time of the advice, and so it has been proved, that the fund would be depleted quite significantly quite quickly.

In any event, Pi should not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement. This is further underscored by the fact that the intention at the outset was to deplete the fund to purchase a property and pay the mortgage to the extent that there would be no fund for Mrs C to benefit from upon Mr C's death in any event.

Furthermore, if Mr C genuinely wanted to leave a legacy for his wife, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Pi should've instead explored life insurance. I appreciate that Pi has said that due to Mr C's health issues, it was unable to arrange life cover but I can't see that any attempt was made to do so. A starting point would have been to ask Mr C how much he would like to leave his wife and then to see whether cover was attainable or not and, if so, at what cost. I think that if it was having full regard to Mr C's information needs then the option of life cover should have been explored and not so readily dismissed.

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

Control or concerns over financial stability of the DB scheme

Whilst I've seen that Mr C ticked a box on the DB transfer questionnaire he completed for Pi which said he wanted to break ties with his (former) employer and preferred to move his funds to a plan that was under his control, I can't see that his reasons for doing so were ever ascertained or his assumptions challenged. So I think Mr C's desire for control over his pension benefits was overstated. Mr C was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. So, I don't think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme.

Suitability of investments

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

Summary

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

Ultimately, I don’t think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C 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 C shouldn’t have been advised to transfer out of the scheme to buy a property without first exploring if there were other means of him achieving this objective whilst also retaining his DB scheme. And the potential for higher death benefits – given what Mr C was intending to use his transferred fund for – was never a realistic objective at all. So higher death benefits weren’t worth giving up the guarantees associated with his DB scheme for.

Aside from Mr C’s primary objective, the other objectives identified by Pi to justify the transfer of Mr C’s DB scheme are generic. I’ve seen no evidence that they were of such importance to Mr C, or that the only means of achieving them was through the transfer of his DB scheme, that they can be said to justify that the transfer was in Mr C’s best interests. This is especially the case given that Mr C was likely to be financially worse of – as I’ve explained above – as a result of the transfer. So, on balance, I’ve not been persuaded that Pi has been able to show that the transfer was in Mr C’s best interests, as required by the FCA.

So, I think Pi should’ve advised Mr C to remain in his DB scheme.

Of course, I have to consider whether Mr C would've gone ahead anyway, against Pi’s advice. Pi argues that this is the case, saying that had Mr C not received advice from Pi he would have sought it elsewhere in pursuit of his goals.

I’ve considered this carefully, but I’m not persuaded that Mr C would’ve insisted on transferring out of the DB scheme, against Pi’s advice. I say this because Mr C was an inexperienced investor with a likely low-medium attitude to risk and this pension accounted for all of his retirement provision (aside from his state pension). So, if Pi 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’m not persuaded that Mr C’s concerns about his former employer were so great that he would’ve insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn’t think it was suitable for him or in his best interests. I don’t think Pi interrogated this objective in any meaningful way – it didn’t establish (at the time) why Mr C felt that way, nor did it challenge any preconceived ideas he had on the matter. If Pi had explained that Mr C could meet all of his objectives without risking his guaranteed pension, I think that would’ve carried significant weight. So, I don’t think Mr C would have insisted on transferring out of the DB scheme.

In light of the above, I think Pi should compensate Mr C for the unsuitable advice, in line with the regulator’s rules for calculating redress for non-compliant pension transfer advice.

Putting things right

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

Pi 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 C plans to retire at age 67. So, compensation should be based on him taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with 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 C's acceptance of my view.

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

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - their 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 C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Pi's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C 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 C's end of year tax position.

Redress paid to Mr C 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, Pi 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 C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

My final decision is that I uphold this complaint and require Pi Financial Ltd to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £170,000. If the compensation amount exceeds £170,000, I also recommend that Pi Financial Ltd pays Mr C the balance. If Mr C accepts this decision, the money award becomes binding on Pi Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. So if the compensation amount exceeds £170,000, Mr C 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 C to accept or reject my decision before 10 May 2024.

Claire Woollerson
Ombudsman