

## **The complaint**

Mrs H has complained about the actions of Purely Financial Ltd (trading as Purely Pensions). She says, in brief, that Purely Financial failed to provide a professional advice service in relation to the transfer of her occupational pension scheme.

## **What happened**

Mrs H is resident overseas. She was cold called by a firm (hereafter referred to as “Firm B”) with a view to transferring her UK occupational pension scheme (“Scheme X”). The scheme had two parts: a defined benefit element and a defined contribution element. Firm B had international offices, including in Mrs H’s country of residence, but doesn’t appear to have been authorised to give advice on whether Mrs H should transfer her benefits in Scheme X. Firm B referred Mrs H to Purely Financial in order to get the necessary regulated financial advice. Firm B had already told Mrs H that there was a strong case for transferring and had recommended a self-invested personal pension (“SIPP”) provider for her transferred funds.

Purely Financial advised Mrs H against transferring her pension. It didn’t offer an insistent client process whereby it would have facilitated a transfer despite its advice so, as far as Purely Financial was concerned, that was the end of the matter. It looks like Mrs H subsequently tried to transfer to the SIPP that had been recommended by Firm B but was unable to do so because the SIPP provider had Financial Conduct Authority (FCA) restrictions placed on it and had entered into administration.

Mrs H complained to Purely Financial in February 2023. Her complaint, in brief, is that Purely Financial was complicit in a process that led her to try to transfer her pension to a SIPP managed by a provider that had come under FCA scrutiny and was about to enter into administration. The nature of the SIPP provider’s problems is evidence, in Mrs H’s view, of Purely Financial’s involvement in a scam that she narrowly avoided being a victim of. And as her transfer couldn’t go through, she had to request a new transfer value which was lower than before. She wants compensation for this because, in her view, the fall in transfer value would have been avoided had Purely Financial not tried to facilitate the transfer to that particular SIPP provider. She also wants her advice fee to be refunded and payment to be made in recognition of the distress and inconvenience she went through.

Purely Financial didn’t think it had done anything wrong. It said that its advice was suitable and in line with FCA rules. It pointed out (amongst other things) that it advised against the transfer and didn’t facilitate the transfer on an insistent client basis. Mrs H referred her complaint to us. Our investigator didn’t think Purely Financial had done anything wrong. Mrs H asked for an ombudsman to review her case.

## **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.

My starting point here is the advice Purely Financial gave to Mrs H, which was to not transfer. This was based on the cost of replicating Mrs H’s occupational scheme benefits;

her age which meant there wasn't a pressing need to transfer at that point in time; the adviser and product charges that would follow a transfer; the peace of mind provided by a defined benefit pension and the affordable cost of life cover that would mean she didn't need to transfer in order to pass on a sizeable lump sum on death.

These are generally good reasons to not transfer. Factoring in the starting position that all advisers are expected to adopt, which is to assume a transfer of safeguarded benefits is unsuitable (COBS 19.1.6), then I see no reason to think Purely Financial's advice was unsuitable. I note here that Mrs H also questions why a QROPS wasn't considered but similar considerations would have applied. Giving up guaranteed benefits wasn't deemed a suitable course of action at that time – giving up those guaranteed benefits to transfer to a QROPS doesn't change that.

Mrs H's argument goes further than the suitability of the advice. She says Purely Financial acted in a way that ensured she nevertheless attempted to transfer despite being advised against doing so. She says that Purely Financial attempted to "de facto facilitate" the transfer on behalf of Firm B. She also points to the fact that the problems facing her recommended SIPP provider were of the type that suggested she nearly fell victim to a scam for which Purely Financial is complicit.

In making her argument, Mrs H has referred to a FCA statement on the responsibilities of firms accepting pension transfer referrals from overseas advisers. I note that the statement Mrs H refers to was issued after the events in question so isn't, in itself, of direct relevance. Nevertheless, firms are required to adhere to the FCA's Principles, the most relevant of which in this instance include the following:

- Principle 2 – A firm must conduct its business with due skill, care and diligence;
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;
- Principle 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.

In addition, firms must comply with COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client. This is in addition to specific rules relating to, amongst other things, assessing suitability and pension transfers. So Mrs H's broader point is a valid one: a firm wouldn't have been allowed to act in the way she says Purely Financial has acted. However, I haven't seen any persuasive evidence to support Mrs H's arguments. I'll explain why.

Before it provided its advice, Purely Financial explained to Mrs H that most people were better off not transferring defined benefit pensions. It also told her that it might advise against a transfer and that it would charge the same fee whatever the outcome. So I don't think Mrs H could, reasonably, have considered Purely Financial favoured a particular course of action or that the process was just a formality – whatever she may have previously been told by Firm B. And Purely Financial was unequivocal in advising against the transfer. I don't think Mrs H could, reasonably, have thought otherwise. To illustrate the point, I quote the following from Purely Financial's two advice reports – both of which were emailed direct to Mrs H:

*"Our recommendation to you is to retain your benefits in the [Scheme X] Plan"*

*"You have a valuable guaranteed income through your [Scheme X] Plan that should not be given up without exceptional circumstances"*

*“The main driver behind my recommendation not to transfer at this stage is that, whilst your reasons to transfer are understandable, they are preferences rather than needs. As has been shown, there is no retirement goal or objective that cannot be attained by retaining your scheme at this stage.”*

*“On balance, I do not believe we can clearly demonstrate that the advantages outweigh the disadvantages of transferring your [Scheme X] Plan. Consequently, I have concluded that remaining in your scheme for the time being is suitable for you.”*

In addition, I’m satisfied Purely Financial was clear in saying it wouldn’t help Mrs H go against its advice and that she would have to make her own arrangements if she wanted to do so, as shown by the statement at the end of the two advice reports:

*“After reading and understanding the advice contained within this report, I wish Purely Pensions to sign my transfer declaration confirming they have provided me with independent financial advice for the purposes of section 48 of the Pension Schemes Act 2015. I acknowledge that Purely Pensions do not offer an insistent client service and should I wish to transfer, I will need to make my own arrangements without any assistance from Purely Pensions.”*

Mrs H points to the fact that Purely Financial went on to sign the declaration referred to above to say it had provided advice. She argues this should only have been completed once she insisted on the transfer, after which point she says the FCA insistent client rules would apply – which she says Purely Financial failed to adhere to. But the box asking Purely Financial to sign the section 48 declaration has been ticked. And the insistent client rules wouldn’t have come into play as there’s no evidence Purely Financial acted on Mrs H’s behalf in facilitating the transfer.

Implicit in Mrs H’s comments is the belief that the above process was misleading and designed in such a way to ensure Mrs H transferred. But, as I’ve said before, I don’t think Mrs H could, reasonably, have thought Purely Financial had advised her to transfer. And I don’t think the statement referred to above, or the declaration Purely Financial signed to confirm it had given advice, would have given her reason to conclude otherwise. So I don’t think the process did unfairly lead her to transfer.

It’s also worth noting the context within which the section 48 advice requirement came about. Giving up safeguarded benefits can be a complex matter and often isn’t in someone’s best interests. So to protect those wanting to give up those benefits by transferring, scheme trustees or managers are required to check that the transferring member has taken advice on the matter. The advice doesn’t have to be in favour of a transfer in order for it to proceed. But in those situations, members would at least be transferring from an informed position – that is, transferring despite expert opinion and having been made aware of the downsides of proceeding. That’s what happened here.

Furthermore, Mrs H has argued that she has lost out because her transfer value fell after her first attempt to transfer failed. Logically, this means Mrs H still intends to transfer (or has already managed to do so). Otherwise, there would be no loss to speak of: Mrs H would still be entitled to the benefits promised to her by her occupational scheme. So it follows that Mrs H will always have ended up in the position of having to provide to her scheme trustees a declaration of the type Purely Financial signed. She wouldn’t have been able to transfer otherwise. In the circumstances, it’s difficult to see how Purely Financial has behaved unfairly here in signing the declaration.

It’s true that Mrs H came to Purely Financial with a view to transferring and that she was under the impression from Firm B that it was a good idea to do so. Purely Financial would

have been aware of this. Likewise, Purely Financial would have known the SIPP provider Firm B had recommended. So Purely Financial would have been aware that Mrs H's intentions were already well established by the time it was engaged to give its advice. As such, I think it needed to be particularly careful to make sure its advice was clear and unambiguous to avoid Mrs H "sleepwalking" into the transfer. For the reasons given above, I'm satisfied Mrs H ought reasonably to have known the advice process wasn't a formality and that Purely Financial ultimately advised against the transfer.

I recognise I've been referring to the documentary evidence that's available. I'm aware that this isn't necessarily the whole story. I realise it's *possible* Purely Financial somehow encouraged Mrs H to transfer despite what it said in its written reports. However, I haven't seen any persuasive evidence along these lines. And it's not clear to me what it would have gained from encouraging the transfer given Mrs H agreed upfront to pay an advice fee whatever the outcome of the advice and whatever, ultimately, happened to her pension.

It's also difficult to reconcile the evidence with Mrs H's view that Purely Financial was taking direction from Firm B. If that was the case, it strikes me that it would have been easier for Purely Financial to have recommended the transfer or have facilitated the transaction on an insistent client basis. But it did neither and, as a result, would seem to have acted against the interests of Firm B as Mrs H sees it.

Mrs H says Purely Financial had a duty of care to verify her proposed investments. But there would seem little reason for Purely Financial to advise on Mrs H's investments given its view that she shouldn't even transfer in the first place. Similar considerations would apply to potential SIPP providers; Purely Financial's advice was to not transfer so the choice of receiving scheme became irrelevant. Indeed, Purely Financial is clear that it wasn't making a recommendation or approval when it mentioned the SIPP provider in question, and Mrs H's proposed investments, in its advice reports. I recognise Mrs H has also pointed to what the FCA has said about advisers recommending a transfer despite the client's intentions to invest in unsuitable assets. But as Purely Financial advised against the transfer, the situation isn't analogous to the ones Mrs H is referring to.

Ultimately, it strikes me that the root cause of Mrs H's complaint is the SIPP provider that was recommended to her by Firm B. Her comments suggest to me that she would have been comfortable had she transferred with her original transfer value to a SIPP that hadn't run into difficulties, or to a QROPS. But I don't think it would be fair and reasonable to hold Purely Financial responsible for the problems relating to the SIPP provider. It didn't recommend the transfer and said so clearly. It didn't advise on the SIPP. And I haven't seen anything that persuades me it facilitated Mrs H's transfer.

### **My final decision**

For the reasons given above, I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 March 2024.

Christian Wood  
**Ombudsman**