DRN-4716999

Financial Ombudsman Service

The complaint

Mr C complains that Peter Stewart Associates Limited's (PSA) involvement in his pension arrangements caused him loss.

What happened

In 2016 Mr C held preserved final salary benefits in an occupational pension scheme (OPS), hereafter known as 'OPS A'. The benefits reflected a period of employed service between September 1992 until July 1995.

It is the transfer of funds derived from OPS A into a Qualifying Recognised Overseas Pension Scheme (QROPS) in 2016, and the loss of the OPS benefits, that is complained about here.

It had been agreed by all parties from the start that Mr C never spoke to PSA directly and there was no evidence of any direct contact or attempted direct contact until after the relevant pension transfer was completed. Mr C recalled being informed PSA were engaged and there is no dispute PSA's name and information appears on various documents related to the transfer. I return to the issue of contact between Mr C and PSA below.

Both parties have been represented throughout. Unless specified, I have referred simply to the party for ease of reference, and this includes submissions made by representatives.

<u>Chronology</u>

Mr C was first contacted by Business A (not PSA) and offered a pension review. Someone attended his home, and Mr C says he signed paperwork and met with them a number of times. Mr C was then passed to Business B for a pension review.

In 2016 Mr C was in his early 50s, married and working full-time. Until very recently we understood that Mr C had no plans at the time to retire or move overseas; albeit he recalled discussing that he might move overseas in retirement depending on circumstances and his financial position when the time arrived. The position has changed on this recently and I return to Mr C's intentions below.

A fact-find document in respect of Mr C and his circumstances has been provided to this Service. Although it is date stamped as having been received and scanned (by person(s)) unknown on 4 December 2015, Mr C's signature and a date in February 2016 appears on the last page.

This document is marked as having been completed by Business B. This Service previously indicated that it was likely that the date stamp is the receipt of the fact-find by PSA. This has not been disputed. The fact-find says Business B will only advise on a transfer from Mr C's defined benefit pension scheme.

The fact-find goes on to record Mr C's employment, membership of his current employer's OPS and that he owned a home with a mortgage. Save for his home (valued at £200,000),

his only other assets had a combined total of £12,000 and it's recorded Mr C had no disposable income a month.

The document suggests Mr C's objectives were that he wanted personal control over assets, with flexibility, and to increase his income via investment, and not using a workplace scheme. It also suggests he was concerned about financial instability. It was recorded that he was not expecting any changes to his income or expenditure in the next 12 months. There is no reference to any planned relocation or the likelihood of him moving overseas at any stage.

An attitude to risk questionnaire is included in the fact-find which provides a scale from one to ten. Mr C has been recorded as having 'low medium risk'. This is said to apply to someone who whilst concerned about not getting as much back from their investments as they put in, probably wants to achieve a higher return. Their preferred investments being likely to include a balanced mix, or lower and higher risk investments.

In June 2016 OPS A wrote to Business B to correct earlier information provided on Mr C's guaranteed minimum pension (GMP). Mr C's projected annual pension for his normal retirement date in the summer of 2024 involved the option of £1,889 a year or a lump sum of just over £9,000 with a reduced annual income of around £1,400 a year.

PSA have not referred to, or said they ever communicated with Business B, who ceased to be authorised by the regulator, the Financial Conduct Authority (FCA) in September 2021. Business B did not hold any of the required permissions in respect of pension transfer work. Originally PSA said they were approached and asked to provide services by Business C. Business C was said to have specialism in advising on overseas pensions, including QROPS. Later submissions suggested that PSA were first approached by a firm called Business D, who introduced them to Business C. PSA say it was Business C who provided them with a copy of Mr C's fact-find, as well as a risk profile in 2016.

Business C was passported into the UK for regulatory purposes via its regulation in Cyprus. PSA told Mr C's representatives they did not think Business C was still trading but they thought at least one director resided in the UK. Business C ceased to be regulated in Cyprus in March 2017. There is reference to the person who operated Business B also being a Director of Business C.

Mr C says he did what he was directed to do and relied on advice he was given.

<u>Agreement between the parties on the legal requirement for regulated financial advice</u>

It is agreed that because Mr C's OPS A had a transfer value of over £30,000, he was legally required to receive regulated financial advice on a transfer.

<u>July 2016 TVAS</u>

We have been provided with a pension transfer analysis report (TVAS). Such a report is usually intended to compare the value of benefits that would be given up (lost) if transferring out of an OPS with defined benefits, with the alternative benefits available on transfer to the intended pension arrangement. This is to enable a meaningful comparison and to provide understanding of what would be needed from a new arrangement to match (and potentially exceed) the benefits that would be lost.

Mr C's TVAS sets out that it has been prepared by Business D and is dated 1 July 2016. It has a client reference of "*Business C 05*".

This TVAS purports to "*provide information*" on, and "*compare*" the benefits provided to Mr C by OPS A with what is said to be a hypothetical QROPS (it is called "*generic*" in the document). OPS A is only ever referred to as "*the DB (UK) Pension scheme*". 'DB' is a widely recognised abbreviation used for 'defined benefit' pension schemes.

It sets out that "*this analysis does not on its own show whether or not transferring your benefits is advisable as that also depends on many other factors such as your attitude to risk your personal circumstances and your objectives*". It goes on to say, "*this analysis has been based on your personal information and the details supplied by the scheme*". It says it is comparing the benefits available and using the guaranteed transfer value of Mr C's DB (UK) Pension scheme.

It is explained that a QROPS is a way of moving a UK pension to a scheme administered outside of the UK. And it said this is more flexible and easily accessible if someone has retired abroad or is a planning to do so and does not intend to return to the UK.

It concludes that a critical yield of over 18.5% a year will be needed for the transferred sum to match the level of benefits available from the DB (UK) Pension scheme. It is not in issue this was a very high yield requirement.

PSA's report dated 1 July 2016

PSA provided a report dated 1 July 2016 addressed to Mr C. PSA say this report was requested by Business C.

This report has been referred to as a "*generic report*" by PSA. In summary it's said the report gives general information on pensions. It is essentially denied by PSA's representatives that this report ought to be understood to be giving anything but general advice and specifically not personal advice to Mr C.

This report sets out that where a non-UK resident seeks to transfer benefits overseas to a QROPS they need to seek advice from an FCA authorised adviser on the implications of proceeding with the transfer. It's said by PSA that their report was to supplement advice provided by local non-UK advisers. This is referred to in the report and appears to infer that the person intended to be reading the report is living outside of the UK.

The report stresses it is only writing about the implications of transferring from a UK scheme into a QROPS and that the choice of QROPS and investments are not part of what PSA have considered.

The report sets out that PSA and their report have taken into account Mr C's personal circumstances and there are a number of references to Mr C directly and his position, needs and requirements. The report also refers to Mr C intending to permanently live outside the UK in the very near future. This intention is not agreed between the parties.

Mr C signed the advice confirmation on 15 July 2016 (confirming his understanding of PSA's advice). We have also been provided with an unsigned version by PSA.

PSA's Appropriate Advice Declaration certificate

It is agreed PSA are responsible for the document, referred to as the Appropriate Advice Declaration 'certificate' (the certificate) on PSA headed paper (containing their regulatory information) undated, signed by the PSA adviser (with his individual regulatory registration information). It derives from PSA.

It contains Mr C's name and date of birth and a scheme name described only as "*DB (UK) Pension Scheme*". It is signed and dated by Mr C on 15 July 2016.

This certificate confirms PSA have advised Mr C, setting out:

"*This is to confirm I have provided the above member with advice on the implications of a potential transfer of accrued benefits to a QROPS".*

It goes on to confirm PSA has the necessary permission, (and the relevant authorities are set out), to carry out the regulated activity and that PSA is authorised and regulated by the FCA. This section is signed by the PSA adviser with his title, individual FCA registration details, and professional information.

It is agreed this document was provided to enable the transfer out from OPS A for Mr C.

Mr C's transfer(s)

In July 2016 Business C wrote to OPS A enclosing the Advice confirmation letter and noted this was signed by PSA. Business C instructed OPS A to proceed with the transfer and for OPS A to refer any questions either to themselves or PSA.

The cash equivalent transfer value (CETV) of Mr C's benefits in OPS A was transferred into a QROPS which was administered by a business domiciled in Gibraltar. The Gibraltar QROPS was placed in administration in early 2024.

We have been provided with a statement for Mr C's QROPS (by PSA) for the period 21 September 2016 to 28 March 2017. This confirms the initial deposit of £49,762 (from OPS A) and various fees and charges are shown.

There is a further deposit of £41,907 (which appears to derive from a different OPS in September 2016). And an additional deposit of £13,521 in November 2016 (deriving from a third business in respect of pension funds). The broker is shown to be a business sharing a name with Business C.

I have only considered a complaint made in respect of the OPS A transfer.

Further information provided on the additional use of PSA's Appropriate Advice Declaration certificate

We have been provided with copies of emails between PSA and Business C.
These include an internal PSA email to a PSA Director confirming a call from a pension provider (not in respect of OPS A) about Mr C around September 2016. PSA refer to Mr C as "*one of our QROPS clients*".

It appears that a document purporting to be PSA's 'Appropriate Advice Declaration certificate' was submitted to a pension provider not connected to OPS A. This pension provider contacted PSA due to concerns. PSA contacted Business C and asked them to find out who was responsible for using the certificate which we are told had not been completed by PSA.

The suggestion made at the time by Business C to PSA, and later submitted to this Service by PSA, is that the certificate provided for OPS A was scanned and altered, without PSA's knowledge to be used to try and transfer funds from another pension scheme. Business C told PSA it was Mr C who had done this.

We have been provided with some emails between Business C and PSA on this subject. PSA noted their concern and that in any event no advice certificate was required for a transfer involving the non-OPS A firm. There is an internal email between PSA directors in September 2016 about this querying what is going on in and asking, "*who are these people*?"

In October 2016 Business C told PSA that Mr C had been frustrated by delays by this other pension provider, and so he had altered the original PSA certificate and sent it to this other pension provider and that he apologises. They go on to say that although this pension provider says it has contacted Mr C, Mr C says not. Business C tell PSA they don't want to antagonise Mr C into complaining to this Service (which Business C say he had threatened to do, no reasons are given, and this has not been addressed). Business C suggest to PSA, they leave this other provider's plan and review it again next year "*which may also be in everyone's best interests*". Neither party has provided anything providing any clarity on what Business C might have meant by this, or what the reference to 'threats' might mean.

Until recently I had not been told whether Mr C agrees he changed this document and tried to use it. I now understand Mr C denies doing this.

Later contact from PSA with Mr C

We have been provided with an undated email from PSA to Mr C which refers to Mr C's "*recent application*" to transfer his pension rights. The email isn't entirely clear but appears to say PSA reviewed their original report and that having looked at a copy of the report they were asked to provide for Mr C by Business C, they are attaching a letter which identifies the findings of their review and confirms the options open to him. It asks Mr C to read their letter and confirm what he wants to do. It sets out that if they do not hear from him within 21 days, they will assume he is happy to proceed on the original basis.

It is not sufficiently clear from the email alone what this email is referring to or when it was sent, or why it was sent. Nor is it clear to me if Mr C recalls receiving it.

The surrounding material suggests this email was sent to Mr C in 2017 at least six months after he transferred his OPS A funds (and around eight months after the original TVAS). Thus the transfer had completed sometime previously.

PSA submits they reviewed their original report for Mr C and were surprised to discover he had transferred. I am told more recently this information came from Business C. It's said PSA concluded the original TVAS did not contain the right critical yield, (which they say ought to have been a higher figure) and so they had a new TVAS prepared for Mr C.

PSA say if Mr C had authorised them to do what was proposed in their second report, this would have allowed Mr C to return his critical yield to the one set out in the 2016 report.

March 2017 TVAS

We have been provided with a second TVAS for Mr C with the same client reference of 'Business C 05' as the previous TVAS. This one is dated 30 March 2017. This TVAS has similar formatting and layout in some respects to the earlier TVAS but has purportedly been prepared by Business E. However the cover page contains the same advisers name as the 2016 TVAS from Business D.

This report follows the same format as the previous TVAS but differs in some of the content. Some information is provided on fees and charges applied by the advisers and investment managers (initial and ongoing) as well as an establishment charge. And it compares OPS A

with two different options available. The TVAS refers to two critical yields of either 20.75% or 17.03%. The name of the QROPS used does not appear to be accurate. PSA's report offers only two specific options and tells Mr C these are his only options.

Further information from PSA

PSA say that when they revisited Mr C's case, they were surprised (in late March 2017) to learn Mr C had transferred out of OPS A, given the "*extremely high critical yield*" identified in 2016. They say this transfer was recommended by Business C without their knowledge and they had not played any part in the execution of the transfer. PSA say that having learnt of the transfer, they were able to confirm the assets held by Mr C to enable them to complete a full review. It appears Business C gave this information to PSA.

Further details of PSA's letter to Mr C (dated March 2017)

In the letter dated 30 March 2017 from PSA to Mr C, PSA say they were "*engaged*" by Business C to review a transfer to the QROPS, and that "*as a result we wrote you a report*". The letter says they had advised on the "*understanding you will be moving abroad*". And that following their review, they have seen Mr C's investments differ to those they based their figures on and so greater growth is needed than they said in their July 2016 letter.
PSA said they were offering Mr C the opportunity to reinvest his money differently to enable him to get the critical yield back to that in their 2016 report. They recommended Mr C move his investments to a particular investment company which was "*deemed appropriate by PSA and the trustees of your new scheme*".

This letter has confirmation text at the end and was signed by Mr C on 26 April 2017 choosing the option not to follow this recommendation. We have not been told why Mr C signed this, or if he agrees he did. It is not entirely clear to me if PSA accept this was a personal recommendation.

We also received a blank copy of this letter which has an additional page allowing for a spouse to sign and for the date to be entered. I previously considered this might suggest this was a pro forma document and have not been told this was wrong.

Complaint

Mr C signed a letter of authority with representatives in respect of this complaint in August 2021. Representatives for Mr C complained to PSA and said PSA had not done what they ought to have done for Mr C.

In addition it was said the transfer had been unsuitable and the QROPS was used to invest in high-risk, non-standard funds that were not suitable for Mr C and that he did not know or understand this at the time. It was complained Mr C had either no appetite or capacity for investment risk, or alternatively, at most a low appetite. It was said his investments are now illiquid, and this is a consequence of the actions and failures of PSA.

It is disputed on behalf of PSA that the QROPS held these types of investments. From what has been said more recently it might be understood that Mr C's representatives don't demur, although they consider the offshore element to have presented increased risk.

Initial responses to the complaint from PSA

PSA didn't accept the complaint. Representatives for PSA at the time explained why. It was not agreed PSA were required to assess the suitability of the transfer or the related

underlying investments. It was stressed PSA were not required to provide a personal recommendation nor accepted that PSA ought to have advised Mr C not to transfer.

PSA said they were asked to provide services by Business C. And whilst PSA's correspondence might have been addressed to Mr C, it had been requested by and passed on to Business C. PSA never met Mr C or had any direct contact with him. It was said that PSA engaged Business E to provide the TVAS for Mr C.

It did not originally appear that PSA acknowledged or explained the two TVAS'. PSA have gone on to suggest in respect of Businesses D and E that one was a subsidiary of the other.

In earlier submissions PSA said the 2016 TVAS and their review letter (also referred to as a report) of July 2016 focussed primarily on a comparison of the benefits and disadvantages of Mr C's OPS and a "*generic*" QROPS. No specific QROPS was used but one they describe as "*a typical QROPS investment drawn from market average figures held within a generic QROPS*".

It was stressed that PSA's review letter made the risks of a QROPS very clear and highlighted the benefits of the existing OPS and the risk of these benefits being lost should Mr C transfer. It was conceded that much of what PSA provided "*constituted advice*", but it had fallen short of providing the specifics that might be characterised as being a recommendation or a comment on suitability.

PSA's representatives went on to give examples and say more about the contents of the information provided by PSA and why PSA's role was so limited. PSA's representatives went on to set out what they said was contained in the July 2016 report about Mr C and the benefits he held. It was said that PSA had acted in-line with statutory and regulatory obligations throughout. The reasoning that underlined the response was provided.

PSA changed representation. We have not been told specifically if all or any earlier information and submissions that were provided are adopted or no longer pursued.
In summary in earlier submissions it was said:

a. PSA only provided preliminary non-specific advice to Mr C on the transfer, and this was provided in accordance and in-line with statutory and regulatory obligations. This advice given fell well short of a personal recommendation on the transfer or any assessment on suitability and there was no advice as to the underlying investments.
b. PSA was not required at the time of the transfer to make a personal recommendation and they were not obliged to assess suitability. Generalized advice was provided that was compliant with the relevant regulations.
c. A 'local' adviser, Business C, gave personal recommendations on the transfer, including the assessment of the suitability of the transfer and advice on the underlying investments, as well as facilitating the transfer. This reflected their territorial expertise when it came to QROPS.

   It was Business C who initiated contact with Mr C and went on to develop a direct customer relationship. PSA did not have the same relationship with Mr C.

   PSA only provided a review letter and a supporting TVAS report, and this was directly to Business C for them to continue with the transfer process.
d. The FCA considered Mr C's case as part of a wider review in 2017 and no action was taken about what they did.
e. It was said to be crucial to appreciate the advice provided to Mr C and on the transfer was provided on the "*fundamental basis*" and predicated on the condition Mr C

moved overseas.

The fact Mr C had not moved overseas was contrary to the clear understanding PSA had in the lead up to providing the advice. The advice made it clear that if Mr C had not lived overseas for at least five full tax years then the benefits of a QROPS would not be available to him.

Any complaint about suitability and the consequences must fail, due to Mr C's conduct rather than any act or omission by PSA.

On behalf of PSA it was said to be significant that there was no exception under the requirements for advice for non-UK residents when it came to transferring OPS benefits. And it was "*in order to meet this requirement and assist those overseas customers*" that PSA (as a UK authorised firm) "*carried out the preliminary 'leg' of the advisory process and provided high-level transfer advice on non-specific QROPS which included transfer value information*."

In doing so, PSA had no direct relationship with the customer and simply provided their review information to the local adviser (Business C) that had the established relationship with the customer and who would go on to complete "*the secondary 'leg' of the advisory process, by advising the customer more substantively as to specific QROPS and underlying investments*" and effecting the transfer.

The demarcation of these advisory roles is said to demonstrate the more limited role played by PSA, which did not extend to personal recommendations. PSA's representatives at the time took issue with the original complaint that relied on the Conduct of Business rules (COBS) and in particular rule 19 and specifically 19.1.1c, (which, it was stressed, was not in place at the time of the transfer in 2016).

<u>Further information once this case was allocated to an Investigator at this Service</u>

Representatives for PSA and for Mr C provided us with further information, documents, and submissions.

There was some reference to the fact-find and attitude to risk information having been provided by a further business (not referred to thus far) who was said to also be associated with a Director of Business C. But we haven't been told anymore about this.

We were provided with an email dated September 2021, from OPS A to Mr C's representatives confirming Mr C's benefits had been on a final salary basis and that their 2016 records showed that Mr C received advice from PSA. We were also provided with original documents from the QROPS (with redactions).

These included the original transfer request and authority information. Including a pre-transfer request form addressed to "*the trustees of DB (UK) Pension Scheme*".

There is confirmation for OPS A, that the signatory (Mr C) has taken regulated independent financial advice and that they understand the scheme trustees will need written confirmation of this from their adviser and it provides the prescribed statements. The adviser's details are handwritten as PSA, with the name, address and their FCA registration number as well as the name of one of the PSA directors.

It appears to more recently be suggested by PSA that this handwritten information must have been completed by Business C without PSA's knowledge or authority. The name of the intended QROPS is also handwritten and this form is signed by Mr C dated 13 July 2016.

<u>Investigator's view</u>

The Investigator upheld Mr C's complaint about the transfer of OPS A benefits on the basis the recommendation to transfer had not been suitable. He set out what PSA would be required to do to redress any loss. The Investigator's view was not accepted by PSA.

Response on behalf PSA

New representatives for PSA said this Service was not able to consider Mr C's complaint as Mr C is not an eligible complainant applying this Service's rules on jurisdiction. PSA also say the work they did ought to be understood to have been approved by the regulator, the FCA.

We were provided with an email from the FCA sent to PSA in January 2020, said to be in respect of supervisory work the FCA completed in 2017/2018 and which was said to be focussed solely on advice given by PSA relating to pension transfer business for overseas customers, and limited to business processed only in 2016. There is a reference to earlier emails, but we have not been provided with a complete trail.

In the 2020 email the FCA say they have concluded their supervisory work, and no further information is required, and it's considered all actions are complete. It is acknowledged that actions undertaken by PSA were completed some time ago.

We have also been sent a document said to set out Business C's approach to obtaining new pensions business, involving transfers of pension funds, primarily focussed on QROPS', with PSA apparently being needed to provide a TVAS and PSA's regulatory number.

We have been sent an invoice for £695 sent by Business D (based in South Africa) to Business C (in Cyprus) for the preparation of a 'Generic Advice' report on Mr C's DB scheme including TVAS. This is dated 27 June 2016. We have not been told how PSA come to have this document.

PSA's more recent representations

Submissions were made that Mr C is not an eligible complainant and so we cannot consider his complaint further. I have previously issued my decision on this.

Some of what has been said might be considered relevant to the merits of Mr C's complaint and as such, I am summarising the main thrust. I intend no discourtesy dealing with what's said in this way and it simply reflects the comparatively informal nature of this Service. I have considered everything provided in full. The main thrust is that PSA gave no specific or personal advice or recommendation to Mr C and their report highlighted Mr C ought to take advice from his adviser before a decision on transfer was reached.

PSA were approached by Business C to provide a "*generic report*" as to the potential benefits and drawbacks to Mr C transferring his preserved OPS benefits. This report was to be used in the context of Business C advising on whether to transfer out and into a QROPS. The approach to PSA having said to have been made through an advisory business regulated in South Africa called Business D. Business D (and Business E) were in contact with Business C, and asked PSA to assist as the transfer was from a UK pension scheme, and Business C wanted input from a UK adviser.

PSA only communicated with Business C. They did not have any relationship with Mr C in connection with the potential transfer. Information on Mr C was obtained and provided to PSA by Business B (in conjunction with Business C).

Their report might have been addressed to Mr C but was provided to Business C. PSA conclude Business C gave the relevant advice after they provided their report, and they say Mr C obviously decided to transfer the relevant pension funds into a QROPS and invest in accordance with Business C's recommendations.

As an advice confirmation letter was required by OPS A scheme, PSA signed a letter confirming they had given advice to Mr C on the "*implications of a potential transfer*". It's said on behalf of PSA, this letter does not serve to make Mr C a client of PSA.

PSA say their involvement is reflected in Business C's Client Procedure List which they were given by Business C, (as provided to this Service). It's said this document shows the client journey and the limited role of PSA. A role that might involve them being approached if Business C required a TVAS report.

PSA were said not to have any knowledge or information about whether Mr C was advised to transfer or not and what happened. PSA were paid £695 for their generic report. Business D invoiced Business C for this sum as they retained an administrative role.

It is submitted PSA discussed the provision of generic reports to assist overseas advisory firms with the FCA. And that the FCA accepted PSA could provide general commentary to allow independent decisions to be made by scheme members in conjunction with their financial adviser. It's said the FCA did not require PSA to take any supervisory action and that I ought to understand this to mean that PSA acted correctly at all times when it came to providing a limited report service, with no personal advice or recommendations. It was suggested the FCA understood that PSA's process was based on the scheme member not being a customer of PSA; meaning, by inference, the FCA accepted there was not a customer relationship.

I have previously explained we have not been provided with enough to understand the ambit of the contact with the FCA, including copies of all communications and what was requested, provided and discussed. We have not been told whether any discussions or supervisory work involved consideration of how or whether PSA might provide signed Appropriate Adviser Declaration forms to UK OPS' such as to enable regulatory requirements on transfer to be met. Nor whether the FCA approved generic advice reports for overseas customers could also be provided to UK residents and whether such reports could contain and purport to have considered personal information and to what extent.

PSA say they were engaged and instructed by Business C. It was Business C with whom PSA had a contract (through Business D) and Business C who paid PSA's fees. It is irrelevant if Mr C was charged for these fees, as there was not a contractual or customer relationship between PSA and Mr C.

PSA say they did not know their name was used on Mr C's pension transfer application form. And they submit this was a misuse of their name by Business C, who ought to be the culpable party here. There was reference to other cases considered by this Service.

Investigator's further thinking

The Investigator thought we were able to consider Mr C's complaint. He stressed that each case is considered on its own facts and merits and that our role is different to that of the FCA.

He didn't agree Mr C wasn't an eligible complainant or someone who didn't have a relationship with PSA when looking at the overall circumstances. In particular he pointed to the report being addressed to Mr C and clearly intended for Mr C, and this demonstrated a

service being provided to Mr C. In addition the declaration on the last page of the report clearly set out that PSA had supplied Mr C with advice.

In addition the Investigator highlighted the later communications in March 2017, where PSA contacted Mr C directly to explain the change in critical yield and offered advice.

Further on behalf of Mr C

Mr C's representatives sent us further documents. It was suggested that were it not for the recommendation to transfer the OPS A benefits (and PSA's advice), Mr C would not have transferred and that if PSA had advised against the transfers Mr C would not have proceeded.

The further documents included advice and transfer documents that appear to relate to the requisite provision of advice and the transfer of benefits from a further OPS (OPS 2) for Mr C to the QROPS dated between July to early September 2016. The documents reflect the involvement and use of PSA's identity and pension transfer permissions. I previously set out why information provided tended to suggest that PSA were involved. We've also been sent documents in respect of the transfer of pension funds from a further pension plan. These have no reference to PSA.

Such material has only been taken into account where I have highlighted this and it is appropriate and relevant to do so. I've explained I am only considering a complaint about the transfer from OPS A. The documents relating to other transfers of pension arrangements held by Mr C have played no determinative role in this decision.

Further on behalf of PSA

PSA's representatives sent in a copy of the advice confirmation certificate which had caused previous concern by a pension company and which they say was amended without their knowledge.

It continued to be said Mr C did not buy a service from PSA, he was a customer of Business C and not a direct customer of PSA. PSA didn't do anything they would normally do when 'onboarding' a customer or retail client. Therefore there could only be two possibilities, either PSA were wholly inept, or Mr C was not PSA's client.

PSA's representatives say their research suggests Mr C can apply to the Financial Services Compensation Scheme (FSCS), although we haven't been told why this is said. PSA told us they are now concerned about Business C because having seen papers in this complaint they have identified Business C used PSA's name when unauthorised to do so.

Jurisdiction decision

On 2 October 2023 I issued my decision that we were able to consider Mr C's complaint against PSA about the transfer of his benefits from OPS A to a QROPS and why.

Provisional merits decision

On 26 March 2024 I issued my provisional decision on the merits of Mr C's complaint. I set out that I intended to uphold Mr C's complaint and why. I included my thinking in respect of how I intend to approach redress. There has been a stream of responses and submissions from both parties following this and I have ensured these have been shared and parties given the opportunity to respond further. Mr C accepted my provisional decision.

Responses to provisional decision on merits from PSA

Whilst PSA disagreed with my thinking on jurisdiction, they said they would proceed at this stage on the basis Mr C was a client and obligations were owed. I am not summarising all that has been said and I am not required to. I have considered it, along with everything provided.

In summary PSA say there was no breach of regulatory requirements. They consider it was clear to Mr C that he was unlikely to receive greater benefits through transferring. And even if Mr C had received additional warnings or a recommendation from PSA not to transfer, he would have still gone ahead.

In any event PSA say Mr C contributed to his loss in such a way that PSA ought not to be considered liable and/ or he failed to mitigate it. As such I ought to reduce any redress, even if I find there was some form of regulatory failure (which is not accepted). PSA say that at its highest any loss calculation ought to be capped to a date in early 2017, up to the time that Mr C could have been moved into the portfolio they recommended.

It is stressed the work completed by PSA was not to facilitate a pre-determined course of action and PSA had limited contact with Business C when it came to being asked to act. PSA were only paid a modest fee and had no interest in any transfer.

PSA say that if Business C ultimately mis-invested funds, PSA had no knowledge of this or any involvement in the investment process. In any event the information they were given about Mr C did not suggest the investment of his funds had been unsuitable.

I am told that due to information recently obtained by PSA, they have come to question Business C's approach to investment and the clarity of what it did and whether there might be alleged misconduct. It is not suggested this information relates to Mr C's transfer and investments directly. It is stressed that even if I conclude PSA's advice was not wholly compliant, PSA were not involved in any improper conduct. PSA don't think there is any evidence Mr C was recommended to transfer out of OPS A.

It is stressed that the regulatory requirements in place in July 2016 and July 2017 did not require a firm to issue a personal recommendation on a proposed pension transfer. So the fact PSA did not provide one, ought not to be considered a failure.

PSA think the reason I quoted a consultation paper in my provisional decision was to find a failure in regulatory requirements and that means I haven't understood it was a consultation paper. As such PSA did not need to have taken the contents into account as the advice process took place within one month of the publication of the paper.

COBS 19.1 required that Mr C as a pension scheme member needed to understand a comparison of his benefits on transfer and if he didn't transfer. But I am asked to note that COBS 19.1.7BG (matching the critical yield not being sufficient) is not relevant as that guidance relates to a firm making a personal recommendation, and PSA weren't doing this and weren't required to.

PSA say that even if they can be criticised on aspects of their information gathering, the important consideration must be whether it would have been evident to Mr C that a transfer might result in greater benefits or not. And there ought to have been no doubt for Mr C on reading PSA's report of July 2016, that he was unlikely to achieve higher benefits on transfer. PSA go on to set out why they say this and what they rely on. It's accepted PSA didn't know what Mr C's proposed investments were at the time.

PSA don't understand a reference to the regulator's 2008 report on pension switching since this was a pension transfer. And they don't consider my reference to 2013, 2014 and 2016 alerts from the regulator are relevant. PSA think I use the 2017 alert to evidence a July 2016 breach. And that I have approached this complaint as though it was a UK adviser advising on a pension transfer in the UK.

PSA do not accept the regulator's January 2017 alert can reasonably understood as a reminder of requirements. They say it was the first-time specific requirements were laid out for pension transfers for non-UK residents and PSA amended their processes in 2017 following discussions with the regulator.

Submissions continue to be stressed that UK requirements on pension transfers did not fit into the advice process for overseas transfers.

PSA ask me to conclude that even had they obtained additional information and recommended against the proposed transfer, it would have made no difference. PSA say that, for example, whilst they could have sought clarification on the issue of whether Mr C intended to live overseas, this would not have impacted the outcome. It was clear to Mr C they were proceeding on the basis Mr C would be living overseas, and this was the basis for the use of the QROPS.

PSA say they got this information from Business C, an overseas advisor. And this was a process Business C used for their overseas clients which included those who were about to make a move overseas. And at no stage did Mr C query or correct PSA's understanding that he would be moving overseas, despite their report containing a request to contact the writer of the report at PSA with any queries or if something was wrong.

In respect of the investments made, it is accepted by PSA that the regulator's January 2017 alert states that UK based advisors should take into account potential returns from the relevant investments as well as the costs and charges and associated risks, and that PSA's report does not contain this. However PSA say there was some guidance about potential investments in their report which they consider ought to have provided guidance and flagged up potential issues to Mr C.

PSA think it would have been obvious to Mr C that he would need to take considerable risk to achieve high enough returns and that the quoted return would almost certainly not be achievable. And based on what they understand to have been Mr C's long-term employment and linked financial knowledge, this makes it even more likely he would have understood.

PSA say they obtained information about Mr C's investments around March 2017 (those in their 2017 TVAS). There was nothing unusual and the portfolio presents a balanced risk and was suitable for Mr C. So PSA say there was nothing in this information that would have caused PSA to have advised Mr C not to transfer in 2016.

Their lack of knowledge of investments ought not to suggest there would have been any impact on the transfer had they known what the intended investments were. Albeit PSA say the discretionary fund management charge and the overall charges would have been considered to be too high. But PSA say this wouldn't have impacted Mr C's transfer even if they had been highlighted, as the higher critical yield was would still have been well outside the achievable parameters. PSA think that because Mr C ignored PSA's concerns about the critical yield when it was highlighted, it's probable he would have done the same had PSA flagged the other points prior to transfer.

PSA say Mr C was keen to transfer and intended to do so regardless of PSA's advice and give examples of why they say this and thus why no loss ought to be connected to PSA.

PSA ask me to take into account that Mr C was entitled to transfer and there was no expectation that a firm advising a client not to transfer must then refuse to provide the relevant adviser certificate. I say no more on this because it is agreed and was included in my provisional decision.

Further responses from and on behalf of Mr C

PSA are wrong to seek to limit the scope of what they did on the basis that Business C were responsible for advising on the suitability of the QROPS and underlying investments. And the regulator has made it clear such a business model is an improper delegation of regulated activity to an unregulated firm. It's said the involvement of Business C and any delegation of activity from PSA, did not exclude or excuse PSA from meeting their duties.

My attention is drawn to a publication issued by the regulator in November 2015 on improper delegations of authorised activities. Including that the authorised firm remains responsible for all decisions, actions and potential harm resulting from regulated activities provided in their name and the associated liability for providing unsuitable advice. I have also been referred to the alert issued by the regulator in 2016 in respect of business being accepted from unauthorised introducers and leads.

It's said PSA ought to have reasonably foreseen the risks posed to and by Mr C. And what was delegated to Business C was improper and unsuitable given Mr C's personal and financial circumstances. PSA could not provide advice pursuant to section 48 of Pension Schemes Act 2015 without taking the investment into consideration (it being key to the advice) and as such PSA didn't do what they were required to do.

Overall PSA's model presented foreseeable risks to Mr C and failed to address or take account of warnings and requirements issued by the regulator.

They disagree with PSA's submissions that knowledge of Mr C's funds (and purported standard investments) would not have presented any real concern or flag to PSA in 2016, nor that PSA would not have done anything further. It's stressed PSA ought to have completed enhanced due diligence and a consideration of suitability for Mr C, particularly because the funds selected are/ were offshore funds, domiciled outside of the regulatory area of the United Kingdom. My attention has been drawn to commentary from the regulator and statutory material said to be relevant when it comes to funds established in countries other than the UK. And what has been said by the regulator about funds structured as collective investment schemes to be promoted to retail investors in the UK.

On behalf of Mr C it's said none of the schemes were UK registered schemes nor did they have FCA recognised status. And that guidance on this was first published in May 2015 prior to the transfer and investment. It's said PSA ought to have known [or would have known at the time] despite any classified risk assessment that they posed significant risk to UK retail investors because they weren't covered by a UK compensation scheme, had no access to this Service, no cancellation rights and would require legal action in the event of a dispute. Given the risk posed by such funds, the transfer made to facilitate the investments was not suitable and Mr C ought to have been advised against it.

It's suggested the submission there's no evidence Mr C was recommended to transfer out of OPS A is irrelevant to what I need to decide. I'm told the key issue here is the 2016 suitability letter/ report which ought to have clearly and concisely advised against the transfer. And it ought to have confirmed that if Mr C proceeded with the transfer, he was doing so against PSA's professional opinion, (and it's asserted he ought to have been informed he would be an execution-only client if he did this and treated as such). I am told that such a warning would have meant Mr C would not have proceeded with either the

transfer or investment. Had PSA not exposed Mr C to risk through their work, Mr C would not be in the position he is now in (where it is said that he has suffered loss).

Mr C's professional experience has not been in pensions, nor did it involve an assessment on the suitability of investments. Mr C relied on the advice he was given as he was entitled to do, but to his detriment. Had he been advised against transfer he would have followed that advice. He paid for a service and he expected the same standard of care from PSA in providing that service as they would give to any retail client. He should not be treated as having any higher standard of knowledge than an ordinary retail customer.

Previously I had indicated my understanding Mr C had not taken any benefits from his QROPS. Very recently it has become clear this was not right. Mr C's representatives have apologised for this. They say there have been only two payments received. On 14 December 2019 we're told Mr C made an annual drawdown request for just under £5,900. And in January 2020 a request for his tax-free lump sum, being just over £20,000.

Having looked at the information provided to support this I am not sure this is entirely accurate. I can see that in January 2020 a sum of £20,014 was paid out. Mr C received £18,552 as his tax-free cash sum and the remainder was used to cover fees on the transaction and annual fees for the years 2018- 2020.

The same information also suggests that he took a specified sum of £2,922 in December 2020 when he was aged over 56 years and this was to be an annual drawdown withdrawal. And he wanted the same sum for the 2021 annual withdrawal paid to him in January 2021. There is also reference to a sum of £2,585. A letter from December 2020 confirms that the tax office in Gibraltar agreed to Mr C receiving his pension fund as income and provided the relevant tax to be applied. There is also a surrender form for a one-off withdrawal of £5,874 dated December 2020.

I don't consider the precise sums received determinative of what I have needed to decide in this complaint.

I have been asked on behalf of Mr C to adjust any redress to ensure any deduction for the payments received including his tax-free lump sum to be apportioned accordingly since they say 3 pension plans were transferred into the QROPS. This information is inconsistent with the information from the QROPS recently provided which records that the funds originated from four different pension schemes.

I can see that PSA and Mr C's representatives have been in some communication about other arrangements (not OPS A). I don't consider this to impact what I have needed to decide in respect of the complaint made involving the OPS A transfer.

Mr C's representatives had previously suggested that PSA were wrong to say they had understood Mr C was going to move overseas and there was suggestion on their part that it was evident he was not intending to. This being my understanding of the position as set out in my provisional merits decision and earlier communications.

It has very recently become clear through the provision of information new to this Service that the position was and is somewhat different to what I previously understood. It is now said that at the time of the transfers in 2016 Mr C's wife and son lived abroad and had done so for an extended period of time (for 21 years, since 2003). This is because Mr C's wife's mother lived overseas and was elderly and in need of daily assistance. It is now suggested that at the time of the July 2016 report and later letter of March 2017 Mr C had no plans but was considering moving overseas to be with his family. So that Mr C had no reason to question the information contained within PSA's 2016 report on this aspect. We're told that

by 2021 Mr C's wife was still living abroad caring for her mother and their son, by this stage their son was attending further education. I am told that in late 2023 Mr C's mother-in-law died and so his wife only now remains overseas until their son's education concludes. Mr C says the question about him leaving the country was always open-ended due to unspecified personal circumstances. And although Mr C has not moved overseas it continues to remain an ongoing consideration and possibility given his personal circumstances. It's said there was a risk he could have been called on by his wife to move and so it was always a consideration and has been since 2003. But this has never been necessary due to the flexibility of his work.

Mr C maintains he had no set plans to move no in the near future it was as likely that he would not move as that he would. his work was in the UK, and he had no legal right to live or work abroad without going through testing none of which had been commenced in 2016. Mr C's representatives have told us that Mr C confirms this situation was discussed with PSA. That Mr C told PSA he didn't know what the future held for him, and it is suggested he told PSA he didn't have a crystal ball. It is submitted that he had no reason to mislead or provide misinformation to PSA nor was it in his best interests.

These submissions are not only at odds with what was previously understood about Mr C's lack of intention to move overseas but also contradict previous agreement that Mr C never had any direct contact or discussions with PSA in 2016. I return to this below.

Equally Mr C's representatives also say Mr C didn't tell PSA he was moving overseas, but in any event, it would not follow that the transfer to the QROPS was suitable or that what PSA did was right or in-line with industry standards and requirements.

PSA's further submissions

PSA don't agree with the submissions made on behalf of Mr C and think Mr C's representatives have misunderstood the position. One of the reasons being because PSA did not delegate any activities to Business C. Business C appointed PSA for the specific purpose of providing what they refer to as the relevant note on what they refer to as the potential transfer. In other words PSA say any delegation was going in the opposite direction.

So that if it's found PSA were not required to consider the specific investments, there would also be no question of valid or invalid delegation because Business C was authorised to advise on the investment proposition.
PSA understand it has been assumed
on behalf of Mr C that Business C was an unregulated introducer when it was not. And stress Business C was authorised to provide investment advice under its authorization in Cyprus at the relevant times.

It's appropriate for me to identify various submissions that have been made to this Service. This is done on the basis I am not persuaded either party has always fully understood what the other party was suggesting. Here for example, I have set out the regulatory position and history for Business C in previous communications.

PSA continue to say the investment portfolio was not high risk and nothing in the portfolio would have changed what PSA said even were they obliged to look at the investments. They don't accept the fact of investments being overseas equates automatically to presenting an increased risk. And note that UK investments would have become overseas investments for an overseas investor. Even if the investments were overseas, it's regulated investment activity advice that gives rise to protections and Business C was regulated in the UK.

PSA stress they remain willing to assist Mr C in moving his investments into another portfolio and say this is a sensible way of approaching matters.

Regardless of the view as to the sufficiency of the advice, PSA say Mr C would have transferred out of the OPS. They continue to stress that they say Mr C ignored PSA's recommendation to move his investments and that more recent information provided highlights Mr C's complaint reflects a manufactured approach to maximise recovery at the expense of full disclosure.

PSA suggest the information provided more recently is central to the issue of causation that they have highlighted. In particular whether Mr C would have done something different, had PSA recommended he did not transfer. Noting their report made it clear that Mr C would not be better off on transfer, and reminding me that Mr C was advised by Business C.

PSA understood there was a reasonable prospect of Mr C moving overseas and that's why they thought Mr C ought to have questioned PSA's reference to this in their 2016 report if this wasn't accurate. But since it now seems he was considering moving overseas, it's said it seems even more likely that Mr C would inevitably have always accepted Business C's advice to set up a QROPS and transfer his funds.

PSA refer to a handwritten note which I am told was part of a different pension transfer arrangement involving Mr C, which is said to contain Mr C's reasons for wishing to transfer that pension. It's said that this note shows Mr C knew how to consider and communicate pension needs and that he wanted to consolidate/ control his asset and the flexibility of investment choice and how / when his income was taken after age 55. And that this is important to take into account when now understanding that Mr C did access his pension funds when he reached 55.

PSA infer there might have been an attempt to conceal this information, or a deliberate failure not to correct me. PSA's representatives submit this is because it is clear it was important to Mr C to be able to access his tax-free lump sum at the age of 55, as shown in the handwritten note submitted to another pension provider. Give he was 52 at the time of advice but not intending to retire until 65 PSA say his noted objective and the history of withdrawals shows he wanted to access the tax-free sum at 55. PSA say that had he done this as a member of OPS A, this would have triggered his pension income payments which would have been the last thing Mr C would have wanted as a higher rate taxpayer. Thus transfer was Mr C's only option. And this is said to support PSA's submissions that Mr C would have proceeded with the transfer even if properly advised.

It said on behalf of PSA that Mr C's representatives' representations cannot be relied upon. In particular that it has variously been suggested no move abroad was envisaged by Mr C, then, much later, he was considering a move overseas. and when this Service queried that information, it was said that it was an open-ended consideration.

PSA's representatives acknowledge it is for me to consider relevance. They ask me to consider this relevant because any additional warnings that PSA could have provided in 2016 (whether could or ought to have provided) would have made no difference to the outcome on transfer; a report that might be considered more compliant with the requirements would not have changed matters.

PSA's representatives ask whether we have asked Mr C what he would have done with clear warnings or a more detailed report because they are confident that if asked Mr C's representatives would say Mr C would not have transferred. I am told that I ought to be cautious before accepting that on behalf of Mr C.

PSA say there is a further point that goes to quantum and in respect of Mr C ignoring a personal recommendation from PSA in 2017 to change investments. PSA say this activity ought to be understood as Mr C declining to take the advice of an advisor. They say this engages the principle that in such circumstances an advisor cannot be responsible for the outcome of a customer's actions. It’s suggested I am inappropriately jumping from finding a breach, to an outcome of full redress.

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 done so I have not changed my thinking from that set out in my provisional decision on the merits of this complaint. I am upholding Mr C’s complaint as it is fair and reasonable to do so. PSA did not do everything they were required to do when they dealt with Mr C. They played an intrinsic and necessary role in the transfer of Mr C’s OPS A benefits to the QROPS. But for PSA the transfer would not have proceeded and as such it is both fair and reasonable that they are considered responsible for what happened and any loss that followed.

I have not included or summarised everything that has been provided and said within this decision. I am not required to do so. I can reassure all parties everything has been read and considered with care. I have been requested at various times to provide reasons and set out information I have requested. I am sure it will be appreciated that ultimately it is for me to identify the information I require and rely upon to reach my decision and give the reasons for that decision. I am comfortable that all parties have had material shared with them and sufficient time and opportunity to provide full submissions and responses, and I have seen that they have done so.

I accept the process when it came to Mr C opening a QROPS and transferring his benefits from OPS A involved various other parties. This included unregulated parties, and those who were and might have been regulated here and overseas at various times, but who did not hold the relevant permissions to advise on pension transfers when it came to defined benefits. It was only PSA who had the relevant permissions and authorisations when it came to pensions work ad to enable the transfer to be made.

I consider (despite the recent submissions made on Mr C’s behalf) that it is clear it was other parties (not PSA) who had direct contact with Mr C about this matter. This included obtaining information, directing Mr C and giving him documents to sign. PSA’s role was limited, and they acted at a distance when it came to Mr C. All direct contact with Mr C was exclusively undertaken by other parties in advance of the opening of the QROPS and the transfer on the basis of what I have seen, and not PSA. The process of opening of a QROPS and the transfer from OPS A was led by others who met with Mr C, and who directed him. It was not until after the transfer had completed (and in 2017), that there is persuasive evidence of some limited direct contact between PSA and Mr C.

However PSA were intrinsically involved as the regulated party with the necessary permissions to enable the transfer to complete, and in particular in providing the written document(s) ensuring the transfer proceeded. It is right that PSA are responsible for what I am persuaded appears to have been an unsuitable transfer and for not doing what they ought to have done. This does not preclude PSA from pursuing other parties.

Overall I am not convinced Mr C fully understood he had a QROPS and what that meant. Previously I indicated that I had found no sensible or persuasive reason as to why he started one at that particular time; nor that he understood or ought reasonably to have understood

what he was giving up on transfer, and what was needed to even match the benefits he lost on transfer.

I am not persuaded the transfer was in Mr C's best interests, or that he had sufficient information to make an informed choice as he ought to have been. I am not persuaded Mr C was someone for whom a QROPS was suitable or that it answered his needs or objectives at the time.

Whilst I have been surprised to be told very late in the day that Mr C's close family lived overseas long term and that a move to join them was always under consideration to a greater or lesser extent, this does not change my thinking. I don't consider a QROPS an appropriate starting point for someone who lives, works and owns property in the UK, even if he might move overseas, and even if Mr C had wanted to access a tax-free sum ahead of the scheme retirement age and around the age of 55. The time had not been reached when he was or had moved and would not be returning to the UK. And had the latter objective been his main objective there would have been cheaper, less complex and more suitable alternatives. I am not persuaded Mr C's accessing of tax-free cash (and apparently some income payments) sometime after the transfer demonstrate that this was his objective and significant motivation at the time. I can see he has utilised this option, but I don't consider it would be reasonable to discount everything else that was said and purportedly considered and valued at the time (and subsequently) to conclude accessing benefits more flexibly was Mr C's driver.

In any event, as I have said, had this been a primary motivation, I don't accept a QROPS to have been an appropriate starting point and something that ought not to have drawn PSA's attention and professional consideration, and certainly more than it did.

Whilst I have limited information on the investments that followed, and the current position of the QROPS, these flowed from the original transfer. But for PSA's involvement I don't consider Mr C would now be in the position he is in.

It is sufficiently clear, that at the time PSA provided their written document(s) and including their Appropriate Advice Declaration certificate, PSA did not do what they ought to have done, there were a number of areas of concern that ought to have alerted PSA. The information from the time does not persuade me that what was done, was done adequately. Nor did PSA know what they ought to have known, or do what they ought to have done, at the time they presented themselves as having advised Mr C and when they signed the necessary documentation.

Jurisdiction

Whilst PSA's representatives disputed this Service is able to consider Mr C's complaint (saying he is not an eligible complainant), I have not changed my thinking from that previously set out in my decision on jurisdiction. As such I am not providing a further decision on this aspect, and I am not required to do so. I don't consider PSA provided any substantively new submissions on this. Their representatives said they did not think I would change my thinking; this does not mean they were precluded from addressing this further.

As I have set out, we can consider Mr C's complaint, as he is an eligible complainant, and the necessary relationship did exist between Mr C and PSA and ought to be understood that way. Mr C is an eligible complainant, he was a consumer, and it is accurate to describe him as having been a consumer and customer in respect of PSA.

There is significant and persuasive material that demonstrates Mr C ought to be understood in this way and that was how PSA intended him to have been understood by others (i.e.

OPS A) and how they ought to have understood the position to be at the time. I consider they did have sufficient understanding of this (or ought reasonably to have done).

My thinking on the merits of Mr C's complaint about PSA

I am satisfied that PSA understood or ought to have understood, that when they dealt with matters relating to Mr C, (including when it came to completing documents saying they had advised Mr C on the transfer), they were acting in such a way that was using their regulated permissions in respect of him and the pensions work and service they provided. And thus accepting the duties, responsibilities and potential liabilities and consequences that accompany such work.

Putting everything else to one side, if they did not want to be understood as Mr C's regulated adviser on the transfer and accept the responsibilities that come with this, they ought not to have signed the certificate confirming advice, in other words, the Appropriate Adviser Declaration.

Advising on the transfer of benefits held in an OPS is a regulated activity. Mr C's benefits were held in OPS A. PSA were regulated to advise on such activity at the relevant time by the FCA. PSA tell us they subsequently applied to revoke certain permissions on a voluntary basis, but this was not retrospective.

I understand that PSA might feel it unfair that they are the party found responsible, given the involvement and influence of others with Mr C. Balanced against this, it was PSA's choice to accept this work which involved using their permissions to enable the transfer of preserved defined benefits to an overseas arrangement where, on their submissions, PSA had limited contact with Business C when it came to being asked to act and they were only paid a modest fee. I also understand PSA think they highlighted information and risks in their 2016 report, and it is suggested this was to the extent that Mr C ought to have acted differently.

I have also seen PSA say they didn't need to make a personal recommendation, indeed they didn't need to recommend in favour of a transfer, to complete the Appropriate Adviser Declaration and this is all accurate, they didn't.

I accept others played an important role in advising and influencing Mr C in respect of what happened to the OPS A plan benefits, and this was distinct to PSA's role. It is agreed Mr C did not pay PSA directly himself. However the involvement of others does not preclude the involvement and responsibility of other parties and advisers, such as PSA. It would not be necessary for PSA to be paid at all, albeit that would be unusual, and of course here they were paid.

It is clear Mr C was made aware at the time that PSA, an FCA regulated financial advice firm was involved in the advice he was being given and in the transfer. As such it's likely he relied on their involvement when assessing whether he ought to go ahead and whether things were being done as they ought to be, he was entitled to do so and it was reasonable for him to have done so. I am not persuaded Mr C ought to have been treated as anything but a normal retail customer. I don't accept that any financial experience or expertise Mr C holds means that he either had meaningful knowledge or understanding when it came to pensions or that PSA had any reason to think they could treat him as having professional experience (nor that they did).

In reaching my thinking I have found the material provided from the time persuasive when it comes to establishing what happened and the importance of PSA's role in ensuring the transfer to the QROPS was able to proceed.

It's not our role to say whether a business has acted unlawfully or not, that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances.

In reaching my decision, I've taken into account the 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 regulator's Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS). 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 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 PSA's actions here.

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

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).

It is trite law to set out that an adviser must carry out his service and the tasks associated with it with reasonable skill, care and diligence, but worth repeating here. And with the degree of skill, care and diligence that would be exercised in the ordinary and proper course of a similar business.

In *ICS Ltd v West Bromwich Building Society (No2) [1999] Lloyds Rep PN 496 at 504* Evans-Lombe J said that in carrying out its tasks for a client, an adviser:
"…owed to its clients contractual duties to exercise the care and professional skills appropriate to an organisation presenting itself as an expert independent financial adviser; to provide its clients with independent advice in their best interests and not to allow its own interests to conflict with those of its clients…"

The standard of skill, care and diligence required to discharge that duty is that exercised by the reasonably competent adviser. Of course this is the legal position, and whilst my ambit is to consider what is fair and reasonable in the circumstances of a complaint, I take the law into account.

Here, putting aside everything else that was done, and which I will comment on further, it was PSA's involvement and the provision of their Appropriate Advice Declaration that ultimately enabled the transfer to go ahead and thus there is a causal link to all that followed. I have not identified any intervening act that would make that unfair or unreasonable to conclude.

The transferring of OPS benefits has received a great deal of industry and regulatory scrutiny, commentary, and consideration over the years, including prior to and around the time Mr C first started having his pensions reviewed.

At the relevant time various requirements had been introduced, in part to protect consumers who might otherwise lose valuable Defined Benefits, or some other types of guarantees (safeguarded benefits). Of particular relevance here, was the Government introduction of a regulatory requirement that ceding OPS trustees must ensure individual scheme members have taken advice from an adviser authorised by the FCA, before a transfer is allowed to proceed where the value of benefits being given up is over £30,000 (section 48 of the Pension Schemes Act 2015 and associated regulations). PSA confirm this in their report intended for Mr C dated 1 July 2016 and would have known what was required from an authorised adviser with the relevant permissions, and why.

I am in no doubt PSA understood their actions, in particular in respect of their provision of their Appropriate Advice Declaration, meant they would be understood to have advised Mr C on the transfer themselves, and that they intended this to be so. In particular by third parties such as the trustees of the OPS, in addition to Mr C.

Even if I were persuaded (which I am not) that PSA didn't fully understand that they were acting in a regulated and advisory capacity (and accepting the responsibilities and liabilities that came with this) by completing a declaration the law required and which the regulator had explained had to be completed by the FCA regulated adviser who advised the proposed

transferee, PSA ought to have understood this. It is reasonable to conclude PSA are liable and responsible for any loss that has resulted from this activity, this relationship (and the work and actions they completed).

The requirement is that the trustees of any defined benefit pension scheme must ensure the member of an OPS has taken independent financial advice when looking to transfer. It didn't matter whether the advice was to transfer or not, so long as advice had been given. In other words where there were safeguarded benefits above the value of £30,000, the ceding trustees of OPS A needed to have evidence that Mr C had received advice in relation to any proposed transfer.

Regulation 7 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015/742 sets out the form of confirmation of appropriate independent advice. The confirmation that appropriate independent advice has been received must be in the form of a statement in writing from the authorised independent adviser providing the advice confirming and including evidence that:

- advice has been provided which is specific to the type of transaction proposed by the member,
- that the adviser has permission to carry out the regulated activity in article 53E of the FCA's regulated activities order to provide advice on the transfer of safeguarded benefits,
- the name of the member that was given the advice and the scheme in which they hold safeguarded benefits to which the advice given applies, and
- the adviser's FCA Firm Reference number where the adviser works for the purposes of regulation to carry out the regulated activity.

Here PSA provided their name and the information to satisfy the evidence requirement. In essence they accepted they had the necessary relationship and permission and had completed the necessary regulated work, i.e. providing advice on the transfer.

I am in no doubt that PSA's certificate was provided as the regulated Appropriate Advice Declaration to meet the statutory requirements confirming appropriate independent advice has been provided and by whom. And I am in no doubt this is what PSA knew they were providing, and what this was required for and how it was to be used.

Any submission that PSA were simply confirming that Mr C had been advised by another party is not persuasive. I don't accept that any sensible interpretation of the law and guidance and extensive commentary at the time, allowed for PSA to think an Appropriate Advice Declaration might be provided by an FCA regulated firm that had not actually provided the advice. There is no other regulated firm involved here that had the necessary permissions for this pension work.

I have seen what has been said more recently about delegations. This hasn't changed my thinking or taken it any further. I am not persuaded that there were any formalised delegations here, simply different parties adopting different roles when it came to Mr C.

In January 2017 the regulator published an alert confirming their expectations that "*the advice must be provided by a firm with the FCA permission to advise on pension transfers. FCA rules apply to advice provided by FCA authorised firms and, in particular, we expect the firm to consider the assets in which their client's funds will be invested as well as the specific receiving scheme*". I do not accept the date of this alert ought reasonably to be understood to be the first time PSA ought reasonably to have understood these expectations or considered whether what they did might involve such considerations.

Ultimately OPS A needed an Appropriate Advice Declaration from a firm regulated by the FCA (with the necessary permissions) to enable the funds from Mr C's plan to be accessed and transferred. PSA provided this. But for PSA's provision of the form, the transfer would not have proceeded.

PSA say they didn't advise Mr C (and only provided a generic report). They also say they did not provide a personal recommendation. I consider these to be distinct submissions. Following the logic of the submission that PSA didn't advise Mr C, would mean (based on their submissions) that they provided a misleading and inaccurate statement to the trustees of an OPS using their regulated identity to ensure a transfer of pension funds went ahead.

I consider the only alternative would mean PSA were confirming merely for regulated purposes, they had provided someone with regulated advice, but that PSA didn't mean what they said. This would be nonsensical. I don't think it's likely that any gap in the usual process for overseas customers transferring would make this reasonably acceptable, even if such a gap applied (which I don't consider it did, since Mr C resided in the UK with no sign of intended departure).

This is because I do not accept that the signing of an Appropriate Advice Declaration by PSA could reasonably allow them to have meant they only gave generic advice, (whether to Mr C or to a third party), for purposes of confirming Mr C had been advised. Nor do I consider that PSA could sensibly conclude other advice given by non-regulated parties, or those without the necessary FCA pensions work permissions might reasonably form part of the appropriate advice declaration.

I am not persuaded PSA could reasonably think any such interpretation was compliant with the law, regulation and guidance in place.

I note for completeness that PSA referred to Mr C contemporaneously as one of their "*QROPS clients*". PSA not only understood their role was intended to be perceived by others as being Mr C's advisers, but they considered Mr C (accurately) as their client, their customer.

To suggest otherwise appears to me to logically suggest that one purpose of the arrangements between PSA and Business C was the avoidance of duties that would otherwise be owed by PSA and to facilitate the transfer of funds from an OPS knowing advice has not been given by the firm confirming they had, where a firm without the necessary permissions had advised. I am not concluding this is what happened here, merely highlighting the potential logic behind a submission I have been presented with.

I note what was also suggested in earlier representations made on behalf of PSA, that PSA provided restricted advice, designed to be supplemented by the primary advice of Mr C's local adviser. I don't accept there was any effective restriction here that would limit PSA's liability here. In any event, and as I will come onto, Mr C was not living overseas or receiving advice from a local adviser (to him) overseas.

The FCA does not require the named adviser to have been paid by their client. PSA were paid for services ultimately rendered to Mr C, albeit it remains unclear to me how PSA come to be associated with Business D (or E).

Overall I consider there are a number of features in what happened that ought reasonably to have caused PSA concern and caused them to act differently; including seeking a better understanding and reviewing whether they ought to do what they were doing for Mr C, and the sufficiency of what they did do.

What was prepared by PSA and provided to Mr C about this transfer did not meet the expectations of the regulator or the requirements and duties in respect of a client (nor do I think it met what would be expected of appropriate advice, including under the Act and Regulations). It also did not meet what was required as a personal recommendation, whether or not it ought to have been understood to be one.

PSA's original report is said to have been generic advice. I don't think this is an accurate description. The report says PSA and their report have taken into account Mr C's "*own personal and expected circumstances*" and there are a number of references to Mr C directly and his position, needs and requirements.

In addition it used information on Mr C's own OPS in its assessment and the purported comparison with a 'generic QROPS'. It might not give the example of a specific QROPS, but that doesn't mean the report can accurately be described as generic. It is clearly intended for one person only and could not be applied to any other person.

This report sets out that where a non-UK resident seeks to transfer benefits overseas to a QROPS they need to seek advice from an FCA authorised adviser on the implications of proceeding with the transfer. This is said to supplement advice provided by local non-UK advisers. As starting point this indicates that PSA were holding themselves out to be providing advice, albeit to a non-UK resident, which was not Mr C's status.

It is unsatisfactory in the circumstances here that PSA concluded it was appropriate to refer to a generic QROPS. It is often the case that the decision to use a QROPS will involve tax considerations and benefits, often (if not exclusively) for an overseas resident (non-UK resident for tax purposes). This report says it was intended for an overseas resident, and the absence of particular charges and recommendations about territorial tax advice are usually important when making a decision.

The importance of tax considerations cannot be overstated when it comes to a QROPS. Here there is no attempt to provide a territorial location for the generic QROPS. Nor even as a minimum (which in itself may not have been sufficient) any work apparently done to confirm and ensure Mr C is being supported and advised on these aspects. And of course taking into account the impact of the relevant charges and fees.

This highlights a significant area of concern. I had not been provided with any real explanation about why PSA's report refers to Mr C intending to permanently live outside the UK in very near future and nothing satisfactory. It isn't in the fact-find PSA say they relied on to prepare the report. Equally it isn't the sort of information one might expect to find in a generic report. It has been suggested more recently that the information came from Business C. Nothing has been provided to support this, such as the communication of this information.

I note the wording of the 2016 TVAS. "*A QROPS is a way of moving your UK pension to a scheme administered outside the UK, which is more flexible and easily accessible if you have retired abroad or are planning to do so and do not intend to return to the UK*".

And the wording of PSA's report of July 2016 that the UK Department of Works and Pensions requires members to have been advised to transfer out of pension schemes where there are safeguarded benefits of more than £30,000 and "*there is no exception for non-UK residents. In practice this means that a non-UK resident seeking to transfer benefits overseas to a QROPS has to seek advice from an FCA-authorised adviser on the implications of proceeding with such a transfer. This will supplement the advice provided by the local non-UK adviser who can provide specialist knowledge on the local QROPS tax regime and pension rules. As a consequence I have been requested by your local adviser [*Business C*] to write specifically and only in relation to the implications of transferring your benefits in the DB UK Scheme to a QROPS scheme*."

The report goes on to record that the writer understands Mr C currently resides in the UK but intends to "*leave the UK shortly for permanent residence abroad*." This highlights why it is reasonable for Mr C to have understood PSA were advising him and for PSA to have been understood to have accepted this role, relationship and the implications (because they say they are advising him in line with pension rules). It also highlights that PSA were informing Mr C their advice was to accompany the territorially relevant advice provided for a non-UK resident by the non-UK adviser.

I find it hard to understand why this alone didn't raise concerns from PSA about what they were doing. There was a fact-find indicating someone was in full-time UK employment with a UK mortgage and no suggestion in the fact-find they intended to change their circumstances. But their report says he is about to make a permanent move overseas. And a QROPS was being considered for the OPS A funds to be transferred into. On PSA's account, they had no knowledge of Mr C beyond what Business C told them and no knowledge of what he was being advised by Business C and why.

I appreciate that recently I've been told Mr C might have had a reason to move overseas (whether permanently or not). This information doesn't change my thinking about a QROPS and what PSA ought to have done, even if I am disappointed and surprised at when this information has been provided.

I also appreciate the recent submission that Mr C told PSA about the potential for him to move at some stage in 2016. I don't consider this happened. I accept from PSA they did not speak to Mr C directly and prior to writing their report in 2016. This is consistent with Mr C's earlier submissions and what I previously set out. It may be Mr C spoke to Business C or another business about this, but there is nothing that persuades me it was PSA.

It is not unreasonable to consider there may be future benefits to opening a QROPS where you intend to live overseas. But even then, and in such circumstances, it might be considered unusual for it to be considered appropriate or necessary to open a QROPS and transfer funds before it is sufficiently clear a move overseas (intended to be permanent) has been successful (and arguably for some period of time) given the financial consequences and implications. Certainly I'd expect to see some documented intention from Mr C and a fact-based rationale for a QROPS and a consideration of alternative arrangements to achieve his objectives.

I have considered whether the contents of the report ought to have raised Mr C's concerns sufficiently, such as to make it unfair that PSA are found responsible here, in particular because he knew he was not intending to imminently move overseas. But on balance I don't think that would be the fair outcome. I don't think Mr C would have (or ought to have) understood the importance of references to overseas living and the transfer, and how that might be relevant to a QROPS. PSA as authorised and regulated advisers in pensions transfers did not do what they ought to have done here. And what they did do, facilitated the transfer and led directly to the transfer into a QROPS. It has not been suggested to me, but I think it's a reasonable inference, that some of the references to matters outside of the UK might have reasonably been understood to be relevant to offshore investments, that I am informed were used here.

The report did not refer to Mr C having other pension arrangements. Whilst I haven't seen anything that suggests to me PSA knew enough about this at the time, they did shortly afterwards. And within a short space of time they were aware Mr C was transferring other pension benefits.

Here there is reference to Mr C not holding investments (and having limited assets and no disposable income). I don't think it would have been unreasonable on the information PSA held at the relevant time, for them to have concluded that Mr C was someone who was likely to have limited capacity for loss and to lack the necessary knowledge (and experience) when it came to understanding the implications of transferring his pension from something without risk to something entirely risk based; with the additional complexities and tax implications that are often characterised by a QROPS and a suggestion of moving overseas. These are all areas that have been highlighted by the regulator which ought reasonably to cause concern.

The objectives relied upon by PSA for Mr C in respect of the OPS A transfer can fairly be characterised as being generalised or unparticularised in nature and I found it hard to identify how they link personally to Mr C. But they are said by PSA to have been his

objectives and not generic. For example suggesting Mr C wanted more control over his assets, more flexibility in how he could take an income and the suggestion of an increased income through investing. PSA have to some extent repeated these through what they have said he wanted to achieve through another transfer and how they say this demonstrates his desire to access tax-free cash.

In any event I find it hard to see these to be compelling objectives for transferring and losing the guaranteed benefits to a QROPS. I note the significant high critical yield identified in the report. This again being a well-established area where such yields ought to indicate against transfer as a starting point, and ought to have immediately drawn the attention of an adviser authorised in pensions transfers.

I have seen what PSA say about the January 2017 alert (and communications) being the first-time expectations were provided or by inference understood, I don't accept this can reasonably be said as a minimum for all of the contents. I have also seen what they say about not providing a personal recommendation and how it might be said that the regulator's expectation that recommendations ought not to rely solely on a critical yield might not apply here. For clarity, I think even the very high critical yield alone ought to have caused PSA in the circumstances to have done more here. I don't consider it was reasonable for the yield to have been prepared, presented and relied upon in the way it was. Or that PSA should have reasonably considered how this was dealt with was appropriate or reasonable and without further knowledge and detail on Mr C and the proposed transfer, the proposed QROPS, associated fees and charges (and the intended investments).

Overall there were significant areas which cannot be described as generic or to some degree personal to Mr C, which ought reasonably to have alerted PSA to consider whether they ought to complete a report (or in the terms they did), and the declaration required to enable the transfer to complete.

Given Mr C's circumstances and what was being done by other parties, the report demonstrates the failure of PSA to appropriately know their client. I appreciate it's said PSA relied on information gathered by another party and it was appropriate for them to do so, but I don't agree here. Given the known complexities around such transfers and the particular attention in the regulatory environment at the time around such transfers (and the information they didn't have or that was inconsistent) I don't consider it reasonable for PSA to have relied upon the information they say they had or to have drafted their report(s) in the way they did.

The contents of the 2016 and 2017 reports do not contain what I would expect to see in such reports, nor do I consider they comply with what was required. I don't accept they can be described as generic. I think they were intended to be understood by Mr C to be personal advice reports; and as such they were fundamentally flawed. I am surprised PSA considered it reasonable in such circumstances to refer to a generic QROPS. I am equally surprised that PSA thought it appropriate to refer to Mr C's circumstances and OPS and then stress the report is only writing about the implications of transferring from a UK scheme into a QROPS and that the choice of QROPS and investments are not part of what PSA have considered. I don't consider PSA ought to have excluded these areas, nor they were in a position to reasonably do so here.

PSA would (or ought to) have known what was required and the role they were assuming in the transfer activity. To have completed the necessary documentation they did, which enabled the transfer to proceed, they needed to accept they were acting as Mr C's advisers, in their regulated capacity and they did so, voluntarily.

I am not persuaded that any attempts to limit or repudiate the liability of PSA in respect of their work in any of the documents provided to us, that they drafted for Mr C's attention, were effective in removing the consequences of the relationship I consider is reasonably imported and created by their work. I have not seen any agreement between PSA and others addressing liability for any future complaints or problems. The involvement of more than one regulated entity does not mean a complaint must be made to all or in any particular order, nor does the involvement of an unregulated party prevent alternative forms of complaint and recovery being pursued.

I think the most basic enquiry would have demonstrated to PSA, that Mr C did not sufficiently understand what was being done and why, nor the nature of the products involved and the inherent risks. Even (and again) putting to one-side any question about suitability.
It is worth reflecting on the historic context further. Whilst I have seen what's said about some of the historic regulatory references not bearing direct relevance or being focussed on an unrelated issue, I have been clear I refer to such material for historical context when it comes to common areas of concern generally when it comes to pension products.

As early as 2008 the regulator issued a report entitled "*quality of advice on pension switching*". The report provided examples of poor, compliant and good, examples of advice given since pensions A-day. Some examples below note what it thought would constitute unsuitable advice:

- *A pension that is more expensive than a stakeholder pension, but a stakeholder pension would have fulfilled the customer's needs*
- *A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option, but there is no evidence this option was needed)*

The regulator clearly outlined what should be considered and stated cost was a factor as well as the provision of suitable reasons for transfer. Therefore, if additional costs were involved with the advice to switch or if the client ended up paying for services, they were unlikely to utilise, this is likely to indicate that the advice was unsuitable.

The regulator's published checklist for pension switching is still applicable. That checklist identified four main areas of concern where consumers had lost out. It seems to me the following may be relevant here:

- They had been switched to a pension that is more expensive than their existing one (because of exit penalties and/or initial costs and ongoing costs) without good reason.
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.
- They had switched into a pension where there is a need for ongoing investment reviews, but this was not explained, offered or put in place.

Whilst this is of direct relevance to switching, it provides a sense of the history and context around when people change how pension benefits are held.

The regulator stresses at COBS 5.3 that the starting point when it comes to transferring out of an OPS containing defined benefits is to assume such a transfer will not be suitable. This section of COBS might be looking at suitability and involve personal recommendations, but it is knowledge of a starting point that PSA would have, given their regulatory status and permissions, and they could not reasonably ignore, albeit I appreciate PSA suggest by

inference any consideration connected to making a personal recommendation was not engaged.

The presumption of unsuitability having been renumbered to COBS 19.1.6.

COBS 19.1.2R set out the requirement for a TVAS. The method of carrying out the TVAS is set out at 19.1.3G, and under 19.1.4R the regulator sets out the financial assumptions to be applied.

In 1994 the regulator at the time issued guidance including the introduction of the requirement for a TVAS to be discussed with a client in simple and clear language. After December 2001 in COBS 5.3.29A the regulator expected a *"…prospective investor to receive sufficient, clear information to make an informed investment decision based on a firm understanding of the risks involved and a knowledge of what protection, rights, expectations and options they may be giving up."*

COBS 19.1.7G expected a business to *"…consider the client's attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."*

In May 2012 the regulator added two new pieces of guidance, which ought already to have been expected to feature in suitable advice, but they are of interest here nonetheless:

- COBS 19.1.7AG expected a business to explain the involved loss of fixed benefits and the transfer of risk from the DB scheme to the client.

  This included the extent to which benefits may fall short of replicating the DB pension, and the investment risk and annuity rate risk (including that they may not be able to buy an annuity which increased in exactly the same way as the DB scheme).

- COBS 19.1.7BG said *"a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme as sufficient in itself."*

I am asked to note by PSA that COBS 19.1.7BG is not relevant as that guidance relates to a firm making a personal recommendation, and PSA say they weren't doing this and weren't required to. I return to this issue later but should make clear I have not relied on a finding of any failure in respect of COBS 19.1.7BG as determinative of any issue in this complaint.

Of course there was no suggestion in PSA's report (or anything provided) that Mr C's benefits were likely to be matched anyway (let alone bettered). It can't be said PSA did rely on the rate of return.

Historically the regulator has considered how pensions funds are accessed. This included the various means used to get unregulated and high-risk investments into people's pension arrangements; I accept my knowledge around the investments is limited here. (It appears to be agreed the investments involved offshore funds, and I have seen reference to fund management fees and suggestion of collective investment schemes).

From around 2013 for example there was a move away from the use of self-invested personal pensions to access unregulated and high-risk investments, not coincidentally, this was around the time that the regulator expressed wider concerns in its thematic reviews about the 'due diligence' it expected of SIPP providers.

This was a well-publicised industry issue at the time so PSA as advisers regulated in the pensions field would have been aware. As an issue I don't think it is unreasonable for this to

inform the reasonable concern they ought to have held when it came to what PSA knew (and didn't know) and deciding what they were willing to do for Mr C using their permissions, and when it came to transferring preserved OPS benefits into a QROPS. Here it would have been reasonable for PSA to have satisfied themselves and made proper and effective enquiry in the circumstances of Mr C's transfer and what was intended (as well as why). Had they done so, PSA would have immediately identified areas (outside of critical yield) of inconsistency, concern and likely to have caused them to have acted differently thereafter.

In the alert issued by the regulator in 2013 it had been brought to the regulator's attention that some financial advisers were giving advice to customers on pension transfers or pension switches without assessing the advantages and disadvantages of investments proposed to be held within the new pension. In particular, financial advisers moving customers' retirement savings to SIPPs to invest wholly or primarily in high risk, often highly illiquid unregulated investments (some which may be in Unregulated Collective Investment Schemes). Examples of these unregulated investments included overseas property developments among other non-mainstream propositions.

And in the cases the regulator identified, they tended to operate under a similar advice model. An introducer would pass customer details to an unregulated firm, which marketed an unregulated investment (e.g. an overseas property development). When the customer expressed an interest in the unregulated investment, the customer would be introduced to a regulated financial adviser to provide advice on a SIPP capable of holding the unregulated investment. The financial adviser would not give advice on the unregulated investment and would say they were only providing advice on a SIPP capable of holding the unregulated investment and would arrange for the SIPP to be started.

Sometimes the regulated financial adviser would also assist the customer to unlock monies held in other investments (e.g. other pension arrangements) so that the customer is able to invest in the unregulated investment. At the time the regulator explained it was now investigating a number of firms and has secured powers to prevent them to continue operating in this way. And the regulator went on to say that:

"*financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.*

The [regulator's]… view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.

For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable. This is because if you give regulated advice and the recommendation will enable investment in unregulated items you cannot separate out the unregulated elements from the regulated elements.

There are clear requirements under the regulator's Principles and Conduct of Business rules and also in established case law for any adviser, in the giving of advice, to first take time to familiarise themselves with the wider investment and financial circumstances. Unless the adviser has done so, they will not be in a position to make recommendations on new products".

This was reinforced in the alert issued by the Regulator in April 2014:

"*We are alerting firms to our requirements when they give advice on self-invested personal pensions (SIPPS), giving our view and key messages. We also set out the failings we have encountered, which firms in this market should carefully consider…*
Customers have a right to expect an authorised firm to act in their best interests, yet the serious and ongoing failings found at firms have placed a substantial number of customers' retirement savings at risk.

We believe pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable.

Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable.

If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole.

The failings outlined in this alert are unacceptable and amount to conduct that falls well short of firms' obligations under our Principles for Businesses and Conduct of Business rules. In particular, we are reminding firms that they must conduct their business with integrity (Principle 1), due skill, care and diligence (Principle 2) and must pay due regard to the interests of their customers and treat them fairly (Principle 6).

The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (whether or not such investments are regulated products).

Despite the initial alert, some firms continue to operate a model where they purportedly restrict their advice to the merits of the SIPP wrapper. We think advising on the suitability of a pension transfer or switch cannot be reasonably done without considering both the customer's existing pension arrangement and the underlying investments intended to be held within the SIPP.

In the cases we have seen, customers' existing arrangements were invariably traditional pension plans invested in mainstream funds or final salary schemes, with the customer generally having no experience of non-mainstream propositions and many having very limited experience of standard investments. The new arrangements firms proposed were to transfer or switch the customers' pension funds to a SIPP, with a view to investment in non-mainstream propositions, which were typically unregulated, high risk and highly illiquid investments. Some examples of these investments are overseas property developments... Such transfers or switches are unlikely to be suitable for the vast majority of retail customers.

Generally speaking, we found very poor standards of advice. Firms typically failed to carry out an adequate assessment of the customer's overall financial position, needs, attitude to risk and objectives in relation to the switch or transfer as a whole (including the characteristics and risk of the wrapper and of the underlying investments). Advisers' understanding of non-mainstream propositions was also typically very poor, at least in part because of inadequate due diligence on the products and on the product provider.

We found that many firms had inadequate PII cover in place or had failed to disclose to their insurers the true nature of their business model. Firms should be open and honest with their insurers and take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems appropriate to their business (Principle 3) …

We have also seen a number of firms adapting their business model to advise customers to take out Small Self-Administered Schemes in an attempt to avoid FCA scrutiny. <u>However, advice to switch or transfer from pension arrangements is a regulated activity regardless of the funds' destination</u>." [My emphasis].

Again this material is relied on primarily for context in the background of the sector by the time of 2016. And in any event I accept some of the features causing the regulator the greatest concern were absent here, or there is insufficient evidence to know. The primary concern was about pensions transfers being facilitated where there was insufficient knowledge (on both sides) and unreasonable and inappropriate restrictions. This is an important feature when it comes to considering whether what PSA did for Mr C was unreasonable, flawed and inadequate.

Following the advent of pensions freedoms in April 2015, pension transfers (including those involving OPS' and safeguarded benefits) and the involvement of more than one entity, was under particular scrutiny in the regulated field when it came to pensions.

In the FCA's alert of August 2016, firms were reminded that "*an authorised firm which accepts business from an introducer must meet its regulatory requirements. If customers are given unsuitable advice by an introducer, the authorised firm may be held responsible for this and subject to regulatory action.*

[The alert continued] ...*Many authorised firms receive customer introductions from introducers. We are very concerned at the increase we have seen in cases in which the introducer has an inappropriate influence on how the authorised firm carries out its business, in particular where the introducer influences the final investment choice. We also have concerns where the authorised firm delegates regulated activities, for example by outsourcing their advice process to unauthorised entities or to other authorised firms that do not have the relevant permissions or are not their appointed representatives.*

Many authorised firms we have visited do not have adequate input or control over the advice they are ultimately responsible for giving to customers. This has been particularly evident in relation to advice on switching and transfer/conversion of pension benefits. We have specific concerns where this advice involves movement of pension pots to unregulated, high risk, illiquid products, whether they are based in the UK or overseas.

Areas of concern included:

1. *Some authorised firms will provide a simplified or limited advice process for customers referred to them to facilitate their desired outcome, often with no direct contact with the customer themselves.*
2. *Often the simplified or limited advice process is designed by the introducer, including the creation of heavily templated pre-prepared suitability reports provided to the authorised firm with reassurance that the process meets regulatory requirements*".

And firms were warned that:

"*Providing a simplified or limited advice process to consumers to facilitate investment into unregulated, high risk, illiquid products, whether they are based in the UK or overseas, or delegating regulated activity to an unauthorised party will* ***not*** *mean that the firm can avoid liability or regulatory action for unsuitable advice (or lack of advice). Following supervisory intervention, firms have varied their permissions so they can no longer operate a business model where there is an inappropriate influence by the introducer.*

It will be you and your firm against whom regulatory action will be taken, and there is also a risk that you may become involved in an illegal scheme".

I note the date, but don't think this means PSA ought not to have known or understood this prior to August 2016.

Again I appreciate PSA seeks to draw a distinction. But I consider this reminder to be of relevance when looking at whether PSA did what they ought to have done for Mr C. PSA came to be involved in writing a report for Mr C, through one or more third parties. PSA might say they wrote their report for Business C, but it was written for Mr C, and PSA now rely on Mr C and his understanding of a report addressed to him. Mr C and his needs and intentions are what was introduced to PSA one might reasonably think.

PSA facilitated and enabled Mr C's transfer, on their submissions at the request of a third party and they (PSA) sought to limit what they did for Mr C, with no direct contact. Whilst through the use of their authorisations, representing themselves as having given Mr C the relevant appropriate advice.

I have seen enough to conclude there is evidence to support my thinking the process involved an element of templating. I note as examples the reference to 'QROPS' clients, the letters drafted to be signed by one or more parties and the information on what PSA say they were needed for to provide by Business C.

PSA weren't delegating investment advice to Business C. Nor was Business C delegating regulated activity to PSA. PSA provided a service properly described by themselves as advice and reasonably understood to be advice. Ultimately it would not be reasonable to conclude they effectively restricted their responsibility, they did not have adequate input or control over the advice they are ultimately responsible for giving to Mr C. Whilst Business C was not unregulated at the time or in the way that was the primary focus of the regulator's comments in this document, that doesn't alter my finding.

Even putting aside the historic context and contemporaneous pensions concerns, there were more than sufficient case specific concerns and missing information in respect of what PSA were asked to rely on when it came to Mr C and the activities they were asked to complete for him that made it unreasonable for them to have done what they did at the time. And I think PSA ought reasonably to have been aware and understood what this might mean when it came to potential responsibility.

In January 2017 the FCA issued an alert setting out its expectations for firms advising on pension transfer including where other firms were involved in the process and where there were overseas schemes involved, and the advice process to be followed.

In the alert FCA went on to explain they published this alert, after seeing a number of advice cases following the introduction of the pension freedoms, some of them cases of poor advice. These cases generated concerns about adviser behaviour, whereby consumers had given up valuable pension benefits which would probably lead to reduced levels of later life income. The alert reminded firms about the regulator's expectations of those advising on pension transfers.

A firm advising on a pension transfer was required not to undertake a comparison using generic assumptions for hypothetical receiving schemes. The firm was required to take into

account the likely expected returns of the assets in which the client's funds will be invested as well as the specific receiving scheme.

The alert can in my opinion be reasonably understood as *reminding* (my italics) advisers that section 48 of the Pension Schemes Act 2015 requires that trustees or scheme managers check that advice has been taken before allowing a transfer to proceed, where the proposed transfer involves a DB pension or other safeguarded benefits worth more than £30,000. Such advice must be provided by a firm with the FCA permission to advise on pension transfers.

The FCA *reminded* (my italics and inference) advisers that their rules apply to advice provided by FCA authorised firms and that in particular it *expected the firm to consider the assets in which their client's funds will be invested as well as the specific receiving scheme* [my italics].

Only firms with the FCA permission to advise on pension transfers could advise on pension transfers and it was not considered acceptable for a firm without the permission to outsource the transfer analysis to a pension transfer specialist or to a firm with the permission and claim to be advising on the pension transfer. The FCA agreed a firm without the permission may refer a client needing pension transfer advice to a firm with the permission. However, it would not be acceptable for that second firm (here this would be PSA) to claim to be advising on the pension transfer without taking into account the assets in which the client's funds will be invested as well as the specific receiving scheme. Where both firms could be responsible for different elements of advice given to the client, firms were expected to liaise for consistency. And as I have already commented, I have not been persuaded of adequate liaison here between PSA and Business C (or indeed any other of the businesses).

It was noted that the firm advising on the transfer remains responsible for the advice, (including advice provided by a non-pension transfer specialist and checked by a pension transfer specialist). Here I am in no doubt PSA must be properly understood as having advised on the transfer.

The FCA acknowledged that non-UK residents considering a pension transfer were likely to need to seek advice from both an overseas adviser for investment advice and a UK adviser for advice on the proposed transfer. To advise on the merits of the proposed transfer, the UK regulated adviser was required to take into account the specific receiving scheme, including:

- the likely expected returns of the assets in which their client's funds will be invested
- the associated risks, and
- all costs and charges that would be borne by their client

In addition to liaising with the overseas adviser where necessary.
I don't consider the 2016 or 2017 alerts to have been introducing new or unexpected guidance and could reasonably (and ought to have been) read as a reminder of the requirements for regulated firms. They followed the January 2013 and April 2014 alerts and concerns around firms advising on pension transfers and reflecting the concerns and areas of scrutiny in the regulated pensions field.

These were live issues for the pension industry at the time. And ought to have informed what PSA did or did not do for a client and how they did it and how they chose to approach pension transfer work.

Just because PSA did not get Mr C to sign a client agreement, nor provide him with full written advice, does not mean they did not owe him a duty. Even if they sought to distance

themselves from direct contact (as appears here), whether intentionally or not, this was the consequence. I am in no doubt PSA knowingly took part in a process whereby unregulated and/or unauthorised parties and other parties directed Mr C on starting a QROPS, transferring OPS benefits and investing, and as such it would not be fair to remove their liability.
There is no written mandate setting out what service PSA are providing to Mr C and its scope. As such in considering PSA's mandate in addition to their knowledge, I have needed to look at the surrounding circumstances and material from the time.

Whilst PSA's current representatives have suggested PSA was not an eligible complainant and did not provide anything that might be characterised as advice to Mr C, PSA's first representatives suggested otherwise. It was suggested at that point that PSA provided restricted advice, designed to be supplemented by the primary advice of Mr C's local adviser.

I've explained I consider it important to reflect upon the context and environment in which PSA was acting at the time when looking at what happened and any responsibility that might be identified from any failings.

In addition, the regulator had repeatedly made it clear that the starting point when it came to the transfer of guaranteed safeguarded pension benefits was that a transfer was not suitable. In other words, there would need to be persuasive reasons on a particular transfer to make it suitable, such as the likelihood of exceeding, not just matching benefits being lost on transfer.

I appreciate it's said on behalf of PSA that the relevance of these alerts must be limited as Mr C was not PSA's customer or client. I don't agree. Firstly because I don't accept Mr C was not or ought not to be understood as having been a client and consumer of PSA. And whilst the alerts might not all precisely reflect what happened, I consider the alerts have direct relevance to the perception and understanding of what PSA would have been aware of at the time when completing what they did for Mr C, or ought to have known and considered at the time, as well as understanding Mr C's relationship with PSA. In other words, they bring context to PSA's responsibilities, and liabilities, as well as appreciating the regulatory environment at the time and what were live issues during the relevant period.
I have also found it useful to remind myself that in June 2017 the FCA published their consultation paper on pension transfers and some of what was said:

"*we are aware that advice has become focused on the transfer value analysis (TVA) output rather than making a rounded assessment of suitability. There is also an increased perception that the availability of advice is limited because advisers are cautious about advising on pension transfers. We are taking this opportunity to re-state the starting assumption when advising on a transfer of safeguarded benefits, and clarifying that the onus is on the adviser to prove that a transfer is in a client's best interests.*
Current requirements

An adviser giving a personal recommendation on the conversion or transfer of safeguarded benefits must comply with our requirements for providing suitable advice, including gathering information on the client's circumstances and objectives. We also have a number of additional requirements to reflect the additional risks and considerations when advising on the conversion or transfer of safeguarded benefits:

- *the advice must be given or checked by a pension transfer specialist*
- *the adviser must undertake a comparison between the benefits being given up and the benefits available under the receiving scheme including undertaking a prescribed*

Transfer Value Analysis (TVA) calculation, and

- *enhanced record keeping requirements*

After the widespread mis-selling of pension transfers in the late 80s and early 90s, which led to the pension review, regulators introduced guidance that all advice on pension transfers should start from the assumption that a transfer is unsuitable. This guidance continues to apply to the transfer or conversion of safeguarded benefits…

Requiring a personal recommendation

In March 2016, the FCA and Her Majesty's Treasury jointly published the findings of the Financial Advice Market Review (FAMR). This Review aimed to identify ways to make the UK's financial advice market work better for consumers…

However, advising on the conversion and transfer of safeguarded benefits is a complex matter and is defined as a separate specified activity in legislation.

In our view, advice on a transfer or conversion of safeguarded benefits needs to include a personal recommendation; if it does not, it won't provide appropriate protection for consumers. In view of the complexities when considering a conversion or transfer of safeguarded benefits we think that, for advice to be meaningful, it is important it looks at the consumer's individual circumstances and provides a specific recommendation.

The merits of transferring or converting safeguarded benefits are highly dependent on an individual's personal circumstances. To make informed decisions, consumers need to understand the specific details of their safeguarded benefits, make an assessment of their value of this benefit for their specific circumstances and compare this to the value of alternative options. The statutory requirement for individuals to receive financial advice before transferring or converting safeguarded benefits recognises that this is very difficult for consumers to do without help.

Most regulated advice on the transfer and conversion of safeguarded benefits is currently given as a personal recommendation. In the few cases we have seen of advisers claiming they are not giving a personal recommendation we have found the advice did not comply with the existing analysis requirements and in many cases is actually a personal recommendation.

We propose to require all advice on the transfer and conversion of safeguarded benefits to include a personal recommendation…

Checking advice

Advice on pension transfers, pension conversions and pension opt-outs must be given or checked by a pension transfer specialist, who must be a fit and proper person with specific qualifications. The existing requirements do not specify what is intended when a pension transfer specialist checks, rather than gives, advice on the transfer or conversion of safeguarded benefits. We have seen cases where a pension transfer specialist simply runs the Transfer Value Analysis (TVA) calculation or checks the numbers that have been produced rather than looking at the overall assessment and recommendation made as a whole. This is not in line with our expectations.

We propose to add guidance to our Handbook to make clear that checking the advice means assessing the reasonableness of the personal recommendation reached by the adviser. Checking does not require a fundamental repeat of the advice process, but will involve an independent assessment of the soundness of the basis for the advice. It should take into

account the client's wider circumstances, including their appetite and capacity for risk and the nature of the scheme being transferred to. In cases where the pension transfer specialist considers that the outcome reached by the adviser is unreasonable, or does not consider that all the relevant factors have been included; we expect the pension transfer specialist to clearly document the reasons for their view and for the adviser to take this into account in their recommendation to the client and the communications that accompany this advice… The adviser giving the overall advice remains responsible for the suitability of the advice, including the advice checked by the pension transfer specialist. Although a pension transfer specialist who is checking advice may not have a liability to the client, for example because they do not have a contract with the client, there might be a liability to the referring adviser if the pension transfer specialist were to fail in properly checking the advice…

Responsibility for advice – outsourcing pension transfer advice

In some cases the pension transfer advice and liability is outsourced in its entirety to another firm. They take on all aspects of the personal recommendation including levying the charges associated with the personal recommendation. The original firm plays no role in the advice being given.

Alternatively, firms without the relevant permission to advise on the transfer or conversion of safeguarded benefits might have clients who are seeking this advice. They can pass the transfer element of advice to an adviser with the appropriate permission but retain a role in advising on the destination of the funds following the transfer, e.g. the specific personal pension scheme and the investments within it. In practice, the assessment of suitability on the transfer cannot be done without consideration of the destination for the transferred funds and vice versa. Therefore in this scenario, although the firms are responsible for different elements of advice given to the client, they will need to liaise to ensure the overall recommendations are suitable and to avoid any disconnect. Both firms must be able to demonstrate the advice they give is suitable for the client.

Advisers should make sure they are familiar with the requirements summarised in our alert on introduced business [2016 referenced above]. Advisers referring clients to other advisers should be familiar with our Handbook guidance in PERG 5.67 on making arrangements with a view to transactions in investments…

From our supervisory work on pension transfers and observations of practices in this market, we have identified the following concerns with how the current requirements are applied:

- *Advisers often focus – in some cases almost exclusively – on the TVA element rather than making a rounded assessment of suitability based on all relevant factors. In the most concerning scenarios, the TVA is undertaken first without any knowledge of the client and then made to fit the client's circumstances.*

Our thematic review on enhanced transfer value (ETV) pension transfers (TR14/12)8 found a number of specific poor practices relating to methodology and personalisation of TVA including failure to reflect all the scheme benefits, insufficient tailoring to the member's specific circumstances and inconsistencies with other supporting documents such as Key Features Illustrations (KFIs).

This results in critical yields which do not reflect the true risks of transferring. Even when the critical yield is determined correctly, we have concerns that firms are not properly explaining volatility and the transfer of risk to their clients. In some firms the TVA is seen as no more than a box-ticking exercise to be completed for compliance reasons.

Equally, the TVA requirement has a number of limitations which, following the introduction of the pension freedoms, have become increasingly significant…

As alternative options to annuities have developed, following the introduction of the pension freedoms, the way in which the TVA is presented to consumers has been extended by firms. Frequently, consumers are shown numerous critical yields depending on how and when they might take their benefits. Critical yields are being presented for drawdown although there is no standard methodology for this approach. Without careful explanation it can be difficult for consumers to understand that critical yields for drawdown options are not directly comparable with those relating to annuitisation due to the underlying differences in who is responsible for carrying the mortality and longevity risk.

The concept of a critical yield is not widely understood by consumers, many of whom have no or limited experience of investments. They also might not appreciate how difficult it is to achieve returns which are equivalent to the critical yield and how the volatility of returns can impact on the outcome.

Overseas transfers

We are conscious of the challenges involved in transferring safeguarded benefits overseas. The government's mandatory requirement for advice to be taken for transfers valued at over £30,000 requires the advice to be given by an FCA authorised adviser. This means that individuals who want to transfer their safeguarded benefit abroad may need to consult an adviser in both the UK and the destination country for the transfer.

The Department for Work and Pensions (DWP) issued a call for evidence… to gather views on easing the challenges while still providing protection for consumers and will be responding in due course. The recent budget announcement on the taxation of transfers to overseas pension schemes makes these types of transfers generally less attractive but there will be people for whom transferring will still be beneficial.

The proposals set out in this paper will have specific effects on the process of transferring safeguarded benefits to an overseas pension. The proposed requirement for all advice to be a personal recommendation may mean that the UK advisor involved in the transfer takes on greater responsibility than they currently do.

Our proposed requirements for an APTA are likely to result in a more complex analysis having to be undertaken for an overseas transfer than for a transfer to a UK DC arrangement. Where a transfer overseas is being considered, firms must ensure that the APTA contains sufficient information in order to be able to compare financial and tax regimes in two countries. For example, a transfer to a Qualifying Recognised Overseas Pension Scheme (QROPS) may incur the QROPS transfer tax charge of 25% or there may be complex tax planning depending on the nature of tax treaties between the UK and the overseas territory where the client is resident".

This was of course a consultation paper and published after Mr C's transfer. It does however highlight what was being seen and considered around the time and includes it appears the time PSA say they were in contact with the regulator.

COBS 19.1.6 sets out that a firm should only consider a transfer to be suitable if it can clearly demonstrate on contemporary evidence that the transfer is in the "client's best interests". Ultimately I am not persuaded this transfer was in Mr C's best interests.

PSA's report does not use the presumption against transfer as the starting point. It says that they write "*specifically and only in relation to the implications of transferring your benefits in*

the DB (UK) Pension Scheme". The report does not answer the basic question of whether Mr C ought to transfer or not.

As PSA didn't sufficiently or adequately consider the merits of the transfer, it wasn't reasonable for them to have supplied Mr C with the declaration at the end of the report confirming he had received advice or the necessary document confirming this.

It is more likely than not that regardless of any advice or suitability, PSA were aware it was likely the transfer would go ahead. PSA were aware through their actions that a QROPS was the intended recipient for the pension funds. I've seen what is said about there not being a sense of pre-determination. In my provisional decision I referred to this being likely in respect of it being pre-determined at the time of the July 2016 report from PSA that they would go on to provide the Appropriate Adviser's Certificate. I haven't changed my thinking on this, but this isn't the matter that has been determinative in my decision.

PSA have stressed to me that they proceeded on the basis Mr C intended to move overseas. I haven't been persuaded that there was cogent and reliable evidence at the time that this was the position, looking at the information held by PSA.

Nor do I accept this something Mr C intended in 2016. In fact I am not persuaded I need to make a finding on whether Mr C actively intended to do so or not. As it's said PSA did proceed on this basis, and such a basis was flawed at the time. It was inconsistent with the fact-find, there is no record to show PSA were told this information about Mr C at the time, in a reliable way, nor when it might happen. Nor do I accept on what has been provided they would have been reasonable to have proceeded on this basis.

Whilst PSA were entitled rely on information gathered by another professional firm, as set out in the regulator's Conduct of Business rules, they were not permitted to do this if they ought reasonably to be aware that the details aren't accurate. And I think there was enough here to make them aware there was apparent inaccuracy and inconsistency. In addition to the information they ought to have held, taken into account and been provided with on knowing their client.

For completeness there's nothing to suggest Mr C had taken any steps in respect of moving overseas (and he has apparently never done so). And as I've already concluded, even so, I am not persuaded opening a QROPS and transferring OPS funds into one would have been appropriate here, even if he was intending to move overseas at the time.

PSA's actions, (and this includes a failure to complete a satisfactory report and to make any meaningful recommendation in this report and signing the certificate) allowed the other party to direct matters that led to Mr C's funds being transferred into an unsuitable product.

As a starting point it would have been reasonable, considering the information PSA had at the time of writing their report and when providing the necessary declaration, for them to have questioned why Mr C was considering this transfer and what he understood. PSA ought reasonably to have been expected to have identified the inconsistencies (including between the fact-find and their starting point, (such as future intentions and objectives). And areas where it appeared the regulator's requirements and expectations might not be being met, for PSA to have done more before completing their report and signing the declaration, such as contacting Mr C directly. And I would have expected there to be careful record keeping around this and what material PSA were basing their work upon, which I do not consider has been demonstrated to me through the limited material from the time that I have been provided with.

In any event the restriction PSA said they were placing on their report was not consistent with what I considered to be the regulatory requirements at the time.

As early as an alert issued in January 2013 the regulator said it should be particularly clear to financial advisors that, where a customer seeks advice on a pension transfer in implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating.

PSA ought to have widened the remit of their report (and the information gathered and shared) and it is not reasonable to conclude the restriction they sought to put in place to be effective. PSA ought to have assessed the overall suitability of the transfer, this included a transfer to a QROPS and the anticipated investment choices, even if investment advice were to come from the firm advising on this element.

Looking at PSA's report and what it did, I have found it hard to identify what information PSA had at the time and I don’t conclude they had sufficient and consistent information to sufficiently understand Mr C’s circumstances, objectives and aims or indeed his capacity for loss or his appetite for risk.

It is clear from information provided that PSA was given some information. Although it is not clear what precisely was provided, by whom and when. There is sufficient for me to conclude that Business C provided PSA with some information. And whilst it is not referenced in the report of July 2016 PSA clearly had some knowledge that Mr C was considering transferring other pension arrangements. The emails from around the time in 2016 show this.

I have read with care all that has been said by PSA about not providing a personal recommendation to Mr C and how that impacts whether what they did was sufficient and in-line with regulatory requirements. In addition, that it is stressed on behalf of PSA they were not required to provide a personal recommendation. As such it’s said the advice was wholly compliant with the relevant regulations.

I accept the contents of PSA’s report and the manner of its draft, might be construed as seeking to establish it as non-personal/ not making a recommendation. It would be reasonable to conclude the report is flawed as a form of personal recommendation. But I think Mr C would have reasonably understood the report to have been a personal recommendation at least to some extent. It contained personal information and circumstances and said it had taken this into account, and considered what PSA captured as the option being considered.

I remind myself of how the regulator reflect on this in the January 2017 alert. “*Advice to a person that is presented as suitable for the person to whom it is made, <u>or</u>* [my underline] *is based on a consideration of the circumstances of that person, constitutes a personal recommendation. In making personal recommendations, the firm will need to comply with our requirements regarding the suitability of the advice provided. The firm should make clear the loss of any safeguarded benefits and the consequent transfer of risk to the client, including:*

- *investment risk*
- *longevity risk, and*
- *the risk that products may not be available or cost effective to meet the client’s needs in retirement*”.

I accept the report does not positively conclude the transfer to a QROPS is suitable or otherwise. It does sufficiently present itself to be *based on a consideration of the*

circumstances of that person so there are persuasive grounds to think the report ought to be understood to be advice constituting a personal recommendation.

In such circumstances I accept PSA apparently had information on Mr C's attitude to risk and the rate of growth required to replicate benefits being given up (in line with COBS 19). Of course the report didn't take into account the assets in which the funds would be invested (and in 2016 PSA said they used market average figures). Nor did PSA take into account the costs and charges. The regulator's January 2017 alert set out "*a firm advising on a pension transfer should not undertake a comparison using generic assumptions for hypothetical receiving schemes*".

I tend to think this is what the 2016 report was purporting to be doing at the time.
The January 2017 alert went on to say "*section 48 of the Pension Schemes Act 2015 requires that trustees or scheme managers check that advice has been taken before allowing a transfer to proceed, where the proposed transfer involves a DB pension or other safeguarded benefits worth more than £30,000. The advice must be provided by a firm with the FCA permission to advise on pension transfers. FCA rules apply to advice provided by FCA authorised firms and, in particular, we expect the firm to consider the assets in which their client's funds will be invested as well as the specific receiving scheme*."

PSA's report was unsatisfactory and reflects a flawed process. It might reasonably be considered a flawed attempt to avoid the description and requirements of providing a personal recommendation and/ or be a flawed personal recommendation. Neither finding changes my overall thinking and the outcome. PSA advised and ought to be understood to have advised Mr C in respect of the transfer. The report itself will have reasonably allowed Mr C to believe the process was being overseen or managed (at least in part) by a regulated firm with the relevant permissions. But ultimately it is PSA's required confirmation they have given appropriate advice to Mr C, which is not a confirmation reflected by the circumstances and history that was needed and facilitated what took place.

I have thought carefully about whether the information that was contained in the report ought to have sufficiently made Mr C understand what was being proposed, and the likely risks involved and what that might mean for him. And I accept there is information about the returns needed to match benefits (albeit on a non-specific basis). I don't overall find the report ought to have sufficiently alerted Mr C in such a way that he ought to be found to have contributed to the position he is now in.

I would like to stress for completeness I have not relied on the January 2017 alert as being determinative when it comes to concluding whether PSA did enough in 2016. I do however continue to consider it is fair to refer to what was set out and how.

To reach a fair and reasonable decision on this complaint I haven't needed to reach any finding on whether Mr C did or did not copy and scan a certificate pretending it was from PSA in respect of a different pension scheme. The information around this document and activity shows there were wider conversations going on about Mr C's circumstances, and PSA had some knowledge about other activities going on in respect of his pension arrangements.

It is an obligation for PSA to have understood Mr C's circumstances, experience and objectives. PSA did not meet or speak to Mr C before writing the July 2016 report. Indeed there's nothing to suggest PSA took any steps to try to contact Mr C until they appear to contact him out of the blue in 2017.

<u>PSA's contact with the regulator</u>

This service has been told something about PSA having contact with the regulator at this time and the thrust of what is said is that I ought to understand what PSA did for Mr C was part of a model sanctioned by the FCA.

But I don't think the information goes that far and I don't accept the information provided supports this as the only reasonable conclusion. In respect of this complaint we have been provided with limited information and material on the contact with FCA, which it appears to have been in 2017 and 2018.

The email provided refers to supervisory work having been "*focussed solely on advice given by PSA relating to pension transfer business for overseas customers and was limited to business that was processed only in 2016*".

I tend to think the material and what's said might reasonably be understood to demonstrate PSA accept Mr C was their customer and they did provide advice.

I am aware that PSA have provided some further detail about the contact they had with the regulator outside of their submissions in this complaint. In such circumstances I would usually consider it appropriate to share such information or invite PSA to do the same. Here I have not found that any potential conversations or discussions with the FCA hold any persuasive weight in respect of this complaint and the decision I need to make. I don't consider there to be sufficient information for me to have any real or meaningful understanding of the conversations that took place with the regulator. Nor do I consider there to be sufficient information for me to conclude that the FCA in any way approved or sanctioned the report (content or approach) provided to Mr C or PSA's provision of the Appropriate Advice Declaration (in the circumstances), or that the regulator confirmed that these items could be accurately characterised as generic advice provided to a third party.

I don't accept that would be an accurate description of what they were, and such submissions seems to be inconsistent with the guidance, commentary and considerations around the time of the regulator.

It is submitted that PSA discussed the provision of generic reports to assist overseas advisory firms with the FCA and said the FCA accepted PSA could provide general commentary to allow independent decisions to be made by scheme members in conjunction with their financial adviser. I haven't seen anything that makes me think such discussions might not have taken place. However they don't assist me here as I don't think this is an accurate summary of what happened in respect of Mr C. I don't think PSA's sole activity can be described as general commentary or generic. PSA provided a report that was personal to Mr C to some extent and would reasonably have been understood as such; despite inaccuracies (Mr C not being overseas). Importantly, PSA also provided the appropriate Adviser Declaration and as such represented themselves as having advised Mr C on his pension transfer to Mr C and others including the trustees of OPS A.

Ultimately and in any event, the FCA's ambit and what I am deciding are different.

For completeness

I have considered the varying submissions made about Mr C's more recent claimed knowledge and experience of some financial matters and whether this ought to impact upon my decision. Ultimately I have decided it does not. I have given this careful thought, and particularly, as with the detail of the investments held in the QROPS, I don't think I have been as well-assisted when it came to being provided with information. Indeed there has also been some inconsistency in submissions, arguably by both parties.

However none of this has been determinative, I have needed to look at what happened historically and I am satisfied PSA didn't do what they ought reasonably to have done, and had they done so, it's more likely than not, Mr C would not now be in the position he is in. Even if Mr C has some degree of financial experience and knowledge, there is nothing to lead me to conclude it lies in the fields of pension transfers and OPS benefits and overseas pension schemes or the related taxation rules. I have also noted the usual requirements in respect of record keeping and whilst I haven't needed to make a finding on this aspect, I do note that I would expect adequate record keeping to have ensured a business could readily meet queries about how inconsistencies were approached and addressed, for example.

I have seen what the Investigator said about the advice given to Mr C being given during the period when this Service provided discount rates on our website for use in loss assessments when a complaint about a past pension transfer was upheld. As set out in the Investigator's view, whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I tend to agree with the investigator that such rates provide a useful in indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return bracket (simply put here critical yield), required to match the occupational pension scheme at retirement was quoted by PSA on 1 July 2016 as being 18.57% a year. It was increased to 20.75% as at the end of March 2017 when compared to the actual portfolio the funds were invested in by this stage. The regulator's upper projection rate at this time was 8%, the middle rate was 5% and the lower projection rate was 2%.

Looking at Mr C's attitude to risk, even putting aside the likely additional charges and impact of any taxation relating to the QROPS, Mr C was not likely to benefit by transferring. I don't think it is likely he would match, let alone exceed the overall value of the OPS at retirement. I think it was more likely that he would achieve significantly less.

As the PSA report did accurately identify in July 2016, "*an important consideration is whether this real rate of return is achievable or not. Unfortunately no one can provide a definite answer to this question. I can only provide you with a very general view of the rate of return we might realistically hope to see*".

The table below then shows a "*realistic rate of return*" for a low to medium risk level where an investment is held for five to 10 years would be 4 to 4.5%.

The regulator clearly outlined what should be considered and stated cost was a factor as well as the provision of suitable reasons for transfer. Therefore, if additional costs were involved with the advice to switch or if the client ended up paying for services, they were unlikely to utilise, this is likely to indicate that the advice was unsuitable.

There were clear additional costs and real complexities relating to the costs and tax implications involved as a consequence of transferring to a QROPS and there is nothing that persuades me that appropriate consideration was given to such implications, and how Mr C was aware of these let alone consideration as to whether a transfer was necessary.

Whilst PSA was right to identify it is an important consideration whether a rate of return is achievable or not. I disagree with PSA's suggestion they can't say whether the critical yield was achievable or not. I think it was sufficiently clear that it was more likely than not, that the OPS benefits would not be matched, and let alone exceeded, which is what I would expect to see (absent other personal persuasive reasons) to make a transfer suitable. This was a significantly high critical yield.

Of course to some extent PSA came to agree this. As PSA came to review their original report, with their suggestion they were surprised to discover Mr C had transferred given the contents of their report. There isn't enough to persuade me they were surprised here, but that isn't part of what I need to decide here and I accept this might be a logical reaction in the circumstances. This indicates to me that PSA thought Mr C ought to have relied on their report and been informed by their report when it came to making a choice.

This tends to support my thinking that PSA ought to have been alerted by the critical yield alone, given what else they knew at the time, and if they considered it reasonable to fail to recommend against a transfer (into a QROPS) or not seek further information. I don't think it was reasonable.

By March 2017 there is reference to there being an increase in the critical yield and PSA say they considered this increase in the critical yield to be a significant change. I accept it was a change, but it had previously been a significantly high critical yield. The increase did not change this significantly and it is arguable that it simply highlighted how unlikely it would be for a transfer to ever allow benefits to be matched.

Whilst in 2016 PSA said they had used market average figures for investment growth, by 2017 PSA appear to have been saying Mr C didn't make the investments they had expected in 2016. I am given to now understand Business C told PSA in 2017 how Mr C invested. I also understand the 2017 to have taken account of some level of charges and fees.

I previously identified the 2017 communication invites the question as to why PSA had revisited their original report to Mr C and to obtain an updated TVAS and information. The Investigator identified that Business C went out of business around this time and considered whether this might be a motivation for PSA to have offered Mr C financial advice. I can understand this might have been a factor, as might any scrutiny of the regulator into the sector.

PSA have more recently told me it was due to a concern PSA had identified about charges being applied to the portfolio that were higher than PSA had assumed in their 2016 report, having obtained information from Business C. And they say it is this that led to them writing to Mr C since they wanted to highlight the charging disparity and recommend customers transfer into more suitable lower cost investments. I'm not sure I understand how this came about or why. But I don't think there's enough to make any finding on this, nor do I consider it necessary here. I have seen what is said by PSA and their intent in 2017 to enable Mr C to be returned to the critical yield set out in the 2016 report.

I am left with the impression that in 2017 PSA sought to address areas with Mr C that the FCA had reminded authorised firms needed to be included when pension transfer advice under the Act was provided. But (and if that was the case) I don't think this was done adequately and in any event, it was too late. PSA might suggest their 2017 proposals would have brought the critical yield in-line with what had been provided in 2016, but that was only in respect of investments and involved what was an already significantly high critical yield, and of course the QROPS had already been opened and the transfer effected.

PSA suggested they offered Mr C the opportunity to reinvest his money in 2017 because of the increase in the critical yield. I am not persuaded what was offered reflected any further or better understanding of Mr C's objectives and circumstances, nor addressed their purported surprise or the failures around the transfer.

It told Mr C he only had two options, (which is unlikely) and it did not seek to do anything but advise on his portfolio in a way that sought to put his investments in the position to achieve

the 2016 very high critical yield. Thus not addressing any of the more fundamental flaws, save beyond how the calculations in 2016 had been completed.

I note PSA said their options would enable Mr C to be in the position he ought to have been had things been done as expected in 2016. This is an unusual and somewhat opaque way to express surprise at a transfer having taken place.

Ultimately I don’t accept PSA’s submissions that Mr C ought to have acted differently in 2017 and what they say ought to be consequences of his failure to allow them to change his investments then.

I have not found Mr C ought to have reasonably done anything differently in 2017. I have very limited information about what happened at the time from either party. Mr C was already in the position I don’t think he ought to have been. And this was due to the actions of PSA in the use of their authorisations. Had PSA done what I think they ought to have done, I don’t think Mr C would have been in the position he found himself in, in 2017 and now.

I don’t think PSA sufficiently advised Mr C on the transfer. And based on the circumstances and what’s said here I don’t think PSA were in a position to provide the declaration that the relevant appropriate advice had been given by them.

Had PSA taken further steps to find out more about Mr C and resolve the inconsistencies in the information they had, their report would have looked very different. I think it’s more likely than not that had PSA’s report contained the information it ought to have done and/ or if they had given the appropriate advice as I tend to think they ought to have done, they would have revised their report and recommended against the transfer. It’s also likely that if they really thought his objectives involved accessing his tax-free cash, other alternatives would have been considered. And Mr C is likely to have taken account of this when it came to making any decision.

PSA’s representatives submitted that the use of the above sentence about Mr C taking account of an appropriate report in my provisional decision doesn’t mean I thought it likely that an appropriate report and/ or appropriate advice would mean Mr C would have acted differently, and/ or he would not have transferred. I am sorry if that was not sufficiently clear to PSA’s representatives when I used that phrase. I consider my thinking on this was reiterated elsewhere. I think a causal link is established between what PSA did and what they failed to do adequately and Mr C’s having a QROPS, transferring his OPS A benefits into the QROPS and the investments that followed. And that had PSA done what they ought to have done, I think it’s sufficiently likely Mr C would not be in the position he is now in. PSA were the UK authorised firm who provided a report on the QROPS and transfer which was intended to be provided to Mr C and which was. I have no doubt this ought reasonably to be understood to be likely to impact Mr C’s thinking and Mr C was entitled to rely upon it and the involvement of a UK authorised adviser on the transfer.

There is not enough to persuade me that Mr C was either so set in any objectives or so influenced by others (or both) that if PSA had done what they ought to have done, it can reasonably be said that Mr C would still have proceeded.

I would like to stress again that it is agreed PSA were not required to recommend a transfer in order to provide and confirm provision of appropriate advice under the legislative and regulatory requirements.

I don't conclude Mr C was ever likely to have been in a position (and certainly not whilst continuing to reside in the UK) to have matched, let alone improve upon the benefits he was entitled to from the OPS by transferring into a QROPS.

The benefits he had accrued offered valuable guarantees. The evidence from the fact-find indicated a low capacity for loss which again tends to suggest the security of guaranteed benefits offered real value to Mr C. It isn't said Mr C was making an informed decision to use this these funds for a high-risk enterprise (the QROPS alone represented this given his circumstances). That's not what the fact-find says. That's not what the risk assessment or capacity for loss says. There is no persuasive evidence to suggest Mr C sufficiently understood and considered these benefits were ones he was willing to lose and then use accepting a high level of risk for growth. And for the reasons set out, even if he wanted to access his tax-free cash ahead of the usual retirement date, this does not change my thinking.

For completeness I invited all parties in my provisional decision to provide me with further information on the investments made using the QROPS in 2016, 2017 and onwards, how these came about and the current status of the QROPS and investments held. I noted that parties would see the relevance of this to intended redress. I have received limited information and the main thrust relates to the offshore status.

PSA say that if Business C ultimately mis-invested funds, PSA had no knowledge of this or any involvement in the investment process. In any event the information they were given on Mr C did not suggest the investment of his funds had been unsuitable. It's said on behalf of Mr C that the investments did present an increased level of risk compared to non-offshore mainstream investments.

I don't consider I have sufficient information to make any finding on the investments, nor do I think I need to. Save I have not seen enough to conclude with certainty the investments are illiquid. It is the advice and transfer process that I consider to have been flawed in such a way that PSA did not act reasonably or do what they ought to have done. My concerns start with the consideration of the transfer and QROPS, and what was done, and I don't consider I need to know more or make a finding about the investments used.

There was a final objective listed in the fact-find that Mr C had concerns over the viability of his OPS. Were this to have been a genuine concern of Mr C's, this might tend to support an impression of Mr C's financial inexperience when it comes to pensions, given the identity of the OPS. I would have expected PSA to have identified this was an area which did not tend to support a transfer substantively.

Ultimately, I uphold Mr C's complaint on the basis PSA didn't do what they ought to have done. Mr C ought not to have been recommended to transfer out of his OPS (albeit I accept direct direction on this came from another party) into a QROPS. The transfer only proceeded due to PSA. They provided the necessary confirmations to enable and facilitate the transfer to proceed. Had they not done so the transfer would not have preceded.

The contents of PSA's report for Mr C cannot accurately be described as being generic. Although I don't think the report did what it ought to have done including when it came to accurately recording personal information and adequately assessing things for Mr C. It is entirely unsatisfactory for a specific pension arrangement to be compared to a 'generic' QROPS, should there be any such appropriate 'generic' QROPS, omitting any sense of the impact of fees and taxation with such an arrangement.

I don't think any of the information provided to Mr C was sufficiently clear for him to understand or be in a position to make an informed choice. PSA were an important and pivotal part of that. But for the actions of PSA the transfer would not have proceeded. I don't think PSA did what they ought to have done.

I don't accept PSA had in place any restriction which meant they didn't accept the liabilities that come with failing to meet the expectations and duties in respect of Mr C (their client). In addition PSA accepted responsibility (or ought reasonably to be found to have done) for providing advice and this is demonstrated by their completion of section 48 Adviser certificate.

I am not persuaded there is sufficient evidence for me to conclude Mr C had made any form of final decision to move overseas, let alone when that might happen. There is enough now to allow me to understand there was a potential destination that was likely to have been considered, but there is nothing I have seen identifying this at the time. Mr C had not moved overseas at the time the QROPS was opened and transfer completed, and the fact-find did not identify he intended to do so, and he has not done so. I am not persuaded there was enough on the limited information at the time, or now to conclude any move might have been permanent. Mr C/ his representatives may have been inconsistent on this, however there is enough for me to reach a fair and reasonable finding.

I am not persuaded that had PSA provided an adequate report to Mr C he would still have chosen to go ahead with the transfer. Mr C was entitled to rely on PSA's report and understand that it was a report prepared personally for him. I think it's more likely that had PSA advised on the basis of Mr C's circumstances (and information contained in the fact find) and setting out the intended destination and investments, they would have advised against the transfer on the basis of the high critical yield. Putting aside what appears to me to be the wholly inappropriate and ill-considered use of a QROPS as a destination product, I think it's more likely than not Mr C would have been able to use appropriate advice to better understand. It's more likely than not, had PSA done what they ought to have done Mr C would not have transferred. I don't consider the impetus for what happened came from Mr C.

For PSA to sign the Adviser Declaration Certificate confirming the adviser has given advice on the transfer, does not mean the advice needs to support a transfer for the certificate to be signed. It might be considered surprising in the circumstances that PSA's report was drafted as it was, but this is not something I need to comment upon further. PSA failed to discharge their duty to demonstrate that they reasonably did what they ought to have done, that they knew their client sufficiently (or that it was in Mr C's best interests to transfer).

Whether or not any other regulated firm with the appropriate permissions and authorisations might have acted similarly or differently, is too speculative to impact my decision here. I have looked at whether something went wrong in the service provided by PSA to Mr C and decided that it did; and what I consider ought to be done about this.

Putting things right

<u>What PSA will need to do</u>

PSA will need to complete the following redress calculation. It is my aim to put Mr C as close to the position he ought to be in had he not transferred out of OPS A. A fair and reasonable outcome is for PSA to put Mr C, as far as possible, into the position he would now be in but for the transfer (and subsequent investments) which were the consequence of flawed and apparently unsuitable advice. I consider he would have most likely remained in the occupational scheme if suitable and appropriate advice had been given.

PSA should 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. This is in respect of the funds derived from OPS A.

For clarity, I understand Mr C has not yet retired, and he has no plans to do so at present; albeit I have been told he has taken tax-free cash and at least some income payments. So, compensation should be based on the scheme's normal retirement (understood here to be age 60), as per the usual assumptions in the FCA's guidance. OPS A provided the normal retirement date in July 2024.

Mr C has taken a sum of tax-free cash and made at least two other withdrawals. The redress exercise will take account of these withdrawals in calculating any redress to be paid in respect of the funds derived from OPS A.

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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, PSA 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 the redress prudently is to use it to augment their defined contribution 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 PSA's offer to calculate how much of the 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 the 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 directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PSA may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 20% and I have not been corrected on this. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

<u>Determination and money award</u>:

Where I uphold a complaint, I can award fair compensation of up to £160,000 here, 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.

I uphold this complaint and require PSA to pay Mr C 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 PSA pays Mr C the balance.

Income tax may be payable on any interest paid. If PSA deducts income tax from the interest, it should tell Mr C how much has been taken off. PSA should give Mr C a tax deduction certificate in respect of interest if Mr C asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

If Mr C accepts an uphold decision, the money award becomes binding on PSA. My recommendation is not binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to consider getting independent legal advice before deciding whether to accept any final decision.

It appears Mr C's QROPS may be unable to be closed. My redress aims to take account of this as follows.

My aim is to return Mr C to the position he would have been in but for the actions of PSA. This is complicated where an investment is illiquid (meaning it cannot be readily sold on the open market), as its value can't be determined. I previously indicated that this appeared to be the position here and I was not corrected. Equally I do not have clear understanding on the investment history of the QROPS or its current status. Parties were asked to provide information on this, they did not.

Mr C's representatives have not told me that Mr C's QROPS failed, although it appears it is likely to have done so given the name of the original provider. I do not know who provides his current QROPS arrangement nor whether it holds any illiquid investments.

Should the QROPS continue to hold illiquid investment(s), the following redress approach must also be completed for such investments.

PSA should agree an amount with the QROPS provider as a commercial value, then pay the sum agreed to the QROPS plus any costs and take ownership of the investment. If PSA is unable to buy the investment, it should give it a nil value for the purposes of calculating compensation.

In return for this, PSA may ask Mr C to provide an undertaking to account to it for the net amount of any payment he may receive from the investment. That undertaking should allow for the effect of any tax and charges on what he receives. PSA will need to meet any costs in drawing up the undertaking. If PSA asks Mr C to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

If it is the case that the QROPS only exists because of the illiquid investment, then in order for the QROPS to be closed and further QROPS fees to be prevented, the investment needs to be removed from the QROPS. I've set out above how this might be achieved by PSA taking over the investment, or this is something that Mr C can discuss with the QROPS provider directly. But I don't know how long that will take.

Third parties are involved, and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that PSA pay Mr C an upfront lump sum equivalent to five years' worth of QROPS fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the QROPS to be closed.

No party provided any detailed response on this part of my proposed redress. In making this part of the award I appreciate that other pension funds were later added to the QROPS. As

such, should further complaints be pursued, it might be unlikely that further awards would be made in respect of future QROPS fees for the same QROPS.

Distress and inconvenience

In addition PSA will need to pay Mr C the sum of £350 to represent his distress and inconvenience that is reasonably connected to the service they provided.

Third parties

Should PSA want to pursue any third party, that is a matter for them. Once they have paid all and any compensation due to Mr C, they may wish to ask Mr C to assign his rights to pursue third parties, should they ask Mr C to do this, they will need to pay for him to receive legal advice on this and to cover the costs of any such assignment.

My final decision

For the reasons given I uphold Mr C's complaint about Peter Stewart Associates Limited. PSA will be required to complete the redress exercise set out above and pay all sums due to Mr C in respect of this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 October 2024.

Louise Wilson
Ombudsman