DRN-4762986

The complaint

Mr D complained about advice he was given to transfer the benefits of two defined-benefit (DB) pension schemes and one defined contribution (DC)[1] pension scheme, to a new personal pension. He says the advice, which was provided in 2018, was unsuitable for him and believes this has caused him a financial loss.

Professional Independent Advisers Limited (trading at the time as PIA Wealth Management) is responsible for answering this complaint. To keep things simple therefore, I'll refer mainly to "PIA".

I'd like to apologise for the time it's taken for this complaint to reach the ombudsman stage.

What happened

Four pensions are relevant to this case, but only three ever transferred.

When Mr D sought advice from PIA he had three DB pensions which I'll refer to as "**Pension L**", "**Pension H**" and "**Pension D**" respectively. He also had a DC scheme I'll refer to as "**Pension DC**".

There's no dispute that following PIA's recommendation, Mr D transferred Pension L, Pension H and Pension DC to a newly created personal pension scheme. However, he left Pension D in place and continued to operate this as a DB scheme.

Mr D asked PIA for regulated pension advice because the rules in place at that time allowed certain pensions to be accessed from the age of 55. It seems that Mr D wanted to access some of his pension savings to obtain what he hoped would be around £25,000 in immediate cash. His circumstances and objectives were broadly as follows:

- Mr D was 57 years old and separated. He had no financial dependents but lived with his two adult children aged 23 and 20 in a home he owned. The property was estimated to be worth £120,000 and had a £55,000 mortgage outstanding with eight years left to run. This mortgage cost Mr D around £650 per month.

- Mr D had recently started a new job and earned around £23,000 per year (gross) and he had no demonstrable savings or investments.

- Mr D had acquired some debt which comprised £5,000 on a credit card and £5,000 he apparently owed to a family member.

- I have seen information which tends to suggest that the normal retirement age (NRA) of the two DB schemes Mr D transferred away from was 65.

- Mr D was evidently on the cusp of joining a new DC pension scheme operated

[1] With a DC pension (sometimes called money purchase) you build up a pot of money that you can use to provide an income in retirement. Unlike DB schemes, which promise a specific income, the income you might get from a defined contribution scheme depends on factors including the amount you pay in, the fund's investment performance and choices you make at retirement.

through his new employer and he intended to eventually retire at around his state pension age, which was 67.

For the DB pensions being transferred, Mr D had been given cash equivalent transfer values (CETVs) of:

1. £58,125 for Pension L and

2. £51,981 for Pension H.

Pension DC had a fund balance of around £18,758. This therefore meant that Mr D ultimately transferred a total of around £128,864 to a newly created personal pension from 2 DB schemes and his existing DC scheme.

PIA had set out its advice in a recommendation letter of 3 July 2018. In this letter, it advised Mr D to transfer out of Pensions L and H to a new personal pension. It further advised that Pension DC should be transferred to the new personal pension, thus consolidating in one new pension 'pot'. This recommendation was mainly based on Mr D withdrawing a tax-free lump-sum and to spend this on eliminating his debts, contribute towards a wedding, and undertake some home improvements. Although Pension D isn't the subject of any complaint (because it was never transferred) it's useful to note that the recommendation for this was to access this immediately. This required crystalising the benefits earlier than the NRA and start to draw an annual pension from it, to support his day-to-day income needs.

Mr D accepted this advice, and he transferred Pension L, Pension H and Pension DC to a newly established personal pension plan in mid-2018.

In 2023, now aged 62, Mr D says he became aware that the transfer(s) might not have been in his best interests, and he raised a complaint with PIA. PIA said it hadn't done anything wrong and had acted to achieve what were clearly Mr D's objectives at that time. It didn't uphold his complaint.

In December 2023, Mr D referred the complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' saying that Mr D's complaint should be upheld. They recommended that for the two DB schemes, PIA should undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice. And for Pension DC, the investigator said that there was no reason for Mr D to have moved his DC pension to the new pension he'd set up. They recommended that PIA should use a formula to determine the fair value of Mr D's DC pension if suitable advice had been given.

PIA still disagrees that Mr D's complaint should be upheld, so it now falls to me to look at the merits and make a Final Decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of PIA's actions here.

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

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

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

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

I've also considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, PIA should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr D's best interests.

Having considered all of the information and evidence in this case, I'm not satisfied PIA's advice to transfer any of these pensions was in Mr D's best interests. I've therefore decided to uphold the complaint for largely the same reasons given by the investigator.

<u>*Financial viability – the two DB transfers*</u>

To assess whether transferring from Pension L and Pension H was worthwhile from a direct like-for-like financial comparison perspective, I considered the amount the transferred funds would need to annually grow by, to match the existing DB benefits already in place. This is explained by referring to a 'critical yield' rate. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

Our investigator explained that the critical yields in both cases were relatively high and that because Mr D was categorised as likely being a cautious investor, the chances of any assumed growth matching the critical yields was very doubtful. The suitability letter Mr D was given by PIA explained that for Pension L the critical yield if assuming a retirement at the NRA of 65 was 5.73%, and for Pension H it was 8.74%.

However, viewed from the lens of 2018, I think the chances of achieving these rates were highly implausible and I think that the PIA adviser should have been clear about this. I say this because we know Mr D had no savings or investments at the time and from what I've seen in other evidence, he had no investment experience at all to call upon. With this in mind, - and his proximity to retirement - I think his capacity for incurring any losses was very limited indeed. I've also accounted for the regulator's upper growth assumption rate at that time being 8%, the middle projection rate 5%, and the lower projection rate being only 2%. Mr D could probably hope to target the lowest of these. We were also in a sustained period of low inflation, ultra-low interest rates and bond yields and there was no apparent sign in

2018 that this would change anytime soon; the Bank of England base rate in July 2018 was 0.5%.

In my view, unless there were substantial and clear reasons for doing so, there would be little point in transferring away from a DB scheme, if this would see demonstrably lower pension benefits in the longer-term. And against the above backdrop, I think that exceeding the above critical yields wasn't at all realistic.

This is somewhat replicated when using the transfer value comparison (TVC). The TVC is essentially the estimated cost of buying a pension which is similar to the DB scheme, if purchased on the open market. In the case of Pension L, the TVC was over £80,000 and as for Pension H, it was over £89,000. In my view, this is a revealing window into the underlying value Mr D could be giving up if leaving his existing DB schemes for which he'd been quoted lower CETVs.

As I'll talk more about later, I note that Mr D was separated (although not apparently divorced) from his wife. In that context, I've considered whether the critical yields and other analysis explained above ought to have reflected that the spouse benefits found in DB schemes might not be something Mr D either still wanted or needed in the light of his marriage situation. It's typically the case that DB schemes pay a pension to a surviving spouse if the member dies, and this could be in the range of 50% of the annual pension for the rest of the spouse's life. What I mean therefore, is that buying a similar pension (annuity) without this feature would no doubt be much cheaper for Mr D, and it could make the above comparisons look less unsatisfactory by bringing the critical yields or TVC's down.

But the documents I've seen don't reflect any detailed discussions about these themes. As I've said, Mr D wasn't divorced and, in any event, at the age of 57 he might well have eventually married again at some future point and required a spousal benefit. PIA quoted alternatives to the critical yield called the "hurdle rate" which I do accept were lower in both cases. However, this assumed *no* spouses pension, *no* increases in payment and *no* guarantee. In my view, this doesn't produce a fair comparison with his DB schemes.

In Mr D's situation, making direct financial comparisons between the DB schemes and transferring away wasn't straightforward. However, I think the adviser themselves saw that the critical yield figures were difficult to match and also that what Mr D would be giving up by transferring could in the long-term be less beneficial. The adviser said, for example, *"I have to say that none of the transfer values offers wonderful value for money"*. I note that the third DB scheme (Pension D) which was *not* transferred had a critical yield of over 11% thus indicating that critical yields were at least considered relevant.

But essentially, I don't think PIA gave enough weight to Mr D's two DB schemes being of such values as to make transferring not worthwhile when looked at from a purely financial perspective. In my view, there was very little chance of future growth in a personal pension coming close to the critical yields of 5.73% and 8.74% (year-on-year) as demonstrated by the analysis. I also think comparisons with the hurdle rate were unfair. And finally, I think the fees charged by the act of transferring would mean that Mr D would incur costs which were not present within the two DB schemes. Overall, I think that by transferring, Mr D would likely see less retirement benefits over the longer-term.

I considered also the analysis prepared by PIA which implied that Mr D could transfer his two DB schemes and still draw a pension that would meet his financial needs into later life. But as our investigator pointed out, these weren't direct like-for-like comparisons either. There was an assumption of a retirement at 67 rather than 65 and some of these models still looked likely to run out over time, whereas the DB schemes paid out for however long Mr D would live.

PIA should have explained in its suitability letter and in any transfer recommendation, the financial comparisons between remaining in Mr D's existing DB scheme and transferring out to a type of personal pension plan. I accept that PIA's case is that it set the critical yields out. It also said, *"you can see therefore that there is a cost to transferring in that although the benefits you will draw will be suited to what you require, they may well not represent the same overall value that the benefits from the schemes will provide".* However, PIA nevertheless still recommended that he should transfer away, and I think Mr D relied on this.

In my view, this was a failing.

Still, I think that PIA's recommendation that Mr D should transfer his two DB schemes out to a personal pension was probably not predicated on financial comparisons with his current scheme alone. Rather, PIA said he had different reasons to transfer away, and these were the main focus of its suitability letter. So, I've thought about the other considerations which might have meant a transfer *was* suitable for him, despite the overall lower financial benefits mentioned above.

<u>*Other reasons to transfer*</u>

The crux of this complaint is really around Mr D's financial circumstances as of 2018 and his desire to free up some immediate cash. PIA's position in defending the complaint is based firmly on Mr D being in a financial situation that merited him transferring because he wanted to access tax-free cash to pay off £10,000 in debt, half of which was owed on his credit card and half which was owed to a family member. He also wanted to contribute towards a wedding for one of his children and pay for some home improvements.

However, I think that overall, it's fair to stress that Mr D's pension provision was relatively modest. When looked at what his annual pensions could be, PIA said the estimates of the pensions payable from age 65 for the three DB schemes were:

- Pension L would pay £2,151 per year.
- Pension H would pay £2,383 per year.
- Pension D would pay £2,844 (not transferred)[2].

These figures combined fell short of the £13,000 per year Mr D estimated he'd need in retirement, but this was based on contemporary pricing whereas the above were projected estimates. Of course, he'd have his state pension to add to this and there may have been a reasonable some in Pension DC, his existing DC pension scheme. There may also have been additional amounts in future pension contributions. To me, whilst this paints a reasonable picture of Mr D being able to just about fund himself in retirement, it would probably be a somewhat limited lifestyle and unlikely to leave much over for discretionary spending or unforeseen events.

With these financial constraints in mind, it was obviously open to the PIA adviser to explain to Mr D that using so much of his pension savings in 2018, rather than keeping his full pension for his retirement, had consequences. These were that Mr D already faced a 'tight' retirement in financial terms and this would only be negatively impacted further by removing money for discretionary spending 'now' - which he'd also need in his later life.

It's not my job to judge Mr D on what he wanted to spend money on, but I think the regulator's position was clear in that the starting assumption for a transfer from a DB scheme

[2] All are gross figures.

is that it is *unsuitable*. So, PIA should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr D's best interests.

I don't think it was in his best interests because as I've already shown above, the evidence is much more persuasive that by transferring away Mr D would likely receive lower retirement benefits overall. And I've seen no persuasive evidence that the home improvements or paying off the two debts were of such urgency, necessity or scale, as to require Mr D to irreversibly transfer away from two of his DB schemes whilst still eight years form the NRA and 10 years from eventually ceasing to work. I accept PIA's point that paying towards a child's wedding is a powerful and emotional draw for a father – and I do therefore think Mr D would have 'moved everything' in a financial sense to make this happen. But this was only a proportion of the £25,000 he initially said he wanted from transferring. I also don't think the adviser did enough to demonstrate the alternatives of funding this – and perhaps part-funding the other issues – whilst still remaining in the DB schemes.

I say this because we know Mr D already had over £18,758 in his existing DB scheme which could have been utilised (or part utilised) to release some immediate cash. The wedding contribution hadn't been fully costed on the documents I've seen, but this may well have been something he could have sourced by using the DC rather than DB pension scheme(s). His mortgage also seemed reasonably priced – as mortgages were at that time – and his loan to value ratio appeared to be only around 45%. So, taking on a small additional amount may have been much more affordable than now being portrayed by PIA. I've also seen nothing showing that the family loan couldn't be paid down in another way or delayed or that the credit card debt couldn't be reorganised.

Another credible option would have been to assess whether all his existing DB schemes could be accessed early. At the time of the advice being provided, PIA was still awaiting some information on this from the various DB trustees. This would have no doubt involved actuarial reductions (due to the schemes being crystalised early and drawn upon for longer) and this may have been less attractive. But this would have still retained all the elements of a DB scheme which are typically regarded as very useful. The adviser appears to have made their own estimates / calculations and concluded that a tax-free lump sum comprising of the full £25,000 might be achievable by remaining in all the DB schemes. But because the resultant annual pension would be subjected to income tax, this was discounted by the adviser. However, I note the adviser went on to recommend that Mr D *"should also draw immediate benefits from the remaining* [Pension D] *defined pension scheme. The pension available we believe is £1,635"* per year.

This option of remaining in one DB scheme was a limited version of the one I've suggested above and would, of course, be subject to tax. I therefore don't follow the adviser's logic in being against remaining in the other two schemes for 'tax reasons'. Factors to mitigate tax could have been adopted.

So, without straying into a full-blown plan of what Mr D could or should have been advised to do, I think the rationale for irrevocably transferring away from his DB schemes was poorly challenged by the adviser and as a result, was somewhat dubious. There appeared numerous other ways in which to source some or most of the money Mr D wanted at that time. As I say, there was the opportunity to simply explain to or remind Mr D that he was someone who had no independent savings or investments outside his pensions, and he had limited and moderate pension resources which would be required to pay for his retirement. This reality needed to be considered as opposed to embarking on what looked like a mainly discretionary spending exercise at that time by someone who didn't actually have substantial financial resources.

I once again come back to the information that PIA says Mr D was given. I accept that it gave him a certain amount of information and indeed, even some warnings about the risks of giving up a pension which had guarantees, was index-linked, and was paid for life. However, it's important to remember that it was PIA which was the regulated party here, and not Mr D. I accept that Mr D probably even went to the meetings with PIA with some preconceived ideas about he wanted to do. But Mr D wasn't a financial expert, and the evidence implies he had no investment experience at all. He was also paying for regulated financial advice and so he had every right to assume that the advice would be in his best interests. So, even if I accept that PIA did provide quite a lot of information, it still recommended that he should transfer away from these two DB schemes.

Other considerations

- *Death benefits* – I have already mentioned the issues which might have in some way informed Mr D's thinking on spousal pension death benefits and whether or not he considered these totally redundant in the light of his separation. But the suitability letter shows the ability to pass on wealth held within a personal pension was discussed. I think that the adviser told Mr D that he'd be able to pass on any remaining funds in a DC scheme to his two adult children if he died, whereas if remaining in a DB scheme, no benefits to adult children would be passible. The DB pension could therefore effectively die with him.

  To what extent this was discussed I can't say. However, Mr D was only 57 and apparently in good health. We already know he didn't have substantial pension assets. So, I think it should have been made very clear that the purpose of his pension was to have an income in retirement. And I think that if Mr D had lived a long life, then there would likely be less to pass on to anyone, given that the pension would be largely drawn down. In my view, this wouldn't support any rationale for transferring from his DB schemes because Mr D would always probably need to draw a pension and there could easily be very little left upon his death.

- *Mr D asked for the advice* - PIA asks me to consider that Mr D's approach was an unsolicited request and that he went to PIA, rather than the other way around. I've also been shown SMS messages apparently showing Mr D was initially satisfied with the service PIA delivered. I do understand the points being made. However, as I've already said it's important to remember that it was PIA which was the regulated party here and Mr D was essentially an 'amateur' dealing with a trained 'professional'. I do accept that Mr D may well have initially thought matters had seemed to go well for him with the transfer. But the information I've got shows he then became dissatisfied which I've assumed was promoted by speaking to others with far more pensions knowledge than him and at which point he became aware of having a cause to complain.

- *Flexibility and control* – I've noted that in its final response letter PIA said the transfer of the DB schemes and switch to a personal pension ensured Mr D had a 'flexible access' retirement plan that provided for his needs. I've considered this point with care. But I don't think that Mr D really needed flexibility. In fact, I think the opposite was true. I've explained within my Decision that Mr D clearly had only moderate means, and his retirement income already needed to be managed carefully, to provide only just about enough for him to enjoy a reasonable retirement with. So, I've seen nothing showing that the presence of a known and index-linked income wasn't the right thing for Mr D to have. I therefore think that it was more in his interests to use Pensions L and H in exactly the way they were intended, paying an income as they did for the rest of Mr D's life. I've also seen no evidence that Mr D wanted personal control over his funds. He wasn't an experienced investor and I think he would always have found the management of such large funds as an onerous responsibility; I think he would have required ongoing and long-term advice and support, all of which would cost him money.

- *Fund selection* - I can't yet say if Mr D has actually lost any money from the DB element(s) as a result of transferring. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme(s) wasn't suitable for Mr D, it follows that I don't need to further consider the suitability of the investment recommendation. This is because he should have been properly and genuinely advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

The DC transfer complaint

I now turn to the part of the recommendation which caused Mr D to transfer his existing DC scheme – "Pension DC" – into the newly established personal pension. Our investigator also proposed that this part of his complaint should be upheld saying that the costs were essentially greater as a result of transferring. I agree.

PIA said that Mr D was provided with the information he needed about the costs. However, I think that this DC 'switch' should be seen in the context of the full suitability report recommendation. The main thrust of the report was, in my view, undoubtedly the transfer of the two DB schemes (Pension L and Pension H). PIA says it provided information on the costs of the new DC scheme. But there's no dispute the fees were higher, albeit I accept only marginally so. Our investigator outlined previously what these were – for example, the annual management charge rose from 0.375% % to 0.45% by switching providers. There were other increases too including a £199 one-off charge to be able to withdraw tax-free cash.

As I say, this aspect of the complaint is less important in the scale of things. But I've seen no demonstrable benefit to Mr D for this switch and I'm therefore upholding this on the same grounds as explained comprehensively by our investigator. Switching was not in his interests.

Would Mr D have insisted on transferring?

I think if the adviser had put forward analysis showing Mr D could be worse off in retirement, and that some or most of his financial aspirations could be met by remaining in the DB schemes, then Mr D would have also followed that advice. Mr D was paying a meaningful amount to PIA for regulated advice. He was accompanied at one meeting by an acquaintance but Mr D himself doesn't appear to have been financially experienced in these issues. I therefore think he would have relied heavily on what the adviser recommended.

Following from the DB transfer advice which I think was wrong, in my view there would have been no credible reason to also transfer his DC scheme to a platform that would see additional charges. For this, I also think he would have relied heavily on what the adviser recommended, if that had been to remain where he was.

Summary

I've considered all the issues in this case with care.

I think it's more likely that by transferring away from these two DB schemes, the analysis showed Mr D would probably receive less pension benefits in the longer term.

I agree with the view of our investigator who commented that PIA failed to explore what other options Mr D probably had with regards to releasing funds and I see no reason why these aspirations could not have been addressed by engaging with the relevant parties, seeking payments to be made over time or through an amended payment plan, and using his other pensions / income to fulfil at least some of his aspirations. What Mr D was irreversibly giving up was a guaranteed pension which had long-term and substantial index-linking attached. Although relatively small, these DB pensions made up a large proportion of his current security in retirement, providing as they did a pension for the rest of his life.

I do accept that PIA provided Mr D with a certain amount of information. It also warned him that he'd lose important guarantees by transferring. But the adviser focussed unilaterally on one area, which was to release cash, and still advised him to transfer out. I think Mr D relied on that recommendation. There were no further reasons why Mr D needed to switch Pension DC either.

On this basis, I don't think PIA should have advised Mr D to transfer away from his DB scheme. And it shouldn't have advised the DC pension switch.

I think PIA should compensate Mr D for the unsuitable advice, using the regulator's pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for PIA to put Mr D, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would have most likely remained in the two deferred DB pension schemes if suitable advice had been given. I also don't think he should have been advised to transfer his DC pension.

1. <u>The two DB schemes (Pensions L and H)</u>

PIA must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Compensation should be based on the schemes' normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr D's acceptance of the decision.

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

- calculate and offer Mr D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension

- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts PIA's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr D 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 D's end of year tax position.

Redress paid to Mr D as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PIA may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

2. <u>The DC scheme (Pension DC)</u>

My aim is that Mr D should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr D would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr D's circumstances and objectives when he invested.

What must PIA do?

To compensate Mr D fairly, PIA must:

- Compare the performance of Mr D's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- PIA should also add any interest set out below to the compensation payable.

- PIA should pay into Mr D's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If PIA is unable to pay the total amount into Mr D's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr D won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.

- For example, if Mr D is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr D would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
The New Pension Plan[3]	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr D's investment had it remained with the previous provider until the end date. PIA should request that the previous provider calculate this value.

Any withdrawal from the new pension plan should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if PIA totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, PIA will need to determine a fair value for Mr D's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

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[3] This is the new pension plan recommended to Mr D by PIA.

I've decided on this method of compensation because:

- Mr D wanted Capital growth with a small risk to his capital.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr D's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr D into that position. It does not mean that Mr D would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr D could have obtained from investments suited to his objective and risk attitude.

Where I uphold a complaint, I can award fair compensation of up to £190,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £190,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Professional Independent Advisers Limited to calculate and pay Mr D the compensation amount as set out in the steps above, up to a maximum of £190,000.

<u>Recommendation:</u> If the compensation amount exceeds £190,000, I also recommend that Professional Independent Advisers Limited pays Mr D the balance.

If Mr D accepts this decision, the money award becomes binding on Professional Independent Advisers Limited.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 March 2025.

Michael Campbell
Ombudsman