DRN-4961834

The complaint

Mrs K is unhappy with the work done by Peter Stewart Associates Limited (PSA) who were involved in the transfer and investment advice Mrs K received in respect of funds derived from her preserved Occupational Pension Scheme (OPS) benefits. She says she lost out as a consequence.

What happened

Overview

Mrs K has resided out of the UK and overseas in the same country (Country X) since 1993. In 2017 she transferred preserved benefits from her paid-up UK based OPS into a newly opened UK based self-invested personal pension (SIPP).

Mrs K had a local and primary adviser on this activity in Country X, her country of residence, who I shall refer to as 'Firm G'. PSA were involved as the UK regulated firm that was needed for the transfer. PSA prepared a report in December 2016 in respect of the transfer, and they went on to inform the OPS (ultimately in late April 2017) that Mrs K had been advised in-line with the requirements at the time. The transfer completed in early May 2017.

It is agreed that the intention following the transfer was for Mrs K to have the funds invested, and she had anticipated using Rathbones to manage the investments based on what Firm G had told her. Mrs K apparently had limited options in Country X when it came to being advised on investments held in a UK SIPP and having her portfolio managed. Firm G told Mrs K prior to the transfer, they (Firm G), would soon have an agreement in place with Rathbones. This agreement would have enabled Mrs K to receive advice on investing the funds held in the SIPP.

Firm G's agreement with Rathbones was not agreed within the timeframe Firm G had indicated and was not in place at the time of transfer. Firm G did not tell Mrs K this until after the transfer had completed. The ability to receive the type of advice Mrs K wanted, and to invest in the way she wanted, was not available in her country of residence until mid-2018 according to Firm G, and the Ombudsman Service in Country X accepted this. It appears Mrs K accepts it was in July 2018 this was the first time it was available, albeit she had her own reasons why she chose not to use it.

Mrs K is unhappy as she was left with funds held in such a way that any growth was limited. Mrs K says she started to self-manage the investments, and that she has not done this successfully.

Mrs K doesn't think she ought to have transferred out of her OPS and lost guaranteed benefits, nor to have been put in a position that has caused her loss. Mrs K says PSA played a determinative role in enabling this to happen and that as such they are responsible for the loss and impact she experienced.

Mrs K has already complained about Firm G to the Ombudsman in her country of residence. We have been provided with some information from their investigation and the outcome.

PSA came to be represented in this matter. When I refer to PSA and what they have told us, this includes submissions made on their behalf unless I indicate otherwise.
I am not summarising everything provided, I mean no discourtesy. I am not required to summarise everything, but I can and have reassured parties I have read and considered everything provided with care.

Background

Mrs K had preserved benefits in an OPS deriving from her employment in the UK at one of the main UK banks. She from the UK to Country X in 1993 with her partner. She has gone on to have a family and by 2016 she was in her early 50s and her children were aged 16 and a pre-teen. We are told she worked for a bank following her move.

In the summer of 2016, Mrs K was looking into potentially transferring the pension benefits she held in the UK (given the changes introduced in 2015). She was introduced by a friend to Firm G and went on to speak and meet with them. Mrs K stressed more recently that she had not been intending to transfer prior to meeting with Firm G.

Mrs K signed a client engagement with Firm G and received direct advice from them about opening a UK based SIPP and transferring the cash equivalent transfer value (CETV) from her UK OPS into the SIPP, as well as where and how it was intended the funds would be invested.

Firm G obtained the CETV of £485,866 from Mrs K's OPS in respect of her scheme benefits. Firm G arranged in December 2016 for PSA to provide an advice and transfer report as part of the requirements for transfer. For clarity, Firm G was based and regulated in Mrs K's country of residence and PSA was (and is) based and regulated in the UK.

Mrs K sought and obtained her own independent tax advice on the proposed transfer around this time.

Documents from PSA in respect of Mrs K's transfer

PSA provided a 'pension transfer report' in respect of Mrs K dated 22 December 2016 (as well as a transfer value analysis report (TVAS) prepared by a business called G6T). Firm G refer to PSA and G6T as being the same company. G6T sent an invoice, that displays a South African address, for £675 to Firm G on 21 December 2016 for a document. I am told this was for the advice work done by PSA

More recently we have seen an email G6T wrote to PSA in 2022 and the information refers to G6T being licensed internationally in Mauritius and being regulated in South Africa as well as being an authorised representative of and being overseen by a Czech bank. PSA accept G6T invoiced on their behalf, and then passed on the payment (or part thereof, as it appears that some of this sum might have been retained by G6T); it remains unclear how PSA explain their relationship with G6T.

The payment account for the invoice was for Pamleen trading as G6T Holdings UK account. Pamleen Trading Limited was a company registered in the UK. One of the Directors was the person named as the G6T adviser on the TVAS documents. This company was dissolved in 2020.

PSA's 'pension transfer report' of December 2016 for Mrs K has at times been referred to as an advice report. PSA's representatives suggest this report was sent to Firm G and was intended for them. It is addressed to Mrs K at her home address. The report set out for Mrs K the considerations that were said to apply to her on leaving her scheme and transferring to a Qualifying Recognised Overseas Pension Scheme (QROPS) or a SIPP.

It appears to be accepted this report was intended to be considered as an advice report, and by inference that PSA thought that the provision of this report (alongside advice being given by a third-party, Firm G) enabled PSA to confirm to Mrs K's OPS that they had provided her with the advice required by UK legislation (and regulation). It has also been suggested by and on behalf of PSA that this report ought not to have been considered a personal report but instead it ought to be considered a generic report.

As part of the summary of PSA's brief, the report set out that the UK required all UK pension schemes to confirm their member had received advice from a UK regulated advice firm before transferring benefits out of a pension scheme. This meant any person looking to transfer would need to receive advice from a UK based regulated adviser on the implications of transferring.

PSA went on to say this would supplement the advice provided by the local non-UK adviser with their local specialist knowledge. This meant PSA had been asked to write "*specifically and only*" about the implications of transferring.

I am not going to set out the full contents of the report, but I note it said a QROPS was not viable for Mrs K. This complaint is not about whether Mrs K ought to have used a QROPS, and one was never recommended for her.

A critical yield of 6.9% was provided on the transfer. But the report didn't comment on this. A table of realistic rates of return was provided, based on attitude to risk and time until retirement and all the rates were lower than 6.9%, but the report did not comment on this either. The critical yield omitted to include various fees and charges.

A further document also dated 22 December 2016 on PSA headed note paper (containing their regulatory information) signed by the PSA adviser confirmed that the signing adviser had provided Mrs K with "*appropriate independent advice*" as described by the relevant statute and regulatory guidance in respect of the transfer of safeguarded benefit benefits. It records that PSA is regulated and has the relevant regulatory permissions to carry on the regulated activity in Article 53E. PSA agree they produced this letter/ document.

Advising on the conversion or transfer of pension benefits is a regulated activity under article 53E FSMA Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. It is signed by the PSA adviser with his title, individual registration, and professional information. It is then signed and dated by Mrs K on 7 January 2017.

This document suggests that it was sent with the advice report as it asks Mrs K to sign it, confirming receipt and understanding of the report. In particular it notes the report is on the implications of a potential transfer of accrued safeguarded benefits to a SIPP which will provide flexible benefits. And it tells her that the TVAS compares the OPS benefits and the SIPP, in accordance with UK regulatory requirements. In addition Mrs K is asked to confirm that she has understood the warnings regarding unsuitable investments that can be recommended within a SIPP and the effects of the SIPP investment and adviser charges.

She was also asked to confirm she had understood a report from Firm G on the advantages and otherwise of a SIPP to her and her financial and residential circumstances. It is signed and dated by Mrs K on 7 January 2017.

<u>Documents from Firm G</u>

Firm G provided an advice report dated 4 January 2017 to Mrs K. The introduction explains that Firm G's approach is to transfer pensions to the product that allowed capital to be withdrawn as quickly and tax efficiently as possible and why.

It is clear that Mrs K was not going to be able to withdraw her capital imminently given her age at the time. It appears Firm G's experience might have historically involved people who were able to access funds immediately given their age and the apparent use of QROPS.

Firm G's report clearly sets out the recommendation to transfer Mrs K's existing pension funds to the SIPP to allow Mrs K to access her total pot in cash as a lump sum.

The SIPP product was said to be one of the most flexible available because there were few restrictions, low charges and it was open to residents of Mrs K's country of residence. Firm G said they had considered a QROPS for Mrs K, but they thought this did not meet her needs as it did not facilitate the full withdrawal of invested capital.

It noted that on commencement 25% could usually be paid out free of any UK tax with the remaining 75% also available as a lump sum under the drawdown rules but usually taxed under UK tax rules, however Firm G said that it was likely any UK tax could be avoided and they went on to explain why. It was also noted that UK Nationals are entitled to personal allowances regardless of their place of residency. It was also noted there might be a tax liability in Mrs K's country of residence, but this was not known.

Mrs K says that having taken independent tax advice early on, (around late 2016/ early 2017) she knew the transfer did not provide her with any tax advantage. This appears to differ with what Firm G were thinking in March 2017 which PSA rely upon.

It has been suggested that at the time of Firm G's report to Mrs K, she had a low to medium attitude to risk (ATR) and was not sure if she wanted to hold sterling cash or investments in the SIPP.

It does not appear to me that either party in the matter I am deciding think this suggestion is accurate, as it now appears to be agreed Mrs K wanted to invest following transfer.

However the advice from Firm G at the time was for the underlying assets to remain liquid in sterling to facilitate the full withdrawal of capital as soon as possible from the SIPP. No investment strategy was required or had been decided upon according to Firm G at the time, albeit it noted the impact of delay in holding cash delaying the opportunity for growth.

The report provided an overview of the changes announced by the UK government in the March 2014 budget and what followed in the following April 2015. Firm G set out the UK requirements where there was a pension transfer with a value of over £30,000. They noted they used G6T to provide the TVAS which had already been provided to Mrs K and they would invoice her separately for the "*up to*" £675 charge.

Mrs K signed the client information form for Firm G on 7 January 2017. It is clear this form has been amended at some stage as it records by hand that Firm G and Mrs K met on 16 January 2017 and 7 January 2017. The information being set out in that order. It refers to a disclosure statement having been provided in August 2016.

It goes on to record Mrs K had no intention or plans to move from her country of residence, and that she wanted to take benefits from her OPS aged 55 and that she had other sources of retirement income.

Her objectives for the funds derived from the OPS were said to be:

- Flexible drawdown options
- Tax considerations
- Maximising the lump sum available
- Understanding and controlling her investments
- Passing on her fund to her children on death

It is recorded she was not concerned about a maximum pension from the OPS, the importance of existing guarantees within the OPS or her fund running out of capital.

Her attitude to risk was recorded as being in the middle of the options available. This meant she had a low to medium attitude to investment risk, which was defined as being that she wanted security but was willing to accept some degree of risk as the price of a higher return.

There is some inconsistency in this with what PSA wrote in December 2016 and in other information which suggested Mrs K might return to the UK in the future.

<u>Chronology</u>

Firm G sent an invoice to Mrs K for an adviser report (£675) dated 10 Jan 2017 and due for payment by 11 March 2017. The sum suggests this relates to G6T's invoice for PSA.

On 10 January 2017 Mrs K emailed Firm G. She said she had been reading through the SIPP Key features and then she sets out the following:

"*I would not want to hold a large sum in 'X' Bank and would prefer to invest in funds with Rathbones or another investment management company is your agency with Rathbones likely to be available in two to three months*".

Firm G replied "*yes most definitely they have offered us an agency already and we are just checking through the agreement we need to sign*".

There is nothing to suggest PSA were party to any discussions about how her funds would be invested at this stage or that they asked any questions about this.

On 24 January 2017 the SIPP provider wrote to Mrs K's OPS enclosing what it understood to be completed transfer documents. On 26 January 2017 the SIPP provider wrote to Mrs K confirming acceptance of her application to open a SIPP.

I have seen documents provided to the Ombudsman in Mrs K's country of residence and it's suggested and appears Mrs K thought the transfer had completed in January 2017. It had not (and did not until some months later).

On 3 February 2017 Mrs K's OPS wrote to the SIPP provider. They explained that in order to proceed with the transfer they needed the enclosed "*Confirmation of Appropriate Independent Advice*" form to be completed by Mrs K's financial adviser. This being the form the OPS needed from the UK regulated advisers in accordance with the requirements.

On 15 February 2017 PSA told Firm G they could not provide the adviser's advice confirmation form "*at present*" but that the situation could change "*in the coming weeks*".

We were not told originally why PSA said this. It appears that PSA now say this was due to them having been approached by the FCA and agreeing to cease work for overseas clients/ on overseas work during discussions.

There have been references to delays and queries in early 2017. There was some suggestion (which has not been explained) that these were due to changes in the UK regulatory requirements and what was needed from PSA. It was previously suggested that what PSA had provided was not sufficient.

I was later told this was because the OPS required the Appropriate Adviser Declaration to be in their specific format. I have very recently been sent submissions on why PSA think there were delays in the transfer process.

In respect of Mrs K's complaint I was not referred to the alert published by the regulator in January 2017, which included confirmation of their expectations that "*the advice* [on transfer] *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*".

But given the suggestion made to the Country X Ombudsman that there had been relevant change in UK regulation leading to PSA to pause signing Appropriate Adviser Declarations in early 2017, and given PSA refer to speaking to the regulator around this time about their work for overseas clients, it is pertinent to review what was happening in the relevant regulatory field around the time. And this alert appears to have been the most relevant UK regulatory activity around the time.

Around 30 March 2017 Mrs K obtained an online CETV from her OPS which was just over £3,200 higher than the previous CETV. She let Firm G know about this.

The Country X Ombudsman recorded that in March 2017 Firm G had email discussions with PSA and G6T, these included about the transfer value Mrs K had obtained from her OPS. I have seen an email of 31 March 2017 from Firm G to PSA and G6T that refers to this. Although Firm G say Mrs K told them the value was around £4,000 higher and she had contacted them several weeks ago to let them know.

I have seen reference to Mrs K's first CETV being guaranteed until 14 May 2017. Given when it was apparently issued, this would be unusual. And I have also seen reference to a CETV that expired in January 2017. PSA's December 2016 report refers to a CETV being guaranteed until February 2017. G6T's TVAS dated 17 March 2017 refers to the CETV also being guaranteed until February 2017. It appears the value Mrs K obtained in March 2017 might not have been a formal valuation produced by the OPS.

CETVs are usually valid and guaranteed for three months, although there are specified grounds on which one can be extended under the Regulations. Ultimately, I don't think anything turns on this. It is sufficiently clear the transfer was not delayed to enable Firm G or any party to obtain an updated CETV (despite whether the information from the time might suggest Firm G thought this could happen).

There is evidence that might suggest Mrs K was steered away from doing this. I note on there is reference to Firm G suggesting that if Mrs K had wanted to use the new CETV (obtained in March 2017) she would have needed to pay for a new UK adviser's report. And Mrs K was told a further report would have cost £3,000 as the new UK regulations were more onerous than before and required much more work. (It remains unclear to me what these new regulations were said to be and if PSA say they knew about what Firm G said on this).

Firm G appear to have suggested PSA/ G6T was the only firm able to deal with non-UK resident advisers and clients. This was said to be a relevant consideration when deciding whether to obtain the updated CETV, in addition to the wasted costs of the first PSA report which was put at £675.

I note the second report PSA drafted connected to Mrs K, dated April 2017 referred to the cost of the report and advice being £675 which had already been settled by Firm G. (I will return to this, but it is agreed this second report was never provided to Mrs K).

Firm G also suggested that obtaining a new CETV would mean restarting the process and thus a potential loss of interest for Mrs K.

From what has been provided it appears Firm G were in repeated contact, particularly in March 2017, with PSA. We have more recently been provided with further emails from March 2017.

On 17th March 2017 the adviser from G6T (who I'll call Mr R, who is not listed on the FCA register as a PSA adviser) emailed PSA and Firm G. He said he had revisited Mrs K's case in light of PSA's discussions with Firm G. We have not been given any information or communications from the time that cast light on these discussions.

As such Mr R was attaching a TVAS reflecting the exact charges that had been provided by Firm G. He went on to say that by including the exact charges and acknowledging that the funds ought to be held in cash pending full flexible withdrawal which it was assumed would be on her 55th birthday, and the updated TVAS concluded the critical yield had fallen from 6.59% to 5.82%.

The TVAS dated 17 March 2017 refers to the CETV being guaranteed until February 2017. This makes me think the March 2017 TVAS is a somewhat patchy rewrite using the December 2016 version as the template. The March 2017 TVAS refers to a fund of £734,462.50 being needed to purchase an annuity to provide benefits of equal value to the ones estimated to be provided by the OPS.

It is not clear whether parties say Mrs K received the March 2017 TVAS. I don't consider this determinative.

G6T's email noted Firm G's advice report refers to tax implications in Mrs K's country of residence, making full flexible withdrawals an attractive option particularly for those who qualified as transitional residents. But the writer could not work out whether Mrs K fell into that category and asked Firm G if they could assist.

In the-mail response of 31st of March 2017 from Firm G to PSA and G6T, Firm G then set out:

"*She is therefore outside of the 'Transitional Resident' period (of four years) and has accumulated a… tax liability* [in Country X]*… under the Schedule Method, of 20 years,* *equating to 82.28%. This means that if she were to bring the funds into the country (by either transferring to a QROPS* [based in Country X]… *or by drawing benefits from a UK scheme, which she is not old enough to do) then 82.28% of the fund would be taxed at her highest rate of income tax (up to 33%). Thus a transfer to a QROPS would likely see 27.15% of her fund lost to tax and which would have to be paid out of her pocket and not from the fund itself. If she waited until the earliest she could draw benefits from the UK scheme (age 60 I believe from memory) then she would by then have been in* [Country X] *… for a total of 31 years meaning the… tax liability [*in Country X*] … would have peaked and been capped at 100%, giving a an amount to pay of 100% x33% = 33% of her fund.*

[Mrs K] …has elderly parents in the UK and a daughter who is looking to go to university there too. Consequently, if she transferred to a QROPS today, she would incur a liability [in Country X*] … immediately with no means of paying it as she is indebted to the banks to the tune of over Firm G500K already. Furthermore, if she were to then go back to the UK in the next year or two, there would be no way of her claiming back the tax paid… and would likely then also be taxed in the UK when she came to withdraw the funds out of the QROPS at age 55. QROPS is not a good idea.*

*The SIPP route is much better as this allows [Mrs K] to defer the tax liability [*in Country X*] … (which may never be incurred anyway if she returns back to the UK before vesting benefits) and allows her to access funds, as and when required, should she be in either the UK or Country X. If she is in the UK when she vests benefits, she will have the usual UK tax to pay, but would have avoided paying any Country X tax due as outlined above. If she is in Country X when she vests benefits, any UK tax due can be totally negated by claiming an NT tax code under the Double Taxation Treaty between the UK and Country X. This would mean she would then only have the Country X tax to pay (at age 55 this would be 26 years … but which she would at least have the means with which to pay it.*

Just over a couple of weeks ago, [Mrs K] confirmed that she can go online and get live, updated transfer values and that her T/V had risen by roughly GBP4k – this would make the required yield even less.

The transfer to the SIPP gives [Mrs K] so many options that she didn't realise she had, especially given that she could well be very transient and unsettled over the next few years. I might have mentioned before that this client is the most thorough I have ever met. She has asked for and read every single piece of documentation referred to by both the ceding scheme and the SIPP. She has performed her own due diligence on me, the SIPP, its bank account and its trustees. The decision to transfer has most definitely not been taken lightly, with me having to meet and consult with her on at least two occasions over the Christmas holidays. She has also consulted an international Tax Specialist I have referred her to for further clarity. She knows precisely what she is doing and the implications.

Please let me know if you need anything further, but I would like to see this case resolved as quickly as possible as would [Mrs K]".

Firm G went on to say they were aware that they had agreed to provide PSA with other generic information not in respect of Mrs K but for the overall research purposes. Firm G said they would go on to do this. We have not been provided with information on this.

On 4 April 2017 PSA confirmed they were "*able to re-write the report for* [Mrs K] *in a sort of hybrid between the old report that she has already had and the new report that will be covering off the FCA's expectations*".

We have been provided with a second PSA advice report dated 13 April 2017 which recommended transfer, but which said this was only due to the tax benefits for Mrs K (and it set out information on this). I note this date was one week before PSA signed the Appropriate Adviser Declaration to enable the transfer to proceed.

It said that otherwise, based solely on the critical yield and the likelihood of her portfolio achieving the growth required, they would advise against the transfer. This advice document uses Mrs K's personal circumstances as per the original contact client form with Firm G.

This report goes on to say Mrs K has elderly parents and her child may want to go to a UK university and thus she may return at some point. At this stage Mrs K's oldest child was aged 16. It also sets out why PSA were saying they now needed to provide advice. The report also includes reference to the OPS (one of the main UK High Street banks) having a pension fund deficit from September 2016.

PSA stress strongly that this report was never provided to Mrs K and Mrs K confirms she hadn't seen the second report at the time.

PSA have gone on to say this second advice report was never drafted with any intention of it being provided to Mrs K. They now stress it was a "*work in progress*", a working document and they refer to ongoing conversations with the FCA.

In a letter dated 21 April 2017 on PSA headed paper (containing their regulatory information) addressed to Mrs K's OPS, PSA confirmed Mrs K wanted to transfer and it set out:

"*I can confirm that…* [Mrs K] *wishes to transfer her pension fund. The provider will be in contact with you shortly requesting the release of the CETV. I can confirm that I have given appropriate financial advice to the above scheme member* [Mrs K] *and that I am an FCA authorised, financial adviser for [*PSA*]... I have suitable permissions to give such advice and have discussed with the above member the implication of transferring safeguarded rights to flexible benefits*". The relevant adviser and firm reference numbers are then provided.

PSA have suggested this letter was never provided to the OPS.

Also dated 21 April 2017 is the PSA adviser's Appropriate Advice Declaration form, required by the OPS, the "Confirmation of Appropriate Independent Advice" form which needed to be completed and signed by Mrs K's UK adviser. This set out that the individual regulated adviser, who is "*the member's financial adviser*" confirmed that the member, Mrs K, had been:

- given advice in respect of their rights to safeguarded benefits.
- The advice given is specific to the type of transaction proposed by the member (Mrs K) which in this case is a request to take a transfer payment of safeguarded benefits with a view to acquiring a right or entitlement to flexible benefits under another pension scheme, and,
- that the adviser has the relevant permissions to carry on the regulated activity and the advisers individual regulatory reference number and to provide the regulator's reference number for the firm by which the adviser works to carry on the regulated activity.

This information was completed by hand and signed by "*the Member's financial adviser*", an adviser and Director of PSA with PSA's details and dated 21 April 2017.

The Country X Ombudsman took into account that Mrs K could have reversed her decision to proceed with transfer until early May 2017 when the transfer was processed, when reaching their decision that Firm G failed to meet the relevant standard of care as they didn't tell Mrs K their agreement with Rathbones had not been finalised nearly two months after the date they said the funds most definitely would be available.

The Ombudsman in Mrs K's country of residence records that on 4 May 2017 Mrs K emailed Firm G as her access to her OPS website had been revoked and she asked Firm G to send her information about Rathbones. Firm G replied that they expected the OPS to either contact them or PSA as it had been three months since the OPS had received the transfer request and so it would need to requote.

This may not be of central relevance to this complaint, but Firm G cannot be correct on this, given when PSA completed information required to complete the transfer request. And there is nothing to suggest the OPS did contact Firm G or PSA with any new quote around this time. The evidence is not consistent with Firm G 's communication.

Firm G sent Mrs K information on Rathbones several days later when they confirmed they would send the second CETV to the OPS on the Monday. The implication being this value was being pursued for Mrs K. It is clear this was too late as on the same Saturday, the OPS confirmed to Mrs K that her pension benefits had been transferred to her SIPP.

Mrs K emailed Firm G the same day to say she wanted to move her funds out of the [SIPP] bank account as soon as possible and was looking at the Rathbones information over the weekend.

The OPS confirm Mrs K's funds were transferred into her SIPP on 5 May 2017. And on 9 May 2017 Firm G invoiced the SIPP for £6,634.84 (or £6,364.84), which they said was the pre-agreed transfer fee.

<u>Post-transfer activity</u>

What then followed relates to how the funds in the SIPP continued to be held. There were significant issues about how and when it became clear the intended investment management proposition was not and would not be available to investors in Country X and what options were otherwise available.

On 7 May 2017 Mrs K completed a Rathbones risk profiler. On 11 May 2017 Mrs K emailed Firm G an article from a financial news mailshot about concerns about the stock-market, letting them know she thought they might be interested. Firm G replied saying the warning might be a bit extreme but not far off and attached information including in respect of three portfolios.

On 1 June 2017 Mrs K contacted Firm G to see if they had heard back from Rathbones with suggestions and if the SIPP had other interest-bearing account options. Mrs K chased this on 7 June 2017.

Mrs K flagged concerns to Firm G on 11 June 2017 that nothing had happened for a month, and she had lost a month's potential growth with Rathbones as her funds were being left on deposit with poor interest. She thought Firm G's scrutiny of Rathbones' services ought to have occurred in January/ February 2017 once she had completed the transfer papers.

On 13 June 2017 Firm G asked Rathbones to produce an investment proposal for Mrs K. Later in June and in July 2017 Mrs K chased Firm G wanting understanding about where and how her funds were being held on deposit and noting that she was still waiting for information on her options. She pointed out Rathbones had produced a risk assessment (cautious investor) for her, and she wanted to know if Rathbones had produced a report for her.

During July 2017 there were conversations between Mrs K and Firm G about accounts she was interested in opening and the completion of forms to make certain investments. It appears these went ahead, albeit I understand Mrs K considers these to have been holding investments in general terms.

It was not until September 2017 that Firm G signed a terms of business agreement with Rathbones. And in November 2017 Firm G followed up with Rathbones to determine the outcome of the agreement.

On 2 December 2017 Rathbones let Firm G know that having taken legal advice it was unable able to accept referrals for managed investment services from Firm G as Firm G are based in Country X, and Rathbones didn't operate there.

On 23 January 2018 Mrs K let Firm G know she was considering moving some of her pension funds held in a bond into one of the Rathbones funds and she asked for the relevant forms.

Firm G let Mrs K know Rathbones had told her it didn't operate in Country X, and they were in discussions with alternative providers.

On 29 January 2018 Mrs K emailed Firm G. I understand there was dispute over the interpretation and veracity of the statements made within the email between Mrs K and Firm G when the matter reached the Country X Ombudsman:

"*I really can't quite believe your email, which has me very concerned. When deciding whether to transfer [the OPS benefits] … I had a lot of things to weigh up and a major consideration was where to invest the pension funds so that I could generate returns equivalent to or greater than what I was giving up. In my email of 10th January 2017 I asked whether the Rathbones funds would be available within 2-3 months and [*Firm G*] confirmed 'Yes most definitely. They have offered us an agency already and we are just checking through the agreement we need to sign'. So to find out one year later this is now not an option for me is staggering, particularly as you do not appear to have any alternative investment options currently*".

Overall she was concerned as the SIPP had restrictions on how deposits were held, leaving the highest interest rate available to her being at 1% a year and she felt she was losing a minimum of 4.2% a year which was what the most conservative Rathbone fund had averaged over the previous year.

On 3 April 2018 Firm G let Mrs K know more about how the SIPP worked and what they said they had done to resolve the investment issue. They hoped that within two weeks it would be possible for investments to be held in the SIPP.

On 30 April 2018 Mrs K told Firm G that if she had known Rathbone funds were not available, she would not have transferred her OPS funds.

On 20 June 2018 Firm G let Mrs K know they had an in-house company now set up so she could now invest.

Mrs K complained to Firm G on 4 July 2018 that she felt she had been misled into transferring. She wanted a meeting and to understand what funds were available to her through Firm G, and a meeting followed. As at July 2018 Mrs K's SIPP had a value of £481,000.

From July 2018 Firm G had an investment service available using an adviser that was able to give advice on investing through a UK SIPP. But Mrs K said she didn't want to use this as she wasn't confident in the advice from the adviser and their relationship with Firm G.

In late August 2018 Mrs K complained to the Ombudsman in her country of residence and claimed a minimum of £10,382 plus compensation. She was unhappy about transferring when she had understood Rathbones was available. She was also unhappy that Firm G didn't send the higher CETV to her OPS and that there were delays in arranging her funds to be placed on deposit.

<u>Country X Ombudsman</u>

Mrs K's complaint to the Ombudsman in her country of residence covered a number of areas. The Country X Ombudsman upheld some areas of complaint, and the remedy included a loss calculation to address the fact Mrs K's fund was not invested for a specific period. This Ombudsman also proposed a refund of the just over £6,630 transfer fee, and other expenses tied up with the transfer process including the obtaining of the UK Adviser Certificate. I don't yet know if these sums have already been paid, although it appears likely they have been. The Country X Ombudsman operates differently to this Service.

I am considering a complaint about PSA and not Firm G. Whilst I am including some information on the decision of the Ombudsman in Mrs K's country of residence, I am not bound by any of their findings, and indeed our roles, procedures and regulatory and statutory framework are likely to be different, as is the related overseas financial advice environment.

The Country X Ombudsman's decision records that Mrs K complained she felt misled by Firm G as they didn't give her a realistic context in which to make her decision on the transfer or the risks involved. Including that without the Rathbones agency, a wide range of the investment options referred to in the key features would not be available to her.

The Country X Ombudsman accepted from Firm G that they had been right to indicate when they expected Rathbones to be available, as Firm G were in constructive discussions which remained positive until December 2017. It was only at that stage Rathbones said it could not work in Country X due to compliance issues. The Country X Ombudsman found the information provided by Firm G was consistent with this. And noted that Firm G had been clear from initial discussions in 2016 that their role was to provide advice relating to Mrs K's country of residence, to investors based in Mrs K's country of residence.

The Country X Ombudsman found the evidence demonstrated that on 17 December 2016 Rathbones sent Firm G a terms of business agreement to review and sign. Firm G responded that they were reviewing this with their compliance consultant. This was why the overseas Ombudsman found Firm G's statement to Mrs K in January 2017, that the agency was not in place but would be available in two to three months was accurate as an agency had been offered and an agreement was being checked.

The Country X Ombudsman did not find Firm G's statement about Rathbones to Mrs K had been misleading. They concluded that just because an expectation did not come to fruition did not mean a statement about it at an earlier stage was misleading at the time it was made.

The Ombudsman in Mrs K's country of residence noted Mrs K's submissions to them that she didn't know until the Rathbones deal failed that she would need a wrap account. And that she thought Firm G ought to have told her they would not have a way of investing her SIPP funds immediately (at the time), but they didn't tell her. The Country X Ombudsman went on to note that Mrs K had wanted Rathbones or another investment management company.

Firm G told the Country X Ombudsman they considered Mrs K had been informed about the SIPP and Rathbones role and that from the outset she knew there was no way of investing at the time. But stressed that she knew Firm G were finalising their due diligence and they had confirmed there would be a way of investing imminently via themselves, and no other provider or service was mentioned to Mrs K by Firm G. They also thought she had been wrong to think it ought to have been possible to quickly to find an alternative.

Firm G told the Country X Ombudsman, Mrs K was aware of this via original discussions and personal meetings on 2 and 28 December 2016. It does not appear this information or such discussions were documented. Firm G said Mrs K knew they had contacted many (primarily UK) advisers to source a means by which their [overseas based] UK SIPP clients could invest funds, albeit none of their clients had done so to date. And Firm G told the Country X Ombudsman Mrs K was made aware all their UK SIPP clients to date had either held their funds in cash or withdrawn them immediately on receipt.

Mrs K feels she has lost out because Firm G's other clients had been seeking to access their funds immediately, and she wasn't. Firm G said their email of 16 December 2016 confirmed that most of their clients could access their funds completely as they were already aged 55. The Country X Ombudsman didn't appear to be clear whether this statement was in that email. Mrs K didn't accept what Firm G told the Country X Ombudsman. The conclusion was reached that nothing had been provided to support the contention Mrs K was told and the Country X Ombudsman's decision proceeded on the basis this information was not provided.

The decision found Mrs K had chosen to proceed with the transfer knowing the Rathbones arrangement was not in place at the time and this was a risk she decided to take.

However the Country X Ombudsman thought the information provided to Mrs K about this, gave her the impression she was taking a limited and low-level risk. And that without such an arrangement as Rathbones, Mrs K was not able to access the range of investment options referred in the SIPP documents Firm G provided. It also meant Mrs K didn't know she would have to hold the funds in cash until an investment arrangement was finalised.

The Ombudsman in Mrs K's country of residence found Firm G had failed to meet their statutory guarantee to provide service to their client with reasonable care and skill. This included Firm G’s involvement in transferring Mrs K’s OPS benefits.

The Country X Ombudsman further found that Firm G failed to tell Mrs K the Rathbones arrangement had not been finalised from January to May 2017. Mrs K said she had not asked as she believed the arrangement would proceed within the time frame provided, given the way it had been portrayed. And the Country X Ombudsman thought Mrs K’s communications after the transfer from the OPS completed, showed she believed the [Rathbones] arrangement was already in place. There was regular contact between Mrs K and Firm G during the period January to May 2017, but Firm G didn’t mention this and ought to have done. Firm G said this was because they thought it would imminently finalise.

Firm G went on to suggest they did not necessarily believe Mrs K would invest in Rathbones as they now considered it did not match her risk appetite.

The Ombudsman in Mrs K's country of residence thought Mrs K could have reversed her decision to proceed with the transfer until early May 2017 when it was processed. Therefore Firm G failed to meet the requisite standard of care when they didn’t tell Mrs K the Rathbones agreement had not been finalised nearly two months after the date they had said the funds most definitely would be available.

The Country X Ombudsman appears to have accepted from Firm G there was a change in UK regulation that meant the UK adviser was delayed in providing the certificate needed and the suggestion Firm G could not control this.

I have returned to this below, to the extent of the relevance to the complaint I am deciding. I do not in general terms consider it can reasonably be suggested there was a relevant change in UK regulation in early 2017. No party has disagreed with this, although PSA have made submissions around the alert.

When it came to redress Mrs K reached the stage at the Country X Ombudsman of wanting Firm G to compensate her by looking at the cost of buying an annuity on the same terms that her OPS would have paid. She said that had she known of the true position on her investment options she would not have proceeded with the transfer.

She said her plan after the transfer had been to manage the investment of her funds to achieve the return the UK advisers [PSA] advised she needed to match the same return as an annuity. She was also concerned that pensions CETVs have continued to increase

The Ombudsman in Mrs K's country of residence didn’t agree with Mrs K’s valuation of compensation and took into account that a time had been reached when Mrs K could invest. And from July 2018 Firm G had an investment advice and management service available (or one they were linked to) which Mrs K could have used. The Country X Ombudsman concluded Mrs K’s reluctance to use this service was her choice and in summary ought to be considered a failure to mitigate her loss by refusing to use the service and choosing to self-invest.

Firm G’s position was that unless Mrs K used an offshore platform and adviser, she would have to use the wrap and adviser from their linked firm, as that was the only service enabling UK investment advice in her country of residence.

The Country X Ombudsman explained their approach to redress/ compensation was to aim to put Mrs K in the position as if the transfer proceeded as expected, in other words, on the basis she was given the range of investment options promised at the time of transfer.

This meaning that in addition to the refunding of fees, redress in respect of Firm G would look at investment loss from May 2017 to end of July 2018. The Country X Ombudsman went on to request further information and extended submissions and dispute followed. I don’t need to set these out in any detail. I have seen that in 2021 parties, (not PSA), attended mediation with the Country X Ombudsman, to quantify and agree loss and redress.

Ultimately it appears the Country X Ombudsman concluded this approach came with a degree of approximation. Firm G having said Mrs K had a conservative risk appetite based primarily on the risk profiles she completed and what they rated her as. Mrs K said she intended to choose a mix of growth funds and she pointed to the portfolio the adviser provided to her (sometime later) after she met with him, as well as a history of investing, both alone and with her husband.

I previously explained it wasn't clear to me how Mrs K's pension arrangement (and any investments) in her country of residence, including those with her husband are invested. For example whether on advice and through an adviser or whether all or any are self- managed.

Complaint about PSA

Mrs K went on to complain about PSA and in due course this was referred to this Service.

PSA don't accept Mrs K's complaint. They also told us they don't think this Service is able to look at it. They said Mrs K was not an eligible complainant, as they didn't provide Mrs K with a personal recommendation to transfer out of her scheme, they only provided generic advice. And said this was provided to Firm G and not to Mrs K. It has been highlighted that the report they provided concluded by letting her know pension transfers can be complex, and they had not considered her individual circumstances and objectives and that these should be discussed with her local adviser.

Additional information provided by PSA

We have been provided with an email from the FCA, dated 29 March 2018, to PSA. This is said to confirm the FCA had carried out some limited supervisory work, said to be focussed solely on advice given by PSA relating to pension transfer business for overseas customers and that limited to business that was processed in 2016.

The information appears to confirm PSA cooperated and provided all information that was requested in a timely way. At this time the author of the email said they were not yet able to complete their work but could confirm that on information considered to date, the regulator had not required PSA to undertake any remedial actions, albeit PSA had made changes to their advice process of their own volition.

On 19 July 2018 the FCA emailed PSA to confirm there would be no further supervisory work and that the FCA had not deemed it necessary to use any formal supervisory tools or FSMA powers in respect of PSA.

PSA also provided us with an email sent to them by the FCA on 2 January 2020. This contains a message purporting to come from the regulator in respect of "*limited supervisory work* [carried out] … *in 2017/18 [* and there was reference to an email trail*] … this was 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".*

The email confirms supervisory work has concluded and all actions completed. PSA's actions having completed some time ago. The FCA retained its discretion to revisit.

Investigator's view on jurisdiction

An Investigator at this Service did not think Mrs K was an eligible complainant under the FCA's rules, the Dispute Resolution Rules (DISP).

Responses following the Investigator's jurisdiction view

Mrs K didn't agree. She considered PSA to be her UK adviser and understood she was a customer of theirs based on what she received. She thought it could be said Firm G had ceded control of the transfer to PSA as required, as Firm G did not have the authority to do this work. Mrs K identified she had to be a customer of PSA directly for the transfer to proceed. Mrs K considered it inherently wrong to consider PSA could be instructed and paid to provide a report and advice but for them to evade liability for the same.

The Investigator did not change his thinking and the case was referred for an Ombudsman's decision.

PSA suggested the FCA had reviewed the way they did this type of work and that because the FCA did not make any recommendations or take any action, this implied approbation. PSA told us they had voluntarily revoked certain permissions.

PSA sent us some limited copies of communications with the FCA which suggest PSA had proposed making changes to their working model of their own volition and that as such the FCA did not ask anything more. We have not been given the detail on what changes were proposed and actioned.

PSA told us that when they confirmed on the Appropriate Advice declaration form that Mrs K had been advised, this ought not to be understood to mean that they had advised her.

PSA provided the confirmation that from November 2019 they applied to vary and withdraw from the provision of defined benefit transfer advice. They had the relevant permissions in 2016 and 2017.

PSA provided us with an email from Mrs K in March 2022, where she had asked PSA for information, and they asked her to contact Firm G as they said she had never engaged them, and they didn't know why she was contacting them. PSA said this showed Mr K knew she wasn't their client. In reply she had said she knew she "*did not directly engage PSA*" but she was asking them to provide information as she knew they held information that was relevant to her and her pension.

PSA say they did not give Mrs K the report in December 2016 it was provided to Firm G. They say the report did not confirm PSA advised Mrs K it merely confirmed she had been advised. They were not regulated in Country X.

PSA say the April 2017 report was never provided to Mrs K and so she ought not to refer to it. The letter they sent to the OPS didn't confirm PSA had provided Mrs K with advice, it merely confirmed she had received advice.

<u>Jurisdiction decision</u>

In June and July 2023 I shared my thinking on jurisdiction and issued my decision on this. I concluded we can consider Mrs K's complaint, she is an eligible complainant, and the necessary relationship did exist between Mrs K and PSA and ought to be understood that way and I explained why.

<u>PSA response and further submissions</u>

PSA didn't agree with what I said on jurisdiction. PSA's representatives had the opportunity to respond and provided further submissions. I am not setting these out in detail although I have done so previously, and I have not changed my thinking on jurisdiction. PSA's representatives think there can only be two accurate descriptions of the historic position:

- PSA provided services to Firm G and no direct service to Mrs K, or in the alternative,
- to any extent PSA provided services to Mrs K, it was via Firm G acting as Mrs K's agent. They say the provision of information and paying of PSA's fees by Firm G, as well as obtaining a report bear all the hallmarks of agency.

It was said both of these scenarios precluded Mrs K from being an eligible complainant.

PSA's representatives say that PSA, Firm G, and Mrs K thought Mrs K was a client of Firm G. They say that when she complained about Firm G in her country of residence, she said she wasn't a client of PSA.

PSA said I was wrong to rely on the two adviser declaration forms and a cover letter where PSA indicated they had advised Mrs K. And this is because PSA decided they could sign the declarations as this had to happen to allow the transfer to go ahead. It's said PSA had little choice here if Mrs K's transfer was to proceed. It's said the completion of the declarations does not make Mrs K a customer of PSA. And it's suggested that would be analogous to PSA colluding with a third party to sign declaration forms of pension scheme members to facilitate the third party defrauding a pension scheme member, and then any such scheme member could not be a customer of PSA.

PSA's representatives suggest the relationship between PSA and Mrs K did not bear the hallmarks of a client relationship. As they say PSA did not have agreed terms with Mrs K, nor had they completed a 'know your client' (KYC) exercise. They also say they had not charged a fee or given the client advice or had contact with the client.

It was said (but it is not clear if this submission is pursued) PSA were only paid £500 from the fee of £675. There was later reference to G6T retaining some of the fee. It's said PSA would never have onboarded Mrs K as a client in this type of work given the associated exposure for such a fee, and PSA were answerable to Firm G for the report.

PSA say they rendered service to Firm G, to allow Firm G to advise Mrs K. This was what they were paid for. And PSA had no knowledge of what Firm G might advise Mrs K.

PSA's representatives say they have set out the basis upon which PSA agreed to sign the relevant declarations. My understanding is this is a general reference to the submissions that PSA had to sign the documents to enable the transfer to proceed, and that they did so believing Firm G to be the advisers and not themselves. I have not seen any agreement, terms or memorandum of understanding for example between PSA and Firm G, nor has there been any suggestion of any addendum that accompanied the Appropriate Adviser Declarations to the OPS.

It has been stressed that the 'second report' (the 2017 report addressed to Mrs K) was never intended to be sent and was never sent. I am told it was never intended to be used or referenced. PSA's representatives say it formed part of the dialogue with the FCA when it came to the role of reporting for overseas clients as part of the FCA's changes to transfer rules as of March 2018.

PSA continue to stress their role was limited to providing Firm G with certain information relevant to their advice of Mrs K which was to be read with a report produced by G6T. PSA say this was in keeping with the regulatory expectations of the time, December 2016. PSA ask me to take into account that the regulator recognised the difficulties for overseas clients needing to have input from a domestic non-UK firm whilst also requiring a UK firm to advise as to "*the implications of proceeding with the transfer*".

PSA say they did what was required in producing a generic report setting out the implications for Mrs K and this is what is meant by the Appropriate Adviser Declarations produced by PSA for the OPS. PSA say they did not provide Mrs K with a personal recommendation as to the suitability of proceeding with the transfer out of her OPS and they were not required to do this.

It is accepted on behalf of PSA that if they gave a personal recommendation, they would have had to take into account all of the client's circumstances for the purposes of assessing suitability under COBS 9. But they stress they did not give a personal recommendation and it is noted the regulator's requirement to advise on pension transfers by means of a personal recommendation only came into force in 2018.

PSA say they acted at the material times entirely in accordance with the regulatory expectations for overseas clients. Clear guidance was provided to Firm G, the local adviser, and it was for Firm G to advise Mrs K whether or not to proceed with the transfer.

It is suggested on behalf of PSA that it was this model that the regulator reviewed in 2017 and the model was not found to be unsuitable at the time, even if there were suggested changes to the model going forwards. PSA say this was in light of later rule changes.

For completeness PSA note that even if I conclude PSA ought to have provided additional information, which is denied, they say it would have made no difference to the outcome as Mrs K would have still transferred.

PSA say it was clear at the point of their instruction that Mrs K intended to transfer out of the OPS and invest the sum via Firm G. Mrs K never intended to buy an annuity and as such submissions in respect of a critical yield are a red herring. The information on critical yield was provided to Mrs K and she evidently understood it and the issues around it. However her focus was on seeking a level of return which they think Firm G indicated the Rathbones investment firm could likely achieve.

Ultimately PSA say what went wrong here was that Firm G said the Rathbones investment would be able to proceed but it did not and could not. And that's why the overseas Ombudsman found Firm G had misled Mrs K and she was paid redress. PSA highlight what Mrs K told the overseas Ombudsman. "*If I had known that Rathbones funds were not available I would not have transferred my… OPS to the SIPP*".

PSA say it is clear that investment was the motive for Mrs K's transfer and the cause of her loss was Firm G not having an agreement in place with Rathbones. Noting Mrs K didn't suggest when first complaining that she wanted to or should have been advised to retain her OPS benefits in the UK.

PSA say it is only when Mrs K complained about PSA that she has come to suggest a significant reliance on PSA's report and suggest that had she been given additional information (which she suggests ought to have come from PSA) she would not have proceeded with transfer. They consider this logic is flawed because Mrs K has also continued to reiterate that she wanted to invest in Rathbones and what she had been told by Firm G about their QROPS clients and the significant returns they had experienced.

PSA don't accept its credible to say that any additional information from PSA or a higher critical yield would have dissuaded Mrs K away from transfer. They reiterate Mrs K would have proceeded to transfer even if PSA should have given further advice or explicitly advised and recommended against the transfer (on the basis they considered a 6.59% critical yield unlikely to be achieved).

PSA also suggest that some of Mrs K's submissions are informed with the benefit of hindsight, since she didn't get to invest in the way that had been promised by Firm G. And because she went on to discover she could have achieved a higher CETV for her OPS had she sought to transfer at a later date. They do not consider her more recent submissions that she wanted a guaranteed increase in income and a spouse's pension to give her peace of mind, to be an accurate reflection of what she had wanted at the time or indeed what she had valued and continued to value for some time thereafter.

PSA return to the original fact find document where it is recorded by Firm G at the start of the advice process that Mrs K said a guaranteed income was not important to her.

PSA say they let us know about the regulator's review not because there needed to be a detailed analysis but because the regulator had investigated the generic advice process provided by PSA to overseas advisory firms and did not determine that PSA had been operating in a wholly non-compliant manner. PSA's representatives stress the importance of not judging PSA by current standards or expectations.

Further from Mrs K

Mrs K has complained to this Service in respect of a number of issues relating to PSA. Again I am not summarising all that has been said.

Mrs K says she received redress of £40,000 for lost growth/ interest as directed by the Country X Ombudsman, for the period May 2017 until August 2018. But based on her calculations she said it ought to be £76,288.

Mrs K thought PSA had failed to comply with the UK regulator's requirements including their starting point for OPS transfers. She was unhappy they had based their advice report on information that was incorrect and had not contacted her. She could not understand why a hybrid report, or second report had not been provided which would have enabled PSA to revisit what they said.

She doesn’t think PSA properly explained things as they ought to have done in their report, including in respect of what she calls the capital value of her OPS, and she doesn't think PSA properly explained what benefits she would lose on transfer.

Mrs K says she ought to have been given PSA’s second report which referred to a capital value of £734,462 for her OPS (based she says on an incorrect yield of 5.82%) which was significantly higher than the CETV she received. Mrs K says she would not have proceeded had she received the capital value given in the first report, based on what she says is the correct higher critical yield of 6.59%, excluding her initial and ongoing advice fees. As I have identified elsewhere it appears to be the second TVAS that contained this ‘capital value’ figure and not the second PSA report.

The critical yield she was given was wrongly understated as it didn’t include fees and charges (as it ought to have accounted for). And she didn’t understand the critical yield would not be achievable due to her attitude to risk.

Mrs K attributes this to what Firm G told her of the returns of 13 to 20% that had been achieved by their QROPS customers in the previous five years. She thinks the UK adviser (PSA) ought to have told her of the problems of investing in the UK as a non-UK resident.

By November 2020 Mrs K tells us her OPS quoted her a CETV of £627,258, which was far greater than what she received. So, by implication, she feels she lost out.

Mrs K says she would not have transferred if she had not understood that OPS’ were offering high CETVs and her OPS might be insolvent. She says Firm G also told her there might be legislative changes.

Mrs K says she quickly realised the transfer had been a big mistake and wasn’t what she wanted because Firm G couldn’t invest for her and couldn’t find a UK adviser to manage her funds. Mrs K thinks PSA wrongly relied on limited initial information provided by Firm G (recorded prior to her receiving tax advice) and she highlights FCA guidance on why relying on a questionnaire to understand client objectives is poor practice.

Mrs K thinks that if PSA had properly addressed the investment aspect relating to the transfer, they would have identified that there was no fund management service available to her. She says PSA’s report(s) ought to have recommended against a transfer, and she doesn’t think PSA were concerned about her best interests as they ought to have been. They didn’t bother to do ‘Know your client’ work, a risk assessment or collect information and ask any questions.

She noted PSA’s second (2017) report referenced Firm G’s report of January 2017 and that she was going to hold her funds in cash until she reached 55. As she was 52, she can’t understand why PSA didn’t query this, given the funds would be held in the UK. Nor why they didn’t query the inconsistencies.

Mrs K stresses the contents of the second (April 2017) PSA report addressed to her:

“*since we provided you with our original report the topic of transferring from defined benefit pension schemes has come under regulatory scrutiny as the Financial Conduct Authority is concerned some people are deciding to transfer their benefits when it is not in fact in their long-term interests to do so. Our reports were based on the understanding that the specific advice of whether to transfer or not should lie with your local advisor who is better versed in the matters such as local tax regimes… the Financial Conduct Authority has recently affirmed however that the responsibility for the actual recommendation to transfer or not should lie with the regulated entity in this case Peter Stewart Associates and this new information changes the level of work we believe we need to do. I will be considering the investment strategy recommended by your local advisor to ensure that it is a suitable strategy... That it matches your attitude to investment risk and finally comparing its expected* *returns with the critical yield required. In addition to this I will also consider your personal circumstances in relation to the suitability of the transfer*."

Investigator's view on merits

In November 2023 the Investigator issued their view on the merits of Mrs K's complaint. The Investigator acknowledged that PSA's involvement with the transfer came about because the regulator required advice to be provided by a UK regulated adviser before a UK pension containing certain safeguarded benefits could be transferred. And Firm G weren't regulated in the UK, and confirmation of advice was needed from PSA before Mrs K's transfer could proceed.

The Investigator understood PSA say their advice reports weren't provided by themselves to Mrs K; albeit it is clear the first report was provided to Mrs K, even if this was by Firm G. The Investigator thought that as PSA were acting as an adviser on the transfer, the reports were an accurate reflection of what PSA were thinking in terms of their recommendations and about the transfer. By signing the advice declarations PSA were essentially confirming the advice written in their reports.

Whilst PSA may not have been Mrs K's main adviser the Investigator found they were acting as the UK adviser in relation to the OPS transfer and the rules to enable the transfer to proceed. As such PSA had to follow the rules set by the regulator when giving advice of this kind. The Investigator referred to COBS 19 requirements on what an adviser firm must take into account when comparing benefits between the OPS scheme and a proposed SIPP.

The Investigator didn't think it was reasonable for PSA in providing advice on transfer to have simply relied on information it was given by Firm G, in particular their original fact find. Whilst the Investigator could understand it might be expected that Firm G would provide accurate and up-to-date information to PSA, PSA had their own responsibility to ensure this information was accurate. There being no direct contact between Mrs K and PSA at this time.

And it is not suggested PSA took any action to clarify the information they had been given about Mrs K. The Investigator concluded she would have expected PSA to at least carry out their own fact find to understand her circumstances. As such the Investigator did not think PSA could or would have known with certainty if the advice to transfer was truly in Mrs K's best interests. However she thought this reflected the wider picture that the transfer was driven by Mrs K and Firm G and not PSA.

The Investigator identified that in both of their reports PSA confirmed that on financial viability alone the transfer may not have been suitable. This was because of the growth or critical yield needed to match benefits (which was recorded in the later report as 5.82% a year). However the Investigator noted that based on Mrs K's attitude to risk, the likely growth rate was 4.5%. PSA commented on this in their report saying that because Mrs K had been identified as a low to medium risk investor then a critical yield would be at 4.5%. They noted that this was lower than the critical yield required to match the benefits payable from the OPS.

PSA's report set out that if they were to base any recommendation entirely on the critical yield Mrs K should understand that PSA would not recommend proceeding with the transfer as she was likely to be worse off as a result of it.

The Investigator was satisfied that on financial viability alone PSA knew the transfer wasn't likely to be in Mrs K's best interests. And so they clearly based their recommendation on transfer on Mrs K's objectives as stated by Firm G.

The Investigator found PSA should have done more to understand Mrs K's circumstances and this would have helped PSA to understand how important or accurate a desire for early retirement along with flexible death benefits was to her at the time.

The Investigator concluded that putting Mrs K's objectives to one side, PSA considered that the tax implications played a large part in their recommendation. As such they relied on Firm

G as the local advisers and their knowledge of tax matters. There was reference in PSA second report to information Firm G had provided to PSA. I previously identified this appeared to be information derived from the Firm G email to PSA (and G6T) at the end of March 2017.

The Investigator didn't think there was enough to make her think this information had been explained to Mrs K by PSA, but Firm G was aware of it, and the Investigator believed this was an important factor in considering the transfer.

The Investigator considered whether the advice to open a UK SIPP was a better option for Mrs K then a QROPS and concluded given what was known about Mrs K's circumstances and intentions at the time, it wasn't unreasonable for PSA to agree the SIPP was the best option and not a QROPS at the time. This is not in issue here.

The Investigator found that the SIPP may not have been unsuitable for the transferred funds but concluded PSA had failed to adequately consider where Mrs K's funds were going to be transferred to (and they should have looked at the intended investment).

Whilst PSA set out (in the December 2016 report) limited information on the types of investments that can be held and highlighting high-risk categories, PSA didn't consider the funds or investing Mrs K had discussed and intended to do. Whilst the Investigator noted PSA said that investments would be arranged for Mrs K in accordance with recommendations made by her appointed investment adviser, the Investigator did not think this removed PSA's responsibility to have done more to understand the specific intended investments.

Ultimately although the Investigator thought PSA should have done more when it came to assessing the suitability of the transfer and the onward intended progress of the funds, they concluded the transfer was always likely to have gone ahead regardless of PSA's advice and recommendations. In particular it was noted that the decision to transfer was being discussed prior to PSA's involvement and the fact that PSA had no direct contact with Mrs K. The Investigator did not believe that their reports and the detail contained therein influenced her decision to go ahead with the transfer.

The Investigator concluded that the emails between Mrs K and Firm G demonstrated a clear intention on the part of Mrs K to invest her funds in a specific manner. And the Investigator referred to information provided by Mrs K to the Ombudsman in her country of residence. The declaration signed by PSA only needed to confirm advice had been provided. This meant the transfer could have gone ahead even if the advice from PSA was against a transfer.

The Investigator didn't conclude there was Mrs K was caused ongoing consequential financial loss by inadequate advice provided by PSA. It was identified that their advice fee had been invoiced to Firm G and as such had apparently been passed on to Mrs K in Firm G's overall fees. And our understanding is that Firm G's fees were refunded as part of the overseas Ombudsman's complaint resolution.

<u>Mrs K's response to the Investigator's view on the merits</u>

Mrs K did not accept the Investigator's view. She provided her comments and further information.

Mrs K says she was the one who had sought out an adviser for this transfer in 2016, and she had to have a Country X adviser as she lived in this country.

Mrs K says it is wrong to conclude that she would have proceeded with the transfer regardless of PSA's report. She notes that PSA's first report was dated 22nd December 2016 but that her email to Firm G on 12th January 2017 demonstrates she remained undecided about the transfer. She says she did not make her decision to transfer until signing the documents on the 16th of January 2017.

Mrs K says she had concerns and was undecided. She has provided a timeline which she says summarises the meetings and emails in December 2016 and January 2017. In particular she has drawn my attention to a meeting with Firm G on 28 December 2016 and an email of the same day. I have seen this meeting and email was disputed when it came to its interpretation between Mrs K and Firm G at the Country X Ombudsman.

Mrs K says she relied on advice from PSA to make her decision. She says their advice ought to have been suitable, but instead she received only generic advice which did not meet the FCA requirements. She thinks that if PSA had done what they ought to have done including completing their own fact find and providing suitable advice accurate to her own circumstances, PSA would have recommended against the transfer. And Mrs K says that she would have taken that advice and not transferred.

Mrs K continues to believe PSA ought not to have signed the advice declaration sent to the OPS. This is because she says they didn't provide her with the full independent pension transfer advice that they indicated they had provided. She thinks they failed to give appropriate suitable advice because they didn't believe they would be liable if things went wrong.

She notes that in the second report (April 2017) PSA say the FCA have recently affirmed that responsibility for the actual recommendation to transfer or not lies with PSA. And they say they will consider the investment strategy and make sure it matches her ATR. But she notes they didn't do this or consider her ATR. Mrs K was concerned that in PSA's final response letter to her complaint, PSA said they were not authorised to give advice to overseas clients, so she wanted to know why they had advised her and signed the declaration to the OPS that enabled the transfer to proceed.

Mrs K thinks that comments provided in July 2023 by PSA, suggest PSA felt forced to complete the transfer declaration documentation even though they didn't feel it was the correct advice. She says that if that was the case, they ought not to have recommended the transfer. Mrs K says if she had received a copy of PSA’s second report, she would have not proceeded with the transfer.

Mrs K in summary doesn't accept the thinking of the Investigator. And she provided her comments on parts of the view including references to COBS 19. She thinks that if PSA had correctly understood her circumstances, then they would not have recommended the transfer and Mrs K has provided examples of why her circumstances lead her to this different conclusion.

Overall Mrs K considers it would be fundamentally flawed if a UK adviser was simply able to provide a report that suited an overseas adviser. Mrs K stresses that PSA were working for her and not Firm G. She was the one who had to use their information to make a decision.

Mrs K does not agree the transfer was a driven by her and Firm G and not PSA and she explains why she thinks this. She says PSA knew they were responsible for the transfer and thus needed to comply with their own regulatory responsibilities. She thinks Firm G had ceded control to PSA and thus their own regulatory responsibilities. Mrs K is unhappy as it appears to her the situation is being characterised as if PSA were a facilitator of transfers for overseas advisers without concern or understanding of the overseas resident. Mrs K says she would not have transferred regardless of what PSA said in their advice, and in particular she continues to stress she hadn't made up her mind by 12 January 2017.

Mrs K says that before 22 December 2016, the date of PSA's report, there had been only one e-mail from Firm G to Mrs K. She had made no commitment at this stage to transfer and was researching her options and getting independent advice. She says she was still gathering information and has referred to SIPP documents and her e-mail of 5 January 2017.

Mrs K says that if PSA had known her circumstances as they ought to have done, they would have known she wasn’t intending to withdraw the entire pension age 55, living in the particular territory outside of the UK, there were no tax benefits for her, and she didn't need to access a lump sum.

Mrs K has stressed that the tax considerations had originally been an area she wanted to know more about when it came to potential transfer, but that having spoken to an independent tax adviser she understood there was no benefit to her withdrawing any sums from her pension whilst resident in the overseas territory.

Mrs K says she understood there was no tax benefit for her to transfer out of her OPS. It was more beneficial for her to wait until she was resident in the UK. She says that Firm G knew she wanted to move to the UK and wouldn't be taking benefits until that time. And so she says the tax liability as a resident in the overseas territory was irrelevant and not an important factor for her. She says Firm G did not give PSA the full picture and PSA did not bother to check.

She also says that Firm G told her about the 25% tax free sum available if she was a UK resident which she says they told her was the more sensible option for her. She says this was supported by her independent tax advice. Mrs K also claims that if PSA had discussed her objectives with her, they would have realised the tax position in the country where she resides wasn't a good reason to transfer, as the UK rules are more beneficial for her and "*that is why I am going to wait until I am resident in the UK as I can receive 25% tax free".*

Mrs K thinks this demonstrates PSA's first report did not meet regulatory requirements and suggests this is why PSA's declaration was not accepted by her OPS, one of the main UK bank.

Mrs K again stresses the importance of her investment strategy and the important role that the promises she received from Firm G about Rathbones being available played in her decision making.

Mrs K notes that both Firm G and PSA focused on the SIPP offering flexibility and control of her investments but ultimately no investments were available to her and thus there was no flexibility for her. She does not think it's right to say that the transfer would have gone ahead and so PSA ought to be required to pay compensation to her.

She has let us know what she says is the impact of the stress and ongoing struggles in relation to having lost the security of guaranteed benefits and also the amount of time and worry it takes having to self-invest her funds. I am told there is a lack of options to invest due to being a non-UK resident, and these were never explained. There are very few SIPPs that will deal with non-UK residents and there isn't the financial adviser support that she was expecting to be able to rely on. Her lack of investment expertise means she has lost a large amount of her pension fund putting her in a much worse financial position with a significant impact on her quality of life and plans for retirement.

Mrs K says it was wrong for the Investigator to rely on her comment "*If I had known in January 2017 that Rathbones… were not going to be available*" as she went on to say there was no option to invest with any investment management company. She stresses Firm G weren't honest with her about their inability to get agency in the UK.

She complains PSA ought to have considered investment risk and strategy and if they had researched these for her, they would have found out there were no available investments via the SIPP as Firm G didn't have an agency with an UK investment company. She has told us:

"*My email 10th January 2017 explained that I wanted to invest in Rathbones or another investment management company. I believe PSA should have told me that Firm G did not have ANY agency with an investment management company in UK and therefore at that time I would not be able to invest any part of my pension in the SIPP*. "

Mrs K agrees she had the intention and requirement to invest her funds but says this wasn't based on specific investments. She says "*no one... would have transferred their pension if they could not invest it*".

Mrs K disagrees that it can be said PSA's actions didn't impact her decision to transfer. If PSA had assessed the transfer properly then they would have recommended against transfer, and she would not have transferred. Additionally she thinks PSA's action in withholding the second report from her meant that she didn't get the opportunity to stop the transfer. She thinks the second report was withheld from her as it made the inadvisability of the transfer much clearer.

Mrs K thinks she suffered a huge loss from the transfer proceeding, as she thinks she wasn't told the true value of her OPS. Mrs K stresses what's said about a value of £734,462 which was £248,595 more than her CETV.

Mrs K blames the use of an incorrect lower critical yield of 5.82% and says that if a Capital Value had been provided in the first report based on the correct higher Critical Yield of 6.59% a year, (excluding initial and ongoing advisory fees) it would have been substantially more than £734,462.50. This information would have made her realise the true value of her pension. For completeness I note that the TVAS sets out what it says makes up the various capital values it provides.

Overall Mrs K says that in getting the UK Adviser report from PSA as required by UK regulation, she expected them to have her interests in mind and not those of Firm G who received a fee for the transfer.

Mrs K thinks Firm G exaggerated the risks that her OPS may be insolvent and thinks PSA supported this in their April 2017 report, when they reported on the OPS's deficit. For completeness it is agreed Mrs K didn't see this report at the time.

Ultimately, she says PSA provided poor and unsuitable advice. And as a consequence of their failure she transferred her pension arrangements, which was unsuitable and suffered a loss for which PSA ought to be considered liable.

When Mrs K complained to us, she told us something about her background and complaint. This included that she had 13 years' service working for a UK bank in the UK on accounts. She told us that she did not consider the OPS death benefits to be important to her, but the benefits available to her husband on death were important. She told us she couldn't invest the funds derived from her OPS, and so she had put a higher proportion of the fund into savings backed by the UK government and then the maximum covered by FSCS into another savings account. At this stage she told us she went along with the advice as she was worried about her OPS becoming insolvent.

It is understood Mrs K may have some experience of property investment in the country where she resides as well as holding a repayment mortgage. Mrs K didn't tell us about other savings and investments. She told us she opened her own trading account to invest her pension funds as she wasn't able to invest otherwise, but she has made a loss. She says PSA ought to have said they couldn't advise overseas client and she would have realised the problem with Rathbones having agency and she would have stopped the transfer.

<u>PSA's response to the Investigator's view on merits</u>

PSA accepted the Investigator's view on merits, and provided further submissions.

They noted that although PSA initially took the view in early 2017 that they ought not to sign advice certificates this was not because there was a change in UK regulation. It is said PSA took that position as a precaution because they were in discussions with the regulator around the issues relating to overseas members of UK pension schemes.

This differs to some extent to what we were previously told about their agreement with the regulator at the time about what they would do and how they came to sign the declaration in April 2017.

PSA say they knew they could not advise Mrs K about taking a decision in the country where she resides when it came to transferring out of her OPS, which is why their model was to produce a report looking at the implications of transferring, which the overseas adviser could use to decide whether it should make a recommendation to transfer or not.

When the regulator reviewed this model, PSA paused signing adviser declaration certificates, but having engaged with the regulator (which did not result in any action against PSA), PSA took the view they could sign Mrs K's certificate. A change in regulation only came in March 2018 and thus had no impact on Mrs K.

PSA continue to say that Mrs K was not a client of theirs and so COBS 19 did not apply, and so they don't agree with what the Investigator says about this.

PSA agree their second report did accurately reflect the general thinking in respect of Mrs K. However this second report was not provided to Mrs K or Firm G.

PSA think tax considerations were a major factor in the decision made here. They say these factors weighed heavily in favour of the transfer and Mrs K would have known this due to her other discussions.

In light of the two-adviser model PSA did not and were not required to deal with proposed investments for Mrs K, as these remained matters for Firm G. But they accept the Investigator's thinking which was that any such consideration would not have changed the outcome.

Again this differs somewhat to other submissions PSA have made about there not being a two-adviser model.

Overall, PSA disagree with what the Investigator said about PSA's obligations but ultimately they agree Mrs K was going to proceed with the transfer. It is said that PSA's involvement can be considered a formality and Mrs K always intended to transfer because of the tax implications and the desire to use the Rathbones investment proposition to grow her fund.

PSA's representatives asked me to particularly consider their comments of September 2023.

PSA say it is the fact the Rathbones proposition was not available that drove Mrs K to complain. They say she has been compensated for the Firm G failure in respect of this proposition already. They also think Mrs K's discovery that a higher transfer value was later available from the OPS has made her further dissatisfied. They accept this is a likely source of disappointment, but it is not a matter for compensation.

PSA repeat that their signature of the form confirming to the OPS that advice had been given to Mrs K, did not indicate that PSA had advised Mrs K on the issue of whether she ought to transfer out or not.

PSA tell me to account for the fact that at the time they provided their report on Mrs K to Firm G there was no regulatory requirement for a firm to provide a personal recommendation to a client. And stress the FCA introduced rules requiring a firm to proceed in such circumstances by way of a personal recommendation as from 1 April 2018, with the introduction of COBS 19.1.1C (and before that, that COBS 19 applied). As such it was open to a firm to give generic advice about a pension transfer that was not presented as suitable for the person to whom made (nor based on a consideration of the circumstances of that person). And the COBS rules did not say that a firm could not sign a confirmation letter to the ceding OPS unless a personal recommendation was given.

PSA say G6T was a contact and is a fully authorised and regulated advisory firm in South Africa. PSA say G6T introduced Firm G to PSA and asked PSA to assist.

PSA went on to tell us that G6T retained an administrative oversight role due to their relationship with Firm G and that was why G6T invoiced Firm G for PSA's work and received the money and passed it onto PSA. PSA have not explained what it is said this relationship was, nor how they are or came to be linked to G6T. I identified previously the Company bank account where Firm G had to pay the funds is based in the UK. Nor have we been told how PSA came to work with the Director and adviser of this company, Mr R. Nor have PSA commented on G6T/ Mr R's second TVAS; nor why they were willing to rely upon and use either TVAS.

PSA say part of their contact with the regulator was about PSA's existing template for reports and any changes. They say they produced a draft to discuss with the FCA using Mrs K's file as an example and this is why a second report was drafted.

PSA has characterised their memory of contact with the regulator as assisting the regulator to understand the problems faced by expat-OPS members as they didn't think the FCA was particularly familiar with the position at the time. They describe their contact as becoming collaborative and having prepared it they asked the FCA to consider their revised template. They say they are aware the regulator does not provide an endorsement and they did not expect it, and in any event tell me the second report was a work in progress.

We asked PSA to provide us with information about all contracts and agreements in place between PSA and others.

PSA contacted Firm G about this and we were sent Firm G's reply dated December 2022 that Firm G's focus was on gaining PSA's general input to assist their advice to Mrs K which they said she was pressuring them to provide. So that's why it's said they didn't complete formal terms at the time. Firm G say they want to confirm the assistance provided by PSA, and that Mrs K was advised by Firm G. Firm G go on to suggest that was why she complained to the Country X Ombudsman as they submit that was where the regulated activity took place.

For completeness I note PSA have not directly adopted this submission. I don't think there is any positive assertion made on PSA's behalf that there was not any regulated activity taking place in the UK. For the avoidance of doubt is clear to me the transfer of benefits from an OPS such as happened with Mrs K's OPS is a regulated activity in the UK and it took place in the UK. Indeed the funds were transferred to an arrangement also held in the UK.

PSA told us they didn't have a written contract with Firm G but say they were Firm G's counter party in the advice process. At this stage in PSA's submissions we were told they had no relationship with Mrs K, and this was not a two-adviser model.

PSA told us that following a generic PSA report being provided to Firm G in December 2016 they were approached by the FCA and voluntarily agreed that pending the conclusion of discussions with the FCA about the overseas business model they would not undertake further cases. Around the same time PSA say they were told Mrs K's OPS had a preference for any Appropriate Adviser declaration to be provided using the OPS' own templated form.

PSA say they don't have a copy of any letter from the OPS, but this issue had nothing to do with any change in UK financial regulations and PSA say the suggestion of delay or the need for a different document is an incorrect assertion made by Mrs K.

For completeness I previously noted that PSA appear to be wrong about this based on what I have seen Firm G said about on this matter, including to the Country X Ombudsman. It is sufficiently clear to me that Mrs K and the Country X Ombudsman were given to understand by Firm G that it was due to UK regulatory change that there was a delay in early 2017.

I also see that in the April 2017 second PSA report (said not to have been provided to Mrs K at the time) it starts off by saying "*since we provided you with our original report the topic of transferring from defined benefit pension schemes [like hers] has come under regulatory scrutiny*". And there is then reference to the FCA's recent affirmation that responsibility for the recommendation lies with the regulated entity i.e. themselves.

PSA also told us they were initially reluctant to sign the OPS form in light of their agreement with the FCA. But they agreed when Firm G pointed out Mrs K's case had been finalised and agreed prior to PSA's agreement with the FCA. And so they accepted Firm G's logic that in signing the OPS' Appropriate Adviser Declaration they were simply confirming the decision in a different form and PSA say Firm G persuaded them that signing the OPS' declaration did not impact their agreement with the FCA.

Provisional decision

On 16 July 2024 I issued a provisional decision on the merits of Mrs K's complaint. In it I set out that I intended to uphold her complaint in part and why, and what I intended to require PSA to do. Parties were given the opportunity to respond, and responses were shared.

Reponses from PSA

PSA's representatives continue to disagree on eligibility and compliance with regulatory requirements in force at the time but for the purposes of responding to my provisional decision on merits, they let me know they weren't restating that position.

PSA's representatives say two issues arise from my thinking. The first being whether there was an obligation on PSA to "*recheck*" the position on investments in April 2017 and secondly if accepted PSA could and should have done this, what would this have highlighted, and would or should this have led PSA to "*warn*" Mrs K that Firm G had not finalised its proposed agency; and that other investment options might be limited. Consequently they ask, would this have meant Mrs K did not proceed to transfer.

PSA stress their report on the potential transfer was issued in December 2016 and they say that is the point of the relevant advice, notwithstanding what they now call a "*final appropriate advisor declaration*" which was not signed until April 2017. PSA question what obligations applied in April 2017. PSA refer to the alert issued by the regulator in January 2017 and reference to the regulated firm liaising with the overseas adviser, and the proposed investment assets.

PSA submit there is an issue with causation from the outset, and what any further liaison between PSA and Firm G (they say in December 2016) on the proposed investment assets would have been. It's said Firm G would have told PSA the intention was to transfer the relevant funds into the SIPP to be held in cash and then invested in accordance with Mrs K's risk profile through Rathbones. They submit this was Firm G's genuine belief and supported by what Firm G said in January 2017 about when the agency would be in place and that this was accepted by the ombudsman service in Mrs K's country of residence. And that even if PSA had incorporated this information into their report Mrs K would still have transferred.

PSA now characterise what followed as a delay to the finalisation of the transfer process, partly due to the OPS wanting their own format of the appropriate adviser declaration to be used, (for completeness and having looked at the earlier letter from the OPS, I don't think this caused unavoidable delay, as that information was available earlier).

PSA identify that I noted it appeared they had not retained documentation around this, and they don't dispute this. PSA think Mrs K accepts the OPS requirements caused some delay, and they refer to a paragraph from submissions made to the Country X Ombudsman in respect of her complaint about Firm G. It is worth noting that at that time Mrs K and Firm G were referring to the letter produced by PSA as having been produced by G6T, and Firm G saying they had sent her OPS certificate to G6T to sign.

At this time Mrs K told to the Country X Ombudsman that her OPS told her the transfer would be slowed down if the appropriate adviser declaration was not done on the correct form and Firm G told her that despite what was said by OPS, her OPS would almost certainly except the letter produced by G6T [PSA].

PSA also say their discussions with the FCA contributed to delay. They consider it regrettable because they think I am unwilling to accept the context of the discussions as they have set them out.

I'd like to stress that I have been clear in all my communications on this aspect. It has always been a matter for PSA to provide any material they wish to provide on this. I have explained that what has been provided is insufficient to support what is said by PSA about the nature of communications and what took place and when, and that in any event my role and that of the regulator is different.

PSA's representatives seem to suggest that in my provisional decision I insist that PSA appreciated their first report for Mrs K was inadequate and that is why PSA issued a second report in April 2017.

I don’t know if this is a misunderstanding, but it has been agreed ground, if not throughout, then for a long time, that Mrs K never received a second report from PSA and as such my decision is reached on that basis.

It was PSA who accepted following the Investigator’s view on the merits of the complaint, that the second report was an accurate reflection of their thinking at the time. I have never made any finding the second report was sent to Mrs K.

I understand that PSA say the second report in Mrs K's name was a work in progress being used in their discussions with the FCA. I understand PSA say that not only was it never issued it was never intended to be. PSA don’t agree with the way that I have relied on it.

PSA say the discussions with the FCA also led to a voluntary delay in progressing Mrs K's matter given their position on signing the appropriate adviser declaration. They say this did not bring with it an obligation to recheck the advice given. And now say this is analogous with the position of where an adviser gives advice and there is no requirement to recheck the position if there is any delay in progressing the transaction.

Here they say PSA ‘*gave advice*’ in December 2016 and was entitled to provide the advice confirmation at a later date. They say there cannot have been a duty placed on PSA to review the position and check the adequacy of the advice before confirming they had advised. Even if the advice might be considered inadequate that doesn't mean PSA ought not to have signed the appropriate advice declaration without fixing any potential deficiencies or re-checking certain points.

PSA say it's not the role of a pension transfer adviser to second guess what it is told by another regulated firm dealing with investments, nor to check the nature of any other agency or agreements the investment adviser has in place.

PSA then go on to address what they say is the job of the pension transfer adviser in such a two-adviser model. It appears by inference PSA now say this was their role when it came to Mrs K’s advice and their relationship with Firm G. PSA stress it wasn't their role in the two-adviser model to advise on potential investments and the options available.

In Mrs K's case PSA stress they weren't authorised to give investment advice to someone resident in her country of residence. So they don't accept they were required to analyse the extent of the investment options open to her or to seek evidence of the agencies held by her adviser in her country of residence.

PSA say that if they had asked Firm G at the time, Firm G would have said it was still proposing to transfer Mrs K’s funds into the SIPP to be held in cash and then invested through Rathbones; and thus there was no basis for PSA to decline to sign the appropriate adviser declaration. PSA continue to stress Firm G believed in April 2017 the Rathbone’s proposition would proceed.

PSA remind me the January 2017 alert from the regulator makes it clear that the overseas client advice process involving two-advisers is based on a firm such as PSA “*liaising with the overseas advisor where necessary*”. PSA say this can be understood to cover the situation where it was necessary to liaise about the investment proposition. PSA tell me the alert does not suggest it is the role of the pension transfer firm to investigate the status of the overseas adviser’s contractual relationship or to analyse the extent of alternative investment propositions, nor to contact the overseas client about their investments.

PSA say that notwithstanding the delays I can conclude Firm G still thought things would proceed up until 2 December 2017 when Rathbones were no longer were part of the picture.

PSA say that even if they had contacted Mrs K to let her know the Rathbone's proposition had not yet been completed and this was outside of the two-to-three-month period that had been indicated they don't think that would make any difference. And whilst she had not been told about this by April or May 2017, it's not accepted that she believed the arrangements were in place.

PSA say Firm G has told them Mrs K did know the Rathbones agency had not been finalised by April or May 2017 and they refer to a part of the Country X Ombudsman's proceedings. However the quote provided is from what Firm G said in the proceedings. Having seen the conclusions of the Country X Ombudsman, I don't consider this was reflected in the findings, which are summarised above. In any event I am reaching my own findings and I previously indicated my thinking Mrs K did not know the agency had not been finalised at this stage.

PSA say the issue here has always been that Mrs K wished to transfer and understood what she was giving up, but found out after the event she could not invest in the manner she hoped, and so it is solely a dis-satisfaction with the adviser in her country of residence.

When it comes to redress PSA don't agree. Both in respect of liability and my approach. PSA think I ought to take into account what they say Mrs K sought from the Country X Ombudsman and what that Ombudsman concluded when it came to redress. In particular that the Country X Ombudsman did not accept Mrs K would not have transferred and any loss was for a restricted period of time when she was not invested.

PSA say that if her OPS had not been transferred until July 2018, Mrs K would not have benefited from any of the investment returns which were the basis of Country X Ombudsman's redress exercise. As such PSA say there is an issue of double compensation given my proposed approach. They say I must make allowance for what she has already received. In addition it is known how Mrs K chose to invest from July 2018 onwards and if there was a capital loss as of October 2018 when a higher CETV might have been realised, PSA say any loss should be brought up to date by comparison with how she actually invested as opposed to the hypothetical methodology proposed in my provisional decision.

PSA tell me Firm G has confirmed repeatedly there were tax advantages on the transfer, and they say Mrs K refuses to accept them. There is inconsistent and incomplete information on this, however I am satisfied there is no determinative issue on tax advantages and impact to what I have needed to decide.

PSA say Mrs K is wrong to suggest the capital sum stated in the unused and unsent second TVAS/ report would have caused her not to transfer. They say that figure is simply based on a return of 5.82%, the critical yield in the TVAS to retirement age 60, and Mrs K understood clear explanations about critical yield. It's said the same TVAS showed that a return of 5.4% to the same retirement age would net a fund of just under the capital sum Mrs K refers to, based on a 5.83% yield. PSA stress Mrs K understood she could be getting returns of 13 to 20% through the investment proposition and was not put off by a critical yield of 6.59% in the December 2016 report. So they don't think a reduced critical yield leading to the capital sum quoted in the draft March 2017 report would have changed anything.

Mrs K is said to be wrong to say she had no contact with Firm G in February or March 2017. To support this they attached the March 2017 e-mail from Firm G to themselves which set out the discussions Firm G was having with Mrs K, which included an increase in an informal CETV figure that she had obtained viewing her OPS online.

PSA say this demonstrates Mrs K's submissions cannot be considered reliable. They also say this checking of an updated CETV demonstrates how detailed and methodical Mrs K was in her analysis and research of the transfer and that she is to be distinguished from a more naive client who does not understand what is happening. PSA query Mrs K's recent comments that she would have been happy for the transfer not to proceed in March 2017 and why she didn't stop the transfer. I note for completeness on this, that Firm G told Mrs K in May 2017 they were sending the second CETV to the OPS. The history makes it clear that even if this was intended, it was too late.

PSA continue to think that the drive behind Mrs K's complaint was the breakdown in the relationship between herself and Firm G which led her to refuse to consider investment propositions put to her. And the subsequent unsuccessful self-investment, is driving a claim for recovery.

Responses from Mrs K

Mrs K does not accept some of the conclusions in my provisional decision and says she would not have transferred. She says she was close to not signing the papers in January 2017 and had PSA done what they ought to have done, that she would have given up on the whole idea.

The initial CETV was guaranteed until 14 February 2017 as confirmed by her OPS to Firm G on 14 November 2016. Mrs K notes that the pack of documents from her OPS included a copy of their standard form as well as a page about the advice which explained that the adviser confirming her advice needed to use their standard form rather than using their own. Mrs K says the letter was stamped as received by Firm G on 15 November 2016.

The OPS letter confirms what a UK regulated adviser will need to provide. and that if the transfer agreement is received after 14 February 2017, the OPS will calculate the transfer value again; and that if the value reduces by more than 10% from the previous valuation, they will issue a new quotation otherwise they will go ahead and pay the transfer value.

I have seen that part of the letter appears to speak to Mrs K directly and it is usual to expect such letters to be provided to the customer. Various other details are contained in the letter about benefits and what may or may not be relevant on transfer. I don't consider the contents of this letter determinative on what I have needed to decide in this matter. The letter suggests that Firm G asked a number of questions about Mrs K's benefits.

Mrs K says she was not a transitional resident having been in her country of residence for more than 30 years, and as such the tax liability in her country of residence is 100%. The precise tax implications are not something I have needed to decide in this matter, nor have I received detailed submissions about tax.

Mrs K stresses that her OPS received the April 2017 letter from PSA confirming they had given her advice, and this was shown on the documents provided to her by her OPS. Mrs K notes my reference to the claim made on PSA's behalf at one stage that PSA's letter did not confirm they had advised Mrs K, merely that Mrs K had been advised. I can see Mrs K wants to stress that that this is not what the letter said.

This was part of the findings of my provisional decision, and I have not changed my thinking on this. The letter/ Appropriate Adviser information said that the writer had advised and the writer was PSA. Whilst the contents of the letter/ Appropriate Adviser certificate do not explicitly use the phrase 'appropriate advice', I don't think the absence of the word 'appropriate' makes any difference here.

Mrs K confirms her understanding (consistent with what I have seen suggested elsewhere) that the OPS rejected the first advice declaration provided by PSA because PSA did not complete the required OPS form about advice given.

Mrs K says the reason she approached Firm G was to find out her options with her UK pension and not to request a transfer as a starting point. Mrs K says it's wrong for PSA to say she would still have transferred had the critical yield been explained. She continues to rely on the contents of the March 2017 TVAS and what it said about the capital value and how that was much higher than her transfer value. Mrs K says that had she seen the capital value she would have understood the value of what she was giving up and she says she could have cancelled the transfer.

Mrs K disputes any suggestion that PSA or Firm G received any pressure from her, and not when it came to proceeding with the transfer. Albeit she thinks it appears that Firm G put pressure on PSA to sign the appropriate adviser declaration, by saying she was putting pressure on them, but she this was not true. Mrs K says there is no evidence of any relevant pressure from her, and she does not accept there were communications between Firm G and her in February and March 2017. And she was not made aware of PSA not having signed the OPS' declaration. Mrs K says she would have been happy for the transfer not to proceed having obtained an updated transfer value and knowing that it was increasing.

Mrs K does not agree with some of the conclusions of my provisional decision, and in particular that I say she would have transferred at a later date. She says she knows she would not have done as she wouldn't have wanted to deal with Firm G again and they are the only company in Country X that deal with UK SIPPs, and all other firms in Country X only dealt with QROPS for those in her country of residence, which were not right for her.

Mrs K tells me that Firm G told the Country X Ombudsman they could not advise her due to a conflict of interest, and they would not deal with her as they described her as litigious. Mrs K says that there was a joint refusal between her and Firm G to work with each other. This appears on the face of it to be inconsistent with what the Country X Ombudsman recorded as to what Firm G had said at the time about advising on investments initially and the thrust of the Ombudsman's outcome. I do not consider this to be an inconsistency that I need to resolve to decide this complaint fairly and reasonably.

Mrs K says that if PSA had identified to her that Firm G did not have an agency to allow investment and if they had recommended to wait until they did, she would not have transferred in July 2018 as she would not have trusted Firm G and didn't think they acted in her best interests. In support of this Mrs K says Firm G hid the truth from her and did not tell her they had made dozens of attempts to get agencies with other investment management companies in the UK unsuccessfully. She says that had she been told this she would not have transferred as she would not have been certain the agency with Rathbones was going to proceed. She says she was shocked when she realised they didn't have an agency with any investment management company in the UK. I don't think there is sufficient for me to conclude that Firm G had made many unsuccessful attempts to get agencies with other investment management companies in the UK, nor do I think this determinative to what I need to decide in this complaint about PSA.

Mrs K spoke to many investment advisers both in the UK and her country of residence when she came to trying to invest her funds in the UK. She tells me another pension adviser in her country of residence could not understand the recommendation to transfer out of an OPS when she wanted to keep her funds in the UK, and that they would not have recommended such a transfer. This is why she knows she wouldn't have transferred at a later date.

Mrs K says that as a result of PSA's failure to the recommend against the transfer she has lost the value of her OPS and losses due to her investment inexperience and her pension fund is currently only worth £419,000. She considers the true value of her pension needs to be reflected in compensation as well as the ongoing stress of dealing with her pension for her entire retirement. She considers her true loss to be the cost to provide the benefits that her OPS would have provided. She refers to what was outlined in the second TVAS report and what yield she thinks ought to be applied and the fact she thinks ongoing advisory fees ought to be part of the compensation.

Mrs K doesn't think the right date to use for a transfer value is 1 July 2018 as there was no investment option available to her on that date. There wasn't any option available until 18 July 2018 when the new advisers in her country of residence provided their statement of advice.

Mrs K tells me the Country X Ombudsman accepted her overseas pensions were invested in growth funds and that she had placed other funds into growth managed funds. Mrs K asks me to take into account the importance of a risk assessment and the fact it needs to consider how much time is available until the funds will need to be drawn upon.

When it comes to loss and redress Mrs K asks me to put aside how she is analysed on any risk assessment and says I should be informed by what she actually did. And she has gone on to set out some of the funds she held in her portfolios and tells me she has sustained significant losses following the impact upon the markets involving in particular the situation in Ukraine. Mrs K thinks she ought to be awarded compensation on the basis that she would have experienced returns on a portfolio with 90% held in growth funds as that is what she did when she was able to invest.

Mrs K says she would not pay tax at 15% because she considers her investments would not to be impacted by various tax implications whilst in a SIPP and she would only withdraw up to her personal allowance each year.

Mrs K thinks PSA should have given her information about the lack of investment options given the advisers in her country of residence and that PSA knew she wanted to invest the funds derived from her OPS. Mrs K suggests that it was only as a minimum that PSA should have let her know Firm G didn't have any agency with an investment advice business at the time, and she also suggests by inference that PSA (as well as Firm G) ought to have informed her there had been "*many*" previous failed attempts by Firm G to get a UK agency. This would have caused her to understand there was a significant risk that the Rathbone's agency would not proceed, and she would not have transferred. She also thinks PSA ought to have explained the complexities for UK investment management companies to be able to deal with overseas residents.

Mrs K continues to agree she did not receive PSA's second report, but she believes that PSA realised their first report was no longer sufficient and needed to cover additional things. She thinks the content indicates an awareness on the part of PSA (who failed to contact her to obtain or provide further information). Despite this awareness she asks me to take into account that they proceeded to sign the adviser's declaration and thinks they had a duty to make sure their advice was correct, and she doesn't think they considered her best interests.

Mrs K thinks PSA have quoted my provisional decision out of context and it's wrong for PSA to suggest questions on the adequacy of the advice don't play a part in the transfer. It isn't right to say PSA don't need to provide adequate advice. This is distinct from the requirement of the OPS to have the confirmation that appropriate independent financial advice has been given by a regulated adviser. Mrs K highlights "*appropriate*" advice is part of the confirmation.

Mrs K thinks PSA clearly understood their responsibilities towards the issue of investment because of what they wrote in their second report. She quotes "*I will be considering the investment strategy recommended by your local advisor, to ensure that it is a suitable strategy for pension fund investment, that it matches your attitude to investment risk and finally comparing its expected returns with the critical yield required. In addition to this I will also consider your personal circumstances in relation to the suitability of the transfer*".

She complains PSA did none of the above.

Mrs K considers PSA have erroneously relied on a comment made during the course of the overseas Ombudsman's consideration of her complaint against Firm G, in respect of her expectation to be told when the investment proposition was available. Mrs K says that after the transfer completed Firm G told her they had been told by Rathbones that there was a cheaper execution-only service which they thought might be more appropriate for her. She says Firm G never mentioned an agency agreement had not been finalised and thus she had assumed it was in place. Mrs K understood from Firm G that due diligence was taking longer than expected as they had further documents to consider from the alternative service proposition from a different sector of Rathbones. She says the reference to expecting to be advised when the service was available referred to which part of Rathbones, Firm G was going to use.

Mrs K didn't seek confirmation the agency had been agreed as she had never had any indication there were any concerns about the agency proceeding, and she quotes what she was told in January 2017 about Firm G checking through the agreement on the agency they had already been offered.

Mrs K doesn't accept that any comments purportedly made during mediation involving the Ombudsman in her country of residence and purportedly provided to PSA by Firm G are or ought to be considered accurate. She says Firm G did not take notes in the mediation and does not take meeting notes, so she doesn't think that can be any precision or reliability when it comes to words used in a meeting from March 2021.

Mrs K says she would have listened to independent advice not to transfer, and she thinks PSA should have made their own enquiries and that these should have been independent from Firm G. She thinks it's inappropriate for PSA to suggest their liability is reduced due to compensation already awarded to her by the Ombudsman in her country of residence on a separate matter against a different business where the areas of complaint and concern were distinct.

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.

Based on everything that has been provided I have not changed my thinking from that provided in my provisional decision. I am upholding Mrs K's complaint in part as PSA did not do all they were required to do at the time they dealt with Mrs K, nor sufficiently. They played an intrinsic, necessary, and determinative role in the transfer of Mrs K's OPS benefits to the SIPP. But for PSA the transfer would not have proceeded, and this transfer taking place when it did, caused Mrs K a loss for which it is fair and reasonable to require PSA to be considered responsible.

I accept the process involved other parties and that Firm G were Mrs K's primary and local adviser and the party that dealt with her directly. However PSA were intrinsically involved as the UK regulated party with the necessary permissions to enable the transfer to complete. And the role they played, particularly in providing written document(s) ensured the transfer proceeded. As such I consider my decision fair and reasonable having taken account of everything provided.

I don't consider the fact Mrs K first complained about Firm G surprising, nor that this demonstrates she is someone who routinely and unfairly complains. It does not make this complaint fundamentally flawed. She came to be dissatisfied and this was particularly because her pension funds were not being invested when (or how) she had understood they would be. She complained first to and about her primary and local adviser who were regulated in the country where she lives, and this proceeded to their Ombudsman service where part of her complaint was upheld.

Mrs K went on to complain about the second advice firm (PSA) involved in the other territory (UK) where regulated activity took place as she considered they had also let her down and clearly because she thinks her losses have not been fully met. There is nothing wrong in her approach as to how she has complained. That said, I am not upholding all that Mrs K has complained about. I have not concluded Mrs K would not have proceeded with the transfer had PSA done all they ought to have done.

I am not persuaded that the opening of the SIPP and the transfer from the OPS weren't what Mrs K wanted at the time. I consider Mrs K sufficiently understood the benefits she was giving up on transfer from the OPS and that she placed a greater value at the time on the flexibility and alternative options provided to her through holding her pension benefits in the SIPP and being able to invest and ultimately access the funds flexibly.

However PSA didn't do what they ought to have done, including when it came to the provision of written document(s) and including the Appropriate Advice Declaration form/ certificate that ultimately enabled the transfer to proceed. I conclude that had they done what they ought to have done, it is more likely she would still have transferred out of her OPS, but she would have delayed doing this until she was able to invest her funds with the benefit of advice, which was a priority for her, and this was not available until a later date. As such the transfer would not have proceeded until a later date and so Mrs K would have been able to obtain an updated CETV prior to transfer. This being something the evidence from the time persuasively demonstrates was something she actively valued and researched.

In reaching my thinking I have drawn particularly on the evidence from the time and concluded what I think was more likely than not to have happened.

It has been a significant period of time since events in 2016 and 2017. Mrs K first started complaining to Firm G in 2017 and there has been an extended period in which complaints have been made and responded to involving Firm G, the overseas Ombudsman and PSA. As such and having had the opportunity to review material spanning this time, I think all parties have to a greater or lesser extent altered and developed their position over time, and there are inconsistencies and some reliance on hindsight. I don't consider this unusual, and I acknowledge it can be hard to avoid given the passage of time and as positions polarise and particularly when responding to ongoing submissions and areas of disagreement. I have only taken an inconsistency into account where it is fair and reasonable to do so. I have identified my thinking where this has happened. Otherwise and in general terms I have carefully balanced all that has been provided, giving it the weight and relevance I consider appropriate to enable me to conclude on balance what I think is more likely and to reach a fair and reasonable outcome.

I have not summarised everything that has been provided and said. I am not required to do so, and this reflects the relatively informal nature of this Service, which is an alternative to the Courts. I have included more than I would consider usual, and this reflects the history and that here parties have provided submissions and responses actively and over an extended period. It is for me to decide what I consider relevant and to attach the weight I consider appropriate to evidence. I want to assure all parties I have read everything provided with care.

It appears fair for me to understand the overseas Ombudsman found Firm G were not wrong to have told Mrs K there was an anticipated agreement with Rathbones that would have enabled her to invest using Rathbones, given what was known at the time (in early 2017). However Firm G failed to tell Mrs K the agreement with Rathbones was not in place by the time they had indicated it ought to have been. Mrs K reasonably believed it was in place and reasonably placed reliance on what she had been told.

Due to this Mrs K's fund was transferred but could not be invested. It has not been disputed throughout complaints made to either Ombudsman Service (in Country X and here) that at the time there was no advised managed investment service available to her as a resident in Country X for the funds held in the UK, in the absence of what had been proposed by Firm G. Had Mrs K known the Rathbones agreement wasn't in place, she could have paused the transfer, or stopped it. Thus she lost investment performance having been transferred and remaining uninvested, (or only invested in a limited way) and this needed to be addressed.

I am not considering a complaint about Firm G nor am I reviewing the findings of the overseas Ombudsman, but I see the logic in this conclusion.

I note the evidence from the time also demonstrates that Mrs K had established she might have been entitled to a higher transfer value in March 2017 and told Firm G. Firm G told PSA in March 2017 and went on to tell Mrs K in July 2017 that her OPS would be contact about the higher value before transfer.

The Country X Ombudsman found Mrs K had contributed to her loss by declining to use the investment facility and platform which became available in July 2018, because she did not trust the adviser or the link between the investment firm to Firm G. As such the overseas Ombudsman capped the calculation for investment loss to the time they found she could have invested (July 2018). Again I see the logic in this thinking.

As I've set out the overseas Ombudsman required Firm G to repay all advice fees, including the sum paid to PSA. The mediation that followed appears to have looked at investment losses.

There is some complexity here, and whilst I am not bound by the findings of the overseas Ombudsman, it is not entirely clear to me what the eventual outcome was when it came to the mediation on remedy. I have seen what Mrs K says she has been paid in total. But I don't know the basis for any sums paid.

I explained in my provisional decision this means I intended to conclude Mrs K had already been repaid a sum that includes the fee that was paid to PSA, that I would have otherwise required them to repay. I have not been corrected on this.

It is inappropriate for me to make a finding on Country X Ombudsman's decision. In any event that's not necessary here, in order for me to reach a fair and reasonable outcome on this complaint. I have considered whether this means there is a risk of double compensation to the extent that would not be fair or reasonable.

I am comfortable my decision including the redress reasonably identify a causal loss connected to PSA. My decision simply addresses the sum available to Mrs K when she transferred and whether an additional amount might have been realised, and as such falls outside the redress exercise adopted by the Country X Ombudsman, which primarily considered what happened to the sum that was transferred, after the transfer.

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 SIPP 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 my ambit is to consider what is fair and reasonable in the circumstances of a complaint, whilst taking the law into account.

Jurisdiction

As I have already set out there is significant and persuasive material that demonstrates we can consider Mrs K's complaint, she is an eligible complainant, and the necessary relationship existed between Mrs K and PSA and ought to be understood that way. Mrs K is an eligible complainant, she was a consumer, and it is accurate to describe her as having been a consumer, client and customer in respect of PSA.

I have seen later submissions made about the two-adviser approach used by PSA with clients like Mrs K and what was discussed with the FCA and how Mrs K's file was used as an example. The majority of these submissions and related evidence supports my thinking on this.

I don't think this is as nuanced a finding as PSA's representatives propose. I am satisfied PSA understood or ought to have understood, that when they dealt with matters relating to Mrs K, (including when it came to completing documents saying they had advised Mrs K on the transfer), they were acting in such a way that was using their regulated permissions for the work and service provided. This activity involved holding themselves out (for regulatory purposes) as having advised Mrs K personally and to ensure others understood and relied on their confirmation that Mrs K was their client. Thus PSA accepted 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 Mrs K's regulated adviser for 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. I consider the only sensible understanding of this document is that PSA confirm they have advised Mrs K in relation to a proposed transfer of safeguarded pension benefits and want to be understood as her UK regulated advisers. Thus Mrs K was their client and an eligible complainant. Flawed, inappropriate or incomplete advice (for example) would not and does not change this position in the circumstances.

My thinking on the merits of Mrs K's complaint about PSA

Advising on the transfer of benefits held in an OPS is a regulated activity. Mrs K's benefits were held in an OPS. These benefits were historic and represented a period of employment from some years previously and prior to her move overseas in 1993. 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.

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 Mrs K first started having her pension 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).

Since April 2015 the trustees of any defined benefit pension scheme with a transfer value of over £30,000 have been required under section 48 of the Pension Schemes Act 2015 and associated regulations to ensure that the member takes independent financial advice when looking to transfer. It didn't matter whether the advice was to transfer or not, so long as advice has been given. Where there were safeguarded benefits above the value of £30,000, the ceding trustees of the OPS needed to have evidence that the member (Mrs K) had received advice in relation to any proposed transfer. PSA confirm this in their report intended for Mrs K dated December 2016 and would have known what was required and why.

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, the transfer of safeguarded benefits to flexible benefits,
- 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.

PSA provided the necessary evidence to satisfy the evidence requirement. As such they accepted they had the necessary relationship and had completed the necessary regulated work, and that they had advised Mrs K on the regulated transfer.

Thus they held themselves out (for regulatory purposes) as having advised Mrs K personally themselves, Mrs K was their client. They were acting in such a way that was using their regulated permissions for the work and service provided and thus they accepted the associated duties and responsibilities.

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

The suggestion PSA were simply confirming that Mrs K 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 UK regulated firm involved here that had the necessary permissions.

If PSA are continuing to suggest they didn't advise Mrs K, this 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. Which would mean they acted in a way that is fundamentally flawed. Alternatively it could mean PSA were confirming for regulated purposes that they had provided someone with regulated advice, but that PSA didn't mean what they said. This would be nonsensical.

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*".

This is around the time PSA say they were in contact with the FCA. It is also prior to the transfer having completed. PSA would have either been aware of the January 2017 alert, or ought to have been. This alert was not introducing new regulatory requirements.

It appears the Appropriate Advice Declaration PSA provided in December 2016 was rejected by the OPS as it was not on the OPS' prescribed form, rather than as I previously considered whether PSA had reconsidered whether it met regulatory requirements.

At one stage PSA had said the OPS expressed a preference for the Appropriate Advice Declaration to be on the OPS's own template. I find it surprising PSA did not retain any records about this, or apparently much of the work involving Firm G and Mrs K.

On 3 February 2017 Mrs K's OPS wrote to the SIPP provider explaining the need for their enclosed Appropriate Independent Advice form to be completed by Mrs K's financial adviser. On 15 February 2017 PSA told Firm G they could not provide the adviser's certificate "*at* *present*" but that the situation could change "*in the coming weeks*". It wasn't until April 2017 PSA drafted a letter and completed the OPS' Appropriate Advice Declaration.

I have seen the various submissions made about contact PSA had with the FCA. It is not clear when PSA were first contacted by the FCA. Nor is it clear to me on PSA's submissions whether PSA say they chose to suspend all work being done for overseas residents or whether they agreed with the FCA to do so.

What is clear is that at this stage PSA had completed their first report but there was no effective Appropriate Advice Declaration for Mrs K. PSA having provided their first report and the unacceptable advice declaration December 2016 prior to Mrs K having concluded discussions on transfer and the intended investment approach.

By March 2017 emails provided show PSA had been speaking to Firm G. Firm G provide information to PSA on Mrs K that had not been provided previously. And PSA agreed to provide a further report. In April 2017 PSA signed the relevant Appropriate Advice Declaration to enable the transfer to proceed but using the initial CETV.

We have been provided with a letter from PSA to Mrs K's OPS dated April 2017. In the letter PSA sets out "*I can confirm that* [Mrs K] *wishes to transfer her pension fund… I can confirm that I have given appropriate financial advice to* [Mrs K]". And goes on to confirm the writer's regulatory status and suitable permissions to give such advice, confirming they have discussed with Mrs K the implications of transfer.

I am aware there has been a suggestion this letter was never sent. I have not been given a reason for its existence unless it was drafted to be used to enable the transfer from the OPS to proceed, until the OPS explained it had its own form to be completed. I understand from Mrs K that this was letter was provided to her by her OPS. I think it's more likely than not, this letter was sent if there is any ongoing dispute. I don't think anything turns on this. The Appropriate Advice Declaration from the OPS was completed by PSA around the same time.

A second report was prepared by PSA on Mrs K dated April 2017. This report was not provided to Mrs K. This is not in dispute.

It is hard to accept the submissions that this second report was only ever drafted as a working and incomplete draft for PSA to share with the FCA to assist the FCA with its wider work on overseas residents, or to seek the FCA's input upon. I don't find such submissions entirely persuasive.

This second uses the information Firm G provided to PSA on Mrs K in March 2017. A second TVAS was prepared by a third party which is referred to in the report. It is sufficiently clear to me that the second report is drafted in such a way that it updates and incorporates such material into the December 2016 report that the FCA highlighted and affirmed the requirements about to all firms advising on pension transfers in the January 2017 alert.

Only several weeks before PSA had told Firm G, they could rewrite the first report and provide a new report including the first report but now "*covering off the FCA's expectations*". It's not clear whether PSA say they provided their April 2017 report to Firm G.

But I don't think I need to make a finding about why it was prepared in order to decide this complaint fairly. PSA confirmed to the Investigator it did reflect their thinking at the time. I do note that it's preparation and date are closely connected to the Appropriate Advice Declaration PSA provided that enabled the transfer to proceed.

As set out above there has been reference to delays and queries in early 2017 and some suggestion, which appeared to be accepted by the overseas Ombudsman, these were due to changes in UK regulatory requirements and what was needed from PSA. I am not persuaded there was a regulatory change and have not been taken to anything PSA say was a change. Indeed PSA have gone on to say any suggestion of this was wrong. The source of this erroneous information provided to the overseas Ombudsman appears to be from Firm G. The position in 2017 might be a little less clear.

In PSA's second report of April 2017, PSA set out that since they provided Mrs K with their original report "*the topic of transferring from defined benefit pension schemes* [and they name her particular retirement fund] … *had come under regulatory scrutiny".* And they note "*the regulators concern that some people were transferring when it was not in their long term interests to do so"*. PSA say "*the FCA had recently affirmed that the responsibility for the actual recommendation to transfer or not should lie with the regulated entity in this case PSA*".

And PSA set out that "*this new information has changed the level of work they believe they need to do.* [And say they will consider] … *the investment strategy recommended by Mrs K's local advisor to ensure that it is a suitable strategy*" and that it matches her attitude to investment risk and that they will then compare it with expected returns and the critical yield required.

I think the wording used in this document supports my finding PSA knew their first December 2016 report didn't meet regulatory requirements, for a number of reasons. And if they didn't know, they ought to have done. I don't consider the FCA introduced new requirements in January 2017. PSA were right to consider and refer to the alert as an affirmation. I don't accept it ought to be described as meaningfully "*new information*", even if it was newly drawn together.

There can be no doubt PSA knew from early 2017 (and I consider they knew or ought to have known earlier) that their first Appropriate Advice Declaration for Mrs K didn't meet what was required. Whether or not this impacted their position by February 2017 that they couldn't sign an Appropriate Advice Declaration for Mrs K, is not something I need to decide in this complaint. But the timing of the communication and what was happening in respect of Mrs K's transfer and FCA interest, might be thought to be more than merely coincidental.

In any event PSA knew by March 2017 that Mrs K had not yet transferred, and she needed an Appropriate Advice Declaration for this to complete. They also knew she had accessed an updated CETV quote which Firm G said would mean she would be in a better position. And PSA knew that their first report (and the first TVAS) was wrong when it came to the figures provided. PSA also knew that in March 2017 G6T were confirming they had revisited Mrs K's case in light of discussions between PSA and Firm G (of which we have been told nothing and no records seem to exist). Firm G provide their summary on information on Mrs K, which might fairly be characterised as putting some pressure on PSA to understand Firm G and Mrs K know what they are doing.

It was four days later PSA confirmed to Firm G, they were "*able to re-write the report for* [Mrs K] *in a sort of hybrid between the old report that she has already had and the new report that will be covering off the FCA's expectations*".

It's sufficiently clear to me PSA had the regulatory expectations about what they needed to do for Mrs K closely in mind at this time. But they chose not to contact Mrs K directly, nor to check information including the position when it came to intended investments. Indeed they actively chose not to ensure she was provided with an updated report meeting the regulator's expectations. I find this unsatisfactory, as well as the flawed contents of the December 2016 report.

PSA still went on to provide the Appropriate Advice Declaration in April 2017 that enabled the transfer to proceed. They did this knowing their first report was incorrect and hadn't addressed the regulator's expectations. On PSA's submissions, they also decided they didn't need to draft a second report for Mrs K. Arguably this in itself was a further significant failure. This is not about a duty to review but the knowledge and understanding held by PSA at the time the Appropriate Advice Declaration was signed in April 2017.

I don't accept the submissions the December 2016 report was not prepared for Mrs K. I don't find it plausible or persuasive to say the intended recipient was Firm G. The report is addressed to Mrs K, not only at the start but they speak directly to her and address her as "*you*" throughout. Firm G might have been the party in contact with PSA about what would be done, but PSA did this with the knowledge the document was intended for Mrs K.

The second report is similarly drafted. Ultimately it's clear it was not sent to Mrs K, whatever the intended purpose of this document.

I consider PSA's work for Mrs K both in late 2016 and then in 2017 unsatisfactory. Her OPS needed an Appropriate Advice Declaration to enable the funds to be transferred. PSA provided this. But for PSA's provision of the form, the transfer would not have proceeded.

I don't accept there was any effective restriction here that would limit PSA's liability here. Indeed there are many aspects in what happened and was said that ought reasonably to have caused PSA to act differently and to understand better what was happening.

There is (for example) an acknowledgement in the December 2016 that PSA will not be offering any form of investment advice and that the choice of QROPS, SIPPs or investment considerations are said not to have played any role in PSA's considerations. There is no reference to Mrs K's intended SIPP or investments and only reference to others who will advise on this. This restriction does not mean the regulator's expectations (as affirmed in the January 2017 alert) didn't apply.

In the same way I don't accept the PSA document Mrs K was asked to sign (and did sign on 7 January 2017) was an accurate reflection of what has happened and Mrs K had been told or ought reasonably to have understood from PSA. What was prepared by PSA and provided to Mrs K about this transfer did not meet the expectations of the regulator or the requirements and duties in respect of a client (nor in addition what would be expected of appropriate advice). PSA's original report is said to have been generic advice. I don't think this is an accurate description.

I consider the submissions that correspondence and in particular the Appropriate Advice Declaration only confirms that Mrs K was advised, but does not confirm PSA advised Mrs K, are disingenuous. The language used is clear and meets the regulatory and statutory requirements as would have been understood by PSA. I consider the intention of the documents and how they would be understood is more than sufficiently clear.

These documents all set out that PSA has advised Mrs K in respect of the transfer of OPS benefits out of her scheme. It is a UK regulatory requirement that a member of an OPS in the circumstances such as Mrs K's, must receive UK regulated advice. This is because the regulator has identified the concerns around people giving up valuable benefits and being targeted by unscrupulous parties to access such funds. I am not suggesting this is the situation here, but it is an important reason why the regulator has such requirements and one which I would expect PSA to be aware of.

I've seen PSA told our Investigator in December 2022 that they had considered carefully before saying they had advised Mrs K on the transfer form, as it had been Firm G who advised. I have not been persuaded that PSA did not accept a regulated relationship at the time, nor that they can sensibly suggest they did not know they were holding themselves out as being Mrs K's relevant appropriate adviser by providing and signing documents stating they had provided a client with a regulated service, in other words advising Mrs K (as their client). There could be no reason for the OPS to have doubted this.

But for PSA's confirmation that they had advised Mrs K on the transfer, the transfer could not have gone ahead. They played an intrinsic role, and their role was to complete the documents required by the regulator to enable the transfer to proceed, and thus be Mrs K's named and identified UK regulated adviser.

This does not mean that if their advice was poor, generic, or flawed, it was not still advice. Questions on the adequacy of the advice do not play a part in the transfer being allowed to proceed. It is the requirement for a regulated named adviser to confirm they have advised their client, Mrs K, on the transfer, this being a safeguard the FCA has put in place when it comes to allowing such a transfer to proceed.

I do not consider it reasonable for PSA to have signed the April 2017 Appropriate Advice Declaration without doing more, including obtaining further information and without properly having established Mrs K's intended investment proposition, and indeed the basics of whether it was available to her when she transferred.

PSA knew Mrs K lived overseas but this was a UK-to-UK scheme transfer. It ought to have been clear to them it would be reasonable to understand their role was not just important to such activity but they and their role would be perceived as having relevant expertise that could and would be relied upon.

PSA's representatives say they have set out the basis upon which PSA agreed to sign the relevant declarations. We have not been provided with any evidence, such as contracts, terms, service agreements or indemnity documents for example between PSA and Firm G. I find it very surprising, unsatisfactory and unusual to be presented with the position that where there is an agreed business model to provide a UK regulated service involving overseas clients and advice firms, there are not written terms and records in some form, including setting out for example the respective responsibilities and liabilities. My understanding is that PSA say they had to sign the documents to enable the transfer to proceed, but that they did so believing Firm G to be the advisers and not themselves. I don't find this credible.

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 enabling the transfer to proceed, they needed to accept they were acting as Mrs K's advisers, in their regulated capacity and they did so, voluntarily. To suggest they were forced to complete all of the documents to enable the transfer to proceed, even though they considered the contents not to be true, (which might be understood to be the thrust of submissions), might be thought to demonstrate an acceptance of a knowing intent to circumvent regulation. In the same way I do not find it credible that both firms, both regulated firms (PSA and Firm G) have sought to suggest they were influenced by Mrs K was putting pressure on them to do what she wanted. Nor am I persuaded that PSA's reliance on Firm G persuading them (despite their own reluctance) that they could sign Mrs K's OPS' Appropriate Advice Declaration even though they said they had agreed with the FCA they wouldn't be doing such work to be reasonable.

Mrs K's case had not been finalised and agreed prior to PSA's agreement with the FCA, indeed PSA had only provided the December 2016 report (which they ought to have known was lacking) by that stage. Just because (and if) Mrs K had agreed to go ahead with the transfer, did not remove PSA's regulatory duties. The signing of the OPS' Appropriate Adviser Declaration was not a minor administrative detail involving confirmation of a decision. And I do not find it credible or persuasive that PSA ask me to accept it was reasonable for Firm G to have persuaded them that signing Mrs K's OPS' declaration did not impact their agreement with the FCA. Not because I have any knowledge of what PSA may or may not have agreed with the regulator, but because PSA are inviting me to conclude it would be reasonable for them to be advised and led on regulatory matters by a non-UK firm not regulated in the UK.

Based on what I have seen it might be that Firm G did not tell PSA all they ought to have done, or provide accurate information to PSA, but that doesn't change my thinking about what PSA ought to have done. It may be Firm G did not provide the service to Mrs K they ought to have done, but I am not able to consider a complaint against Firm G.

PSA ought to have done more prior to the signing of the Appropriate Adviser Declaration in April 2017, and I am satisfied they were in a position where they knew this before they signed it. Had they done what they ought to have done, I don't consider the transfer would have proceeded in April 2017.

I note the contents of the January 2017 alert.

"*We expect a firm advising on a pension transfer from a defined benefit (DB) scheme or other scheme with safeguarded benefits to consider the assets in which the client's funds will be invested as well as the specific receiving scheme. It is the responsibility of the firm advising on the transfer to take into account the characteristics of these assets. A firm advising on a pension transfer should not undertake a comparison using generic assumptions for hypothetical receiving schemes. The firm must 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...*

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…

Advice on pension transfers to overseas schemes

We acknowledge that non-UK residents considering a pension transfer are likely to need to seek advice from both an overseas adviser for investment advice and a UK adviser for advice on the proposed transfer. In order to advise on the merits of the proposed transfer, the UK adviser should 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*

This means liaising with the overseas adviser where necessary".

Of course here whilst Mrs K resided overseas, the intended transfer was from a UK OPS into a UK based SIPP.

I am not persuaded that any attempts to limit or repudiate the liability of PSA in respect of their work in any documents they drafted for Mrs K's attention were effective in removing the consequences of the relationship reasonably imported and created by their work.

It is also sufficiently clear that Mrs K was made aware of PSA's involvement and that as an FCA regulated financial advice firm it's likely she relied to some extent on their involvement when assessing whether she ought to go ahead and whether things were being done as they ought to be, and it was reasonable for her to have done (and for PSA to have understood this was likely).

It was PSA's involvement and the provision of their Appropriate Advice Declaration that allowed the transfer to go ahead and allowed all that followed. I don't think PSA did what they ought to have done and I think they ought to have obtained more information and acted differently (from December 2016 onwards and up to the provision of the April 2017 Appropriate Advice Declaration).

I have seen some submissions suggesting that in any event I ought not to conclude PSA were making a personal recommendation to Mrs K, and they were not required to. I see what was also contained in the January 2017 alert about personal recommendations:

"*Advice to a person that is presented as suitable for the person to whom it is made, or 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*

Our guidance on the suitability of pension transfers (COBS 19.1.7(G)) clearly states that when a firm advises a retail client on a pension transfer it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up".

I find it hard here on the facts not to conclude PSA weren't or ought not to be understood to have been making a personal recommendation.

Mrs K thought PSA were acting for her personally and I can understand why here. And I can understand why she thought that their advice (flawed as it might have been) was presented as suitable for her, and in any event that it was based on a consideration of her circumstances. I say this, not just based on the contents of the December 2016 but the fact that PSA signed the April 2017 effective Appropriate Advice Declaration, confirming the giving of regulated advice by themselves to Mrs K having been given updated personal information and circumstances of Mrs K very recently by Firm G (and of course the updated TVAS). I also say this on the basis that PSA agree the April 2017 second report reflected PSA's thinking on Mrs K's case and transfer at the time.

Whilst it postdates events here, I have reminded myself of the FCA's letter of January 2018 and what they said about continuing its supervisory work in relation to pension transfer advice. I accept its comments were made after Mrs K's transfer. But for context I note it included that;

"*firms offering a commoditised approach to pension transfer advice are more likely to give unsuitable advice or fail to recommend a suitable destination fund. By a commoditised approach, we mean an approach which does not entail a complete analysis of a client's personal circumstances or needs and may include some generic assumptions in order to arrive at a personal recommendation. Commoditised business models do not adequately focus on the clients' needs and personal circumstances and can result in a high incidence of unsuitable advice to transfer. Our recent work in this area, which is summarised in the October 2017 Alert identified that in only 47% of files reviewed, transfer advice was suitable. This is a serious concern to us, hence our ongoing focus on this area*".

It is worth reflecting the FCA highlighted to advisers with permissions to advise on pension transfers "*we have published several documents relevant to pension transfer advice. We expect you to consider these when assessing the way you provide pension transfer advice and consider if any changes are required* [and it referred to the August 2016 alert and January 2017 alert amongst other documents] *…*

You should also be aware of the relevant COBS pension transfer rules at COBS 19.1 and our suitability rules at COBS 9."

There was also reference to the October 2017 alert (again postdating Mrs K's transfer but of relevance when considering what was happening and being considered around the time).

The FCA said they had found by October 2017 that:

- "*Generally, when two firms were involved in the process, there was insufficient liaison between the two firms leading to, for example, insufficient sharing of information.*
- *Where the introducing firm did not share information about the client's objectives, needs and personal circumstances with the specialist transfer firm, this often resulted in unsuitable advice.*
- *Where the adviser or transfer specialist made a recommendation without knowing where the transfer proceeds would ultimately be invested, the transfer specialist was not able to produce accurate comparisons between the DB scheme and the receiving scheme.*
- *At some firms the transfer analysis was routinely based on 'default' schemes and/or funds in the knowledge that these would not be the actual receiving schemes.*

- *Many of these firms had seen a significant growth in DB transfer business, but the compliance/transfer resource had not increased appropriately. You should use this information to evaluate the way you provide pension transfer advice so this is in line with our expectations*".

I have looked with real care at PSA's first report, that it is agreed was provided to Mrs K. Whilst it is lacking in a number of ways, as set out, having considered the contents and taken into account the information and evidence, including what Mrs K did at the time, there's enough to reasonably conclude Mrs K would have been aware she was giving up guaranteed benefits by transferring out of her OPS, and I think she had sufficient understanding of what these were likely to look like for her.

In reaching my thinking on this, I have taken into account not only what is contained in the report, but also how Mrs K approached matters. I accept from her she had sought out Firm G when she came to look into transferring her benefits out of her OPS. Albeit I appreciate more recently she says she had not made up her mind at that stage. I have seen from some of her communications with Firm G that she was someone who had an active interest in her financial arrangements. To the extent that she took additional steps in late 2016 to seek out specific tax advice on the options open to her on transferring her pension funds (including whether a QROPS might be a good option or not), she was continuing to undertake ongoing steps from December 2016 which included obtaining an online CETV from her OPS and contacting Firm G about this. She also sent through reportage on the markets to Firm G and did her own research when it came to Rathbones and investments.

The fact PSA (and Firm G) had a client with a degree of interest and who was willing to do her own research did not change the duty she was owed or the service that needed to be provided. I do not want Mrs K to think she is being criticised for this. But I think in the specific circumstances there is persuasive evidence that its more likely than not she understood sufficiently that the transfer out of the OPS meant a loss of guaranteed benefits. And I think it is more likely than not she would have been aware this was an area being widely reported upon and considered, particularly in the financial and regulatory world, with the advent of pension freedoms legislation in the UK and concerns about people accessing funds and making unsuitable transfers.

The information from the time leads me to think Mrs K was sufficiently informed and aware, to the extent she made an informed decision that with this portion of her assets she was willing to risk the loss of guaranteed benefits given her circumstances to gain greater flexibility including the potential for earlier access and to be able invest the funds.

Based on what I have been told thus far I don't consider the opening of the SIPP based in the UK to have been fundamentally flawed, so that even if PSA had done what they ought to have done, this would not have followed.

Mrs K appears to have agreed with some of the things that have been said by Firm G and others, about the potential for her to return to the UK (given she had family in the UK who were ageing) and there has been reference to a child who might want to come to the UK to attend university.

Where someone has resided overseas since the early 1990's, employed, with assets in their overseas place of residence, and a family, and only an unformed thought that they might return to the UK at an unknown time in the future, it might be unusual to consider a UK based SIPP to be an obvious or suitable starting point. But here there was information referenced in PSA's first report and which Mrs K has agreed. Given the age of her children (and herself) there might be a logical stage once she reached a certain age and if her child studied in the UK, when accessing funds in the UK in this way might have been attractive. There have been stages where Mrs K has definitively stated in the course of her complaints that she was determined to return to the UK. I don't find there is persuasive evidence to support this (and the information from the time suggests to me it was referred to as only a possibility). Albeit I see Mrs K says she knew there was no tax benefit for her in the transfer, given her residency. There is nothing that suggests to me that Mrs K has returned to the UK or now has any intention of doing so. I have seen she says her intention is always to withdrawn only up to her maximum personal allowance annually.

The decision to give up guaranteed benefits ought not wholly to be linked to questions of critical yield, and thus the performance required from intended investments to match (and exceed) the OPS benefits. But it is an important factor.

I am satisfied that for Mrs K being able to invest the funds derived from her OPS was of primary importance on transfer at the time, and her emails around the summer of 2017 demonstrate her concern and frustration as she identifies the funds are not invested and not able to be invested in the way that had been intended.

I am also satisfied that PSA would have known (or ought to have known) the importance of considering the intended investments as part of the service they were providing to Mrs K. Again I have no doubt PSA were reminded of this by the January 2017 FCA alert and I see the April 2017 second report (never sent to Mrs K) did set out that it would consider the intended investment strategy.

Firm G told Mrs K that it would be able to offer an investment proposition with Rathbones. This would enable her as a resident of the relevant country, to have investments made with her funds held in a UK based SIPP. That the proposition was not yet in place, but Firm G anticipated it would be within a couple of months. I can see why Firm G said this and I don't consider what was said was misleading. I can understand why Mrs K relied upon it. I note what Mrs K said on 29 January 2018 when she emailed Firm G;

"*I really can't quite believe your email, which has me very concerned. When deciding whether to transfer [the OPS benefits] … I had a lot of things to weigh up and a major consideration was where to invest the pension funds so that I could generate returns equivalent to or greater than what I was giving up. In my email of 10*th *January 2017 I asked whether the Rathbones funds would be available within 2-3 months and [Firm G] confirmed 'Yes most definitely. They [the OPS] have offered us an agency already and we are just checking through the agreement we need to sign'. So to find out one year later this is now not an option for me is staggering, particularly as you do not appear to have any alternative investment options currently*".

This email supports my thinking of Mrs K's degree of understanding when it came to what she was giving up, but also the significant importance she placed on being able to invest her funds as soon as possible. I appreciate Mrs K doesn't agree with my interpretation and reliance on this email, but I am satisfied this is a reasonable interpretation.

The Country X Ombudsman took into account that Mrs K could have reversed her decision to proceed with transfer until early May 2017 when it was processed in reaching their decision as Firm G didn't tell Mrs K their agreement with Rathbones had not been finalised nearly two months after the date they said the funds most definitely would be available. This is my conclusion also.

For completeness and as set out above. Mrs K had told Firm G a higher CETV was available. Firm G told PSA and suggested this made the transfer even more beneficial to Mrs K in late March 2017. PSA say they did not draft a second report for Mrs K taking account of a higher CETV being available. Firm G suggested to Mrs K sometime later that any delay would cause PSA to have to do more work and charge significantly more (PSA have not commented on this) and that her OPS would contact them before the transfer, but this didn't happen.

Based on what I have seen thus far, had PSA done what they ought to have done, they would have established prior to signing the April 2017 Appropriate Adviser Declaration the intended investment position (as well as ensuring Mrs K other information and arguably appropriate and accurate advice and arguably a meaningful recommendation).

Here this would have meant identifying that the UK based Rathbones proposition was not yet available and indeed the agreement had not been finalised. This being contrary to the timescale Firm G has told Mrs K about. Given the importance of investment to Mrs K and her plans, PSA ought to have ensured Mrs K was aware that the intended investment management and advice service were not available as part of their advice to her, and they ought to have addressed this. And I think it's likely they would have identified the limited investment options available to Mrs K at the time in her position if she proceeded with the transfer out and into a UK based SIPP at that time.

Had they done so, I don't think she would have proceeded at that time. Thus reflecting the importance of investment opportunity to her at the time. And I conclude this is the reason she would not have proceeded at the time in 2017 and that she would have wanted to wait until the Rathbones, or an equivalent service became available to her.

I don't consider this is due to any duty to review work already satisfactorily completed in December 2016 as suggested on behalf of PSA. Their work of December 2016 was not adequate or accurate and they knew this or ought to have known this by the time they provided the April 2017 Appropriate Adviser Declaration. Nor do I accept Mrs K's submission that PSA ought to have told her Firm G had tried to get other agencies.

PSA submitted to me that even if their advice was inadequate or flawed that doesn't mean they ought not to have signed the appropriate advice declaration without fixing any potential deficiencies. I disagree. If they knew (and they ought to have done) that their advice was not what was required by the regulator, then it was unreasonable for them to have used their regulated status to provide the legally and regulatory required confirmation they had done what was required of them.

I am invited by PSA to speculate on what would have happened if PSA had asked Firm G in December 2016 about the intended investments and if the OPS had accepted the earlier documents PSA provided that they wanted to be accepted as the Appropriate Adviser Declaration. But this isn't what happened and isn't what I am making a decision about.

I accept (as I have said before) that Firm G believed it would be able to get the Rathbones agency, based on what I have seen. At the time Firm G was actively seeking the agency and ability for residents in their country of operation and regulation to be able to be advised on UK pension investments. They had evidence which has been provided to believe their relationship was Rathbones would be progressed. I accept Firm G would have told PSA this, if PSA had asked. That doesn't change my thinking about what PSA ought to have identified and why I think it's likely Mrs K would have waited until she was able to invest as had been intended rather than leaving her fund in cash.

It was not until around July 2018 that an investment service became available in the relevant country using an adviser that was able to give advice on investing through a UK SIPP. I think it's more likely that Mrs K, once provided with the full information she ought to have been, would have waited to transfer her funds until she knew they could be invested. The limited options that were otherwise available to her, were not in her best interests and there being no identifiable drive to transfer within a particular period.

Whilst I have seen what is said about potential concerns about the viability of the OPS, the pension fund having reported a deficit, I don't consider this to have been a persuasive reason to transfer nor a drive to transfer sooner rather than later. The OPS relates to one of the main UK banks (with an international presence) and there is not enough to persuade me there was a reasonable and pressing risk the pension fund was likely to fail at the time.

I don't consider Mrs K would have delayed transferring simply in order to obtain a higher CETV. It is sufficiently clear she was aware that OPS' were offering CETVs that some might consider attractive around the time she started looking into transferring. She refers to this herself and that this was attractive to her. The fact that the sum offered increased by early 2017 and continued to rise is part of the history. I don't accept the possibility (not guaranteed) of a continued rise would have caused her to delay the transfer on its own.

Had Mrs K received the service she ought to have done from PSA I think it's likely that she would have known in late 2016 and early 2017 that not only was the Rathbones proposition not yet available, but that it was not in her best interests (and would involve a significant level of risk) to transfer on the basis that an agreement would be reached that would enable her to invest using Rathbones within the next couple of months. And I think she would have thus waited. For completeness whilst PSA's report of December 2016 for Mrs K did not do what it ought to have done, there is nothing that makes me think that at this time PSA would have been wrong to say Firm G anticipated they would have an agreement in place with Rathbones in time for Mrs K to invest on transfer. But that doesn't mean PSA would have been reasonable to conclude she ought to transfer based on that alone.

In any event, had Mrs K received the service she ought to have done from PSA I think it's likely that she would then have known the Rathbones service was not available by March and April and as such the transfer in early May 2017 would not have proceeded.

I am not persuaded that anything otherwise changed in the period that followed and up until the summer of 2018 such that Mrs K would not then have transferred, once the ability to invest her funds became available. I think she still valued having a sum that could be flexibly accessed and that she wanted to be appropriately invested, over the benefits she would have otherwise been entitled to through the OPS. The fact that significant CETVs were being offered had already been attractive to her, and it appears her was likely to have risen further.

PSA were paid for services ultimately rendered to Mrs K (even if at the request of Firm G). I don't consider the fact that Mrs K paid Firm G who then forwarded the payment (we are told by PSA) to G6T who then paid PSA changes the nature of PSA's relationship with Mrs K here. It was said at one stage PSA didn't agree they were paid for services ultimately rendered to Mrs K. I haven't found what's said on this persuasive. PSA were paid for providing a service, the documents, agreements, and evidence needed by Mrs K, for her transfer to proceed.

I've seen PSA feel that Mrs K is rewriting history as they think she didn't consider herself a client or customer of PSA when she complained to the Country X Ombudsman. I hope PSA will understand that in reaching my decision I have reflected on my understanding of what I'd expect to see in a client/ customer relationship, and what I think was the position at the time. Mrs K's understanding, in addition to PSA's, merely forms part of the information I consider on this. I wouldn't for example, expect Mrs K to understand the UK regulatory requirements when it comes to the transfer of preserved OPS benefits. Nor does my thinking preclude Mrs K being advised directly by Firm G. The understanding or genuine belief of one or another entity is merely part of the picture, not the whole picture. It is a matter for me, having considered the evidence and taken into account that which I must, to reach my own thinking.

I have seen various documents and information from 2016 and 2017 that refer to the potential taxation consequences for any transfer on Mrs K's funds and submissions that have been made over time on this. Ultimately I don't consider the tax position to be of determinative relevance to what I need to decide. I don't know what the tax consequences would have been and will be. I accept that Mrs K saw a tax expert early on, and that her decision to transfer was not motivated by a tax benefit. I see what Firm G have said at various times, and I am not persuaded their thinking was always accurate or consistent. But this doesn't change my thinking. Having seen what Firm G said to PSA in an email of March 2017 about Mrs K's tax position, I am surprised PSA continue to submit their second report for Mrs K was merely a drafting exercise, prepared for the regulator solely, given it suggests the only reason they are recommending the transfer is because of the tax position as otherwise they would recommend against it. I also accept what Mrs K says about the starting point for any regulated adviser considering an OPS transfer to consider it unsuitable.

Based on what has been provided PSA don't appear to have adequately used such a starting point as a reminder to act with caution and sufficiency when it comes to such activities, but as I have explained, in the end I think Mrs K understood enough about what was being given up on transfer, but she wasn't sufficiently informed that her motivations and intentions for the funds might not be available to her, or not for some time.

PSA's contact with the regulator

This Service has been provided with various submissions and some information about PSA having contact with the regulator about pension work around this time and that PSA made changes on a voluntary basis. I am invited to conclude what PSA did (including in respect of Mrs K) was approved by the regulator. But I don't think the information goes that far.

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 when it comes to the adequacy or reasonableness of what PSA did and provided. 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 the report (the content or approach) provided to Mrs K 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 (not a client).

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

I have seen what PSA's representatives say about the FCA's discussions with PSA and what I ought to understand from the limited information provided. I don't accept this interpretation is the only logical understanding that I could reach on the information provided. I don't have enough information to have any meaningful understanding of what passed between the FCA and PSA.

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 that doesn't assist me here as I don't think this is an accurate summary of what happened in respect of Mrs K. I don't think PSA's sole activity can be described as general commentary or generic. PSA represented themselves as having advised Mrs K on her pension transfer to Mrs K and others including the trustees of the OPS. Ultimately and in any event, the FCA's ambit and what I am deciding are different.

Why PSA will be required to complete a loss calculation

Had PSA done what they ought to have done that would have involved the provision of adequate advice and satisfying their duties to their client. Whilst they provided a report in December 2016, this was unsatisfactory and the information PSA had, ought to have caused them to act differently at the time and in the time that followed. I note basic errors such the apparent lack of understanding on Mrs K's residency status. By the time they came to sign the relevant Appropriate Adviser Declaration in late April 2017, I have no doubt they were aware of the requirements of the UK regulator and that they had not done what they needed to. And although they did write an updated report in Mrs K's name, they didn't base this on their own enquiries, nor did it contain what it ought to have done. In any event, this wasn't sent to her, and PSA now say it was an incomplete draft never intended for her (albeit it captured their thinking on her case at the time) and they propose that it was never intended to be used for anything than a discussion point. Whilst not determinative here, I don't think the contents or timing support this submission.

Whilst the initial December 2016 report contained inaccurate information, it's more likely than not that Mrs K had a decent and sufficient comprehension that she was giving up benefits and what that meant. I think she had a clear understanding of why some OPS' were offering significant CETVs around the time. However PSA ought to have acted differently towards their client, and what they did do was not fair or reasonable. Indeed I tend to think it might also be said and for the reasons given, PSA ought also to have met the requirements in respect of an adequate personal recommendation.

In any event, had PSA done what they needed to reasonably do to reasonably sign the Appropriate Adviser Declaration April 2017, the information they provided and the way it was obtained, would have looked different. Mrs K would have known she would not be able to invest in the way intended on transfer. I note the adviser declaration did not need to be positive advice in respect of a transfer.

I have needed to consider what is more likely than not to have happened if PSA had done what they ought to have done. This isn't straightforward. I appreciate that matters have been going on for some time including contested complaints brought to the overseas Ombudsman. I don’t think any party has made consistent reliable statements about what they would have done or ought to have done.

I do consider that Mrs K placed more reliance on Firm G with whom she had a direct and regular relationship. This is demonstrated in all she said to the Country X Ombudsman service. But this doesn’t mean PSA did not play an important role in ensuring the transfer out of the OPS could proceed, and it does not mean they ought not to have done things differently. I also think PSA’s advice would have informed her thinking. And here this would have included the knowledge about her ability to invest in particular and the advisability of transferring when she could not invest as was intended.

I agree with Mrs K that PSA failed to do what they ought to have done, namely they said they had provided her with (appropriate) advice when they signed the declaration to the Trustees of the OPS, but this was not accurate. But I don’t agree that it was only as a consequence of their failure she transferred her pension arrangements, and that this was unsuitable. I don’t consider it reasonable to conclude that had PSA done what they ought to have done, Mrs K would not have started a SIPP or transferred her benefits out of her OPS.

I have been more persuaded by information available from the time or closer to the time. I tend to think Mrs K was motivated to be able to access funds held in her OPS in a more flexible way. I think she was attracted by what she had read by the Rathbones proposition. However it wasn't Rathbones itself that determined her decision to transfer. I think the ability to be able to invest and achieve growth rate beyond that of being held in cash for any period of time was a significant motivator (in addition to other options offering greater flexibility). I find everything that occurred in early 2017 highly unsatisfactory. It is surprising to me that PSA continued to provide information to Firm G.

If PSA had done what they ought to have done it's more likely than not that Mrs K would have understood and concluded it was more sensible to wait until the Rathbones proposition or similar had been agreed. Or at least until an ability to invest based on personal advice as a resident of the relevant country was in place.

It was reasonable for her to have believed from Firm G that the Rathbones proposition would have been in place in two to three months from January 2017 (and it was Firm G checking things at the time). I don’t think it’s reasonable to have expected Mrs K, however self-motivated to have discovered on her own how likely or not it was that the proposition might be agreed or not, nor that she had any duty to check. Given PSA (and G6T) were jointly asking for and receiving additional information on Mrs K in late March 2017, it was not reasonable for PSA to have failed to establish the position on her intended investment approach and comment on this, even at this late stage. They knew what was required. If she had sufficient information or was advised to wait, I think she would have done. I still think she would have gone ahead to transfer, whether or not PSA or another firm signed the adviser declaration on this; and whether or not she was advised not to go ahead. But as such she would have been in a position to have achieved a different CETV.

As such PSA must obtain the CETV that would have been available to Mrs K on 1 July 2018 which is sufficiently close to when there was an advised investment proposition available to her in the relevant country to be reasonable as a calculation date here. Mrs K refers to when she received written advice in the summer of 2018 and says that I ought to use 18 July 2018. I have also noted that on 20 June 2018 Mrs K was told there was an investment and advice platform available to her. I don't consider here that it is possible to say with any precision that there was a date she would have transferred and would have invested. I am satisfied the date of 1 July 2018 is a reasonable approximation in the circumstances.

I considered whether I ought to say April 2018, since that would be three months before the proposition became available and so would allow for a transfer prior to investing once the platform was available. But I don't think that's appropriate here, there's nothing I've seen that enables me to understand whether the ability to use the investment service was known to be coming with sufficient certainty. I am using 1 July 2018 as this is a fair date on which a CETV could have been requested knowing Mrs K could be advised on the investment of the funds and so a transfer could proceed.

PSA suggested my proposed redress might lead to double compensation or recovery. This is because Mrs K has already received a sum for the loss of investment performance between when she transferred in 2017 and when she could have been invested with suitable advice following the overseas Ombudsman's decision. I don't agree. This compensation reflected the lack of potential growth on the sum that was transferred in 2017. My proposed loss calculation is designed to identify if Mrs K would have received a higher transfer value had she transferred at a later date, and if so to pay only the difference between the CETV she received in 2017 from her OPS and that she would have received 1 July 2018. This sum formed no part of the considerations of the Country X Ombudsman based on everything provided.

It is only if there was a higher CETV available on 1 July 2018 that any redress will need to be paid by PSA to Mrs K. PSA will need to pay interest on any loss sum identified in the way set out below.

I appreciate PSA also say I ought to adjust my approach because the overseas Ombudsman's loss calculation wouldn't have been needed or completed if Mrs K had transferred from her OPS at a later date as there would have been no loss of investment performance in 2017 on the CETV that was transferred. As I've explained, it is not my role to revisit or review the overseas Ombudsman's decision, nor do I have power to. I don't consider my approach to redress inconsistent with their finding on redress in any event on the face of what has been provided. Nor, importantly, that it unfairly or unreasonably enriches Mrs K, or in such a way that I ought to adjust what PSA will be required to do if Mrs K accepts my decision.

Mrs K says I ought to ignore all benchmarks and I ought to be informed by what she did when she was able to invest. This might seem a surprising submission on the face of it, given she stressed she experienced a loss through self-managed investment. Mrs K refers to the situation in Ukraine and its impact, which of course could not have been foreseen and impacted the financial markets more widely. I accept Mrs K might mean reflecting the investment approach she has adopted with other investments or when advised. But I haven't changed my thinking.

Secondly, Mrs K suggests my proposed approach to interest ought to reflect a 90% growth holding. Such a submission does not appear reliable or reasonable to me. It suggests a higher appetite and capacity for risk and loss than she has proposed were appropriate for her in a number of ways elsewhere. I appreciate Mrs K might say this is because she now wants to achieve the performance she expected and hoped for, but that doesn't change my thinking.

I am satisfied that the approach I have adopted in using a benchmark is both fair and reasonable here. I have not found submissions made by either party relevant to this area to be reliable or consistent. I am not making an award for future advice fees. Should Mrs K wish to receive advice that is a matter for her. Mrs K would always have been required to pay for investment advice. Mrs K asks me to remove the deduction for future income tax if a payment into her SIPP isn't possible and is to be paid directly to Mrs K. I am not doing so here as I am not persuaded there is enough for me to depart from our usual approach here.

Putting things right

What PSA must do

My aim in awarding fair compensation here is to Mrs K as close to the position she would likely have been in, had it not been for PSA's failure.

PSA must:

- Obtain the CETV that would have been available to Mrs K on 1 July 2018 from her OPS.
- Compare this with the CETV that she did receive.
- If she could have received a higher CETV, she has suffered a loss and compensation is due. The loss being the difference between the sum she received on transfer prior to the deduction of adviser fees and the sum she could have received on transfer on 1 July 2018.
- If she would not have obtained a higher CETV on 1 July 2018 then she has not suffered a loss

Given the time that has elapsed, it is not clear to me if the OPS will apply a charge or fee to provide a CETV, if so, PSA will need to pay this. I approached redress on the basis the OPS will be able to provide a CETV for this date for Mrs K's arrangement. I highlighted in my provisional decision that I wanted to be told if I was wrong in this thinking. No one told me my intended basis wasn't possible.

The compensation amount should if possible be paid into Mrs K's SIPP**.** The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs K as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mrs K has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement. I am presuming this to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

Interest

Interest will need to be paid on any loss sum established from the CETV comparison calculation set out above. This will need to be paid from 1 October 2018 to the settlement date. This recognises that whilst it is reasonable to use 1 July 2018 as the date a new CETV could have been obtained it is appropriate to allow a three-month period for the transfer to have completed when the CETV sum would have then been transferred and available for investment.

Interest on any loss sum to be calculated using a benchmark to represent the loss of potential for investment growth.

The appropriate benchmark to use here is:

- For half: the FTSE UK Private Investors Income Total Return Index; and for the other half: the average rate from fixed rate bonds.

I have chosen this method of compensation as I think it is fair to conclude Mrs K wanted capital growth with a small risk to her capital. I say this having considered all that has been provided.

- 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 her capital.
- To arrive at the fair value when using the fixed rate bonds as the benchmark, PSA should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.
- 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 Mrs K's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So the 50/50 combination would reasonably put Mrs K into that position. It does not mean Mrs K would have invested 50% of her 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 Mrs K could have obtained from investments suited to her objective and risk attitude.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints.

Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

I have considered whether there ought to be any reduction to this sum to recognise the likely impact of management, investment and administration fees to the returns. But I do not consider that necessary here having considered the overall intended outcome.

SIPP fees

I have thought carefully about whether PSA ought to be required to pay Mrs K a sum to represent the SIPP fees that she will have incurred during the period prior to June/ July 2018. I don't consider that is necessary or reasonable here.

Having looked at the timing of when things happened, what I think Mrs K wanted to achieve and what the Country X Ombudsman appears to have taken into account when making their findings on compensation to be paid by Firm G, I do not require PSA to make any payment relating to SIPP fees. Whilst I am not clear if the Country X Ombudsman (and Firm G) fully comprehended what investments would be accepted by the UK based SIPP, this makes no difference to my thinking.

Distress and inconvenience

I am satisfied Mrs K has been caused distress and inconvenience and this is sufficiently connected to failures on the part of PSA. As such I require PSA to pay Mrs K the sum of £350 to reflect this. This sum is to be paid to her directly within 28 days of being informed of her acceptance of my decision.

Further

Where I uphold a complaint, I can award fair compensation to be paid by a financial business. Here the rules that apply mean I can award up to £170,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I uphold Mrs K's complaint. I think that fair compensation should be calculated as set out above. My decision is that PSA should pay Mrs K the amount produced by that calculation up to a maximum of £170,000. In addition to interest.

Recommendation: If the amount produced by the calculation of fair compensation is more than £170,000, I recommend PSA pays Mrs K the balance.

This recommendation is not part of my determination or award. PSA doesn't have to do what I recommend. It's unlikely that Mrs K can accept my decision and go to court to ask for the balance. Mrs K may want to get independent legal advice before deciding whether to accept this decision.

Any claim against any third parties

In all of the circumstances above I think it's fair and reasonable for me to hold PSA responsible for 100% of Mrs K's loss as set out and to the extent set out in this decision. It's a matter for PSA whether they wish to attempt to recover any of the compensation I'm requiring them to pay from other parties. They may ask Mrs K for PSA to take an assignment of Mrs K's rights to pursue those parties if they wish to do so. PSA will need to pay all costs associated with any such assignment.

My final decision

For the reasons given I uphold Mrs K's complaint about Peter Stewart Associates Limited in part. On Mrs K's acceptance of my decision, Peter Stewart Associates Limited will be required to complete the loss calculation exercise set out above, and pay any sum due to Mrs K. In addition Peter Stewart Associates Limited must pay Mrs K £350 directly to represent her distress and inconvenience within 28 days of being informed of her acceptance of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 28 October 2024.

Louise Wilson
Ombudsman