DRN-5026222

The complaint

Mr H has complained that Chattertons Wealth Management Limited unsuitably advised him to transfer five pension plans into the FEI Hybrid Risk Level 2 Medium portfolio, which it managed. Mr H has also complained about advice to transfer his stocks and shares individual savings account (ISA).

What happened

Mr H had five pension plans, and one ISA, as follows:

- Phoenix Life – XXXXXXX37 – the benefits had been accrued in an Occupational Money Purchase scheme which was wound up and transferred to a "Plus Plan" Buyout policy.
- Phoenix Life – XXXXXXXX23/001 – a personal pension plan (PPP), which held former "protected rights".
- Prudential – XXXXXX67 – an Individual Personal Pension.
- Prudential – XXXXXX46 – an Individual Personal Pension.
- Halifax – XXXXXXXX64 – an Individual Personal Pension.
- Halifax – XXXXXX61 – a stocks and shares ISA. The fund value and transfer value at the time of the advice was £23,544.

Mr H has said that says he approached Chattertons for advice and that his main concern at the time was the fact that his two Phoenix Life policies had a terminal bonus which wasn't guaranteed. Mr H wanted advice regarding this.

Mr H raised concerns with Chattertons in December 2020, which was two months after the transfers, saying that he didn't think the advice to transfer was in his best interest. This was following a conversation with another Independent Financial Adviser (IFA).

Mr H said the on-going charges were excessive and considerably more than the ceding pension plans, which he said was clear evidence that they shouldn't have been transferred.

Mr H has provided documentation which indicates that there was an increase in the terminal bonus of approximately 28% since 2017 up to the point of transfer, and continued to increase up to 2023, which Mr H says was left out of the report provided by Chattertons.

Mr H further said that he wasn't offered alternative products other than the FEI Hybrid Risk Level 2 Medium portfolio. And he added that at no point was he made aware that all his pension plans could have remained where they were until the age of 74, or when he was ready to claim on the benefits.

Chattertons responded to Mr H's complaint and said the following in summary:

- The Phoenix Life pension plan numbered XXXXXXX37 had a terminal bonus of £69,846 which wasn't guaranteed and could have been taken away, or reduced, at any time. The number of units held was 84,624 meaning Mr H was guaranteed a pension pot of at least £84,624 (excluding terminal bonus) at the age of 65.

Chattertons said the pension value was considerably less than the transfer value due to the large terminal bonus. And the only way to crystalise the large terminal bonus was to transfer it elsewhere. Chattertons maintained it was the right advice to transfer this pension.

- The Phoenix Life pension plan numbered XXXXXXXX23/001 had a terminal bonus of £7,392 which again wasn't guaranteed. The number of units held was 15,225 which would guarantee a pension fund of at least £15,225 (excluding terminal bonus) at the age of 65. Chattertons said that, for this plan as well, the guaranteed pension fund was also considerably less than the transfer value due to the large terminal bonus and maintained it was the right advice to transfer in order to secure the terminal bonus.

- In relation to the two Prudential and Halifax personal pensions, Chattertons said it didn't factor in ongoing advisor charges, and these should have been carefully weighed up against the fact that the three pensions had extremely low charges. On this basis, it accepted that the recommendation to transfer these pensions wasn't justified, so it upheld this aspect of the complaint.

- And with regard to the ISA, Chattertons said that, after obtaining information on the ISA held with Nationwide, it established that it wasn't able to facilitate fee payments to any other third party. It said that, whilst the overall charges of the recommended ISA portfolio were greater than the existing ISA, this was largely down to the difference of their ongoing service costs which it felt was justified. Chattertons maintained that it was the right advice to transfer the ISA.

Dissatisfied with the response, however, Mr H referred the matter to this service for review.

Having considered the matter, the investigator thought that the complaint should be partially upheld.

As Chattertons had upheld the complaints relating to three of the pension plans and accepted that they shouldn't have been transferred, the investigator said that it wasn't necessary for him to look into whether they were mis-sold.

The investigator instead considered whether Chattertons had done what was needed to put Mr H back into the position he would have been, had those three pensions not been transferred.

Chattertons said the sums of £72,114 (Prudential) and £6,292 (Halifax) were transferred to the new scheme on 25 November 2020 and 30 November 2020 respectively. It said that it had looked at the performance of the FEI Hybrid Risk Level 2 Medium portfolio from 25 November 2020, using £78,406 as a starting figure, and compared this against the FTSE UK Private Investors Income Total Return Index up until the complaint was brought to this service on 1 July 2022.

Chattertons said this resulted in a loss to Mr H of £8,250. Chattertons also said it had looked at the ongoing advisor charges and Discretionary Fund Management (DFM) charges which had been taken from the investments within the new scheme since the start of February 2022 as this was the point that Mr H suggested he wanted to cancel the ongoing service agreement. Chattertons said that, since the start of February 2022, Mr H had paid £950 in ongoing advisor charges and £292 in DFM charges, which totalled £1,243.36.

Therefore, it said that it was prepared to pay Mr H £9,493 in redress.

The investigator said he'd explained to Chattertons that, if the ceding schemes for the Prudential and Halifax pensions were still active, this service wouldn't expect it to use a benchmark for redress comparison purposes. This service would expect Chattertons to obtain the notional fund values from the ceding schemes as if the pensions had remained with them.

Chattertons obtained this information and provided evidence from Prudential and Halifax that, had the pensions remained with them, the loss would have been £7,476, whereas it had offered £8,250 in the final response letter. Chattertons also said that it had compared the figure using the benchmark up to 1 July 2022, whereas the notional figures obtained from the ceding schemes had assumed the plans had been in place until August and September 2023. Chattertons agreed to honour the £8,250.41 previously offered, which the investigator considered was reasonable as it benefitted Mr H.

However, the investigator didn't think it was fair to only reimburse Mr H the ongoing advisor charges and DFM charges from February 2022 only. Essentially, the investigator said, Chattertons had conceded that these three pensions shouldn't have been transferred.

So, to put Mr H in the position he would have been, had they not been transferred, the investigator recommended that Chattertons reimburse the ongoing adviser and DFM charges from the point they were transferred in 2020 to the point they were transferred away from Chattertons in 2023, deducting any fees which Mr H would in any case have paid the ceding schemes.

The investigator's understanding was that the initial advice fee of 2% for the three pensions transferred had been taken into account in the notional values used in the calculation. If not, he said, this should also be taken into account.

In terms of the Phoenix Life pension plans, the investigator noted that Mr H was 62 at the time of the advice, and although it said in the suitability report that his chosen retirement age was 67, Mr H had said that this information wasn't provided to the adviser. Mr H said that he didn't know when he was likely to claim the benefits on his pensions.

The investigator further noted that the two Phoenix Life policies had a minimum guarantee, and the larger Phoenix Life policy had an Enhanced Tax-Free cash element attached to it. These were considered to be valuable benefits, he said, and there would be no guarantees attached with the new provider. The terminal bonus rate in 2018 was 66%, in 2019 it was 80% and in 2020 it was 95%.

The investigator had considered the FEI Hybrid Risk Level 2 Medium portfolio review dated April 2022. The risk level was "2" on a scale of "1 to 5", where "1" was the lowest risk and "5" was the highest risk, and the investment time horizon was eight to 15 years. But the investigator didn't think that an assumed eight to 15 year investment strategy was appropriate for Mr H because he was 62 at the time of the advice and reasonably close to retirement.

According to the terms and conditions of the Phoenix Life policies, there were no on-going charges, policy fees or annual management charges. And whilst the investigator understood the charges to be implicit, he thought it more likely than not that the charges would have been considerably lower than the Discretionary Fund Management (DFM) charges.

In the suitability report it was noted that *"you wish to have a pension pot value of £250,000 by age 67 however your value is currently exceeding this at £251,382".* Mr H was therefore already at the pension value he wanted at his retirement age, the investigator said, and so

he'd thought about whether it was to Mr H's benefit to transfer the policies, taking on the additional risk and incurring higher charges.

The investigator noted that Mr H had raised the fact that the terminal bonus rates leading up to the transfer weren't clearly noted in the suitability report. And Mr H had said that if he'd seen what the rates were from 2018 to 2020 and the increase of nearly 28% during this period, he wouldn't have risked transferring these pensions.

The suitability report also noted that *"A terminal bonus of £71,511.13 (94%) is included in the transfer figure. This has gradually increased from 5% in 2010 to 94% now. This is not guaranteed. This is now decided by their actuarial department".*

The investigator said that, considering Mr H approached Chattertons in 2018 and 2020 due to concerns about the terminal bonus, he agreed with Mr H that it wasn't unreasonable to have expected Chattertons to have shown Mr H the terminal bonus increases for the previous years before the transfer. It was for Chattertons to show Mr H this information in order for him to be able to make an informed choice, the investigator said.

But the investigator didn't think that Chattertons had done so as clearly as it could. The investigator said that he appreciated the reason to transfer these two policies was to secure the large terminal bonuses, but he wasn't persuaded that it was the right advice. The evidence showed that the terminal bonus was performing well over the years leading up to the transfer.

And although this wasn't guaranteed and could have reduced or been removed in its entirety, the investigator said that the Phoenix Life policies had a guaranteed fund value which couldn't be lost. He recognised that it was clearly noted in the suitability report that, by transferring the two Phoenix Life pensions, Mr H would be giving up the enhanced tax-free cash and the unit price guarantee.

However, the investigator wasn't convinced that Mr H was aware of the consequences of giving up these benefits.

Ultimately, he said, the pension funds had been transferred and the guarantees had been lost at a time when steps should have been taken to preserve the pension that had been built up to see Mr H through retirement.

Whilst Chattertons had said that Mr H was satisfied with the objectives in the suitability letters and had agreed to them, the investigator thought that it was the adviser's responsibility to give Mr H suitable advice. Mr H may have been attracted to the features of the FEI Hybrid Risk Level 2 Medium portfolio when he was told about it, but this didn't mean that it was suitable for him – or that it should have been recommended to him.

Looking at Mr H's past investment experience, which seemed to be mostly through his pension plans, the investigator wasn't persuaded that having access to a wider range of investments with the same management firm was a priority for him.

In terms of the objective of consolidating his pension plans, the adviser gave no clear reasoning as to the benefits of this for Mr H, the investigator said. Whilst the pension funds were with the same provider, the investigator couldn't see what tangible benefit it was to Mr H to have his pension plans with one provider.

The investigator then considered what Mr H would have done if he'd been properly advised. He said that, as far as he could tell, Mr H was simply taking the opportunity to take advice

about his pension policies. There didn't appear to be any particular urgency to transfer the policies because he first sought advice in 2018, but only transferred two years later.

On balance, the investigator said, given the guarantees attached to the Phoenix Life policies, the fact that Mr H was close to his retirement date, and that he was exceeding the pension pot value he wanted at retirement, he thought the advice to transfer had put Mr H in a riskier position. This, the investigator added, was coupled with the fact that Mr H had incurred transfer and management charges as a result of the transfer. The investigator didn't think that this was suitable advice.

Addressing the stocks and shares ISA, the investigator said that he'd looked at the suitability report in relation to this. He said he could see that Mr H had said that he'd not had any annual reviews for a number of years with the previous provider and he didn't think he was benefitting from the ongoing advice fee.

Mr H had various savings at the time of the advice amounting to over £100,000, excluding this stocks and shares ISA. Chattertons recommended Mr H transfer the stocks and shares ISA which had a transfer value of £23,544 into the FEI Hybrid Risk Level 2 Medium portfolio.

Chattertons also recommended that Mr H add a further £20,000 to take advantage of the 2021/22 allowance. However, Mr H only transferred the ISA - he didn't top it up.

The investigator noted that both the Nationwide fund in which the ISA had been invested and the FEI Hybrid Risk Level 2 Medium portfolio asset split were diversified. The Nationwide portfolio at the time of transfer had underperformed in the 18 months prior to the transfer, and growth had been less than 2%.

Having looked at the FEI Hybrid Risk Level 2 Medium portfolio review, the investigator again noted the risk rating for the fund, and the same investment time horizon of between eight and 15 years. The larger part of the portfolio was invested in fixed interest gilts, bonds or cash, which were considered to be lower risk. The remainder of the portfolio was invested in equities and property which could boost longer term returns.

The DFM charges were more than Nationwide's on-going service charge. But given that Mr H had a substantial savings pot, the investigator thought that he was in a position to invest the ISA for the time horizon of eight to15 years in order to obtain better returns. The Nationwide's portfolio was also underperforming, so overall, the investigator didn't think it was unreasonable for Chattertons to have advised Mr H to transfer the ISA and benefit from the ongoing advice it would provide.

For this reason, the investigator said, he didn't think Chattertons needed to do anymore regarding the ISA transfer.

The investigator then considered the distress and inconvenience which Mr H had been caused by the matter. He said he could see that Mr H initially raised concerns over the advice to transfer within two months of accepting the advice. A number of emails were then exchanged and a substantial amount of time passed where the complaint remained unresolved, to a point where Chattertons had removed Mr H as their client.

The investigator noted Mr H's comments that, from the point of transfer of the policies, to date, the issue had caused him considerable distress, inconvenience, and worry. Mr H had also felt he needed to find another firm to manage his pensions, which had caused further inconvenience, the investigator said.

It was Mr H's position that, at the time of raising the complaint, he asked Chatterton's if he could visit its offices and discuss his pensions and the complaint in person, but that this was declined.

Overall, the investigator said, based on Chattertons' and his own findings, the five pension plans shouldn't have been transferred. Mr H raised his concerns as soon as the transfers took place, and it took almost a year for his concerns to be investigated and a final response to be issued, leaving Mr H worried about his pension funds for a considerable amount of time.

The investigator noted that Chattertons hadn't offered any compensation for the distress and inconvenience caused to Mr H, but he thought that £750 should be offered for the reasons he'd given.

To resolve the matter, the investigator said that, in respect of the two Phoenix Life plans, Chattertons should compare the actual value of Mr H's fund value deriving from those two plans with their notional value, had the plans remained as they were. If there was a loss, Chattertons should pay into Mr H's pension plan to make it up to the value it should be, taking into account annual allowance factors, any unused tax relief and any protections in place.

If it wasn't possible to pay into Mr H's pension plan, Chattertons should pay the amount directly to Mr H, with a deduction for the income tax which Mr H would otherwise pay on his post tax free cash benefits, assumed to be basic rate.

With regard to the enhanced tax free cash entitlement on Mr H's Phoenix Life Occupational Money Purchase Plan, the investigator said that, if Mr H had annuitized that plan, he would have been entitled to 36% tax free cash instead of the standard 25% to which he was entitled after the transfer. As such, if Mr H decided to annuitise with the proceeds of the transfer, Chattertons should pay to him the difference in the tax free cash amounts he receives and would otherwise have received.

Addressing the Prudential and Halifax pension plans, the investigator said that Chattertons should remove the ongoing service charges from the point that they were transferred in 2020 to the point they were transferred out in 2023, and deduct from that the charges Mr H would have paid the ceding schemes.

Chattertons should also pay Mr H the £8,250 it offered in its final response in respect of the investment loss.

And in respect of the distress and inconvenience Mr H had suffered, the investigator said that it should pay him £750.

In response, Mr H suggested that the notional values which should be used for the Phoenix Life policies should be their maturing values on 21 April 2023 as they had specific maturity dates.

Chattertons said that it didn't have Mr H's authority to seek the comparative performance of the Phoenix Life plans.

The investigator agreed with Mr H's comment that the plans would have run to maturity, and notified both parties of this amendment to the redress proposal. He also confirmed to Chattertons that Mr H would consent to it seeking information about the plans' values.

There followed some confusion about whether Chattertons had authority to request the calculations from Phoenix, but this was then resolved by the investigator contacting Phoenix Life directly. Phoenix Life then provided valuations.

Chattertons then contacted the investigator to say that it had run the redress calculations and that Mr H had made a gain of £13,766 by transferring his Phoenix Life pensions and so, taking into account the loss on the other two policies, he'd made an overall gain of £5,516 by transferring his five plans rather than remaining with his previous provider.

In the circumstances, it said, it presumed that it would only need to pay Mr H £750 in respect of the distress and inconvenience caused.

There followed extensive correspondence between the parties as to the dates which should be used for calculating redress. I haven't included a detailed description of this below, as I'm setting out my own redress calculation proposal below, to which either party may respond, but I have read and considered all of the submissions.

However, in summary, Chattertons argued that the calculation should be capped as at the date at which Mr H moved his pension away from Chattertons.

The investigator said that he thought the redress calculation should be brought up to date. And so, on that basis, Chattertons requested that the matter be referred to an ombudsman for review, saying that it was unfair for it to be held responsible for investment decisions taken by Mr H after its relationship with him had ended.

Mr H also commented on the movement of his pension funds following the termination of his relationship with Chattertons in December 2022, saying that he had taken decisions which he thought were best of him, sometimes against the advice of the adviser he engaged in January 2023.

Mr H further commented that he believed a fair outcome would be to restore the value of his Phoenix policies to that which had existed before the transfers. He also said that the £750 proposed award in respect of distress and inconvenience was insufficient.

As agreement couldn't be reached on the outcome, it was referred to me for review.

I issued a provisional decision on the matter on 7 August 2024, in which I set out my reasons as to why I considered the complaint should be upheld. The following is an extract from that decision.

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

And having done so, I've reached the same overall conclusions as the investigator, and for similar reasons, but with a slightly different redress proposal. As set out above, the remaining issue here seems to be the manner of calculating redress, and as far as Mr H is concerned, the amount offered to him in respect of distress and inconvenience.

As with the investigator, therefore, my aim is to place Mr H in the position he would now be, but for Chatterton's advice to transfer his pension policies.

With regard firstly to the Phoenix Life policies, Mr H has said that he thinks it would be reasonable for him to receive compensation to make up the losses to the sum of his original investment (the transfer values), and further, that the maturing pension funds within the Phoenix Life with profits policies could have been reinvested in April 2023 if he'd been

advised by Phoenix Life.

But as set out above, my aim is to place Mr H in the position he would now be in, had the transfers not happened, and that should reasonably mirror what Mr H has done, or based upon the available evidence, would more likely than not have done.

I've noted what Mr H has said about capitalising on the maturing pension benefits from his Phoenix Life policies, but I don't think it's sufficiently clear that Mr H would in fact have done this, or indeed how this would have happened. In order to "reinvest" the maturing pension benefits, Mr H would have needed to exit the with profits fund. My understanding is that the terminal bonus would simply continue to apply beyond pension "maturity" date rather than being lost, and as my understanding is that Mr H hasn't yet taken his pension benefits, it would be difficult to reasonably conclude that he would have done so under different circumstances.

If, as Mr H has said he should have been the case, he'd been made aware of the increasing terminal bonus, it's difficult to conclude that he would have decided to switch out of the with profits fund when, as he's also said himself, his actual retirement date wasn't known.

But if Mr H has credible evidence which would indicate that this wasn't the case, or that he would in fact have taken a different course of action, he should let me know in response to this provisional decision. But I should say at this point that this cannot reasonably be a position which is taken with the benefit of hindsight.

And so my view is that the comparison between the replacement pension fund and the notional value of Mr H's previous pension funds should run to date.

But I think Chattertons has a point about the performance of Mr H's plans after their relationship had ceased. I acknowledge what Mr H has said about his investment decisions after December 2022, and the manner in which the relationship ended, but Mr H did appoint a new IFA very shortly afterwards. I think it would be reasonable to afford Mr H the small amount of time it took him to appoint a new IFA, but I don't think it would be fair or reasonable to hold Chattertons responsible for investment decisions which were taken after that point without its knowledge or advice. And this is a relatively straightforward matter to address, as I set out below in the redress proposal below.

<u>Putting things right</u>

To determine whether Mr H has suffered a financial loss through its advice to transfer his pension policies, Chattertons Wealth Management Limited should undertake the following.

Ordinarily, I might propose that Chattertons Wealth Management Limited determine the aggregate notional value of all of Mr H's previously held pension policies, as at the date Mr H appointed his new IFA in January 2023 - and compare this with the value of Mr H's pension funds deriving of those particular transfers (i.e. if additional funds have been contributed since, only the value of the number of units which were bought in the replacement fund with the proceeds of those transferred policies) at the same date.

And if this were to demonstrate an overall loss, I would say that that percentage loss should be applied to the value of the same proportion of Mr H's funds in his current pension plan as at the date of any final decision along these lines. This would effectively bring the redress calculation up to date, but remove responsibility from Chattertons for any investment decisions which differed from its advice taken after January 2023.

But I think this would unfairly deny Mr H the maturing value of his with profits Phoenix Life

policies which he would otherwise have had in April 2023. And so my proposal is slightly different to allow for this, and is as follows.

Chattertons Wealth Management Limited should determine the aggregate notional value of all of Mr H's previously held pension policies, as at the date of any final decision along these lines, and compare this with the value of Mr H's pension funds deriving of those particular transfers (i.e. if additional funds have been contributed since, only the value of the number of units which were bought in the replacement fund with the proceeds of those transferred policies) as if they had continued to be invested in the FEI Hybrid Risk Level 2 Medium portfolio at the same date.

This would then factor in the maturing values of Mr H's with profits policies, but would also assume that Chattertons' advice to invest in the FEI Hybrid Risk Level 2 Medium portfolio had been maintained.

If there is an overall loss to Mr H, Chattertons Wealth Management Limited should then, in the first instance, make up that loss within Mr H's pension plan, taking account of any charges for doing so, annual allowance issues, any available tax relief, and protections which might be in place.

If it's not possible to pay into the pension plan, Chattertons Wealth Management Limited should pay the amount of the loss directly to Mr H, with a deduction for the post tax free cash income tax which Mr H would pay on the pension benefits, presumed to be basic rate. This equates to an overall notional deduction of 15%.

I've noted that Mr H had an enhanced tax free cash entitlement within the Phoenix Life Occupational Money Purchase Plan, but this would only have been available if Mr H established an annuity with those pension benefits, and my understanding is that Mr H hasn't done so. It's clearly impossible for me to know whether this is a course of action which Mr H will choose in the future, and I can only make a decision on what is known now.

But if Mr H establishes an annuity with the proportion of his pension funds derived of that particular transfer in response to this provisional decision, then I'll be able to take this into account and amend the redress proposal accordingly.

Ongoing fees for the Prudential and Halifax pension plans

The fees which Mr H paid for these transferred pension funds over and above those he would have paid in the existing plans, and which wouldn't be accounted for in the actual plan values used for the comparison above, should be refunded to Mr H from the point of the transfer until they ceased, with the addition of 8% pa simple interest from the points that they were charged up to the date of settlement.

Distress and inconvenience

I've noted Mr H's comment that he feels the £750 proposed by the investigator in respect of this is insufficient. But I've thought carefully about the individual impact here and the types of award which this service might make under similar circumstances, and I agree that this is appropriate. I think this matter will have caused Mr H considerable distress, upset and worry, and it's clear that he'd expended much effort to bring about a resolution, over an extended period of time, for which I think the sum of £750 is about right. Either party may wish to visit our website for more information about the types of award which we might deem appropriate in such circumstances."

Mr H responded, saying that if his understanding of the redress proposal was correct, there was a problem, as he decided to place his funds into cash after the relationship with Chattertons ended, in preparation for retirement. Since then, it was likely that the recommended fund would have performed better than cash.

Further, Mr H said, Chattertons wasn't paying for another adviser's decisions – he left the pension as it was after the relationship ended with the specific aim of Chattertons not being able to use that argument. He decided to switch the funds into cash in December 2023 after the investigator's recommendation as to how Chattertons should compensate him, but the matter has since been dragged out.

Chattertons also commented that, whilst it accepted that the redress proposal didn't hold it accountable for any failure in performance after Mr H had moved to a new adviser, it considered that the redress calculation should also be adjusted for any actual mitigation by Mr H.

And to do this, it would need to establish exactly what Mr H had done with his investments since moving to the new adviser, to check that he hadn't mitigated his loss and increased the pension plan's value above the current value of the Aviva plan. If he had mitigated his loss, it would be unfair to overcompensate him for a loss he hadn't in fact suffered.

As such, Chattertons requested that I direct Mr H to provide full disclosure of his investment funds from the date that it was moved away from its management in December 2022.

Mr H then submitted further comments, which I summarise as follows:

- He would be out of pocket with the provisional redress proposal, for the following reasons.

- He began with a fund value of £250,000, which was transferred to the FEI Hybrid Risk Level 2 Medium portfolio by Chattertons in November 2020. He'd been happy with that fund value and wasn't particularly looking to increase it any further, which had also been acknowledged by Chattertons in its suitability report. He was seeking to protect it, if possible, rather than increase it.

- By April 2023, those original pension funds, if retained, would have been worth around the same figure of £250,000. The FEI Hybrid Risk Level 2 Medium portfolio by contrast was worth around £214,000.

- After the relationship ended in November 2022, as the FEI Hybrid Risk Level 2 Medium portfolio was a specialist "model fund" which required an adviser trained in FE hybrid to provide ongoing servicing, this placed him in a difficult position which required him to find another adviser and pay additional fees for that adviser to take him on.

- He didn't manage to do this and the fund reverted to being funds not being rebalanced with Aviva. This was the position which Chattertons put him in and this didn't change until December 2023.

- As Chattertons had placed him in that position, he decided, against the advice of his present adviser, to leave the funds as they were, in case the argument now being put forward arose. No other adviser had made changes to the funds since the end of the relationship with Chattertons.

- After receiving the investigator's assessment, he moved his funds into cash ahead of his approaching retirement in April 2024. At that time the fund value was around £220,000.

- Rather than risk the pension funds being exposed to further market volatility, he decide to move into cash, despite being approximately £30,000 worse off – but on the understanding that any loss would be made up on the basis of the investigator's assessment.

- He was now concerned that this may not happen, despite his complaint being upheld.

- On 23 January 2023, he sent the investigator an email asking what he could do with his pension whilst the investigation took place and the investigator replied two days later saying that Mr H could do as he wished and that this wouldn't affect either the outcome or the level of compensation awarded. However, he considered that there was now a potential that it would.

I then issued a second provisional decision on 2 September, in which I set out my further thoughts on the matter. The following is an extract from that decision.

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

To firstly address the comments made by Chattertons, the aim of the proposal as set out in the provisional decision was to place Mr H in the position he would now be in, but for the advice given to him.

As I set out in the provisional decision, but for the matter of the maturing with profits funds, I might have directed Chattertons to apply a percentage loss as at the date of Mr H appointing a new financial adviser to Mr H's current fund value, which would of course also take into account any gains or losses he might have made since, and would boost his pension fund according to a percentage increase on its current value.

But my actual proposal was to compare the notional value of Mr H's old plans with the value of his replacement plan as if it had remained invested in the FEI Hybrid Risk Level 2 Medium portfolio. As such, there would have been no need to obtain any detail about what Mr H had done with his pension funds. The comparator against the notional value of the old pension policies simply mirrors the performance of the FEI Hybrid Risk Level 2 Medium portfolio – in other words, as if Mr H had continued with Chattertons' investment advice.

Turning then to Mr H's comments, I do acknowledge his point about what he did when the relationship with Chattertons ended, but Mr H appointed a new adviser shortly thereafter, and so ought reasonably to have been in a position to either receive advice on how to invest in the future, or as was seemingly the case here, decline to accept that advice and maintain the investments as they were until December 2023.

This may have resulted in lower performance than had the pension fund been actively managed after that point, but this was Mr H's decision.

Further, it was Mr H's decision to move his pension funds into cash in December 2023, which I note predated the investigator's comment about Mr H being able to do as he wished with the pension funds and this not have a bearing on the outcome or award. Whilst I understand why he did so, this wouldn't necessarily have been the advice of Chattertons had the relationship continued. And so I remain of the view that it wouldn't be fair or reasonable

to hold Chattertons responsible for any fund underperformance after the relationship had ended, especially as Mr H had appointed a new financial adviser.

And there's also no reason to believe that, even if the pension funds had been left as they were before Chattertons' advice, Mr H wouldn't in any case have transferred into cash in preparation for retirement in December 2023. So any reduction in comparative performance may well in any case have applied.

That said, and notwithstanding the above, my aim, as set out in the provisional decision, is to place Mr H in the position he would now be in but for Chattertons' advice. And that should take into account what has actually happened, which is that Mr H moved his pension funds into cash.

If Mr H is planning retirement in the near future, as appears to have been the prompt to transfer into cash, then I don't think this would necessarily have been an unreasonable course of action, and if the FEI Hybrid Risk Level 2 Medium portfolio has demonstrated strong gains since December 2023 to date, then this will have an unfair impact on any redress he may receive.

And so I consider that reverting to a percentage of any loss, as at the date of Mr H appointing his new adviser for all of the plans except the with profits plans, and then applying this to the current fund value represented by those transfers, would be appropriate. For the two with profits policies, as I consider that suitable advice beyond January 2023 would have been to leave them until maturity in April 2023, it would be appropriate to apply the percentage loss at that latter point to the current fund value represented by those transfers.

To revisit Chattertons' point above, Mr H was free to do with his pension funds whatever he wished after the relationship ended. But by applying the percentage loss as at the date Mr H appointed a new financial adviser, this ensures that Chattertons wouldn't be responsible for those subsequent investment decisions. As it is, Mr H transferred from the FEI Hybrid Risk Level 2 Medium portfolio into cash, and so Chattertons is in any case aware of the changes made to the portfolio.

<u>Putting things right</u>

To determine whether Mr H has suffered a financial loss through its advice to transfer his pension policies, Chattertons Wealth Management Limited should undertake the following.

Chattertons Wealth Management Limited should determine the aggregate notional value of the non with profits policies, as at the date Mr H appointed his new IFA in January 2023 - and compare this with the value of Mr H's pension funds deriving of those particular transfers at the same date.

For the with profits policies, Chattertons Wealth Management Limited should determine their notional value, as at their maturity date in April 2023 - and compare this with the value of Mr H's pension funds deriving of those particular transfers at the same date.

And if demonstrates an overall loss, that percentage loss should be applied to the value of Mr H's funds in his current pension plan as at the date of any final decision along these lines. As with the previous redress proposal, this would effectively bring the redress calculation up to date, but remove responsibility from Chattertons for any investment decisions which differed from its advice taken after January 2023.

If there is an overall loss to Mr H, Chattertons Wealth Management Limited should then, in the first instance, make up that loss within Mr H's pension plan, taking account of any

charges for doing so, annual allowance issues, any available tax relief, and protections which might be in place.

If it's not possible to pay into the pension plan, Chattertons Wealth Management Limited should pay the amount of the loss directly to Mr H, with a deduction for the post tax free cash income tax which Mr H would pay on the pension benefits, presumed to be basic rate. This equates to an overall notional deduction of 15%.

Ongoing fees for the Prudential and Halifax pension plans

The fees which Mr H paid for these transferred pension funds over and above those he would have paid in the existing plans, and which wouldn't be accounted for in the actual plan values used for the comparison above, should be refunded to Mr H from the point of the transfer until they ceased, with the addition of 8% pa simple interest from the points that they were charged up to the date of settlement.

Distress and inconvenience

For the reasons set out in my previous decision, Chattertons Wealth Management Limited should pay to Mr H an additional £750."

Chattertons had no further comments to make. Mr H submitted further comments, which I've read in full, but will summarise briefly, and address, the main points in the section below.

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.

Chattertons' letter dated 13 March 2024

This was the letter in which Chattertons set out its position that Mr H hadn't suffered a financial loss, but that it would be paying him the £750 in respect of the distress and inconvenience caused to him by the matter.

However, Mr H didn't see how Chattertons had reached the "no loss" conclusion and provided his own calculations. Mr H queried as to whether, if Chattertons had been wrong on this point, it should be left up to it to do the redress calculations.

In response, I would say that that letter is somewhat redundant now in any case. My direction, as set out in my last provisional decision, means that Chattertons needs to address the matter of calculating redress afresh.

I understand Mr H's point about being sceptical of Chattertons' ability to undertake the revised redress calculation, but it is a fairly straightforward process, involving Chattertons seeking notional pension figures from the previous provider and comparing this to the actual fund value at a specific date. Any percentage loss would then be applied to the current fund value.

Chattertons will also need to provide Mr H with a copy of its calculations so that he may verify that they've been undertaken correctly.

Mr H appointing a new IFA in January 2023

Mr H reiterated that he made his investment decisions, against the advice of his new IFA,

and so he considered that the appointment of the new IFA was irrelevant.

Mr H said that he switched his pension funds into cash ahead of retirement but had put this off whilst waiting for the complaint to be resolved. Prior to that, he'd decided to maintain the investments as they were after the termination of his relationship with Chattertons, which he thought would make the investigation of his complaint simpler.

If he'd taken advice from his present IFA, he would be in a better position financially, he added. He considered various options, including switching to another fund, but this risked a lower performance, to which Mr H thought Chattertons would have said that it wasn't its responsibility.

Mr H considered that the fairest solution would be to simply return the sum he started out with - £250,000. Failing that, the redress calculation should be run up to the point that he moved into cash.

Again, I acknowledge Mr H's points in this regard, but consider that I've already addressed them in the previous decisions. It was up to Mr H to make the decisions he did regarding how and where his pension funds were invested after the termination of the relationship with Chattertons. And as I said in the previous decision, I can understand why Mr H might have switched into cash ahead of his planned retirement. But he could also have sought and accepted advice from his new IFA.

I remain of the view that Chattertons shouldn't fairly or reasonably bear the cost of Mr H's own investment decisions – as he's said, made against the advice of his present IFA – which he took after that relationship ended.

However, notwithstanding the above, given that Mr H seems to have left his pension funds in the FEI Hybrid Risk Level 2 Medium portfolio until he switched into cash, it's really only that latter decision – again, Mr H's to make, and as set out in the previous decision, one which he might reasonably have made anyway ahead of his retirement - which will have impacted the relative performance of Mr H's pension funds as compared to what would have happened if he'd maintained Chattertons' advice.

To address Mr H's point that the calculation should be take up to the point that he moved into cash, as it is the percentage loss which would be applied to the current fund value, I don't think this would favour Mr H. To do so would remove the benefit of the percentage loss being applied to any returns which Mr H may have made on the cash fund since that point. The returns in the cash fund might have been lower than they might have been in a more actively managed investment environment, but again, it wouldn't be fair to direct Chattertons to apply a percentage loss to notionally higher returns which haven't actually been achieved because of the move into cash.

<u>The ongoing fees</u>

Mr H said that the fees he'd been charged were as follows:

- Transfer fee of approximately £4,985
- Fees charged between 16 December 2020 and 16 December 2021 of £4335.99
- "Forecast" fees between 16 December 2021 and 16 December 2022 of £4,399.30

As set out in my previous decision, the fees which wouldn't in any case be accounted for in the actual plan values should be refunded, with interest. But if the transfer fee was, for example, removed from the invested transfer value, that is already factored into the separate redress calculation (by way of reducing the actual value of the pension fund and producing a

great loss percentage). And so it wouldn't need to be refunded to Mr H as well.

Summary

For the reasons given in this, and my previous decisions, my conclusion is that the complaint should be upheld. Further, for the reasons given, on a fair and reasonable assessment of the facts here, my view remains that the redress proposal as set out in my previous decision is appropriate.

Putting things right

As set out in my previous decisions, my aim is to put Mr H as closely in the position he would now be, but for the unsuitable advice of Chattertons Wealth Management Limited.

To determine whether Mr H has suffered a financial loss through its advice to transfer his pension policies, Chattertons Wealth Management Limited should undertake the following.

Chattertons Wealth Management Limited should determine the aggregate notional value of the non with profits policies, as at the date Mr H appointed his new IFA in January 2023 - and compare this with the value of Mr H's pension funds deriving of those particular transfers at the same date.

For the with profits policies, Chattertons Wealth Management Limited should determine their notional value, as at their maturity date in April 2023 - and compare this with the value of Mr H's pension funds deriving of those particular transfers at the same date.

And if this demonstrates an overall loss, that percentage loss should be applied to the value of Mr H's funds in his current pension plan as at the date of this final decision. As with the original redress proposal, this would effectively bring the redress calculation up to date, but remove responsibility from Chattertons for any investment decisions which differed from its advice taken after January 2023.

If there is an overall loss to Mr H, Chattertons Wealth Management Limited should then, in the first instance, make up that loss within Mr H's pension plan, taking account of any charges for doing so, annual allowance issues, any available tax relief, and protections which might be in place.

If it's not possible to pay into the pension plan, Chattertons Wealth Management Limited should pay the amount of the loss directly to Mr H, with a deduction for the post tax free cash income tax which Mr H would pay on the pension benefits, presumed to be basic rate. This equates to an overall notional deduction of 15%.

Any redress due should be paid within 28 days of Chattertons Wealth Management Limited being notified of Mr H's acceptance of this decision. If it isn't, interest at the rate of 8% simple pa should be added the redress sum from the date of this decision up to the date of settlement.

<u>Ongoing fees for the Prudential and Halifax pension plans</u>

The fees which Mr H paid for these transferred pension funds over and above those he would have paid in the existing plans, and which wouldn't be accounted for in the actual plan values used for the comparison above, should be refunded to Mr H from the point of the transfer until they ceased, with the addition of 8% pa simple interest from the points that they were charged up to the date of settlement.

Distress and inconvenience

For the reasons set out in my previous decisions, Chattertons Wealth Management Limited should pay to Mr H an additional £750.

My final decision

My final decision is that I uphold the complaint and direct Chatterton's Wealth Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 October 2024.

Philip Miller
Ombudsman