

## **The complaint**

In accordance with our approach to anonymity, I'll be referring to the complainant in this case as Mrs C.

Mrs C complained about advice she was given to transfer the benefits of a defined-benefit (DB) pension scheme to a personal pension plan, in 2019. She says the advice was unsuitable for her and believes this has caused her a financial loss.

St. James's Place Wealth Management Plc is responsible for answering this complaint. To keep things simple, I'll refer mainly to "SJP".

## **What happened**

The pension in question here related to a DB scheme from previous pensionable service and so Mrs C was a deferred member at the point of seeking advice.

Information gathered about Mrs C's circumstances was broadly as follows:

- Mrs C earned around £146,000 (gross) per year at the time of this advice. She had two DB pensions which I'll be referring to as "Pension N" and "Pension U". Only "Pension U" is being complained about here.
- Mrs C was 59 years old and married to Mr C who was 61. Mr C no longer worked as he'd retired on health grounds. He was already drawing his own independent DB pension of £33,658 per year and an annuity of around £3,500 per year.
- Mrs C's plan was also to retire, in the next few months. She intended to crystallise "Pension N" which could generate a substantial tax-free lump sum for her and then draw an annual pension from this scheme amounting to around £34,906. Both Mrs and Mr C anticipated receiving the full state pension at the age of 66.
- I think it's fair to say that by the standards of most people, Mrs and Mr C were in an agreeable financial situation. They owned two homes outright which had an estimated combined value of around £1 million. Although they still had liquid savings and investments of over £100,000, their overall wealth had recently been somewhat reduced to help Mrs C and her husband pass significant wealth assistance to their adult children to each buy properties.
- Mrs C specifically asked for regulated pension advice from SJP about potentially transferring "Pension U" to a type of personal pension plan. The cash equivalent transfer value of "Pension U" was around £341,649.

SJP set out its advice in a suitability report in March 2019. In this it advised Mrs C to transfer out of her DB scheme and into a personal pension plan and invest the proceeds in a managed investment portfolio arranged by SJP. Mrs C's financial objectives were to retire at the age of 60 (a matter of months away) and to have sufficient joint income with her husband to cover both essential and discretionary expenditure in retirement. They said they would

need £4,500 per month for this.

SJP said that transferring “Pension U” to a personal pension plan would also provide the flexibility Mrs C had said she wanted with this pension scheme - effectively to decide if and when certain benefits could be drawn from this pension, rather than being paid a regular monthly amount for the rest of her life. Another objective Mrs C evidently had was to provide a financial legacy for her wider beneficiaries, rather than 50% of this pension just being passed to her spouse, as is common with DB schemes.

Mrs C now alleges that she might have been poorly advised to transfer this pension. She is represented by a claims management company and first raised a complaint to SJP about its advice in 2023, saying she shouldn't have been advised to transfer out of this DB scheme at all. In response, SJP said it was acting on the financial objectives Mrs C had at the time.

Disagreeing with SJP, Mrs C then referred her case to the Financial Ombudsman Service in 2024. One of our investigators looked into the complaint and said it shouldn't be upheld. The investigator thought the circumstances did indeed show that Mrs C had all the retirement income she needed and that if she wanted more flexibility, then this method of transferring it to another scheme, would provide it.

Mrs C still didn't agree with this and so the complaint has been passed to me to make a final decision.

### **What I've decided – and why**

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

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for 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 applicable rules, regulations and requirements*

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

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, SJP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs C's best interests.

I've used all the information we have to carefully consider whether transferring away from the DB scheme to a personal pension arrangement was in Mrs C's best interests. I have also considered the responses to the investigator's 'view'. And having done all this, I am not upholding Mrs C's complaint. Like our investigator, I think it was in Mrs C's interests to transfer because it fitted with her stated financial objectives.

### Financial viability

I'll keep this section brief because I don't think SJP ever tried to persuade Mrs C that she would be anything other than worse off in the longer-term, in a direct financial comparison sense, by transferring "Pension U" to a personal pension plan. I say this because Mrs C confirmed that she understood that by *"transferring I am accepting risks that are currently covered by the scheme trustees. I understand that the ["Pension U"] scheme currently offers me a guaranteed income which would continue throughout my life and increase in line with inflation, and that by transferring my benefits ... I will lose this guarantee"*.

SJP referred in its transfer recommendation to a 'critical yield' rate. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. The critical yield is part of a range of different things which help show how likely it is that a transferred personal pension fund could achieve the necessary investment growth for a transfer-out to become financially viable.

I can think of better ways SJP might have explained this critical yield issue within its suitability letter. But it told Mrs C that if transferring, her monies from "Pension U" would need to grow by over £56,000 (or 16.1%) in the first year just to match the DB scheme's value. Given the very low interest rates and the investment environment at that time, and the moderate attitude to investment risk that Mrs C had, I think that she would have known that she wouldn't realistically be able to achieve anywhere near that level of investment growth.

SJP also referred in its transfer recommendation to a 'transfer value comparator' (TVC). The TVC is essentially a comparison of how much it would cost to purchase, on the open market, a guaranteed income for life with what the benefits her DB scheme was offering. In Mrs C's case, the suitability letter was clear that this was £551,328. This was substantially more than the CETV of £341,649. And so, in my view, this too presented a revealing window into just how much Mrs C could be giving up by transferring away from her DB scheme and I think Mrs C would have known this.

Overall, I'm satisfied that SJP explained to Mrs C what she would be giving up by transferring away and that this was conveyed to her in a reasonable manner. For example, I can see that it told her, *"the [TVC] shows that, if you were to use the transfer value to replace the guaranteed income, you would receive a lower income than the scheme could provide"*. The suitability letter further explained, *"the guaranteed income you receive would be approximately 61.9% of the income ["Pension U"] would provide"*. A further narrative went on to explain that transferring her pension to a personal type of plan could see her money eventually run out, whereas her "Pension U" DB scheme was guaranteed to pay out for the rest of her life.

In my view, the circumstances of this case reliably portray Mrs C has an educated professional with considerable financial assets by the standard of most. I've seen no reasons

to doubt she had the capacity to understand what was being explained to her and that she could be worse off by transferring this smaller part of her overall pension provision. As I'll also explain more about below, a key objective of Mrs C's financial strategy in transferring "Pension U" was that even after transferring, she still had a substantial DB scheme in the form of "Pension N" to use in exactly the way that scheme was intended. She would be using the guaranteed features from this scheme to pay her the regular and guaranteed pension for the rest of her life.

With all this in mind, I think Mrs C would have known what she was giving up. However, the rationale for transferring in this particular case wasn't predicated on the financial comparisons. Rather, it was restricted to a quite different category which mainly related to Mrs and Mr C's lifestyle. This showed that the guaranteed income they knew they already had for their retirement comfortably exceeded their known outgoings and discretionary spending needs. So, Mrs C wanted to use this particular pension ("Pension U") in a more flexible way and draw income from it when most suited to her and Mr C's requirements. She also wanted to pass wealth down.

In my view, it was on this basis that I think the transfer was merited.

#### Other reasons given for the transfer advice

I've used the documentation from the time to help list some of the main themes which the recommended transfer-away was based on.

The crux of this matter is that Mrs C wanted more flexibility with "Pension U"; essentially she wanted to be able to draw from this as she saw fit, rather than to take a regular income. The rationale for this, in my view, was both very clear and duly recorded on the suitability letter. It's therefore reasonable for me to assume this was discussed in considerable detail between adviser and client.

We know that Mr C had already retired and had a net income of around £2,650 per month from a DB pension and a guaranteed annuity. And by retiring and starting to draw from "Pension N", we know that Mrs C would be drawing a guaranteed and index-linked monthly pension of around £2,500 per month. Mrs C and the SJP adviser had spoken about her retirement income needs and come to what appears to me to have been a realistic requirement for £2,500 per month (essential joint spending) and a further £2,000 per month (discretionary joint spending). With Mrs and Mr C's guaranteed monthly sums already exceeding this requirement – and both were due independent state pensions within 4½ -to- 6 years - I think this provided Mrs C with the opportunity to make "Pension U" fit more closely with her future financial objectives.

Mrs and Mr C also told the adviser of their intention to sell their second home and we know there was a substantial cash tax-free lump sum available when crystallising either / both of Mrs C's two pension schemes. In my view, this meant that as well as Mrs and Mr C's joint pensions easily covering what looked like a comfortable retirement, there were also meaningful cash sums available in the future to complement the existing cash they already had.

As I've said, I'm satisfied this is the direction the conversation took between adviser and client. Mrs C had warned the adviser that she didn't want "*too much*" income because this might merely incur further unwanted taxation for her. We also know that she and the adviser definitely talked about passing wealth on. And that Mrs and Mr C had already started to pass down wealth to their children is confirmatory evidence that this was indeed a major influence in their thinking and part of their retirement plans.

Death benefits were also discussed. Whilst this can be an emotive subject and one which can, in my experience, be misunderstood in a pension transfer context, the evidence here does tend to imply that Mrs C was well aware that the passing of pension wealth to her children could be tax-free. At only 60 years old and in apparent good health, this could be said to be an inadequate reason to transfer from a DB scheme. However, in this particular case, I think it fitted with Mrs C's wider circumstances and goals: by transferring to a personal scheme, money could be passed to their children rather than her husband, who simply didn't need it.

### Summary

I have considered with care that the regulator gives a clear steer, that in most cases, transferring away from a DB scheme probably isn't merited for many people.

However, this doesn't fit every scenario and Mrs and Mr C had significant financial assets, quite a bit of 'cash', and each had their own DB pensions guaranteed and index-linked for life. This left Mrs C's "Pension U" as a somewhat welcome – but not essential - addition to their finances which could be used flexibly. The evidence shows that Mrs and Mr C had thought about their retirement finances in considerable detail. Mrs and Mr C also already exceeded the monthly money they planned to need in retirement. This known income was supported by their forthcoming state pensions due in the medium-term and bolstered further by an agreeable level of liquid savings.

To Mrs and Mr C's credit, they had a history of generous giving to their two adult children and the evidence is very clear that they wanted to continue down that path by passing more wealth as they aged.

With all this in mind, I think Mrs C's objective of using "Pension U" more flexibly was appropriate and indeed suited to their needs of that time. We do often see situations where 'flexibility' is ill-defined and over-used to justify some pension transfers. However, I don't think this was the case here. This was Mrs and Mr C's own money, and they had a right to use it in a way they saw fit.

In my view, this is the type of situation Parliament had in mind when allowing DB pension transfers to become more flexible and tailored to individual needs.

So, for these reasons, I'm not upholding this complaint. I am sorry to disappoint Mrs C.

### **My final decision**

I do not uphold this complaint.

I do not require St. James's Place Wealth Management Plc to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 20 May 2025.

Michael Campbell  
**Ombudsman**