DRN-5236275

The complaint

Mr F complains about Michael Chapman (MC). He says one of MC's advisers gave him unsuitable advice, recommending that he transfer the proceeds of a Personal Pension Plan (PPP) and Defined Benefit (DB) occupational pension scheme (OPS) to a Self-Invested Pension Plan (SIPP).

Mr F is represented in this matter by a third party ("the representative").

What happened

At the time of the advice, MC was a sole trader. Although MC has sold his advisory business, he remains responsible for the 2010 advice Mr F received from one of his advisers at the time. Notwithstanding MC's liability for the adviser's acts and omissions, for clarity, I'll refer to the adviser (who I'll call "Adviser K") and MC separately.

Having received a Transfer of Benefits pack for his DB pension, Mr F approached Adviser K for advice. An initial meeting took place on 22 December 2010, during which a fact find was completed. Amongst other things, this confirmed that:

- Mr F was 51 years old, employed, and earning £21,000 per annum. He was married and his wife was 38 years old, employed, and earning £6,000 per annum.
- Mr F was in good health, but had some disability in his knees, hands, and arms.
- Mr and Mrs F had three children, two of which were financially dependent.
- Mr F had a personal car loan for £3,000 and held a joint mortgage with his wife.
- Mr F held £2,500 in savings.
- The cash equivalent transfer value (CETV) of Mr F's DB pension was around £108,000.

Adviser K's recollections from the time are, in brief, that:

- Mr F was concerned about the safety of his DB pension and the closure of the DB Scheme to further accruals. He worried that his employer might not be able to meet its future obligations to scheme members, and he thought redundancies in the future were likely.
- She discussed Mr F's attitude to risk (ATR) on a wide range of investment types and noted that he felt stocks and shares were too dangerous for his taste. Mr F said he was more comfortable with the possibility of direct investment if he could be in control.
- Mr F wanted to consolidate his pensions into a scheme that provided better returns and asked Adviser K to advise him of his options. Various options were discussed, including remaining in the DB scheme; transferring to a PPP; and transferring to a SIPP to invest in commercial property.
- Despite emphasising that the *"best course of action normally"* was to remain in the DB scheme, Mr F was intrigued by the idea of using his pension to purchase a property.

Adviser K agreed to review Mr F's options by producing a Transfer Value Analysis (TVAS). Adviser K's suitability report was later completed and presented to Mr F during a meeting on 3 February 2011. Amongst other things, the report noted the following:

- There were no plans to wind up Mr F's DB scheme, but he'd become a deferred member when it closed to further accrual from February 2011. A new Defined Contribution (DC) scheme would replace the DB scheme, which Mr F decided he'd join.
- Mr F was keen to insulate his pension against risks by taking control of it and using it to purchase an investment property. Having identified a hairdresser's shop with offices and a storage area for this purpose, he'd asked Adviser K to recommend a pension provider offering significant flexibility on property purchase agreements which could receive his DB pension transfer value and facilitate the property purchase.
- Mr F had a small paid-up PPP worth almost £4,000 which was held in Cash. The scheme had an extremely limited range of funds available and didn't allow self-investment, direct property purchase, or have a drawdown facility for taking benefits.
- Adviser K didn't recommend moving Mr F's PPP unless he transferred his DB pension. Additional costs for transferring the PPP at the same time as the DB pension would be very low. However, by transferring his DB pension, Mr F would be giving up a guaranteed retirement income.

Regarding the TVAS, Adviser K's report:

- Said preparing a report using a SIPP and its typical charging structure wasn't possible, so a pension provider's tool had been used to determine the effects of transferring to its SIPP. This meant charging information for Mr F's case wouldn't be accurate.
- Set out administration and property management charges for another pension provider's ("Provider C") SIPP along with MC's ongoing advice charge.
- Said that because the SIPP's charges were fixed rather than a percentage of the fund, as the fund grew, the charges should fall as a percentage of the fund value. So, assuming Mr F's property investment allowed his fund value to grow, the charges included in the TVAS would be slightly higher than the charges he'd actually face. Consequently, actual growth rates required to meet critical yields may be marginally lower than those shown.
- Estimated that Mr F's DB pension would provide around £8,500 a year from age 65, increasing over time to provide some protection against inflation. To achieve the same pension from a new scheme, Mr F would need an investment return of 9.3% per year. But even if this rate was achieved, other economic factors could mean that he might not receive the same level of pension.
- The amount of tax-free cash (TFC) he could receive from a PPP entirely depended on the level of investment growth achieved and if poor levels were attained, Mr F's entitlement under a PPP could be smaller.
- The death benefits available before retirement under the DB scheme were substantially greater than those that would be available following the transfer to a PPP. Under the DB scheme, if Mr F died before drawing benefits, Mrs F would receive a lump sum ten times his pension entitlement, estimated to be around £60,000. She'd also receive a widow's pension of 50% of Mr F's pension entitlement, estimated to be around £3,000 per annum. Under the new scheme around £28,000

(the entire non protected rights fund value) could be paid to Mrs F, with the protected rights fund value (around £50,000) being used to provide pension income. However, payments could only be made if sufficient liquid funds were available in the scheme.
- If Mr F's DB transfer value was used to purchase property, the property would need to be sold before any payment to Mrs F could be made. It could be difficult to obtain an attractive sale value in a situation where a sale was forced, so the fund available to distribute to Mr F's family could be diminished.
- The actuarial analysis converted the value of widowers' pensions into capital lump sums for comparison purposes. This showed the value under Mr F's DB pension to be around £192,000 compared to around £77,000 under the new scheme after transfer.
- Death benefits after retirement hadn't formed part of the TVAS as it depended on how Mr F eventually took benefits. However, if, as discussed, he used a drawdown facility, it was likely death benefits under the new scheme would be greater.
- Regarding Mr F's concerns about the financial stability of his employer, government legislation (in the form of the *Pension Protection Fund ("PPF"))* provided considerable protection for members of schemes where an employer became insolvent and unable to meet its responsibilities. So, there was good reason to assume that Mr F would be protected even if his employer became insolvent.

Adviser K and Mr F met again on 23 February 2011. During this meeting Mr K was provided with a pre-written declaration to sign, confirming he understood Adviser K's concerns about him transferring and that she wasn't advising him to do so. Adviser K gave Mr F with several forms to sign, including his DB Scheme's Application for Transfer form and Provider C's SIPP application forms. Mr F completed and returned the forms in the same meeting. Adviser K sent a letter to Mr F later that day, summarising their meeting. In brief, the letter:

- Repeated the that she couldn't recommend transferring to a SIPP as there was a high risk that doing so would result in Mr F receiving a lower pension income in retirement.
- Said Mr F and his wife were still very keen to transfer despite Adviser K's warnings. Mr F wanted to simplify his pension arrangements and move his PPP with his DB pension to maximise his budget for property purchase and start a business. He was confident he could make improvements to the property to increase its value and secure regular rental income for his SIPP.
- Said that as Mr F was determined to transfer for property purchase, she agreed to find a suitable SIPP provider with a competitive charging structure and 'can do' attitude when making decisions about allowable investments. Based on this, Adviser K had recommended Provider C's SIPP.
- Confirmed that once transferred, Mr F's funds would remain on deposit whilst he finalised negotiations for his property purchase.
- Warned there were no guarantees that Mr F's fund value or eventual retirement benefits would increase because of the transfer. This was substantially dependant on Mr F's ability to select a suitable commercial property, make improvements to increase the value and to ensure it remained occupied with tenants paying good rent.
- Confirmed that Adviser K had forwarded Mr F's application form to transfer his DB pension and PPP to Provider C's SIPP.

The proceeds of Mr F's DB pension and PPP – totalling over £112,000 – were transferred to Provider C's SIPP in March and May 2011. In March 2012, Mr F purchased commercial property via his SIPP for £92,000.

Provider C sent Mr F annual SIPP statements, but from December 2016 onwards these were returned, marked “Gone Away”. Attempts made to contact Mr F via Adviser K weren’t successful. Chasers for payment of outstanding SIPP fees were also sent, but these too went unanswered.

In July 2022, Provider C successfully contacted Mr F about his outstanding SIPP fees, and these were settled by him in August 2022.

Mr F later made enquiries with the Financial Services Compensation Scheme (FSCS) in December 2022 about making a claim against MC. But as there was nothing to suggest MC was unable to meet any claims, he was told to complain directly to it.

In March 2023, with the help of a representative, Mr C complained to MC about the advice he believed he’d received in 2010. MC began reviewing Mr C’s complaint, but before this could be completed, Mr F’s representative referred the matter to our Service.

MC later provided several responses to Mr C’s complaint. It mainly argued that Mr F hadn’t been advised to transfer. And, amongst other things, it said:

- Adviser K conducted a thorough analysis of Mr F’s DB pension and explored his future needs and plans.
- Mr F was given detailed information about all the options available to him, including remaining in the DB scheme. He was also repeatedly warned about the specific risks associated with transferring.
- Mr F didn’t want to invest in shares or collective assessments and had no experience of this. However, he owned a house and wanted to be involved in other property investments provided they were under his supervision.
- Adviser K clearly informed Mr F that she didn’t recommend transferring. And after he explained why he wished to purchase a specific property; she maintained her position.
- Whilst it wasn’t the role of an adviser to simply facilitate a transfer at the request of a client, Mr F was an insistent client who strongly and urgently wished to proceed despite all warnings provided. So, following his *“continuous strong protests”*, Adviser K explained that she could only help if he agreed to sign a declaration saying he was acting against her advice.
- Proceeding with the transfer was Mr F’s choice to make. And Adviser K believed that if she hadn’t agreed to facilitate the transfer, Mr F would have looked for another adviser to do so.

Notwithstanding the above, MC said that Mr F’s complaint had been made too late.

One of our Investigators considered the matter and disagreed. He thought Mr F’s complaint had been made in time and should be upheld. He didn’t think Adviser K had given Mr F clear enough information and felt the process she followed made the recommendation unclear. He also felt Mr F hadn’t been able to make an informed choice regarding whether to be an insistent client. Overall, he didn’t think transferring Mr F’s pensions was in his best interests. He didn’t think Mr F had a genuine need to do so, and if this had been clearly explained, he didn’t think Mr F would’ve gone ahead.
As no agreement could be reached, the matter was passed to me for a decision on whether we have jurisdiction to consider the matter. I issued a jurisdiction decision on 3 December 2024 and my findings were as follows:

"I've considered all the available evidence and arguments to decide whether we can investigate this complaint.

The parties involved in this matter have made many submissions, and although I've read them all, I won't be responding to every point that has been made. No discourtesy is intended by this, it simply reflects the informal nature of our service as a free alternative to the courts. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I'll refer to what I consider to be most relevant in coming to the decision I have.

As both parties have acknowledged, the evidence here is limited. This is partly due to the passage of time; all relevant documentation not being retained; and Mr F not being able to make further submissions. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

To be clear, my decision here isn't about the merits of Mr F's complaint – which includes whether advice to transfer was provided – but explains why I think his complaint is something we're able to help him with. I appreciate this will be disappointing to MC, but I'll explain why.

There are rules we must follow when dealing with complaints which determine when we can and can't look at a complaint. These rules are called the Dispute Resolution (DISP) rules and are set out by the financial regulator – the Financial Conduct Authority (FCA) – in the FCA's handbook.

The relevant rule in this case is DISP 2.8.2. It says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

- *(a) six years after the event complained of; or (if later)*
- *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; (…)

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or (…)

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired (…)."

MC doesn't consent to our service considering Mr F's complaint. And the event Mr F is complaining about – the advice he says he received in 2010 to transfer the proceeds of a PPP and DB pension to a SIPP – is clearly more than six years from when the complaint was made in March 2023. So, the remaining issue for me to decide is whether Mr F made his complaint within three years of the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint. Or, put another way, whether Mr F was aware or should reasonably have been aware he had cause for complaint before March 2020 – more than three years before he complained to MC in March 2023.

In making his complaint, Mr F says he only became aware of any potential problem in 2022 after he noticed a significant increase in property administration fees being applied to his SIPP. He says this wasn't something Adviser K ever discussed with him, so when he saw an advert about potential pension mis-selling this prompted him to ask for an investigation to be carried out. This led to Mr F's representative approaching the FSCS to make a claim against MC before a complaint was raised directly.

But when Mr F realised he had cause to complain about Adviser K's advice isn't the only test I must apply when considering the time limits. I also need to consider when he ought reasonably to have become aware. To be clear, Mr F didn't need to know that something had definitely gone wrong or that his complaint against MC was justified in order to raise it. He just needed to have had knowledge or been put on the path to discover that something had, or might've, gone wrong and that the problem could've been down to something Adviser K did. He'd then have had three years to explore what had happened and to have made his complaint.

In saying the complaint has been brought too late, MC makes the following observations:

- *Mr F understood investment growth of 9.4% p.a. was needed for his SIPP to match benefits under his DB pension. So, when the commercial property wasn't generating income for Mr F's SIPP, and there'd been no dramatic increases in its value, Mr F should've known there was a problem and complained sooner.*

- *Mr F would've received annual SIPP statements, including projections of his likely income in retirement. Having reviewed these, he should've noticed that the projections were decreasing over the years due to the lack of growth in the value of his SIPP, and this should've prompted him to complain earlier.*

I've reviewed what's available of the information Mr F was given at the time of Adviser K's advice, including what was in Adviser K's 3 February 2011 report, her 23 February 2011 letter, and Provider C's March 2011 pre-retirement illustration. Together, these documents confirmed that:

- *By transferring his DB pension, Mr F would be giving up a guaranteed retirement income, potentially resulting in a smaller entitlement under a PPP.*
- *To achieve the equivalent of his DB pension from a new scheme, Mr F would need an investment return of 9.3% p.a. But even if this was achieved, other economic factors could mean that he might not receive the same level of pension.*
- *There were no guarantees that Mr F's fund value or eventual retirement benefits would increase by transferring.*

I'm also mindful that the disclaimer Adviser K says Mr F was given to sign included the following statement:

"[MC] have advised me (…) there is a <u>high risk</u> that transferring to a new personal pension arrangement would mean I receive a lower pension income in retirement (…)."

This, together with the fact that matching benefits under the DB pension wasn't what Adviser K recorded as Mr F's objective in transferring, doesn't suggest to me that Mr F would've been operating on the understanding that transferring would provide him with the same income he could expect under his DB pension. I've also not seen anything showing that Adviser K provided Mr F with this guarantee, such that any indication that this was unlikely to happen – as MC says was the case when the property wasn't increasing in value or generating income for the SIPP – would've signalled to him that something was wrong.

I've considered whether, on their own, the value of the commercial property and how long it wasn't generating income ought to have alerted Mr F to something not being right, but I'm not persuaded they should've.

The commercial property was purchased for just under £92,000 in March 2012 and remained unoccupied, generating no income, until November 2023.

Adviser K recorded that Mr F's intention was to use the proceeds of his DB pension to purchase commercial property, make improvements to increase its value, and use it to secure regular rental income for his SIPP. However, I can't see that there was any discussion about what this meant in real terms, including when these actions were meant to take place, so I'm not persuaded that the property not increasing in value or generating income over a certain period should've made Mr F aware of a cause to complain.

There's nothing to suggest that Mr F had more than a general knowledge of pensions. And although MC has said owning a house meant that Mr F was very keen to be involved in other property investments, I'm conscious that he had no direct experience investing in commercial property. So, I think it's more likely that the value of the commercial property, and in turn the SIPP, would've been Mr F's main concern. This was something I believe he would've been able to easily identify and understand from any SIPP statements he might have received.

Clearly any increase in the value of the commercial property would have been welcome, but without any expectations being set around what, if any, increases should be anticipated or targeted, I don't think the absence of this should reasonably have triggered Mr F's awareness of any cause to complain.

The commercial property continued to be valued at its purchase price over the years, and from annual statements I've seen, the SIPP value broadly reflected the same figure. Instead of putting Mr F on notice that something was wrong, I think Mr F would likely have been reassured that the property appeared to be retaining its value. Similarly, I think he would've reflected positively on Adviser K's 2010 advice, which facilitated the transfer and placed him in what he believed was a position to achieve his stated objective of protecting and controlling his pension.

Records show that soon after the property purchase, Mr F confirmed with Adviser K that he was going to be made redundant in December 2012 and intended to use his redundancy payment to start a skip hire business and run this from his friend's land. There's limited information about what exactly happened following this, but if Mr F was preoccupied with launching and running a new business to generate income, this would explain why improvements to the commercial property weren't made and regular rental income wasn't secured. Again, without any expectations set around these things, I don't think the fact that they didn't happen for some time following the transfer should reasonably have prompted any awareness in Mr F that something was amiss, and he may have reason to complain.

Finally, I've considered whether SIPP statements MC says Mr F would've received over the years should've prompted him to complain earlier.

Mr F would've been sent SIPP statements annually from 2012 onwards, but as he was marked 'gone away' from 2016 due to any post sent to him being returned, these were never received. It wasn't until Provider C received notification of Mr F's change of address in June 2022 that Mr F began receiving correspondence about his SIPP again. As there's no evidence that Mr F received SIPP statements between 2016 and June 2022, I'm unable to agree that they should've have prompted him to complain earlier than he did.

I've thought about whether statements Mr F may have received between 2012 and 2015 should reasonably have made him aware of cause for complaint, but I'm not persuaded they should've. Provider C no longer holds copies of statements Mr F was sent during this period, but I think it's reasonable to assume they'd include information similar to what's found in Mr F's more recent statements.

Although it seems likely that retirement income projections would've been provided, the statements I've seen indicate these would've been limited and generic. But even if they weren't, I don't think three statements over the first three years of the SIPP would've provided Mr F with enough information to make meaningful comparisons with what he gave up under his DB pension or identify any trends which ought to have raised concerns about his potential retirement income and prompted him to complain at the time.

Bearing in mind all the available evidence and having taken everything into account, I don't think Mr F ought reasonably to have had cause to make his complaint about MC at any stage more than three years before he complained.

As I've said, Mr F says he only became aware he had cause to complain in 2022 when he noticed a significant increase in property administration fees being applied to his SIPP. Following this, his representative made him aware that he could've received unsuitable advice. Based on what I've seen, I think that's a fair explanation as to how Mr F's complaint came to be made.

I'm conscious that just one month after Provider C successfully contacted Mr F, it wrote to him, advising that he owed around £1,400 in property administration fees. Provider C stated that if the fees weren't paid, it might take steps to sell the commercial property and hold Mr F's SIPP liable for any costs associated with Provider C trying to reach an agreement with the third party responsible for carrying out SIPP property inspections.

Mr F paid the outstanding fees and records show that that invoices for administration fees charged for 2020/2021 and 2021/2022 were generated. I think it's reasonable to believe these were shared with Mr F when Provider C was seeking payment of the outstanding fees. The invoices showed the property administration fee was between £580 and £720 per annum. Given that this differed significantly from the estimated property administration fee Adviser K shared with Mr F in 2011/2012 – £200 per annum – it's understandable that this triggered Mr F to make enquiries about the advice he thought he'd received in 2010 and complain.

In the absence of any compelling evidence that Mr F was aware, or ought to reasonably have been aware, that he had cause to complain more than three years before March 2020, I don't think he has raised his complaint too late. So, I'm satisfied that this is a complaint that can be considered by our service."

MC responded to my jurisdiction decision and, in summary, said:

- Adviser K never advised Mr F to transfer his pensions to a SIPP and purchase commercial property. Despite her risk warnings, Mr F was adamant that he wanted the transfer to go ahead as quickly as possible.
- The pre-written statement Adviser K provided to Mr F on 23 February 2011 wasn't sprung on him. He'd been warned previously that without signing the statement, Adviser K couldn't proceed further.
- Mr F was given full information about SIPP fees that would apply while Adviser K worked for MC. Any fees after this date weren't under its control.
- Mr F was *"plainly and fully aware that his property investment was not performing well because he has been in complete control of the property since its purchase",* so his complaint hadn't been made in time.
- Mr F ran a business from a property with the same postcode as the commercial property purchased via his SIPP from at least August 2016. Evidence of this had been forwarded to our Service.
- Adviser K worked for MC until the business was sold in 2013. She continued to be employed by the new business until 2016.
- Mr F had complete knowledge of the circumstances surrounding his decision to transfer and purchase property from the outset.

Mr F's representative didn't comment on my jurisdiction decision, so the complaint was returned to me for a decision on its merits.

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.

Following my jurisdiction decision, MC expressed concern that Mr F's complaint hadn't been properly investigated, and that its arguments and Adviser K's statements hadn't been taken into account. Because of this it said it hoped to discuss the matter before a final decision was issued.

I've considered what MC has said and carefully reviewed this case. Having done so, I'm satisfied I have all the information I need to make a fair decision, and I don't think a discussion is necessary. As I acknowledged previously, the parties involved in this matter have provided as much evidence as possible from the time in question. And MC has made detailed submissions supporting its position that it only carried out Mr F's instructions as an insistent customer.

I'd like to reassure MC and Mr F's representative that I've read and understood every submission made in this case. Although I won't comment on or mention every single point made, it isn't because I've ignored it – I haven't. I've simply concentrated my findings on what I think is relevant and at the heart of this complaint. No discourtesy is intended by this.

Can our Service consider this complaint?

MC maintains that Mr F's complaint isn't one our Service can consider as it hasn't been made in time. It says Mr F was aware that his property investment wasn't performing well because he'd been in *"complete control of the property since its purchase."*

I've thought carefully about what MC has said, but I'm not persuaded that simply owning the property via his SIPP meant that Mr F was aware or should reasonably have been aware that he had cause for complaint before March 2020 – more than three years before he complained to MC in March 2023.

As I said in my jurisdiction decision, I can't see that Mr F was ever operating on the understanding that certain levels of performance were to be expected from his property investment, such that anything that didn't reflect this should've signalled to him that something was wrong and prompted him to complain earlier than he did.

As an inexperienced investor, I still think the value of the commercial property, and in turn the SIPP, would most likely have been Mr F's main concern. The commercial property continued to be valued at its purchase price over the years, and the SIPP value broadly reflected the same figure, so instead of putting Mr F on notice that something was wrong, I think he would likely have been reassured that his investment appeared to be retaining its value.

Having reconsidered the matter of jurisdiction in light of MC's comments, I'm still of the view that it wasn't until 2022 when Mr F learned of the significantly increased property administration fees being applied to his SIPP that he became aware he had cause to complain. I don't think he's raised his complaint too late. So, I'm satisfied that his complaint is one that can be considered by our Service.

Turning now to the merits of Mr F's complaint.

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

The applicable rules, regulations, and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Adviser K'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 requires a firm to *"act honestly, fairly and professionally in accordance with the best interests of its client".*

The provisions in COBS 9 set out a firm's obligations when giving a personal recommendation and assessing suitability. Under COBS 9.2.1R it must take reasonable steps to ensure its recommendation is suitable. To achieve this, a firm must obtain necessary information about its customer, including their knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

COBS 9.2.2R said a firm had to obtain enough information from its customer to ensure its recommendation met their objectives; that they could financially withstand the risks associated with these objectives; and that they had the necessary experience and knowledge to understand the risks involved in the transaction.

There were also specific requirements and guidance relating to transfers from DB schemes contained in COBS 19.1. COBS 19.1.2 required the following:

"A firm must:

1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme;

2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading 'Suitability', COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, or opt-out, a firm should start by assuming that a transfer or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer or opt-out is in the client's best interests."

In short, Adviser K needed to start with the assumption a transfer would be unsuitable. She needed to consider Mr F's specific circumstances and objectives, assess the options available and look at what was in his best interests. She also needed to provide a comparison of what the situation would be if he opted to transfer his pension from his DB scheme and what it would be if he didn't, making clear the differences and risks. And she needed to make sure Mr F understood all this information so that he could make an informed decision. All while ensuring she acted honestly, fairly, and professionally.

MC has argued Adviser K's advice was suitable on the basis that she advised against Mr F transferring. It says that it was only after Mr F insisted on transferring that Adviser K recommended a SIPP provider which would accommodate his wish to invest in property.

At the time of the advice there was no regulatory advice or guidance in place in respect of insistent clients. But there were the above rules and what was considered good industry practice at the time. So, Adviser K's recommendation had to be clear, and Mr F had to have fully understood the consequences of going against it.

Mr F's position at the time of Adviser K's advice

Although Mr F approached MC for advice, I don't think this meant that he was set on transferring. Mr F evidently had concerns about his DB scheme and while this may have indicated that he was open to transferring, I believe the fact he was seeking financial advice more likely demonstrates that he was only willing to do so if this was in his best interests. And that's what I think Mr F wanted from Adviser K – advice about his options and confirmation of what was in his best interests regarding his DB benefits and retirement objectives.

At the time of the advice, Mr F was 51 years old with 16 years qualifying service in his employer's scheme. Other than a small PPP worth almost £4,000 and his state pension entitlement, his DB benefits were the backbone of his retirement provision. With no record of his wife, Mrs F, having any pension provision beyond her state pension, Mr F's DB benefits also represented the largest proportion of the couple's future retirement income.

Mr and Mrs F had three children, two of which were minors, likely to be financially dependent on them for some time. Their personal and household incomes were very modest, with Mr F earning £21,000 pa and Mrs F earning just £6,000 pa. Mr F had nominal savings (£2,500) and beyond his pensions, he held no other investments. And although Mr F was a homeowner, he had an outstanding mortgage.

Adviser K didn't capture any information about the amount outstanding on Mr F's mortgage; what his regular outgoings were; when he wanted to retire; or what his anticipated income needs in retirement were. But even with the limited information gathered about Mr F's financial position, it's clear that it wasn't one which afforded him the freedom to be more flexible or take risk in the approach he took with his pensions. Mr F didn't have significant assets or expected sources of income in retirement (other than his state pension) which meant he had the capacity to absorb any pension losses.

There's no contemporaneous evidence of Adviser K assessing Mr F's ATR. However, she recalls having an *"in depth"* discussion with Mr F about his *"[ATR] on a wide range of investment types".* And she says that having looked at *"the range of possible investments",* she established that *"he was uncomfortable with stocks and shares which he felt were too dangerous"* and was *"more comfortable with the possibility of direct investment if he could be in control."*

Without anything suggesting he had more than a basic understanding of pensions and investments, I'm not convinced that a conversation would've been enough for Mr F to grasp the nature of different investment types, their associated risks, and their potential implications for him, such that he could effectively judge which investment best suited his financial circumstances and whether it was appropriate to take additional risks with his DB benefits.
Mr F wasn't a pensions expert, so his apparent preference for *"direct investment"* over stocks and shares couldn't be relied on. Adviser K's responsibility was to explore what underpinned Mr F's preferences and address any contradictions and tensions, explaining in real terms the level of risk certain investments could pose to his retirement.

There's no indication Adviser K carried out any evaluation of Mr F's ATR, using, for example, questions about Mr F's experience and how he'd feel about a drop in investment value. Any reference to this is or the contents of the discussion Adviser K says she had with Mr F about risk is noticeably absent from the suitability report and TVAS. So, I think it's unlikely that Mr F would have understood that his ATR was an important consideration in the context of whether he should transfer out of or remain in his DB scheme.

There's also no record of Adviser K considering Mr F's capacity for loss or recording what his priorities were at the outset (before the suitability report).

Overall, I think Adviser K's fact-finding process provided a weak foundation for the advice that followed, and I think this is reflected in the suitability report and TVAS, the contents of which I'll come to later. Although some information was gathered, I don't think it was enough or as in depth as it needed to be to ensure Adviser K provided detailed advice based on a sound understanding of Mr F's circumstances and requirements. The primary purpose of a pension is to provide benefits in retirement, but there seems to have been no real consideration of what benefits Mr F might need at that point. This makes it difficult to say that Adviser K obtained enough essential information to make a suitable recommendation.

Although Adviser K's suitability report said her advice was that Mr F shouldn't transfer out of his DB scheme, I think there were flaws in Adviser K's process which meant it wouldn't have been fair or appropriate for Mr F to rely on this recommendation.

Objectives

In terms of objectives, Adviser K's suitability report said that as Mr F was uncertain about his employer's future and therefore his own employment, his main concern was insulating his DB benefits from risk.

The suitability report contained general information about protection the PPF could provide to DB scheme members if an employer became insolvent. And Adviser K confirmed that there were no plans for the DB scheme to wind up. But Adviser K offered limited information about the financial position of Mr F's employer or his DB scheme. And she didn't appear to get to the bottom of why Mr F was so concerned about his employer and his pension being at risk.

Adviser K couldn't predict what might happen in the future, but determining the financial stability of Mr M's employer and the DB scheme's funding position was crucial to Mr F understanding whether his main reason for seeking advice and considering transferring was justified.

Adviser K had a responsibility to address and appropriately manage Mr F's concerns. So, she ought to have explored, interrogated and, where necessary, corrected Mr F's views about his DB scheme, ensuring that any decision being made was based on a sound understanding of his options and the features, risks, and benefits of these. I can't see that this happened here or that Adviser K made any concerted attempt to allay Mr F's misgivings about the scheme.

Adviser K recollects that as Mr F wanted to consolidate his pensions into a scheme that provided better returns, he asked her to advise him of his options. She says she discussed various possibilities with Mr F, which included transferring to a SIPP for alternative investment options like commercial property.

Mr F's apparent wish to consolidate his pensions and achieve better returns was never fully articulated. Adviser K didn't establish what returns, in real terms, Mr F was seeking. No reason was given for Mr F's wish to consolidate his pensions, but it seems to me that doing so would be of limited benefit when he'd only be reducing the number of pensions he held from two to one, or from three to two if his new DC pension was included. This was hardly a bonus in terms of saving on paperwork.

MC acknowledges that it's likely only after meeting with Adviser K that Mr F became interested in the possibility of using his DB pension to purchase commercial property. Likewise, Mr F says he had no interest in investing in commercial property prior to speaking to Adviser K.

Mr F may have become intrigued by the idea of investing in property, but Adviser K had to ensure that as an inexperienced investor Mr F was provided with clear and not misleading information about *all* his options, so he understood what was or wasn't in his best interests long-term and why. I'm not satisfied that Adviser K did this.

Apart from remaining in the DB scheme, transferring to invest in commercial property appears to be the only other option referenced in Adviser K's suitability report. There's no evidence that all the available options were *"checked in detail"* and assessed with consideration for Mr F's requirements in retirement as opposed to what may have interested him at the time.

I have no reason to doubt that some discussion between Adviser K and Mr F about his options took place, but as Adviser K acknowledges a lot of information would've been shared, I think it was vital that Mr F's options; their key features; and key considerations were at least summarised in the suitability report. After all, he'd be relying on it to help him decide what course of action to take. Without this there was a foreseeable risk that Mr F would make an uninformed decision about his DB pension based on incomplete information and a poor understanding of his options.

Adviser K's suitability report said Mr M was keen to take control of the value of his pension to purchase an investment property and that he'd asked her to recommend a pension provider offering *"a great deal of flexibility on property purchase agreements"* which could receive his DB pension transfer value and facilitate the property purchase.

I find it hard to believe that an inexperienced investor like Mr F would've expressed his interest in this way. Even if it's argued that his interest is paraphrased in the report, I'm not persuaded that Mr F would've appreciated what *"flexibility on property purchase agreements"* meant in practice, let alone asked for this specifically.

Mr F's recorded objectives in the suitability report seemed skewed towards Mr F transferring, almost like it was a foregone conclusion. Adviser K set out the purpose of the report as being to *"highlight some of the issues"* Mr F *"should consider"* so he *"could understand the advantages and disadvantages of such a move [transferring]".* She also noted that Mr F had already identified a property he wanted to use his DB pension to purchase.

I don't think this approach was in in keeping with the regulator's requirement that Adviser K start by assuming that a transfer wouldn't be suitable. She did very little to challenge Mr F's apparent interest in transferring.

Adviser K had a significant and overriding responsibility to challenge Mr F's objectives and beliefs and not accept them at face value. Mr F wasn't a financial expert and was heavily reliant on Adviser K for her advice and expertise. So, I think she needed to do more than just note Mr F's objectives and focus her report on these and the best way of achieving them, especially when he was likely to be worse off as a result.

Financial Viability

Although there's no copy of the TVAS that was included in the appendix of Adviser K's suitability report, MC says the report provided a *"detailed resume of the [TVAS'] findings to more clearly explain them to [Mr F]".*

Given his limited knowledge and experience of pensions and investments, I think Adviser K could be sure that Mr F would be relying on her summary of the TVAS to understand the possible implications of transferring to invest in commercial property and whether was worthwhile. So, in line with the regulator's requirements, it was crucial that Adviser K drew Mr F's attention to factors which did and didn't support her advice not to transfer and provided enough clear and relevant information so he could make an informed decision. Based on what I've seen, I'm not satisfied that Adviser K met this obligation.

Adviser K did set out some of the things indicating that transferring might not be in Mr F's best interests. For example, she said a new SIPP would need to grow by 9.3% per annum to match benefits under Mr F's DB scheme. And that even if Mr F's SIPP investments achieved this rate of growth (critical yield), Mr F could still receive a lower pension in retirement.

But I don't think Adviser K went far enough. Notably, she offered no comment on whether the investment return required was achievable until she met with Mr F on 23 February 2011, three weeks after the suitability report was issued.

I'd also question the relevance of the critical yield figure provided as Adviser K's report didn't include specific details of the SIPP used for comparison purposes. I think this undermined the advice process because the information Adviser K was providing was limited and essentially relied on a comparison of the critical yield with another provider's SIPP presumably invested in a default portfolio, instead of Provider C's SIPP which Adviser K briefly mentioned in the suitability report and ultimately advised to Mr F to transfer to.

Adviser K also didn't show what growth rate Mr F could expect from the SIPP or what that might mean to him in monetary terms in retirement. So, it would have been very difficult, if not impossible, for Mr F to make a direct comparison between what he would be giving up by transferring and what he might receive if he did.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 9.3% per year. This compares with the discount rate of 6.2% per year for thirteen years to retirement in this case.

For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%. I've taken this into account, along with the composition of assets in the discount rate, Mr F's cautious attitude to risk and also the term to retirement. I think Mr F was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his attitude to risk.

And bearing in mind Mr F's term to retirement, I think it's important to note that Mr F would also need to achieve consistent investment returns each year on top of the critical yield, so that over time this accumulated into benefits of sufficiently greater value to have made the transfer worthwhile.

In terms of death benefits, Adviser K highlighted that provisions under the DB scheme before retirement were substantially greater than what would be available following transfer to a SIPP. And she noted that if Mr F transferred using his entire transfer value to invest in commercial property, the property would have to be sold with any loan repaid before a payment could be made to his family, which would leave the fund available for distribution diminished.

However, information about death benefits available *after* retirement wasn't provided. Adviser K said this hadn't formed part of the TVAS as this depended on how Mr F eventually took benefits. But I'm not persuaded that this precluded Adviser K from outlining what death benefits would be available under Mr F's DB scheme after retirement and what might be available following transfer to a SIPP.

While Adviser K confirmed the estimated pension available from Mr F's DB scheme from age 65, his options for taking benefits at other times and under different circumstances weren't provided. For example, details of the TFC and residual pension available under the DB scheme from age 65 wasn't confirmed. And despite making enquiries with the DB scheme about early retirement at age 55 (including what benefits may be payable) and what circumstances ill health retirement might be available, I can't see that any of this information was shared with Mr F.

This isn't entirely surprising given that Adviser K failed to establish when Mr F intended to retire or the income he'd require when he did. But together, this represented a significant oversight by Adviser K, which in my view meant she didn't take reasonable steps to act in Mr F's best interests, ensuring he was provided with information that was relevant, which he could understand bearing in mind Adviser K's advice.

Adviser K also failed to provide Mr F with a good understanding of the costs associated with transferring to a SIPP to invest in commercial property or a clear comparison of these with his DB scheme. And although she acknowledged that the charging information used in the TVAS wasn't *"completely accurate",* she still made statements that risked giving Mr F the wrong impression about transferring. For example, she said that assuming Mr F's property investment allowed his SIPP fund value to grow, the charges he'd incur could be slightly lower than those in the TVAS. And so, the growth rates required to meet critical yields might be slightly lower too.

Saying this without providing any context or having meaningfully addressed how Mr F apparently wanted to invest, the risks associated with this, and what growth might be expected, meant there was a foreseeable risk that Mr F might take what Adviser K said as reassurance that notwithstanding the SIPP's higher charging structure, and the higher growth required from it to match the DB benefits, the performance of his investment could mitigate this. Whilst this might have been remotely possible, Adviser K should've said so and explained why.

Adviser K said the purpose of the TVAS was to help Mr F *"understand the differences between the plans [his DB pension and a new arrangement]*", but for the reasons I've given above, I don't think Adviser K succeeded in doing so. I think it's clear that Mr F had insufficient information to go off in order to decide if going against Adviser's advice was truly in his best interests. And I don't see how Adviser K could expect Mr F to make an informed decision about going against its recommendation when it hadn't given him all the information he needed to make that decision.

Notwithstanding this, whilst Adviser K's 3 February 2011 suitability report covered a lot of information, I'm not persuaded that her recommendation was entirely clear. Adviser K says she clearly explained to Mr F that based on the findings of her suitability report, she couldn't recommend that he transfer away from his DB scheme. But I can't see that this position was made explicit until she met with Mr F and wrote a letter to him on 23 February 2011, saying she couldn't advise the transfer because of the *"high risk"* that transferring to a new arrangement could mean he'd received a lower pension income in retirement. It's not clear why this was absent from the suitability report, but I think it's one of several examples of Adviser failing to meet her duty to take reasonable steps to ensure Mr F understood her advice.

Without any of this information, or indeed any substantive reasoning being provided in writing for why Adviser K didn't recommend Mr F transfer, I don't see that Mr F could reasonably have understood why this was apparently Adviser K's advice. So, I don't think Adviser K provided full and clear advice to Mr F. And as a result, I don't think he was in a position to make an informed decision – about the transfer or about being an insistent client. And so, I don't think the advice given by Adviser K, was suitable.

Insistent client process

Despite the advice being, in my view, incomplete and unsuitable, I think Adviser K then also directed Mr F towards disregarding it.

Following her 3 February 2011 suitability report, Adviser K met with Mr F on 23 February 2011. During the meeting, Adviser K says she repeated her earlier advice that she couldn't recommend that Mr F transfer to a new arrangement. However, in a letter she wrote to Mr F on the same day as the meeting, summarising what was discussed, she said:

"you and [Mrs F] are very keen to proceed with the transfer despite my warnings as you plan to use the transfer value to finance the purchase of a commercial property to start your own business. You are confident that you will be able to make improvements to a property to increase its value in addition to securing a regular rental income for the pension scheme."

Adviser K says Mr F was *"determined to proceed"* with transferring to the SIPP. So, subject to him signing a declaration to this effect, she agreed to find a suitable provider, noting Mr F's preference for a SIPP provider with a *"'can do' attitude"* towards *"allowable investments"*. On this basis, Adviser K recommended Provider C's SIPP, saying:

"(…) It offers access to a huge range of different investments, which will allow us to create a bespoke portfolio suitable for your aims and attitude to risk. It also offers the facility to purchase commercial property, which is clearly of particular interest to you (…). The transferred funds will remain on deposit whilst you finalise negotiations for the property purchase."

So, in the same meeting where she repeated that she didn't recommend transferring, Adviser K provided the opportunity for Mr F to proceed against her advice. I don't think that was appropriate or in Mr F's best interests – particularly if Adviser K truly considered not transferring to be suitable. It also seriously undermined her recommendation not to transfer.

If, after Adviser K reiterated her advice not to transfer, Mr F 'insisted' on transferring, I think it would've been more appropriate if Adviser K first established exactly why he wanted to go against her advice, including why these reasons took priority over his original objective of safeguarding his guaranteed retirement benefits. If, following this discussion, Mr F maintained that he wished to transfer, it would've been fair for Adviser K to provide information about the insistent client process and send Mr F her SIPP recommendation, allowing him to consider this on his own and then revert to her if he still wished to proceed.

But what happened instead was that after saying she still didn't recommend transferring, Adviser K gave Mr F a declaration to sign (stating he wished to transfer as soon as possible and accepted the risks), followed by an application form for Provider C's SIPP. Mr F completed and signed the application form, but he says he doesn't remember signing the declaration – and MC can't locate a copy. The fact that this all took place in one meeting meant that it allowed Mr F very little time to think about the action he was taking.

The wording of the insistent client declaration, although written in the first person, wasn't Mr F's. It was created by Adviser K. It would've been clear to Adviser K from the outset that Mr F had very little knowledge or experience of financial matters. So, it would've been even more important to ensure he understood what he was getting into with transferring, and a good way to have done this would've been to see in his own words that he understood the recommendation being made and why he wanted to proceed.

MC says Adviser K judged that Mr F *"had shown a suitable explanation of why he wished to transfer even against her specific advice to the contrary".* But I haven't seen any persuasive evidence of this.

Although the declaration said Mr F wanted to use his transfer value to purchase commercial property from which a new business he intended to start would operate, there's nothing to suggest that Adviser K questioned Mr F about this. For example, she didn't ask what business Mr F would be starting, what experience he had doing so, or how he thought he'd increase the property's value and income. There's also no indication that Mr F had a business plan. Importantly, Adviser K didn't query why purchasing the property at that point was such a pressing need, or what Mr F would do if his venture didn't work out.

I'm mindful that when Adviser K agreed to recommend an appropriate SIPP and facilitate the transfer, Mr F hadn't even identified a property to purchase. So, as Adviser K noted in her 23 February 2011 letter, this meant that Mr F would be transferring out of his DB scheme to a SIPP where his fund would be held in Cash until he *"finalised negotiations"* for a property he had yet to find.

By transferring, Mr F would be making an irreversible decision and taking a gamble with the bulk of his retirement provision. He'd be giving up a guaranteed, increasing pension income for life, which would've gone some way to meeting his needs in retirement, in exchange for the hope that the value of the property he purchased and the business he started would grow and generate income – the specific details of which Adviser K hadn't established.

MC has said, *"this was a highly unusual transaction"* and I agree. And given what Adviser K knew of Mr F and his circumstances, his apparent insistence on transferring should've rung alarm bells. Mr F had no property investment experience. And although Adviser K didn't fully inform Mr F of the risks associated with his intended investment, she would've – or certainly ought to have – known that Mr F wasn't in a position to absorb the fall in the value of his pension that was at risk with this transaction. Investing in commercial property comes with significant risks not limited to liquidity issues if a property can't easily be sold at retirement, capital risk if the property sale price is less than the purchase price, lack of investment diversification, and associated costs (solicitor's fees, property management charges, insurance costs etc).

Adviser K was required to ensure that she treated Mr F fairly and acted in his best interests. And I'm not persuaded that she did so with how she helped Mr F identify as an 'insistent client'. I don't think the process was geared towards Mr F making an informed, considered assessment of the reasons why he shouldn't be transferring.

I think this shows that Adviser K made it altogether far too easy for Mr F to agree that he was an *'insistent client'* rather than allowing him time to think about the advice not to go ahead with the transfer. And so, I don't think he truly could make an informed decision about this.

Would Mr F have acted differently?

Overall, I think the advice was unsuitable and the process followed didn't allow Mr F to make an informed decision about whether to be an insistent client. But even so, I need to think whether he would always have gone ahead and transferred if clear advice had been provided and an appropriate process followed.

As I've said, Mr F was considering his options with his DB pension. And he initiated enquiries about this. But as MC seems to accept, Mr F wasn't aware of the option of transferring to a SIPP to invest in commercial property until Adviser K brought this up. Mr F did ultimately invest in commercial property, but the property wasn't purchased until a year after the transfer, and it remained unoccupied for eleven years until 2023. The property has, in the main, not been used for its intended purpose. So, this doesn't indicate to me that this was a genuine need for Mr F.

Once the idea had to been put to Mr F, I don't doubt he was interested in investing in commercial property and the possibility of running his own business from it. And when he became aware it may be possible to do so using the proceeds of his DB pension, this would've had some appeal. But the main purpose of a pension is again to provide an income in retirement. Mr F's DB pension represented the majority of his private pension arrangement and would've provided him with a guaranteed retirement income. It would've been very important to him in retirement and it's understandable that, as noted by Adviser K, he was keen to safeguard it.

Taking this into account, I think, had Mr F been provided with more appropriate and robust advice around why the transfer was not suitable, he wouldn't have gone ahead with it. I know MC maintains that it said the transfer was against its recommendation – which overall was in my view correct. But the process Adviser K used, lacked sufficient clarity, reasoning and rigour – for all the reasons set out above.

And, in my view, this meant Mr F wasn't able to make an informed decision. If he had been provided with more appropriate information and reasoning, so that he fully understood the risks and long-term implications involved in transferring his DB pension and investing as he did and hadn't been directed towards the 'insistent client' route, I think he would have acted differently and retained his deferred benefits. As a result, I think Mr M's complaint should be upheld.

Suitability of the advice to transfer Mr F's PPP

If Adviser K had provided clear and proper advice around why transferring Mr F's DB pension wasn't suitable, I'm satisfied that he wouldn't have gone ahead.

Adviser K's advice on Mr F's DB pension included consideration of his PPP. Specifically, she said she wouldn't recommend moving this plan unless Mr F's DB pension was transferred. She explained that if Mr F's PPP was transferred at the same time as his DB pension, the additional costs for doing so would be minimal. Accordingly, Mr F's PPP was transferred to the SIPP along with his DB pension.

As the advice was inextricably linked to Mr F's PPP and the transfer of it seemed contingent on the transfer of Mr F's DB pension, I'm not persuaded that Mr F's PPP would've been transferred were it not for Adviser K's advice failings regarding his DB transfer. So, I think it is appropriate to hold MC responsible for all of the losses Mr F has incurred.

Our Investigator recommended that MC also pay Mr F £300 for the distress caused by the unsuitable advice. I don't doubt that Mr F has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for Michael Chapman to put Mr F, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme and retained his PPP which was also transferred as part of this advice.

Michael Chapman should undertake the two redress calculations below and then total the resulting amounts to give an overall redress figure. If one of the calculations shows Mr F has made a gain, that gain can be offset against any losses from the other calculation.

Calculation 1 – Mr F's DB pension

Michael Chapman should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr F has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65**,** as per the usual assumptions in the FCA's guidance.

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

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

- calculate and offer Mr F redress as a cash lump sum payment,
- explain to Mr F before starting the redress calculation that:
  - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr F receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr F accepts Michael Chapman's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr F for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr F's end of year tax position.

Redress paid directly to Mr F as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Michael Chapman may make a notional deduction to allow for income tax that would otherwise have been paid. Mr F's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Calculation 2 – Mr F’s PPP

Fair compensation

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

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

What must Michael Chapman do?

To compensate Mr F fairly, Michael Chapman must:

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

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

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

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

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

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

- Pay to Mr F £300 for distress caused by the unsuitable advice.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
PPP	No longer in force	Notional value from previous provider	Date of investment	Date of my final decison	8% simple per year on any loss from the end date to the date of settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

Determined in line with DISP App 4.5.6(1), this means the actual amount paid from the investment at the end date.

Notional Value

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

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

Why is this remedy suitable?

I've decided on this method of compensation because:

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

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

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

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

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

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £190,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £190,000, I may recommend the business to pay the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Michael Chapman should pay Mr F the amount produced by that calculation – up to a maximum of £190,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above. Michael Chapman should provide details of its calculation to Mr F in a clear, simple format.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £190,000, I recommend that Michael Chapman pays Mr F the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Michael Chapman. It is unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F either to accept or reject my decision before 26 April 2025.

Chillel Bailey
Ombudsman