DRN-5254040

The complaint

Mr M complains that he was given unsuitable advice to transfer two defined benefit (DB) pension schemes to personal pension plan arrangements. The first pension was transferred in 2018 and the second took place in 2019.

Sublime Business Financial Advisers Limited is responsible for answering this complaint and so to keep things simple, I'll refer mainly to "SBFA".

What happened

It's helpful to start out by explaining that Mr M had quite a few pensions but only two have been complained about.

1. "Pension K" – this is the pension complaint I'm addressing in this Final Decision. It was a DB scheme and linked to employment Mr M had from 2000 - 2018. However, in 2012 Pension K was stopped as an ongoing DB scheme (in common with many DB schemes). It was superseded by a new defined contribution (DC)[1] pension scheme. This meant Mr M became a deferred member of Pension K, as of 2012.

2. "Pension K2" – this was the DC scheme which was started by Mr M's employer after Pension K was closed in 2012 (as described above).

3. "Pension M" – this relates to a DB pension scheme Mr M had from a job held approximately between 1995 – 2000. In 2018, he transferred away from this scheme and into a personal pension arrangement. I've recently issued a Final Decision about this pension. I think the advice to transfer this was wrong and I upheld the complaint.

4. An independent DC pension Mr M had started himself. This didn't appear to be connected directly with any employment and as such was a purely personal pension arrangement.

5. In the course of investigating Mr M's complaint I discovered he also probably had some other 'old' pensions relating to shorter periods of work during the 1980s and early 1990s. We can't say whether these were DB or DC schemes as he couldn't remember, and it seems the SBFA adviser never checked.

<u>Which complaint this Final Decision refers to</u>

I'd like to reiterate that Mr M only complained about Pension K and Pension M (above). None of the other pensions are the subject of any complaint although I'll occasionally be referring to them as they have some relevance to what happened and whether his complaint should be upheld.

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

It's also very important to note that I have split the two different DB pension transfer events Mr M has complained about into **two separate complaints**. I've already told the parties involved about this.

This is because I am bound by regulatory rules concerning the maximum amount of compensation which I can award when a complaint is upheld. For example, the maximum award allowed can be affected by issues such as when the complaint was first raised, and also when the alleged act or omission that caused the complaint occurred. In this situation, because Mr M's two DB pension complaints refer to dates which span two different award categories (2018 and 2019), I've decided to deal with these two matters as two separate complaints.

This Final Decision is the second one I've made and is about Pension K. A Final Decision about Pension M has already been issued.

The Pension K complaint - Mr M's circumstances at the time

Information gathered about Mr M's circumstances in September 2019 (the second transfer event) was broadly as follows:

- He was 56 years old. Mr M had been given a cash equivalent transfer value (CETV) for Pension K of £512,720. The normal retirement age of Pension K was 65.

- Mr M had previously worked in the retail sector as a senior manager earning around £77,000 per year but had left the sector around a year ago on a voluntary basis after a long career. Although no longer employed, he was still intending to work until he reached 60 "on his own terms".

- Mr M lived with his partner in what appeared a long-term relationship. He had a grown-up daughter from a previous marriage who was not financially dependent on him.

- Jointly, Mr M and his partner had savings totaling around £100,000. Mr M also jointly owned two investment properties with a close relative, and I understand his partner also had investments in her own right. Mr M derived an income of around £14,000 per year from his rental properties, shared with his co-investor. Mr M's partner had an independent salary of around £35,000 per year. Mr M was currently drawing a net income of £1,500 per month from a variety of investments he held.

- Mr M's main home was evidently worth around £250,000 as of the 2018 pension transfer advice (the complaint I've already dealt with). But the 2019 value of his home wasn't updated, so I've assumed it to be broadly the same. The adviser only recorded that the mortgage on his main home was "small and affordable" and likely to be paid off fully in 5-6 years. The records imply Mr M also had modest interest-only mortgages on his rental properties, at low interest rates. He had no other known debts or financial liabilities.

SBFA set out its advice to Mr M in respect of his Pension K, in a suitability letter of 7 September 2019. In this, it advised Mr M to transfer out of the DB scheme and invest the funds in a personal pension. Mr M accepted this advice and so transferred to a personal pension plan which was also recommended by SBFA.

In March 2024 and now aged 61, Mr M made a complaint to SBFA about the two pension transfers. He said that as a result of the transfers he had lost guaranteed benefits that, upon reflection, he could not afford to lose. He said SBFA's advice was negligently and it was in breach of its statutory duty around these matters.

SBFA didn't agree with the complaint and said it had acted in Mr M's interests and in accordance with his wishes at the time. SBFA therefore didn't uphold the complaint. Disagreeing with this, Mr M referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' which said that his complaint should be upheld because both DB scheme transfers were not in Mr M's best interests. Mr M accepted the investigator's 'view' in full. SBFA still disagreed and asked for an ombudsman's decision. It sent in some further information and evidence for the ombudsman to consider.

As no informal resolution could be found, it falls to me to make a Final Decision. I am therefore now making a Final Decision about the merits of the complaint in relation to Pension K.

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 Businesses ('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 SBFA'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, SBFA should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

I've also considered everything said by Mr M's representative in bringing his complaint (including its full acceptance of the investigator's 'view'). Likewise, I've considered everything said by SBFA. I've considered everything SBFA sent to us with great care, but in particular

I'm grateful for the comprehensive submissions sent to us on 14 October and 19 November 2024. Again, both of these have been duly considered.

I've used all the information we have to carefully consider whether transferring away from Pension K to a personal pension was in Mr M's best interests. Like our investigator, I don't think the transferring advice was in his interests.

I'm therefore upholding this complaint in relation to Pension K.

Introductory issues

I've noted that when defending this complaint, SBFA has mentioned on numerous occasions that Mr M wanted to transfer, that he apparently understood the risks, that lots of documents were generated and given to him by the adviser, and that he was in a financially strong position. I've also got no doubt that Mr M probably went to SBFA with some preconceived ideas about his DB pension and how he wanted to proceed. So, I do understand the points being made by SBFA which are that Mr M was a mature and knowledgeable client and probably quite comfortable in engaging in most aspects of personal financial matters.

However, it's also important to understand that it was SBFA which was the regulated party here and *not* Mr M. Due to the size of his CETVs for both Pension K and Pension M, there was a requirement that if transferring, he'd need to obtain regulated financial advice. SBFA was responsible for providing that regulated advice and was also charging Mr M for doing so. There's also evidence that whilst Mr M may well have been 'financially experienced' in a general sense, he certainly wasn't a pensions expert, and because of the number and different types of pensions involved in his then situation, I think Mr M would have found navigating his way through the complexity of these matters quite challenging.

Against this backdrop, the adviser's role was to really understand what Mr F needed and recommend what was in his best interests, rather than what Mr M himself might have thought was a good idea. Mr M had every right to expect that the information and advice given to him by the adviser was correct, well evidenced and in his best interests; it was SBFA's responsibility to provide suitable advice in accordance with the rules I've set out above.

Financial viability of the transfer of Pension K

When looking at whether I thought the advice given by SBFA to make this transfer, was suitable, I considered whether transferring appeared viable from a financial comparison perspective. Put another way, was Mr M's situation – and specifically his benefits in retirement - made better or worse from transferring, compared to the pension benefits he already enjoyed with Pension K? I don't think transferring from Pension K was in Mr M's best interests when viewed through this lens.

This transfer took place around 18 months after the first (with Pension M) and it's fair to say that broadly the same economic conditions existed in relation to growth assumptions and the investment landscape. So, I think the conditions were still such that there was little chance of Mr M finding that transferring to a type of money purchase pension where he bore all the investment risks, was financially worthwhile.

I start from the position that there would seem little point in transferring from a DB scheme if the client was destined to obtain less retirement benefits overall. If this were the case, other factors would need to make transferring substantially worthwhile.

New regulatory requirements had also been introduced by 2019 about how clients should be informed about the value of their DB scheme. These rules were not present at the time Mr M had sought advice with regard to his previous pension in February 2018. So, in the September 2019 suitability letter, it was highlighted that a comparison had been made with a transfer value comparator (TVC). The TVC is basically the estimated cost of buying a pension which is similar to the DB scheme, if purchased on the open market. In the case of Pension K, the TVC was £1,105,216. In my view, this is a very revealing window into the underlying value Mr M would be giving up if leaving his existing DB scheme for which he'd been given a CETV of barely half that amount.

In 2018 we were still in a period of sustained ultra-low interest rates and the Bank of England base rate was just 0.75%. I think that it's also important to bear in mind that Mr M, if transferring away, would inevitably incur costs associated with a personal pension plan and this could have a drag effect on any growth if he transferred to a DC scheme. I see the recommended platform chosen did contain relatively low charges when benchmarked against the wider industry alternatives. However, these were still costs not being borne at all within his existing Pension K DB scheme.

Overall therefore, I think the fair and equal comparisons between his existing Pension K and a new personal pension were clearly showing that transferring away was most likely going to cause him to have lower retirement benefits in the longer-term, if leaving the DB scheme.

Of course, I've only used this section to consider one aspect of the potential rationale for transferring away from Pension K. And to be fair to SBFA, the adviser wasn't really promoting financial viability as the most relevant reason or priority for him leaving his existing DB scheme. I've therefore looked at the other possible reasons and rationale used by SBFA for Mr M transferring away.

Other reasons to transfer

In the suitability letter dated 7 September 2019 SBFA advised Mr M to transfer out of the DB scheme and invest the funds in a personal pension (a DC scheme) which already existed. So, by the time of this second tranche of advice, Mr M evidently had three DC pensions in existence which had come from:

- Transferring Pension M the previous year, where he transferred £80,673. This was the DB scheme I've already made a Final Decision about and which I agreed was wrong to transfer.
- Pension K2 - the DC pension originally related to Mr M's employment, and which superseded Pension K after this had been closed to new members.
- His independent DC pension which wasn't connected directly to employment.

SBFA told us in its final response letter that the first two comprised of approximately £62,500 and £122,000 respectively. But there was no current value of the third DC scheme, which SBFA said it hadn't provided advice on. Nonetheless, as I mentioned in my previous Final Decision about the first part of this complaint, we do know that as of early *2018* the balance of the independent pension had been around £60,000.

All this meant that by the time of seeking advice about his Pension K DB scheme in September 2019, Mr M had additional DC pension assets totalling over £200,000. My understanding is that he'd also withdrawn some elements of tax-free cash from various DC schemes, although it's not entirely clear where the monies from these were placed. Therefore, as well as having the above significant DC assets, I think it's fair to say Mr M also possessed relatively large amounts of savings. I say this because as of February 2018 we know he had access to around £100,000 in savings – and I think it's reasonable to assume this had, by now, increased.

In my view, this painted a picture of someone with meaningful cash reserves and flexible pension savings in the above-mentioned DC schemes. And it was against this backdrop that Mr M was seeking advice about his DB scheme where the CETV had risen to £512,720.

I think it's fair to accept that Mr M probably wanted to at least explore the feasibility of transferring Pension K. This is because it seems he'd already obtained a CETV from his provider, showing the transferring value. Mr M's only stated intention though, was to access tax-free cash from the transfer of £5,000 for a holiday.

SBFA's suitability letter recommended that Mr M should transfer away from Pension K and invest the funds with a well-known personal pension provider; it also said he should withdraw £5,000 tax-free cash. As I mentioned in my linked Final Decision regarding the transfer of Pension M, in my view it's also difficult to get a clear picture from the suitability letter of SBFA's rationale for recommending this particular course of action in September 2019. Again, whilst the letter itself is long and to some extent detailed, the reasoning is not fully laid out, rather it discussed at length some of the options available.

However, SBFA said the advantages of transferring were:

- He was able to generate more tax-free cash by transferring to a personal pension.
- He could start and stop an income from a personal pension more freely.
- It gave him time to pause and decide what ultimately, he could do with the (transferred) pension.
- The pension could be invested and would grow in accordance with Mr M's ATR. SBFA implied this could provide better returns.
- The personal pension plan was more flexible.

I therefore looked at these things and the wider rationale within the commentary in the letter and I considered everything it said carefully. I've also used a hand-written letter Mr M prepared for the adviser, no doubt in response to a specific request that he articulate his own reasoning and to confirm his understanding of what he was doing:

- *Tax-free cash*

As regards access to the tax-free cash element from Pension K, I accept it was factually correct to say that he'd probably be able to get a higher tax-free lump-sum by transferring to a personal scheme. But this needed a careful explanation.

It's often the case that the tax-free lump sum from a personal pension would be higher than from a DB scheme. But removing 25% of the pension doesn't come without consequences as it means the remaining pension for future years would be lower and I don't think enough thought was given as to what Mr M would live off when retired, or how much he and his partner would need by way of an income later in life. In fact, I haven't seen that any comprehensive analysis was carried out of how much they'd need in their retirement when they had fully given up work and were relying on pensions (and / or other sources) to live on month by month.

So, whilst in general terms having a lot of 'cash' at the age of 56 might have looked very tempting, Mr M simply didn't need to access this pension anytime soon. He was still relatively young in pension terms and the main purpose of a pension is to fund one's retirement. Mr M's actual retirement still looked several years away and he specifically told the adviser that he didn't intend to access transferred cash from Pension K until he was 64, still some eight years away. Therefore, without any need to either access taxed or untaxed funds, the more suitable advice in my view was not to transfer away from his DB scheme at that point. Mr M didn't yet need to make a decision about irreversibly transferring. He could have waited until his thoughts about retiring were more defined before taking such an important step. This should have been reflected in the advice.

A key aspect in the suitability letter appeared to be a desire to release a small amount of cash. It explained how transferring provided the ability for Mr M to transfer and then draw down a single tax-free sum of £5,000 apparently for a family holiday. But whilst I do understand that Mr M would have probably wanted to go on holiday and I believe it was an important family time together, I don't think transferring his pension was needed. I also understand that the adviser's comments likely originated from such a conversation with Mr M himself. But Mr M's circumstances show that irreversibly transferring from Pension K to achieve such a small amount of releasable cash was completely unnecessary. We know, for example, that Mr M already likely had access to substantial cash savings. He also had other DC schemes from which a similar drawdown could have been taken, so there was simply no reason to transfer the whole of his Pension K into a personal pension plan just to access this amount of money.

- *Flexible use of the pension*

Flexibility generally sounds like a good thing and I think Mr M was influenced by this. In my view, the adviser promoted the common and flexible features about a personal type of pension, including flexible drawdown as and when needed, rather than being an 'inflexible' pension that was paid every month. In many cases, these aren't unreasonable things which show that DC schemes do have certain advantages.

However, it's important to tailor the advice to the circumstances of the particular client. In my view, the flexible aspects mentioned in the suitability letter were all just generic features of a personal type of plan, rather than specific advantages that made leaving Pension K the right thing to do for Mr M. I don't think he required the financial flexibility which was implied in the suitability letter. In fact, Mr M already had considerable financial flexibility in his other pensions and these weren't inconsiderable amounts. As I've pointed out, Mr M had an existing independent personal pension plan which recently had a fund balance of around £60,000. His two other DC schemes likely had a fund balance of over £200,000. He also likely had his large savings balance.

With this in mind, it's my view that the use of flexibility as a rationale for transferring would be no more than a 'stock' objective with little or no real meaning to Mr M's situation. There was simply no need to transfer away in order to achieve a cash lump-sum as this was eminently possible from a variety of other tax efficient sources in his case, whether he transferred or not. Nor did he need other forms of flexibility.

I've thought about Mr M having already voluntarily given up his current job (although at that time he still had intentions to work intermittently until the age of 60). With this in mind I've thought about whether any flexibility of income was needed – cash to live on if you like. However, Mr M's intentions weren't to completely stop working as I understand it and even if he did want to bolster his income, his other pensions ought to have been considered first. In my view, these would have provided significant income if needed. But Mr M already had some investment income too, and his partner earned £35,000 per year and all the evidence

I've seen shows their outgoings were relatively modest. In short – there were no urgent income requirements which meant leaving his DB scheme was required.

Mr M could also have used his existing Pension K to have provided income and a meaningful tax-free lump sum. This was available straightaway under the early retirement features of the DB scheme. Even using contemporary figures from the time – which contained actuarial reductions for early access to the benefits at the age of 56 – an annual salary of around £11,623 was estimated. Alternatively he could have reduced the annual pension to £8,856 and secured a tax-free lump sum of £59,041. Waiting until (or even close to) the NRA of 65 would have seen these estimates increase.

I accept these options were probably discussed and discounted due to the actuarial reductions involved. But overall, even crystalising Pension K at that time just wasn't necessary in Mr M's case, due to the very good financial position he was in. I therefore think Mr M's circumstances here were much more aligned to him remaining in the DB scheme and 'retiring' from it (accessing it) when he felt he was ready to do so.

- *The CETV*

In my view, the value of the CETV was not on its own a justified reason to recommend transferring. At £512,720 the CETV may well have seemed a very attractive figure to Mr M and perhaps one he might not be offered again. But Mr M already had flexible pension assets and a considerable savings base. What Mr M was being advised to give up by transferring was a guaranteed and index-linked pension for the rest of his life.

I don't think transferring was in his best interests because even though the CETV was a considerable sum in its own right, we know there were no compelling financial reasons to transfer his deferred DB scheme in Pension K away to a personal pension plan. The adviser didn't get into the detail of Mr M's full financial needs in retirement. But I think it's highly likely that Mr M could have better met his retirement income needs and cash needs by remaining in the DB scheme until it became payable much closer to the scheme's NRA.

By transferring, Mr M was committing to exposing his CETV to the risks of the markets. And by doing so he was incurring ongoing fund management and platform charges which didn't exist within his current deferred DB scheme. Mr M was still only 56 years old and in good health and it's reasonable to say his outlook and plans could still evolve in the years ahead. Irreversibly transferring was therefore a risk he simply didn't need to take.

But even if I do accept that his view of taking the £512,720 was somewhat preferred by him at the outset, I don't think there were any ways of really telling whether this CETV would have materially reduced if it was rerun at a later date. CETVs do change, and I accept the CETV given to him had steadily risen in recent times. But as of 2018, we were still in a sustained period of low interest and bond rates which were largely the cause of enhanced CETV's such as the one Mr M had been quoted. This financial landscape had persisted for some years and there was no indication at the point of the advice that this would change. In short, the amount of the CETV was not a reason on its own to leave such a valuable pension scheme which had the benefits I've described.

- *Death Benefits*

I can see from the wider documentation that SBFA and Mr M discussed the death benefits in his deferred DB scheme. I do accept that if Mr M intended never to re-marry then this was the one feature that could be used to show a personal pension was a better fit to his situation. This is because the spousal and child death benefits typically found in a DB scheme didn't really apply to Mr M.

However, I think from the evidence I've seen, a personal pension arrangement was portrayed as being better also in a wider financial sense, owing to the possible retention of the full value of Mr M's funds if he died. So, if he died relatively young, I note he wanted to provide his daughter and partner with respective percentages of his full fund. But with the DB scheme, his pension would have just 'died with him'. I've therefore considered this issue.

Most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer here through a personal pension were probably made to look like an attractive feature to Mr M as his two nominees might have inherited the value of his transferred funds tax-free in such circumstances. However, Mr M was still only 56 years old and very much in good health. So, an obvious drawback with a personal pension's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. There was therefore every chance that the amount left to pass on would realistically be depleted, particularly if Mr M lived a long life and spent the money on leisure and international travel, as he stated was his hope for retirement. The main purpose of a pension is to provide retirement income and Mr M still had many other assets to pass on to his family.

I also can't say if life insurance was discussed in this case. But at just 56 years old, a modest 'term' life insurance policy may have still been an affordable product if Mr M really did want to leave a reasonable lump sum legacy for his partner and adult child in the event of his sudden death. It also doesn't appear that SBFA took into account the fact that Mr M could have nominated a beneficiary of any funds remaining in his other DC pension schemes, valued at over £200,000. So, to this end, Mr M already had plenty of options ensuring part of his pension wouldn't just die with him. Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M. It seems to me he also had other financial assets to pass on.

- *Other issues*

Provision of information / warnings to Mr M - SBFA said in October 2024 that it could not have been clearer about the loss of guarantees that would occur by transferring and that Mr M understood and accepted this. Nevertheless, whilst this might be true SBFA still recommended that he should transfer away and I think it's reasonable to believe that Mr M was heavily influenced by this. If SBFA thought the warnings and losses of guarantees were of such seriousness, then I think the final recommendation ought to have been *not* to transfer.

Outstanding mortgages – I've thought about the outstanding mortgages Mr M had. Although not heavily featured in this case, I've thought about whether these change anything.

However, Mr M didn't have any other debts and the mortgage on his main home is something I understand was being mainly paid down in accordance with the established plan. However, as I've said, I don't think the adviser discussed this much with him and it wasn't part of the pension advice. For the investment properties, my understanding is that the mortgages were small and that there was equity in them. The established 'system' used in buy-to-let properties usually involves using the income to pay the mortgage, whilst property values steadily rise until it is right to eventually sell the asset(s). The documents I've seen imply Mr M actually derived some additional income from these two houses. So, with all this in mind, I don't think Mr M's mortgage arrangements were anything other than under control and planned for. I don't think they relate to what happened with this pension.

<u>Would Mr M have transferred anyway?</u>

I have considered whether Mr M would have still transferred even if SBFA hadn't recommended this course of action.

As I've mentioned earlier, it's reasonable to say that Mr M probably came to the advice process with some preconceived ideas about transferring away from Pension K. But I think if the advice had been more clearly set out and had given him a well-explained rationale for not transferring – with good reasoning – I think it's more likely he'd have followed that advice. Mr M didn't need to transfer and there were no critical financial demands on him at the time which meant obtaining a large cash lump-sum or increasing his income, were things he urgently needed to do.

Suitability of investments

SBFA recommended that Mr M invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for him and I don't think he would have insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

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

I acknowledge that Mr M probably went to SBFA, for the second time, with preconceived ideas about what he wanted to do. However, as I've said, Mr M wasn't a pensions or investment expert. He paid SBFA for its regulated financial advice. So, the adviser's role wasn't to simply follow Mr M's lead, it was to really understand what he needed and recommend what was in his best interests. I do accept that the SBFA adviser provided a lot of information, but they still ultimately recommended the transfer, which I don't think was right.

What I've shown in this Final Decision is that transferring was not financially viable. The TVC analysis and reasonable growth assumptions meant that, when looked at through the lens of September 2019, Mr M would likely see less retirement benefits overall as a result of transferring away from Pension K.

He also already had the flexibility that SBFA implied would be created by transferring away. With at least three DC pensions and sizeable cash savings, there was no need to transfer to obtain a £5,000 sum; Mr M had no other apparent need for cash.

By transferring, what Mr M was irreversibly giving up was a guaranteed pension. Although relatively small, this annual pension would clearly make up an important minority of his security in retirement, providing as it did, a pension for the rest of his life. I don't think there were any other particular reasons which justified the transfer and outweighed this.

I've therefore seen no reasons why Mr M wouldn't want to retain his DB pension in Pension K and use it in exactly the way it was intended. In my view, this would have seen Mr M approach retirement in an agreeable financial situation. On one hand he had this DB pension, but he also had at least three other DC schemes which provided all the flexibility and options he appeared to want.

In light of the above, I uphold this complaint. SBFA should compensate Mr M for the unsuitable advice using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for SBFA to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely remained in the deferred DB pension (Pension K) scheme if suitable advice had been given.

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

If there is a loss, 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, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of the decision.

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

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts SBFA's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

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

Where I uphold a complaint, I can award fair compensation of *up to* £430,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £430,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Sublime Business Financial Advisers Limited to calculate and if appropriate pay Mr M the compensation amount as set out in the steps above, up to a maximum of £430,000.

Recommendation: If the compensation amount exceeds £430,000, I also recommend that Sublime Business Financial Advisers Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Sublime Business Financial Advisers Limited.

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 13 February 2025.

Michael Campbell
Ombudsman