DRN-5428973

The complaint

Mr W is represented. He says Sovereign Private Clients Limited ('Sovereign'), before it became Alterno Wealth Limited, gave him unsuitable advice in 2018 to transfer his Defined Benefits Pension ('DBP') to a Prudential Retirement Account ('PRA'), a personal pension.

What happened

Mr W was approaching his mid-50s at the time of advice. Sovereign was engaged to conduct a pension review for him and the DBP to PRA transfer was its recommendation.

The DBP's Cash Equivalent Transfer Value was around £157,000 as of January 2018, its retirement age was 65 and Mr W was more than 10 years away from that at the time. Sovereign's suitability report says he planned to retire at age 67 and that he was 'happy and comfortable' to work to that age. In addition to the DBP (which had a guaranteed minimum pension), he had a personal pension valued at around £80,000. His risk profile was defined as 'lowest medium'.

The report says Mr W's objectives for the review were to secure the highest possible transfer value, to put a plan in place to access the pension at age 55, to use the highest possible Tax Free Cash ('TFC') from it to repay part of his mortgage and fund home improvements, to have a pension exposed to the prospects of better growth (and one he could access whenever he wished), and to have a pension with death benefits that pass capital value to his family.

In its advice, Sovereign highlighted that the critical yield required to match the DBP's benefits at age 67 was 9.84% (or 10.99% to match benefits at age 65), and it issued warnings (in red text) saying the following –

"*In my opinion it is unlikely you will achieve a critical yield of 10.99% given your attitude to risk to allow your benefits to match those that are offered by* [the DBP]*. Therefore if you wished to match the guaranteed benefits you are giving up on transfer I would recommend that you do not transfer*."

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Sovereign also said –

"*If you were to transfer your CETV into a drawdown scheme and the fund was to grow at 2.4%, a growth rate reflecting your attitude to risk and benefits were withdrawn in a manner that matched those available from* [the DBP] *then your fund is likely to last until your 79th birthday. Future growth rates cannot be guaranteed and it is possible that your funds may not achieve the desired growth rate resulting in you depleting your fund before your 79th birthday.*

Your average life expectancy is 85 years.

On this basis you would therefore exhaust your pension funds 6 years before your predicted death. I cannot therefore recommend on this basis that you transfer your funds into a drawdown scheme and take the same level of benefits as offered by [the DBP]."

It then proceeded to recommend the transfer, for the following main reasons – to give Mr W control of his pension and flexibility to access TFC at age 55 as he planned to; to enable, on death before retirement, his pension's value to pass to his family (as opposed to only a percentage of pension income passing to his wife); and the PRA offered an estimated TFC that was around £4,000 more than the lump sum he could get from the DBP.

Sovereign's initial advice charge was 4.64% (deducted from the PRA).

One of our investigators looked into the complaint and concluded that it should be upheld. He found that Sovereign's transfer advice to Mr W was unsuitable. He was not persuaded that any of the reasons behind Sovereign's recommendation justified the transfer.

In particular, he noted that its reference to the TFC related objective could not have been urgent at the time because Mr W was some years away from age 55 when he could access the TFC; a life insurance policy would have addressed the death benefits matter and the quote Sovereign obtained, considered then discounted was within what Mr W could afford; and, as the suitability report acknowledged, the critical yields associated with the transfer were unlikely to be matched and were sufficient reasons why the transfer should not have happened.

Sovereign does not appear to have accepted this outcome, so the matter was referred to an Ombudsman.

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.

Having done so, I have reached the same conclusion expressed by the investigator.

Regulatory rules and guidance

The regulator's *Handbook* includes Principles for Businesses that they are expected to adhere to.

Principles 2, 3 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence, to make reasonable efforts to manage and control their affairs responsibly and effectively, and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – which also confirms that The Principles are ever present requirements that firms must comply with. Therefore, these obligations were owed by Sovereign to Mr W throughout their dealings with each other.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the *client's best interests rule* which, as the title suggests, requires firms to uphold their clients' best interests. This essentially reinforces the requirement in Principle 6 for firms to uphold their customers' interests and treat them fairly.

Like The Principles, the relevant COBS provisions (rules and guidance) were applicable to Sovereign's service to Mr W.

With regards to pension transfers (including DBP transfers), the regulator's 2017 alert, issued in the same year Sovereign started Mr W's pension review, included this – "*Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that firms advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed*."

The rules and guidance in COBS – which firms must follow in giving regulated advice – extend, for pension transfer advice, to those in COBS 19.1. As they were at the time of Sovereign's February 2018 advice, the rules [R] and guidance [G] in COBS 19.1 included the following –

"*COBS 19.1.-1[R]*

1) This section applies to a firm that gives advice or a personal recommendation about a pension transfer ..."

"***COBS 19.1.2[R]***

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 or other pension scheme with safeguarded benefits;

(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."

"***COBS 19.1.6[G]***

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, convert or opt-out, a firm should start by assuming that a transfer, conversion 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, conversion or opt-out is in the client's best interests."

This is known as the *presumption of unsuitability.*

All the above are directly relevant to considering the suitability (or otherwise) of Sovereign's DBP transfer recommendation to Mr W.

Suitability of the DBP transfer recommendation

The regulator's guidance to firms at the time of Sovereign's advice was that the starting point should be the acknowledgement that a DBP transfer, given the safeguarded benefits in a DBP and their loss in a transfer, is unsuitable.

The exception applies where the facts of a case allow a firm to demonstrate, on contemporary evidence, that the transfer is in the client's best interests. Upholding the client's best interests is the firm's overriding obligation, as I mentioned above.

In this context, its role in giving regulated advice is not discharged by merely *facilitating* whatever a client might want. Of course, a firm should give due regard to a client's objectives. However, it is also obliged to give competent advice on the suitability, for the client and in her/his best interests, of her/his desired outcome(s). The regulator's 2016 guidance on 'assessing suitability' referred to an expectation upon firms to objectively consider their clients' needs and objectives. Such an objective approach enables a firm to not only advise on how to achieve such needs and objectives, but also to advise on whether (or not) doing so is suitable for the client and in the client's best interests.

Sovereign appears to have expressly acknowledged, within its advice, that the DBP transfer was not in Mr W's best interests. Its suitability report gave prominent warnings about the considerably high critical yields associated with the transfer and the unlikelihood that they could be satisfied in the PRA. The warnings concluded with clear statements saying that if Mr W wished to match the guaranteed benefits he would lose in a transfer Sovereign would not recommend the transfer. This conclusion – about the chances of the critical yields being matched – was unsurprising, given Mr W's lowest medium risk profile and the critical yields of 10.99% and 9.84%. Bearing in mind the generally accepted correlation, in investments, between risks and rewards it was arguably quite unlikely that a lowest medium risk approach would deliver annual performances at either of these notably high annual return rates.

Another warning given by Sovereign, which further displays its acknowledgement that the transfer was unsuitable, concerned the likely depletion of Mr W's pension during his retirement if transferred into a drawdown arrangements (based on what could be viewed as an arguably more likely annual return estimation, for his risk profile, of 2.4%). Part of what it said was – "… *you would therefore exhaust your pension funds 6 years before your predicted*
death. I cannot therefore recommend on this basis that you transfer your funds into a drawdown scheme and take the same level of benefits as offered by [the DBP]."

Mr W had more than 10 years to retirement. Sovereign noted that his projected capacity for retirement income was defined by his workplace pension (the DBP), his personal pension and his state pension. Value in the personal pension, to fund an annuity or drawdown arrangement for him in the future, was inherently dependent on investment performance, so neither that value nor the retirement income/benefits to be derived from it was guaranteed. In contrast the DBP's retirement income/benefits were defined, could be estimated and were guaranteed, and they did not depend on investment performance.

Out of the three pensions, the DBP was Mr W's main and most valuable pension provision. It was therefore inherently important for him to match the guaranteed benefits associated with it, and I am not persuaded that he did not wish to. Even if he said he did not wish to, Sovereign would have been duty bound – resulting from the rules and guidance mentioned above – to uphold his best interests and advise him on the importance of retaining them, or, if the facts made this possible, on the importance of ensuring that the critical yields associated with a transfer were achievable. The facts did not lend themselves to the latter, by Sovereign's admission within the report, so the former would have applied.

To an extent, Sovereign did this in its warnings. It advised Mr W that the critical yields were unlikely to be matched in the PRA and that, for this reason, it would not recommend the transfer. The problem is that it proceeded to give the impression that matching the critical yields was unimportant to him, or that it was less important to him than the reasons it gave for recommending the transfer. That was wrong. Sovereign should have concluded its advice by confirming the unsuitability of the transfer based on the warnings. That conclusion should have been properly reasoned, so Mr W would have understood why it was not in his best interests to lose guaranteed benefits that he was unlikely to match in the PRA.

Available evidence shows that he sought, deferred to and relied on Sovereign's advice, and that he was not insistent on any specific aspect of his pension arrangement, so, on balance, I consider he would have followed suitable advice against the transfer.

The reasons for the recommendation, as stated in the suitability report, did not justify the transfer, they did not make it suitable and they did not outweigh the significant detriment to be caused to Mr W in losing guaranteed benefits he was unlikely to match in the PRA.

As the investigator said, there appears to have been no immediate need for a lump sum from the pension at the time of advice. Even if there was, TFC from the PRA was not accessible for a number of years ahead of the advice, so the transfer would not have met any such immediate need for cash. Furthermore, the personal pension does not appear to have been properly considered as an alternative future option in this respect – if there was a foreseeable future need for cash from Mr W's pension provisions – whereby he could have avoided consideration of the DBP altogether.

If there was such foresight, available evidence, including Sovereign's pension transfer reports, confirms that TFC could have been accessed in the DBP when Mr W reached age 55. Therefore, a transfer was not the only means by which he could withdraw this benefit. Sovereign advised the transfer partly because the TFC, at age 55, from the PRA was estimated to be around £4,000 more than that from the DBP. I am not persuaded that this was in Mr W's best interest.

TFC withdrawn from the DBP would have left behind a reduced rate of retirement income benefits but they would have been guaranteed retired income benefits. In contrast, the same reduction would have applied to the PRA but its effect would have impacted on the invested value of the PRA and its ongoing performance (given that Mr W did not intend to retire at age 55). In other words, the long-term consequences of the transfer and early TFC were likely to outweigh any short-term benefit in achieving an extra £4,000 in TFC at age 55. Furthermore, there does not appear to have been a specific need, in Mr W's plans, for an additional £4,000 in TFC (or, for the specific higher TFC figure estimated for the PRA).

Sovereign said the transfer gave Mr W control of his pension, but I have not seen enough evidence to show that *control* of the pension was a priority for him, or that it was important enough to him to justify the loss of valuable guaranteed benefits in the DBP that he was unlikely to match in the PRA. A similar finding applies to the death benefits related reason given by Sovereign to support its recommendation. I have not seen enough evidence that it was a distinct priority for Mr W even if that meant losing valuable guaranteed benefits in the DBP that he was unlikely to match in the PRA.

As the investigator explained, the primary purpose of a pension, especially a DBP, is to provide for income in retirement. The DBP did this on terms that defined and guaranteed such income, without dependence on the performance of underlying pension investments. The death benefits matter that Sovereign considered is not uncommon, but it appears to have been suitably addressed separately earlier in its advice to Mr W, before the considered solution was unsuitably dismissed, in my view.

The suitability report said –

"*In the event of your death, before accessing your pension benefits, in order to provide your spouse with the equivalent benefits to match your transfer of £156,914 a whole of life quote was generated on the following basis;*

Amount Assured	*£156,914*
Term	*Whole of Life*
Premium Type	*Guaranteed*
Premium Amt	*£65.15*
Frequency	*Monthly*

You do not want to commit any budget to this and you are happy in the knowledge that monies would be in a plan where the proceeds will pass ..."

The report also confirmed that Mr W had £300 per month surplus income, from which the premium for the quote above could have been paid. This would have presented a solution to the death benefits matter, and it would have done so without the need for the transfer.

Overall, on balance, and for all the above reasons, I uphold Mr W's complaint, and I conclude that the transfer of his DBP to the PRA that was recommended by Sovereign was unsuitable.

Putting things right

fair compensation

A fair and reasonable outcome would be for Sovereign to put Mr W, 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.

Sovereign 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.

My understanding is that Mr W 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, 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 W's acceptance.

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

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W 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 W receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr W accepts Sovereign's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

Redress paid directly to Mr W 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), Sovereign may make a notional deduction to allow for income tax that would otherwise have been paid. Mr W'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.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £200,000, £350,000, £355,000, £375,000, £415,000, £430,000 or £445,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr W's case, the complaint events occurred before 1 April 2019 and the complaint was referred to us after 1 April 2024 but before 1 April 2025, so the applicable compensation limit would be £195,000.

My final decision

I uphold Mr W's complaint. I order Sovereign Private Clients Limited to calculate and pay him compensation as set out above, and to provide him with a copy of the calculation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 September 2025.

Roy Kuku
Ombudsman