DRN-5474095

The complaint

Mr W has complained about advice he was given by City Financial Planning Ltd ("CFPL") to transfer his former employer's defined benefit ("DB") pension scheme to a personal pension.

Both Mr W and CFPL have appointed representatives to deal with this matter on their behalf. However, for ease, I'll simply refer to all representations as being made by Mr W or CFPL.

What happened

The information on file shows that Mr W met with CFPL in April 2007 and completed a fact find document. Following this meeting, on the advice of CFPL, Mr W established a personal pension plan with a provider I'll refer to as Firm N.

In May 2008, Mr W emailed CFPL and said that he would like to meet to discuss his pension plan. He explained that he would be leaving his current employer soon so he'd like to discuss whether he should move his employer's DB pension arrangement into his personal pension. He also explained that his new employer was prepared to make contributions into his personal pension so he'd like to understand the benefits of this. And he said he was unhappy with Firm N because of the lack of fund choice and inability to manage the fund online.

It appears Mr W met with CFPL in June and September 2008. During these meetings a new fact find document was completed, although much of the document was left blank because it was noted that the discussion with Mr W was limited to the DB pension transfer. The following was recorded about Mr W:

- he was married with one dependent son;
- he probably wanted to retire earlier than 65;
- he would like as much income as possible in retirement.

A transfer out quotation on file provides the following about Mr W's DB scheme benefits:

- a normal retirement date of the 7 August 2027;
- a total preserved pension at date of leaving of £17,264.27 per year, including a 50% spouse's pension payable on Mr W's death after normal retirement age;
- a spouse's pension of 50% of the accrued pension payable on Mr W's death before retirement.

A suitability letter was issued on 16 September 2008. This set out that Mr W was looking at the option of taking his non-state pension benefits earlier than 65, although his plans were not certain. It said that he was looking for flexibility, not only with when he took his benefits but how he takes them. And he was very concerned that he had no control over the DB pension fund he had accumulated, in terms of the value and that he is unable to influence the Scheme Trustees' investment strategy.

In terms of Mr W's objectives these were recorded as:

- keeping his pension provision separate from his former employer;
- moving his DB pension into private ownership because of uncertainty around his former employer's solvency position;
- taking ownership of the fund supporting the accrued benefits rather than its cash in value being determined by actuarial discretion;
  obtaining a lump sum cash payment on death prior to retirement and to capture the pension benefits currently payable to spouses;
- having control over the retirement date;
- Managing the fund with a view to improving retirement benefits (potentially);
- Managing the fund conductive to his retirement date;
- Maintain and possibly improving the tax free cash at retirement;
- Flexibility in the available options at retirement;
- Consolidating all his pension in one place.

The suitability letter then went on to set out the options Mr W had available to him and the advantages and disadvantages of each of these.

The suitability letter also set out that having completed a transfer value analysis (TVAS), Mr W's transferred pension would have to achieve an investment return in excess of 8.4% per year to match the benefits provided by the DB scheme at age 60 and 65, although it noted that retirement earlier than 65 under the DB scheme was subject to early retirement factors and was only permitted with the DB scheme's approval.

The suitability letter said that CFPL had determined that Mr W's attitude to risk (ATR) was initially very cautious. The letter then went on to explain that another adviser from CFPL would be discussing the specific investments with Mr W and these would reflect Mr W's ATR.

CFPL went on to recommend that Mr W transfer his DB pension to his existing personal pension with Firm N. And it recommended 100% of the transferred monies were initially invested in Firm N's Deposit fund.

Mr W met with CFPL again on 30 September to discuss which funds he was going to invest in. During this meeting he signed the previous Suitability letter to say that he accepted CFPL's recommendation and the DB transfer paperwork was signed. He also signed an investment instruction form agreeing where future contributions to his Firm N plan would be invested.

Mr W emailed CFPL after this meeting to say that he had tweaked the funds CFPL had recommended slightly. He set out the funds and amounts he was comfortable investing in. And he suggested that the whole pension pot was reviewed in a couple of months' time. He also said that CFPL should proceed with these fund tweaks if it thought they were reasonable and, if not, call him as soon as possible.

The transfer application was submitted and Firm N received £219,193.43 from Mr W's DB scheme on 17 November 2008.
A further suitability letter was issued by CFPL on 30 November 2008. This letter referred to the meeting Mr W had with CFPL at the end of September 2008 and his application of the final DB transfer value on 10 November 2008. It also updated Mr W's ATR and set out CFPL's fund recommendations, which it said matched Mr W's ATR and had been discussed in the September meeting.

Mr W contacted CFPL following receipt of the suitability letter. He said that he hadn't been aware that 30% of the funds he was going to invest in were Adventurous. So he said he no longer wanted to invest in two of the higher risk funds, which he believed would reduce his risk profile, leaving 10% in Adventurous funds. CFPL notified Firm N of the changes to the funds and these were implemented in December 2008.

Mr W transferred his pension with Firm N to a SIPP in 2015.

Mr W's complaint

Mr W complained in July 2023 to CFPL about the suitability of the transfer advice. He said he'd recently been offered the opportunity to join another DB scheme. And he said it was only at that point that he truly understood the nature of DB pension arrangements and the associated advantages.

CFPL didn't consider the complaint because it didn't think Mr W had complained in time under the rules that apply.

Mr W referred his complaint to the Financial Ombudsman Service. An Investigator reviewed matters and thought the complaint had been made in time and having considered the merits of the complaint, the Investigator thought it should be upheld.

CFPL disagreed. It maintained the complaint had not been referred in time under the relevant rules and it provided detailed submissions to support its position. But CFPL hasn't been able to provide details of how Mr W's pension arrangement performed over the years because it stopped acting for him after his pension was transferred to Firm N. And Mr W used a different financial adviser when he moved his pension to a SIPP in 2015 and then again when he changed SIPP providers in 2022.

In order to consider matters further, our Investigator requested information from Mr W, Firm N and Mr W's SIPP previous and current providers. After considering this information, along with CFPL submissions, the investigator remained of the view that the complaint had been referred in time. This information was shared with CFPL but it still thought the complaint had been referred out of time.

Provisional decision

I issued a provisional decision in March 2025. In summary I said that I was satisfied the complaint had been referred in time because I didn't think CFPL has shown that Mr W had been aware of the cause for complaint for more than three years before he complained. And having considered the merits of the complaint, I thought that the advice given to Mr W was unsuitable. This was because Mr W's DB arrangement provided a guaranteed, risk-free and increasing income. And by transferring, Mr W was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

I said I didn't think Mr W should have been advised to transfer out of the scheme just to meet his objectives of having the option to retire earlier than 65 (particularly as this wasn't a fixed plan), moving his pension away from his employer, consolidating his pensions and having control over his pensions. I didn't think these were worth giving up the guarantees associated with his DB scheme. So, I though CFPL should've advised Mr W to remain in his DB scheme.

Mr W accepted the provisional decision and confirmed that he didn't have any further comments to make.

CFPL didn't accept the provisional decision. It provided detailed submissions to support its position that the complaint is time-barred. And in the event that it's not time-barred, it maintains that it shouldn't be upheld. I've summarised CFPL's submissions below:

- CFPL considers there are a number of material omissions from the 'What happened' section of the provisional decision, where the ombudsman has excluded contradictory evidence from the narrative.
- CFPL maintains that the complaint has been bought out of time. It considers that Mr W – based on the performance of his pension - would have been aware, or ought reasonably to have been aware, from around 2010 -2012, of his cause for complaint.
- CFPL disagrees with a number of findings reached in the provisional decision, including that Mr W didn't know he could transfer his pension until CFPL told him this was possible and that Mr W only had a general understanding of pensions.
- CFPL's submissions contradict the version of events advanced by Mr W some 15 years after the investment advice was sought and provided. As such, in the absence of any corroborative documentation, his representations should be disregarded.

What I've decided – and why

I'd like to start by acknowledging all the comments and evidence that have been provided in relation to this complaint. And I'd like to assure both parties that I've carefully considered everything provided. However, my decision won't mention or address every piece of evidence or point made. Instead, it will only address what I see to be relevant in deciding whether Mr W's complaint against CFPL is one that this Service can consider, and having determined that it is, whether it should be upheld.

<u>Mr W's testimony</u>

Before setting out my thoughts on our jurisdiction to consider this complaint, I note what CFPL has said about Mr W's testimony being inconsistent and that it thinks no weight has been placed on this.

I do accept there are some inconsistencies between the evidence available from the time of the sale and Mr W's statement testimony that he submitted as part of his complaint. In the testimony statement Mr W says, amongst other things, that he didn't have any prior investment experience and didn't know he could transfer his pension until CFPL told him this was possible. But for reasons I'll go on to explain, I think the evidence from the time of the sale casts doubt over these statements.

I don't necessarily think Mr W's submissions were intentionally intended to mislead. As CFPL has rightly said, the advice was provided some 15 years before Mr W complained. So it's possible his recollections of events and his circumstances have faded overtime. For this reason, in reaching my decision on jurisdiction and the merits of the complaint, I've placed more weight on the contemporaneous evidence from the time of the sale.

<u>Jurisdiction</u>

CFPL maintains that the complaint was not referred in time under the rules that apply. However, having reconsidered all the available evidence, including CFPL's most recent submissions, I remain of the view that this is a complaint that falls within the jurisdiction of this Service. I've set out my reasons for this below.

The rules I must follow in determining whether we can consider this complaint are set out in the Dispute Resolution ('DISP') rules, published as part of the FCA's Handbook.

CFPL says that Mr W hasn't made his complaint in time. The section of the rules that CFPL refers to here means that, unless CFPL consents – which it hasn't - we can't look into this complaint if it's been brought:

- more than six years after the event complained of;
- or, if later, more than three years after Mr W was aware – or ought reasonably to have become aware – he had cause for complaint;

unless the complaint was brought within the time limits, and there's a written acknowledgement or some other record of it having been received; or

unless, in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances.

Mr W referred this complaint to CFPL in July 2023. The complaint I'm considering here is that CFPL gave him unsuitable advice to transfer his DB pension arrangement to a personal pension. The advice and transfer took place in 2008, which was more than six years before Mr W referred his complaint to CFPL. Therefore, Mr W's complaint has been brought too late under the six-year part of the rule.

So, I have to consider whether Mr W complained within three years of when he was aware, or ought reasonably to have become aware, of his cause for complaint. In other words, should Mr W ought reasonably to have been aware of his cause for complaint before July 2020, three years before he complained to CFPL.

In making his complaint, Mr W says he only became aware that he may have received unsuitable advice shortly before he complained in July 2023 when he was invited to join a new DB pension. He says it was at this time that he came to understand the value of the benefits he had given up in his former DB scheme.

Even if Mr W didn't actually become aware he had cause for complaint until shortly before July 2023, I have to consider if he ought reasonably to have become aware earlier and before July 2020 (three years before he complained to CFPL). That's an objective assessment based on what a reasonable person in Mr W's situation would've known. To decide that, I take into account all the information Mr W had over the years and from all sources as well as what he was told and the documentation he was given at the time the advice to transfer was given.

CFPL says that Mr W would have been aware from the outset that his pension had to achieve growth of 8.4% each year to meet the benefits of the DB scheme. And it considers that as Mr W actively managed his investments, he would have been aware some time before July 2020 – possibly as early as 2012 - that his new pension arrangement was not achieving this yield.

I've firstly considered what the evidence provided suggests was discussed with Mr W during the advice process and what I think he ought to have understood about the advice at that time. Mr W's understanding of the advice he received, and what he should expect as a result of transferring, is crucial when considering at what point he ought reasonably to have understood this wasn't being delivered.

The suitability letter said the TVAS report had been discussed and that a full copy had been enclosed with the suitability letter. It provided an explanation of the critical yield (including that it was 8.4%). It also said that Mr W was aware of how hard his pension would need to work to achieve this, that investment returns in excess of the critical yield weren't guaranteed and that returns were dependent on the investment strategy going forward.

The suitability letter also said that the critical yield figure shouldn't be used in isolation. And if Mr W decided to buy an annuity at some stage, then an actual investment return of less than 8.4% per annum wouldn't necessarily lead to a lower annuity than the "guaranteed" pension at age 65 from the DB scheme.

And the same suitability letter went on to set out that Mr W had been given an initial risk rating of "100% Very Cautious"; that he was to invest 100% of the transferred funds in the Deposit fund; and, it noted this fund had a very cautious risk rating. The suitability letter also noted that the Deposit fund had achieved an annual growth rate of between 5.0 and 6.5% since 2003.

CFPL's reasons for recommending the transfer were noted in the suitability letter as:

- Your personal pension is private and no employer has any influence over it;
- Your personal pension is not a DB pension so the solvency of the old scheme is no longer relevant;
- Ownership of your existing fund is obtained by taking the full transfer value;
- A lump sum payment on death is now available prior to retirement;
- Your retirement date choice is very flexible;
- Any investment gains earned will be added to your fund to improve your retirement benefits.

While CFPL noted that investment gains would be added to the fund, the reasons it gave for recommending the transfer were not to obtain a greater pension on retirement. And despite the growth rates on the Deposit fund being below the critical yield, CFPL still recommended the transfer went ahead.

The initial investment into the Deposit fund was temporary as CFPL operated a two stage advice process. So there was a follow up meeting a couple of months later to discuss the available investments. I've considered the suitability letter that was issued after this meeting.

I note that Mr W's objectives are listed as achieving a good level of growth and diversification of his investments but there is no mention of the critical yield in this letter. So overall I think it's difficult to argue that Mr W would have considered the critical yield being achieved an important consideration, particularly when improved pension benefits wasn't given as a reason for the recommendation. And CFPL advised Mr W to go ahead with the transfer even though the fund he was to invest in initially hadn't been achieving growth anywhere near the critical yield figure. And the subsequent investments were selected with no apparent consideration being given as to the critical yield being met. So I don't think Mr W would have necessarily considered the critical yield an important factor, or that CFPL's advice to transfer would result in him achieving that yield.

With the above in mind, I've thought about when Mr W ought to have first had concerns about the advice he had been given.

I've not seen that Mr W was provided with information showing the critical yield his pension was achieving. In the information received from Firm N, which has previously been shared with CFPL, it's been suggested that annual statements weren't issued for this plan while it was with Firm N.

CFPL has said that Mr W was managing his pension and so ought to have been able to work out that his fund wasn't achieving anywhere near the critical yield required. But the fund value isn't really the full picture. A pension is a long term investment and most consumers will understand that there are likely to be fluctuations in fund value. Falls in fund value or underperformance, particularly towards the start of the investment term, will be less likely to cause concern on the basis there's time for the fund to recover before retirement. Further, although CFPL has suggested that Mr W would've easily been able to calculate that the returns weren't commensurate with the critical yields quoted, for the reason I've given above, I don't think the critical yield, or a lack of growth in any particular year and slight fall in fund value is something which should've prompted Mr W to start to think about if the transfer had been in his best interest, particularly as the reasons given for recommending the transfer weren't to increase his overall pension benefits.

So I'm not satisfied that the performance of Mr W's plan while it was with Firm N would have given him any cause to question the advice CFPL had provided.

Mr W received further advice from another financial adviser in 2015. He's confirmed that this was because he was seeking the flexibility of allowing a commercial property asset within the SIPP wrapper. I've not been provided with details of this advice but given that it was to discuss the pension buying a commercial property, I'm not persuaded that Mr W's previous pension transfer would have been discussed. And I've not seen anything to suggest that Mr W would have been given any information during this advice process that would have alerted him to the cause for complaint.

Mr W has complained that if he'd understood the considerable benefits that were to be lost by transferring and the true risks associated with the transfer, he would not have transferred.

I've considered what Mr W has said here alongside the initial sales paperwork. I note the September 2008 suitability letter says the following about Mr W's circumstances:

> *"You are looking for flexibility not only when you take your benefits but also how you take them. You are very concerned about the fact that you have no control over the pension fund you have accumulated in the [Mr W's former employer's DB scheme] in terms of its value (being a non earmarked figure determined by actuarial discretion) and that you are unable to influence the scheme trustees investment strategy"*

The above suggests to me that, at the time of advice, Mr W didn't have a full understanding of how the DB scheme worked and that the benefits he would receive from this scheme were guaranteed. So in effect, the value of the pension fund he had accumulated and where the scheme trustees invested these funds was not relevant as these didn't impact the benefits he would receive upon retirement from the DB scheme.

Mr W says he became aware that the advice he received to transfer may have been unsuitable when he was offered to join another DB scheme in 2023. He says it was only at this point that he truly understood the nature of a DB scheme and associated advantages to being a member of one. And he says he did not truly understand the benefits he would be losing.

Having carefully considered all the available information, I've not seen anything to suggest that Mr W was provided with information or was aware, or ought reasonably to have been aware, of the cause for complaint more than three years before he complained. So I'm satisfied this is a complaint this Service can consider. I've therefore gone on consider the merits of the complaint.

<u>Merits of the complaint</u>

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

In doing so, 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 Businesses ('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 CFPL'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CFPL should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr W's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. I've explained why below.

Mr W's ATR

CFPL provided the advice to transfer the pension over the course of two meetings. The initial suitability letter, issued in September 2008 after the first meeting, set out the recommendation to transfer the DB scheme and it said that this had been based on Mr W having a very cautious attitude to risk initially. As explained above , the fund recommended in this suitability letter was Firm N's deposit fund and the letter noted that this fund had a risk rating of 'very cautious'.

Mr W met with CFPL again on 30 September 2008. It's clear there was a discussion around what funds Mr W should invest in during this meeting as Mr W emailed CFPL the day after the meeting to update the funds it had recommended.

Mr W wasn't an execution only client so CFPL wasn't there to just transact what Mr W wanted. Yet despite this, CFPL took this instruction to update funds from Mr W without assessing the updated funds' suitability for him, or letting Mr W know how these changes might impact his risk profile and the advice they had given him.

The suitability letter that was issued after this meeting on 30 November 2008 said that

Mr W's ATR had been updated to:

- 10% Very Cautious
- 55% Cautious
- 5% Balanced
- 30% Adventurous

The letter also set out CFPL's fund recommendations, which it said matched Mr W's ATR.

Mr W contacted CFPL immediately following receipt of the suitability letter. He said that he hadn't been aware that 30% of the funds he was to invest in were Adventurous. So he said he no longer wanted to invest in two of the higher risk funds, which he believed would reduce his risk profile to:

- 10% Very Cautious
- 75% Cautious
- 5% Balanced
- 10% Adventurous

Again, CFPL didn't issue Mr W with updated advice at this time to explain the consequences of these changes. Nor does it appear to have explained that the illustration Mr W had been provided with previously was based on the higher risk funds. This all happened within 30 days of the transferred funds being received by Firm N on 17 November 2008 and it is my understanding that the transfer could have been reversed at this point, if necessary. But in any event, a thorough assessment of Mr W's attitude to investment risk and a recommendation to match that ought to have taken place before any irreversible action to transfer out of the DB scheme was taken.

CFPL had to look at the suitability of the intended investment in order to consider the overall suitability of the DB transfer. The reasons for this are set out in COBS 9.2, which refers to suitability of advised sales.

COBS 9.2.2R requires, amongst other things, the business to obtain the information necessary about its client for it to understand the essential facts about him and to have a reasonable basis for believing that the specific transaction to be recommended 'meets his investment objectives'. It also requires that the information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

I'm not satisfied that CFPL adequately did this in this case. And had it done so, it ought to have identified (and before it assessed the suitability of the transfer) that although ultimately 10% of the fund was allocated to Adventurous investments, 75% remained in cautious or very cautious funds. So I'm satisfied that, overall, Mr W had a cautious or low-medium ATR, at most.

I think this is also supported by the fact that one of Mr W's main reasons for transferring initially was to protect his pension his former employer (because of uncertainty around his former employer's solvency position). And although Mr W made some choices as to the investments he thought he wanted to make, he did not fully understand the risk he would be taking by making those choices as he reduced the risk profile of the selected funds from 30% Adventurous to 10% Adventurous.

CFPL was providing the advice so it should have been driving the discussion around the investment choices at the earliest point and explaining how that would meet with Mr W's risk appetite.

Financial viability

CFPL carried out a transfer analysis (as required by the regulator) showing how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

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.

Mr W was 46 at the time of the advice and wanted to retire at 65 or possibly earlier, although he didn't have a fixed plan at the time.

The critical yield required to match Mr W's benefits at age 65 was 8.4% if he took a full pension and 7% if he took TFC and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 6.9% per year if Mr W took a full pension and 6.7% per year if he took TFC and a reduced pension. And at age 60, the critical yield was the same as at age 65 if Mr W took a full pension and 7.3% if he took TFC and a reduced pension.

This compares with the discount rate of 7% per year for 18 years to retirement (age 65), or 6.9% for 13 years to retirement (age 60). 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, the regulator's projection rates and also the term to retirement.

As I've said above, I think CFPL should have identified that Mr W had a low-medium ATR at most. As such, in my view he could've expected growth between the lower and middle projection rates if he'd invested in line with that attitude to risk.

Although improving retirement benefits wasn't one of Mr W's key objectives, there would be little point in Mr W giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But at age 65 the lowest critical yield was 7%. The discount rate at this time was 7% and the regulator's lower projection rate at that time was 5%. At age 60, the lowest critical yield was 7.3%. The discount rate at this time was 6.9% and the regulator's lower projection rate at that time was 5%. So I think Mr W was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with his ATR. This would likely be the case even if the scheme moved to the PPF.

For this reason alone a transfer out of the DB scheme wasn't in Mr W's best interests. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

I don't think Mr W required flexibility in retirement. This is because based on the evidence

I've seen, I don't think he had a genuine need at the time he sought advice to access his pension or tax free cash earlier than the normal scheme retirement age. I say this because Mr W was only 46 when he received advice so he was many years from retirement and didn't have any fixed plans. So, I think it was too soon to make any kind of decision about transferring out of the DB scheme.

In addition, this wasn't Mr W's only pension. He had an existing personal pension which he appears to have been contributing significant sums to each year. Mr W would be able to access his existing personal pension anytime from the age of 55. So in the event that Mr W did need to access his pension funds before the DB scheme retirement age, I think it's likely that he could have met any needs he had through his personal pension.

Overall, I don't think it was a suitable recommendation for Mr W to give up his guaranteed benefits in exchange for flexibility at that time when he didn't know what his needs in retirement would be.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr W. But whilst I appreciate death benefits are important to consumers, and Mr W might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CFPL explored to what extent Mr W was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr W was married so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr W predeceased her. I don't think CFPL made the value of this benefit clear enough to Mr W. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, CFPL should not have encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr W genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CFPL should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr W. And I don't think that insurance was properly explored as an alternative.

Mr W's investment experience, wish for control over his pension and concerns over the financial stability of the DB scheme

CFPL has said that Mr W agreed to take on investment risk rather than proceed by reference to the guaranteed elements of his DB scheme and it considers that in my provisional decisions I have sought to downplay Mr W's understanding of matters at the time of advice. When setting out my thoughts on jurisdiction above, I explained why I wasn't satisfied Mr W had a full understanding of how the DB scheme worked, certainly in terms of the value of the DB pension fund and where the scheme trustees invested these funds not impacting the benefits he would receive upon retirement from the DB scheme.

But I do accept that Mr W does appear to have been taking an active role in managing his existing personal pension, prior to the advice to transfer the DB scheme. In his May 2008 email to CFPL, he said he was unhappy with the lack of fund choice through Firm N and that he couldn't manage his pension online.

CFPL has also said that after the Firm N personal pension had been established, Mr W changed the funds he was invested in and increased his contributions to the plan, without consulting CFPL. And I note the fact find completed the year before when the personal pension was arranged in 2007, notes that Mr W holds a self-select ISA. So it seems Mr W may have had some experience with investments, albeit fairly limited. But I don't think this means Mr W was by any means an expert in this area or that he wasn't relying on CFPL for advice. I acknowledge what CFPL has said about Mr W being intelligent and I accept that may well be the case. But it doesn't mean he had sufficient knowledge or experience to understand all the risks involved in transferring his DB pension. I also think this is demonstrated by Mr W choosing to invest 30% of his monies in a fund that would be described as 'adventurous'. When this was pointed out to him by CFPL, Mr W quickly asked for this to be changed so that his overall exposure to risk was lowered.

I think Mr W's desire for control over his pension benefits was overstated. While he does appear to have had some experience with investments, he also had a low-medium ATR at most. So, it seems likely that the guaranteed nature of the DB scheme, if properly understood, would have been appealing to him, rather than exposing these funds to investment risk. Mr W's main concern here seemed to be his control over the pre-retirement 'cash in value' of his DB scheme being determined by actuarial discretion. But this was only relevant if Mr W chose to transfer his pension, not if he chose to remain in the DB scheme. It doesn't appear CFPL did anything to allay Mr W's concerns here.

At the time of advice, the information I've seen suggests that there was a deficit in the funding of Mr W's DB scheme. CFPL painted a rather bleak picture of this in the suitability letter when it said:

> *"Your accrued benefits as shown in the Benefit Statement, a copy of which is enclosed, may become payable as shown but this depends entirely on the scheme's ongoing solvency level and the sponsoring employer's ability to maintain contributions.*
> *…*
> *New pensions legislation on wind-ups of Defined Benefit schemes such as the [Mr W's former employer's DB scheme] became effective from 11 June 2003… preventing employers avoiding, for the first time, the true cost of providing Scheme members with their full past service accrued entitlements. This was a huge and sudden financial liability for private sector sponsoring employers and is likely to lead to some of them going out of business. However, the introduction of the Pensions Protection Fund may protect scheme members benefit entitlement in a limited way by providing a pension of 90% of that entitlement (capped initially at £25,000 per*

annum) but with a reduced cost of living protection. The Pensions Protection Fund is entirely paid for by the levy on private sector defined benefit schemes only. This levy is now risk based and this will put further pressure on the financial position of the [Mr W's former employer's DB scheme]. In these circumstances, we will not assume that your accrued benefits shown in the above statement are particularly guaranteed not only in view of the above general position but also in view of the [Mr W's former employer's DB scheme] actual solvency position…

…

To consider the actual solvency position of the scheme, we obtained a copy of its latest triennial Actuarial Report as at 31st of December 2005, which is attached for your perusal. This report stated that the insolvency situation of the scheme at the time is that of being very significantly underfunded.

…

The Trustees could reduce the transfer values being made available in the future and could also withdraw the Scheme's early retirement provision. Neither of these actions would be subject to any debate with the Scheme members; these decisions would be immediate upon announcement.

The transfer value currently offered should therefore not be relied on as a pointer to what value might be offered at any time in the future.

…

For the purpose of our advice here, we are not taking your benefits to be fully guaranteed for the reasons explained above.

I accept that there was a chance the scheme could have ended up being taken over by the PPF. However, from the information provided there appears to have been a recovery plan to rectify the scheme deficit. I'm not aware that this information was shared with Mr W.

Furthermore, if the scheme did end up moving to the PPF, I think CFPL should have explained that this was not as concerning as Mr W may have thought. As I've explained above, based on Mr W's ATR there was a chance he may not match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr W. But CFPL wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his interests.

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr W was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr W shouldn't have been advised to transfer out of the scheme just to meet his objectives of having the option to retire earlier than 65 (although this wasn't a fixed plan), moving his pension away from his employer, consolidating his pensions and having control over his pensions. These weren't worth giving up the guarantees associated with his DB scheme.

So, I think CFPL should've advised Mr W to remain in his DB scheme.

What would Mr W have done if CFPL had advised against transferring?

Of course, I have to consider whether Mr W would've gone ahead anyway, against CFPL's advice. But having carefully considered this point, I'm not persuaded that Mr W would've insisted on transferring out of the DB scheme, against CFPL's advice. I say this because Mr W clearly had a low-medium ATR at most and this pension would have provided him with a guaranteed source of income in retirement. So, if CFPL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr W's need for control of his pension and his concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought and was paying for, didn't think it was suitable for him or in his best interests. If CFPL had explained to Mr W that investing in line with his ATR would likely mean that he would receive lower benefits on retirement than remaining in his DB scheme even if the DB scheme ended up moving to the PPF, I think that would've carried significant weight. So, I don't think Mr W would have insisted on transferring out of the DB scheme.

In light of the above, I think CFPL should compensate Mr W for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Is CFPL responsible for all of the loss Mr W may have suffered?

CFPL may argue that it shouldn't be held responsible for any potential loss Mr W's suffered as he made changes to the funds CFPL recommended. And he then went on to transfer his Firm N pension to a SIPP following advice from another financial adviser. I've thought about whether this changes CFPL's responsibility for compensating Mr W for any loss suffered. In the circumstances, I don't think it does.

CFPL should not have recommended Mr W transfer out of his DB scheme without having fully assessed the suitability of the whole of this transaction for him. For the reason explained above, I don't think it did this. And it was only as a result of CFPL's involvement that Mr W transferred the funds held in his DB scheme to Firm N. CFPL's role was pivotal, since the eventual investments were fully reliant on the funds being transferred first. If that hadn't happened, Mr W couldn't have invested as he did and he couldn't have gone on to move these funds from Firm N to a SIPP. So, in my view, the entirety of Mr W's loss stems from CFPL's unsuitable advice to transfer away from his DB scheme. And I think it's fair that CFPL bears the full responsibility for compensating Mr W for any loss he's suffered.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would have most likely remained in the occupational pension scheme if suitable advice had been given.

CFPL must 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: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, 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 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 W's acceptance of my final decision.

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

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts CFPL's offer to calculate how much of their 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 their 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), CFPL 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.

My final decision

For the reason explained, I'm satisfied that this complaint falls within the jurisdiction of this Service. And having considered the merits of the complaint, I'm upholding it and I direct City Financial Planning Ltd to calculate redress as set out above.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require City Financial Planning Ltd to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I recommend that City Financial Planning Ltd pays Mr W the balance.

If Mr W accepts my final decision, the money award becomes binding on City Financial Planning Ltd.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 May 2025.
Lorna Goulding
Ombudsman