

The complaint

Mr C complains about the advice he was given by Atomos Financial Planning Limited to transfer his defined benefit occupational pension scheme (OPS) to a personal pension arrangement.

What happened

Mr C's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 27 March 2025. The background and circumstances to the complaint and the reasons why the investigator thought that the complaint should be upheld were set out in that assessment. However to recap, Atomos Financial Planning Limited (trading as Sanlam Wealth Planning UK Limited at the time) provided a recommendation report to Mr C to transfer his defined benefits to a personal pension flexi-access drawdown plan on 31 October 2016. Mr C agreed to the recommendation, and the transfer completed in December 2016.

At the time Mr C was in his mid-fifties, had no health concerns, was married with three children, and employed with a gross income of approximately £32,000. He had two properties (his own home with £50,000 outstanding mortgage on a repayment basis) and a rental property from which he received £560 net per month (with an interest-only mortgage of £135,000).

Mr C required an income of £28,750 per annum in retirement. It was recorded that he had a low to medium attitude to risk, low to medium capacity for loss, and had little to no experience of investing. As well as the OPS Mr C also had a defined contribution scheme with his employer valued at approximately £50,000, and another defined benefit pension due to pay £1,950 from age 65.

The OPS' normal retirement age was 65. The Cash Equivalent Transfer Value (CETV) was approximately £193,000. And if not transferred, it was due to provide a yearly pension of £10,964, or £7,591 with tax-free cash of approximately £50,000 at 65.

Mr C subsequently complained to the firm about the advice he'd been given (through a representative) in September 2024. Atomos responded to say that it didn't think the complaint had been made within the relevant time limits. It said Mr C was outside of the relevant six-year period – the event complained about being in October 2016, and the complaint made to the firm in September 2024.

Atomos said Mr C was also aware that he had cause for complaint more than three years before he complained to it. It said Mr C ought reasonably to have been aware that he might have cause for complaint in 2016 when he received the suitability letter. It said this was because the letter of complaint alleged the advice was unsuitable as a significant number of objectives in the suitability report were either invalid or incorrect. So it thought that Mr C should have been alerted to this when he received the suitability report which had asked him to read the document carefully and check if it reflected, amongst other things, Mr C's financial position and priorities, as any inconsistencies or omissions could affect the adviser's conclusions.

In his assessment, our investigator said that he thought the complaint had been referred within the relevant three-year time limit. He said a client who knew that they had cause for complaint wouldn't continue with a transfer if they believed it wasn't in their best interests. He said given Mr C had accepted the recommendation and transferred, he didn't think that Mr C would have knowingly acted on advice based on incorrect information. He said he thought Mr C accepting the recommendation demonstrated that he wasn't aware that he had grounds for complaint at that time. The investigator also said he hadn't seen another point more than three years prior to the complaint being made where Mr C ought reasonably to have become aware that he had cause for complaint.

The investigator went on to say that he thought Mr C's complaint should be upheld. He said, in summary, that at the time that the advice was given the starting position for a proposed pension transfer was that it would not be suitable. He said the role of the adviser was to establish, on the evidence available, that it was in Mr C's best interests to transfer his pension in October 2016.

Objectives

The investigator said Mr C had approached Sanlam to explore the viability of transferring his OPS' benefits. He said Mr C was interested in the possibility of accessing his tax-free cash lump sum. The suitability report listed Mr C's uses for the tax-free cash as £28,800 for university living costs for his children; £10,000 for improvements to his home, and £10,000 for improvements to his rental property.

The investigator said Sanlam had recommended the transfer on the basis that Mr C could access the tax-free cash immediately and still maintain his required level of income in retirement. He said this was by Mr C drawing flexibly from the new personal pension and other defined contribution scheme in the years that Mr C was between 65 and 67 to make up for the income shortfall between retiring and receiving state pension.

The investigator said it was recorded that Mr C required an income of £28,750 in retirement to maintain his standard of living. He said at the point of advice Mr C had a guaranteed income of £10,964 from his OPS; £8,400 per annum rental income; £1,950 from his other defined benefit scheme; and the full state pension of £11,500. This meant at the point of advice, Mr C had sufficient income to maintain his living standards from state pension age.

The investigator noted the pension transfer questionnaire Mr C had completed on 15 September 2016 stated that he realistically expected to retire at 67 and that, whilst a high tax-free lump sum would be good, it was not a priority for him. The investigator said he was therefore satisfied that Mr C was realistic about working until 67. So he wouldn't have had a need for the flexibility to bridge a shortfall gap between age 65 and 67.

The investigator said he didn't think the reasons for taking the tax-free cash had been properly explored or costed ahead of the recommendation. In addition to this, he said he couldn't see that any real consideration had been given to the alternatives available to Mr C. He said the "other available options considered" section of the suitability report referred to other alternative ways to access the OPS' benefits, but it didn't mention any alternative ways of raising funds to achieve Mr C's goals. He said there was no consideration of potentially borrowing money to fund the renovations of the houses, and no analysis of the student loan maintenance grants available to Mr C's children. The investigator also said there was also no consideration of the defined contribution benefits being used which were valued at around £50,000 as an alternative source of funds.

Financial Viability

The investigator said as part of the advice process Sanlam had completed a transfer value analysis (TVAS). This analysis sought to establish the average annual investment growth required on the transfer value to provide the same benefits as the OPS at its normal retirement date - known as the critical yield. The critical yield was 7.66%.

The investigator said 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. He said whilst businesses weren't required to refer to these rates when giving advice on pension transfers, he thought they provided a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The critical yield of 7.66% per year compared to the discount rate of 3.7% per year for the term to retirement age in this case. The investigator said for further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

The investigator said he'd taken this into account, along with the composition of assets in the discount rate, Mr C's attitude to risk and also the term to retirement. He said he thought Mr C was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement as a result of investing in line with his attitude to risk. And he therefore didn't believe the transfer was financially viable.

The investigator said the suitability report made clear it was unlikely the invested portion of the transfer value would grow enough to provide equivalent benefits to the ceding scheme. Although it said the growth would be enough to provide Mr C with his required income in retirement, the investigator said Mr C was already in a position where his income was covered.

The investigator said he didn't think Mr C had an essential need for the tax-free cash. He thought the evidence suggested there was no urgent need for the money, and that there were alternative methods available to fund the non-urgent expenditures other than sacrificing the valuable final salary benefits. He said he couldn't see evidence this had been sufficiently explored with Mr C.

The investigator said Mr C was almost 10 years away from retirement date. He said a lot could change during that time, and Mr C had the opportunity to transfer his pension at any point in the future up until his normal retirement date. He said Mr C could have reconsidered the transfer at a later date when the specifics of what he needed and the costs were known.

Overall, the investigator said he didn't think Atomos had demonstrated a compelling reason for Mr C to transfer his OPS' benefits to the personal pension. He said the transfer was neither financially viable or justified by another good reason. He didn't think Mr C should have been advised to sacrifice his guaranteed benefits. And he thought Mr C would have left his pension benefits in the OPS if he had been suitably advised to do so.

Atomos didn't agree with the investigator's findings and said it wanted the case passed to an Ombudsman to consider.

What I've decided – and why

Jurisdiction

Like the investigator, I'm satisfied that Mr C has referred his complaint to us within time. Atmos has said that if, as alleged, the advice was unsuitable because Mr C's aims and

objectives that the advice was based on were incorrect in the fact find and suitability report, then he ought reasonably to have identified this at the time.

It's reasonable to expect Mr C to have read the documentation that he was provided with at the time that he was advised. However I think he would have just been looking at whether the aims and objectives recorded broadly reflected what had been discussed. Mr C wasn't a particularly experienced investor and wouldn't likely have known there was any significant difference between objectives, future preferences or priorities. For example the fact that he only had one child at university at the time didn't mean he wouldn't need to provide for the others at some point – the complaint being that he didn't need the funds at that point in time, it wasn't a priority, and there could have been alternative means of funding that hadn't been explored rather than through a transfer. So I don't think the 'objectives' recorded would or ought to have been a red flag to Mr C, in as far as they should have alerted him that he had cause for complaint.

Mr C's representative has said that he first became aware of a potential cause for concern about his pension in mid to end 2023 following conversations with colleagues and seeing an advert. This seems plausible, and I've seen no other evidence to suggest that Mr C was aware or ought reasonably to have become aware that he had cause for complaint more than three years prior to his complaint to Atomos in September 2024.

Merits

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've come to the same conclusions as the investigator, and largely for the same reasons.

When advising on a pension transfer the firm was bound to comply with the regulator's Conduct of Business Sourcebook rules (COBS). COBS 19.1.6 provided that when advising a client about whether to transfer safeguarded benefits, a firm should start by assuming a transfer would not be suitable. And it should only consider a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in the client's best interests.

Mr C was recorded as having a low to medium attitude to risk. The answers that Mr C provided in the Risk Tolerance section of the risk profile questionnaire suggest he was more towards lower risk than medium. His answers were all consistent with an investor who was only willing to take limited risk. Amongst others, he ticked to 'Agree' with the statements that his friends would say he was cautious, he preferred his money to be safe from risk and being financially cautious was important to him. He disagreed with the statements that he had put money in a risky investment. And in response to the statement 'Overall, how likely is it that you would take a significant financial risk' Mr C ticked unlikely.

The OPS was projected to provide a pension of just under £11,000 at age 65 – or £7,500 a year income and a lump sum of £50,000. So this was a significant proportion of Mr C's pension provision that he could rely on in retirement to maintain his standard of living. Giving up these largely guaranteed benefits in exchange for benefits that depended on investment returns was a significant risk in itself. And the critical yield required on the transfer value was 7.66%.

For the reasons outlined by the investigator, by transferring it was likely Mr C would receive benefits of a materially lower overall value than the occupational scheme at retirement. The adviser recognised this in his suitability report, and he said based solely on the critical yield he would not recommend a transfer as it wasn't achievable. Given the amount of guaranteed

income given up and the investment return required, I don't think a transfer was aligned to the limited degree of risk that Mr C had indicated he was willing to take.

So I've considered whether the reasons given for Mr C wanting to access his tax-free cash at the time and the benefits to him of doing so outweighed the loss of the guarantees, likely lower level of benefits Mr C would receive through retirement and that transferring wasn't more broadly aligned to the level of risk he wanted to take. And for the reasons outlined by the investigator and below, I don't think they did.

Although it was recorded that Mr C wanted to access tax-free cash for his children's university costs, their particular details and ages weren't recorded in the suitability letter. Mr C's representative said only one of his children was at university at the time. Two others weren't and still hadn't been to university. So I don't think Mr C had an urgent need to access the tax-free cash at that time for that purpose – he could have waited until he actually needed to fund those costs and considered his options and whether to transfer at that time.

It was also recorded that Mr C wanted £10,000 for improvements to his home, and £10,000 for improvements to his rental property. As the investigator said, there doesn't appear to have been any investigation of the costing of alternative means of providing these funds – for instance by remortgaging against the properties. I accept that Mr C may not have wanted to take on more debt. However without knowing the costs, Mr C wasn't able to make an informed decision about the relative values of what he was giving up against these alternatives. And there's no record of whether the improvements were urgent or something that Mr C was merely thinking of doing at some point, but weren't essential.

As the investigator said, it doesn't appear that other options were considered in any detail including maintenance grants, the costs of other means of funding or that the adviser looked into the advantages and disadvantages of Mr C using his other pension provision if he had an urgent need for the money at that particular time.

I don't doubt that taking the tax-free cash from the pension would have appeared an attractive proposition to Mr C at the time. However Atomos wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests.

Atomos was aware of the value of the guaranteed benefits being given up and that staying in the OPS was more broadly aligned to Mr C's attitude to accept risk. And that by transferring Mr C was very likely to obtain lower retirement benefits.

As explained above, COBS 19.1.6 required that the firm demonstrate, on contemporary evidence, that the transfer was in Mr C's best interests. Taking all the above into account and for the reasons set out by the investigator, I don't think the advice was suitable and I don't think Atomos demonstrated that it was in Mr C's best interests.

Putting things right

A fair and reasonable outcome would be for Atomos Financial Planning Limited to put Mr C, 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.

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

For clarity, Mr C 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 S22/13 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 C's acceptance.

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

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

Redress paid directly to Mr C 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, Atomos Financial Planning Limited may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C'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

My final decision is that I uphold Mr C's complaint.

I order Atomos Financial Planning Limited to calculate and pay any compensation due to Mr C as outlined above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 November 2025.

David Ashley
Ombudsman