DRN-5711200

The complaint

Spencer Churchill Law Ltd (SC), on behalf of Mr C, complains about the advice he received from Richard Jacobs Pension and Trustee Services Limited (RJP) in 2016 to transfer his deferred defined benefit (DB) Occupational pension scheme to a Self-Invested Personal Pension (SIPP). RJP is represented by Edesia Law.

What happened

The investigator set out the background to this complaint, for ease of reference I've included an amended copy of this below:

Mr C decided to seek advice about his DB scheme and employee shares. Mr C did not have any direct contact with RJP. All contact was through Equilibrium Financial Planning LLP (EF).

Mr C held three meetings with EF – two in 2015 and one in 2016 and the following information was collected:

<u>July 2015</u>

Mr C objectives at this time were:

- Engage a financial adviser that can look after the whole package and make investment and planning decisions so that Mr C doesn't have to get involved.
- Review the DB scheme.
- Sell the employee shares.

His personal and financial details were recorded as:

- Mr C was 54, married with three daughters. One daughter was financially dependent.
- He was semi-retired.
- His residential property value was £650,000 with a £35,000 mortgage.
- He held £200,000 in cash, £170,000 of employee shares, and the DB scheme.
- He was likely to take his pension from age 55.

A Personal Financial Risk Tolerance report was completed on 14 July 2015. This concluded that on an investment risk scale of 1 to 7 (with 1 being the lowest and 7 being the highest), Mr C's score was 3.

<u>August 2015</u>

- Mr C was a cautious investor and that he liked a degree of stability. It was concluded the DB scheme was perfectly suited to his circumstances and future goals.
- Mr C had been offered a position with a company on a 12-month rolling contract. This was likely to be a 5-to-10-year project.
- Mr C discussed investment matters including how the employee shares kept him awake at night.

April 2016

- Mr C was 55, married with no dependent children.
- The DB scheme had a Secured Unfunded Retirement Benefit Scheme providing a pension of £30,000 per annum at age 55 and £38,000 at age 60 and a pension fund of £1.75m which was transferrable with a normal retirement age of 60.

RJP was contacted by EF by e-mail on 5 May 2016. It said Mr C was looking to transfer his DB scheme and required a transfer report. RJP issued a Defined Benefit Analysis report on 16 May 2016.

On 21 June 2016, EF issued an investment recommendation report. The objective was to find an investment strategy for the cash value of the DB scheme as per the recommendation by RJP. It said it would invest in line with his cautious attitude to risk.

Mr C's DB scheme was transferred and confirmation of investment was issued in July 2016.

SC complained to RJP on 25 March 2024. In summary it said:

- Mr C had received unsuitable advice because he wasn't told about the loss of guaranteed benefits on transfer (and the differences between the DB scheme and personal pension plan).
- RJP's advice wasn't clear, fair and was misleading.
- Mr C did not require the tax-free cash.
- Mr C had no investment experience, and the recommendation didn't meet his low attitude to investment risk and low capacity for loss.
- The critical yield significantly exceeded the industry standard recommendation for salary-related pension schemes, the transfer increased charges.

Edesia Law responded on 2 May 2024. It said Mr C's complaint was time-barred and not one our service could consider.

An ombudsman at this service considered whether the complaint had been made in time and said it had. RJP had argued Mr C had seen returns lower than the 5.83% required to match the critical yield. But the ombudsman said that Mr C was still many years away from the retirement age (75) applied to the critical yield and in that time Mr C had taken tax-free cash, paid fees to RJP and EF and there had been significant volatility in the UK market. It wasn't until 2022 where Mr C saw another large fall and then he saw SC's advert that his cause for complaint was formed. And this was within three years of when he complained.

Our investigator then looked into the merits of the complaint, she found that RJP was responsible for Mr C transferring (it said it wasn't) and that the advice was unsuitable as the critical yields were likely unachievable for his attitude to risk and there was no evidence that RJP had considered the suitability of the DB scheme for Mr C. Therefore, RJP hadn't demonstrated the advice was suitable for Mr C.

Edesia Law on behalf of RJP, have made numerous submissions comprising of many arguments but I only intend to set out the main arguments it has made. My job is to get to the heart of the matter and whilst I have considered everything it has said, I do not think it is necessary to comment on every point to reach a fair and reasonable outcome. In summary it said:

- RJP did not give the advice attributed to it by Mr C by way of his complaint. The purpose of its report was to enable EF to give substantive advice to Mr C as to whether or not to transfer out of the DB scheme.

- EF sought a transfer report and not a suitability report. RJP provided a critical yield analysis only – on the understanding EF would advise Mr C on his options and for him to issue his instructions to EF about whether he wished to transfer.
- Whilst RJP did sign the adviser's declaration that appropriate advice had been given. The context of this was that the report was for EF to review and determine whether a transfer would be pursued or not.
- The investigator didn't comment on aspects of meetings Mr C had with EF that point to him considering transferring. Such as '[Mr C] understood "*the potential benefits and pitfalls of transferring / retaining his final salary entitlements". And "[Mr C] agreed (with EFL] that the final salary pension would be a perfect fit for him…however [Mr C] also feels that at a reasonable rate of return the overall benefit could be better if transferred to defined contribution arrangement, albeit with [Mr C] shouldering the investment risk burden.*
- The email to it from EFL summarised its discussions with Mr C as: "*the client has emphasised that he feels his income objectives can be achieved at a low rate of return, and that he values the more favourable death benefit position to leave a greater legacy to his daughters and the flexibility to draw income flexibly and tax efficiently. He has an element of the scheme (SURBS) which cannot be transferred and will provide a guaranteed income of c£30k per annum from NRA, which he feels gives him the safety net to shoulder the investment risk under a DC arrangement".*
- Mr C's attitude to risk (ATR) as evidenced by the finametric report was medium and not low as has been said. The complaint should be viewed from that standpoint and not his 2015 ATR.
- Mr C's attitude to risk from July 2015 when he first met with EF had materially changed by the time RJP issued its report in May 2016. Mr C by that time was someone who was prepared to shoulder the investment risk burden. And content in risking his £1.7m pension asset in favour of the prospects offered by a defined contribution scheme.
- It is not for our service to undo the decision Mr C came to voluntarily over a number of months. If he possessed such as low risk ATR as he now contends, the switch wouldn't have been appropriate for him and his caution would've prevented him from doing so.
- Mr C with full knowledge of the facts, elected to transfer. He may now have buyer's regret but RJP didn't guarantee the outcome. RJP shouldn't be punished for his decision.
- The investigator concluded that Mr C did not have a medium ATR and this was supported by EF's documentation. But the finametric report has Mr C as 3 out of 7. It contends that 1-2 is low risk and 3-5 are medium and 6-7 high. That 3 is low risk is unreasonable and is being used to reverse engineer a conclusion that the service wants to reach.
- The investigator commented that many of the answers pointed to someone who wished to take very little risk with his investments. But RJP was entitled to rely on the overall findings. Ignoring the overall score would undermine the purpose of the risk analysis.
- The investigator has ignored that the report was conditional in nature. The advice provided was: *"Such an investment return is generally regarded as acceptable with a medium attitude to risk and a transfer can take place in the belief that such matching benefits may be provided following a transfer, however no one can provide such a guarantee."*
- There was no positive recommendation made by it, rather the conclusion was "*transfer can take place" if a medium ATR existed'.*
- The decision to transfer was Mr C's alone. He received the report, containing numerous warnings as to the risks involved on transfer, and reviewed it and decided to transfer – the report did not recommend a transfer be effected.
- RJP remains of the view the case should be time-barred. It says Mr C should've been aware of his cause for complaint more than three years before he complained.
- RJP contends Mr C would've been looking at his statements very closely given his stated characteristics and worry about his share's performance. Mr C had answered previously

that any fall in value would make him uncomfortable. Yet there were falls in value, long before 2022 and it was not performing anywhere near the prescribed levels, he was told he must achieve for the long term investment strategy.

- It says any reasonable investor must have known in 2019-2020 when the fund lost £37,990.90 that it was underperforming. This was enough for Mr C to have cause for complaint.

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.

Has the complaint been made too late?

Whilst an ombudsman colleague has already made a decision on our jurisdiction, consideration of our jurisdiction applies until a final decision is issued. So I have considered the arguments made by RJP as to whether the complaint is within our jurisdiction. And more specifically whether it has been made in time.

Having done so, I am of the view that the complaint has been referred in time. For much the same reasons given by the previous ombudsman. Whilst Mr C's complaint has been referred more than six years after the event complained about being the advice to transfer his pension. I don't think he ought reasonably to have known more than three years before, that he had cause for complaint against RJP.

RJP has argued that the drops in his fund value in 2020 combined with the lack of growth from 2017 to 2019 and even until the limitation point, mean that Mr C ought to have known his pension wasn't achieving the growth required to match what he'd given up. It says this alongside Mr C's characteristics as someone who was very concerned about losses and who would be looking at his statements closely, meant he must have had his cause for complaint at the latest by 2019. However, I disagree as did the previous ombudsman.

I'll briefly summarise why; the growth required to meet the critical yield was over a 20-year period until age 75. Mr C would've been aware that fund values and annuity rates can fluctuate. And from transferring to the date of limitation, he'd taken tax-free cash, paid fees to both RJP and EF, which will initially have had a noticeable impact on his fund value. But more importantly market conditions just after transferring were volatile, firstly Brexit which occurred one month after the advice, and then Covid (early 2020) had impacted the opportunity for investment growth significantly. Mr C has told us he was aware that market conditions had caused these fluctuations and so he wasn't unduly concerned. He likely would've been told this by the adviser as well in reviews carried out. I think it's reasonable that the common man in this situation as well as someone with Mr C's characteristics, would have put any concerns down to market conditions and not the advice they were given. So, I don't think this ought to have started the clock. And by the 2021 statement his fund had recovered and seen growth, likely cementing this view. But in 2022 this upward trend didn't continue, and his fund value fell again. He says this then gave him concerns about the advice he'd been given and led to him to respond to the advert about unsuitable pension advice and through that process he then complained about RJP.

I am satisfied here that whilst Mr C wasn't achieving the growth required in the early years after transferring, it could reasonably be put down to the market conditions and he had many more years to achieve this growth. Therefore, I think Mr C has complained within three years of when he ought reasonably to have been aware of his cause for complaint. So this is a case I can consider.

Are RJP responsible for the transfer advice that allowed Mr C to transfer his DB pension?

RJP argues it did not give Mr C advice and the responsibility lies with EF. It says it only provided a critical yield analysis and it had the expectation that EF would then use that to give suitability advice.

The agreement between EF the introducer and RJP states that EF is the introducer and RJP the firm. It says

> 1.1. The main purpose of this agreement is to detail the basis under which the introduction of customers by the Introducer to the Firm for the provision of independent financial advice ("the Business") will be made to the Firm and to provide clarification of all relevant issues.

It then goes onto say:

> **The Firm**
>
> 2.1. The Firm is authorised and regulated by the Financial Conduct Authority to provide advice on or arrange transactions in respect of pensions, life assurance, unit trusts and individual savings accounts. In addition the Firm advises on other products including, National Savings and other investment services.
>
> 2.2. The Firm will comply with all Rules in respect of its conduct of the Business. The rules relate only to the Firm and cannot be absolved or transferred to another party.
>
> 2.3. The Firm will obtain and maintain all regulatory and other authorisations necessary for the conduct of the Business and comply in all respects with the requirements of such authorizations.
>
> 2.4. The Firm hereby agrees to provide (full financial / investment / insurance) advice to customers in a manner consistent with the Firm's Services and Costs Disclosure Document and Client Agreement which will be issued to each customer introduced to the Firm bv the Introducer.

I think it is clear the agreement says that EF will send clients to RJP for advice. And that RJP will provide full advice. I've not included the whole agreement but 2.5 (shown later) in fact states it will carry out a full advice process. And 2.6 says at all times it will provide independent financial advice to Customers.

No separate agreement has been supplied for providing critical yield analysis and not full advice. RJP's argument that it thought EF only needed it because it did not have the correct software to do the analysis, and EF would be providing the advice is completely undermined by the introducer agreement. The agreement is clear that EF will introduce clients to RJP and that it will then give the customer advice.

RJP have said that the email in relation to Mr C, led it to believe it was only to provide critical yield analysis. The email to RJP says:

We have a client who is looking to transfer out of the [redacted] DB scheme and needs a transfer report doing.

I have attached all relevant documents we currently hold on file:

- Shortened fact find
- Enhanced Protection Certificate
- Scheme information & forms
- Meeting notes x 3

The client has a CETV deadline of 29 May and would ideally like to get the paperwork submitted by then should a transfer be advisable.

In our most recent discussions, the client has emphasised that he feels his income objectives can be achieved at a low rate of return, and that he values the more favourable death benefit position to leave a greater legacy to his daughters, and the flexibility to draw income flexibly and tax efficiently. He has seen a large increase in his transfer value and feels now may be the time to transfer. He also has an element of the scheme (SURBS) which cannot be transferred and will provide a guaranteed income of c£30k per annum from NRA, which he feels gives him the safety net to shoulder the investment risk under a DC arrangement.

Please could you have a quick look through the information and get back to me with any further requirements, and let me know the likely timescales for getting the report issued?

Kind regards

RJP says it was only asked for a critical yield analysis but I don't think that is a fair and reasonable interpretation of the email. The email asked for a transfer report and given its agreement with EF, I think in that context RJP ought to have thought it was being asked for advice on whether Mr C ought to transfer his DB benefits, i.e a full advice process. If EF only wanted a critical yield analysis, I'd expect the email to have mentioned this in relation to its agreement, as it was counter to the agreement. And the email has many details that aren't required for a plain critical yield analysis. So I think it is clear that the transfer report requested wasn't a critical yield analysis, it was a suitability report as to whether Mr C should transfer his DB benefits.

If EF always intended to give the advice to Mr C as RJP said it reasonably believed, its agreement with EF calls this belief into question, I would have expected RJP to clarify the request as it went against their agreement. And RJP's argument here is rather undermined by the fact it signed and submitted a document to say it gave appropriate advice, which it knew was required to allow the transfer to proceed.

That RJP says it did not give full advice, can only be seen as a fault of its, rather than anyone else's given the context here. RJP will have known that for a transfer to occur, Mr C needed a document to show he'd received appropriate advice. If it felt it had not given appropriate advice and had only done a critical yield analysis, acting in the best interests of Mr C as it should've been doing, it should not have signed and submitted such a document. If it believed EF had given that advice, it should have checked with it and asked it to submit this document instead. It strikes me that RJP decided for whatever reason that doing a scaled down version of what it knew it needed to provide was ok here. And it was happy to provide a document saying it had provided appropriate advice to allow the transfer to take place, with full knowledge it had not done so.

Ultimately, I am satisfied that it was RJP's involvement that gave Mr C the ability to transfer his benefits. And that it can fairly and reasonably be held responsible for the advice Mr C received which allowed him to transfer his DB benefits.

Was the advice to transfer suitable:

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 RJP'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.

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, RJP should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

RJP carried out a transfer value analysis report (as required by the regulator) showing how much Mr C'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 C was 55 at the time of the advice. RJP's critical yield analysis, seemingly based on the value of Mr C's income from the scheme at 55 going forward, showed that the rate required to match Mr C's benefits at age 75 was 5.83%, 5.68% at 70 and 5.47% at 65. This compares with the discount rate of 4.8% at 75, 4.5% at 70 and 4.1% at 65.

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%.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's low-medium attitude to risk and also the term to retirement. There would be little point in Mr C giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.47%, I think Mr C was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

The investigator said Mr C wasn't a medium risk investor as part of her reasoning as to why the advice was unsuitable. RJP argues that his risk appetite was initially recorded as being 3-7 which is medium or lower medium and his risk appetite increased as time went on. But I don't think it is necessary to debate this in any detail, as even if Mr C was a medium risk investor (I think the evidence suggests he was lowest medium at most) the above strongly suggests that the transfer wasn't viable in any event. There would be no point in taking on all the risk, just to match the benefits given up, and I think Mr C was unlikely to improve on the benefits he'd given up by transferring even investing at a medium attitude to risk.

I note RJP argues that the investigator didn't take into account that it had been recorded: *'Mr C he feels at a reasonable rate of return the overall benefit could be better if transferred to a defined contribution arrangement'* but I don't think this supports their argument that the complaint shouldn't be upheld. In fact, I think it does the opposite, RJP should have said after looking at the amounts involved, Mr C's attitude to risk and its critical yield analysis that Mr C was unlikely to improve on the benefits available from the scheme. And it should not have recommended a transfer at a medium investment risk or at all.

RJP didn't provide any additional reasons for recommending the transfer, other than it could be recommended with a medium attitude to risk being taken. I therefore don't think it can reasonably argue that those other reasons made the transfer suitable as it didn't consider them at the time. I think the evidence is clear, RJP failed in its obligations to Mr C in the advice process it carried out and recommending a transfer. It didn't clearly demonstrate, on contemporary evidence, that the transfer was in Mr C's best interests. And it didn't give him appropriate advice as it signed to say it did.

RJP argue that it only said a transfer could be suitable if Mr C was to invest in a medium attitude to risk and then he alongside EF went on to invest in lower risk investments. And therefore their recommendation wasn't followed and it cannot be held responsible for Mr C's decision to transfer. However, this was another failing in RJP's advice process as the FCA made it clear that in order to give suitable advice on a transfer or switch of pension benefits, the advice has to consider the suitability of the underlying investments in relation to the recommendation.

RJP says the investments made by EF were not compatible with its advice or its belief that Mr C now had a medium attitude to risk because they were based on him being a cautious low risk investor. But RJP didn't know how EF would be investing Mr C's funds once the transfer completed. Without those details RJP couldn't be sure it was giving suitable advice. I note that RJP claims it did not give a recommendation or full advice but as I've said before it should not then have signed and submitted a document that said it had given appropriate advice- therefore allowing Mr C to transfer his DB pension.

For this reason alone a transfer out of the DB scheme wasn't in Mr C'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.

RJP has also sought to put the blame or responsibility for transferring onto Mr C. But Mr C was entitled to rely on it acting in his best interests and that it would provide him with appropriate advice as it signed to say it had done. In fact, it gave him very little information bar an incomplete and flawed analysis of the likely returns required to improve on the benefits he'd given up. It did include generic warnings but these were not specific to Mr C's circumstances or objectives, yet it says Mr C decide to transfer from a position of all the facts and fully informed. It's arguments that Mr C made a decision to transfer in possession of the full facts is puzzling given it also argues it did not provide advice – and it's been told there is no evidence EF provided any further comment on the suitability of transferring. I note it also wrongly claimed previously that it wasn't a requirement at the time of advice to provide a suitability report. This is despite its agreement saying:

> 2.5. The Firm will accept full responsibility for discharging all obligations placed upon it by the Financial Conduct and Markets Act 2000, by: conducting a relevant fact finding exercise; providing the Customer with a Services and Costs Disclosure Document and Customer Agreement; provide the Customer with a relevant illustration and key features document; and provide a Suitability Letter and fully explaining the basis of any recommendation made and the nature of any risk involved with the transaction.

So I find it's position that Mr C is responsible for any losses he has suffered and that he essentially should've known better if he was a low risk investor, particularly unconvincing. When it as the professional firm did not give its customer the appropriate advice, despite the above agreement, and the fact it signed to say it had given appropriate advice, when it knew it hadn't.

The advice was only given on the basis that a medium return *could* improve on the benefits from the DB scheme. But RJP has argued other reasons were also behind Mr C's choice to accept its recommendation. As they didn't give him any advice on these other aspects as they should have done, I have assumed their argument is that even though the advice was lacking, suitable advice would've been to transfer in any event. But I don't agree.

I say this because Mr C's income needs were met at the time of advice, and he'd accepted a new role that he expected to run for 5-10 years which would take him at least to the normal retirement age of the scheme. In retirement he wished to maintain his living standards and current levels of expenditure of around £5,000 a month. And his DB pension would meet those needs in retirement. He also had nearly £400,000 in cash and shares. The tax-free lump sum available from the scheme, would've also provided additional flexibility in retirement.

Furthermore, Mr C was only 55 at the time of the advice, and based on what I've seen he didn't have concrete retirement plans. As Mr C likely had a minimum of five years before he would think about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr C to give up his guaranteed benefits then when he didn't know what his needs in retirement would be. If Mr C later had reason to transfer out of their DB scheme they could have done so closer to retirement. Instead RJP gave a recommendation that put the investment risk on him rather than the scheme, using an inadequately considered view that he could improve his benefits in retirement.

RJP claim that Mr C wished to transfer after considering all the facts (he didn't have all the facts) and was enticed by the opportunity to leave funds to his daughters upon his death. 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 C. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here should've been to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

Furthermore, if Mr C genuinely wanted to leave a legacy, beyond what was already likely to be a decent sized estate, for his children, which didn't depend on investment returns or how much of their pension fund remained on their death, I think Mr C should've have instead been told to explore life insurance. I think he had the means with which to meet the costs of providing a lump sum on death similar to that likely to be payable from the potential dc arrangement.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr C.

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 C. But RJP 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. RJP completely failed to do so.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think RJP should've advised Mr C to remain in their DB scheme. Had it done so, I think Mr C would have accepted this advice and remained in the scheme. In light of the above, I think RJP should compensate Mr C for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Putting things right

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

RJP 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 C plans to retire at age 67. So, compensation should be based on him taking benefits at this age.

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 C'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, RJP should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C 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 C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts RJP's offer to calculate how much of their 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 their 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 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), RJP 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 40%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £195,000, plus any interest and/or costs/interest on costs that I think are appropriate. If fair compensation is more than £195,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that RJP should pay Mr C the amount produced by that calculation – up to a maximum of £195,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £195,000, I recommend that RJP pays Mr C the balance.
This recommendation is not part of my determination or award. RJP doesn't have to do what I recommend. It's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C may want to get independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons explained above, I uphold Mr C's complaint and require Richard Jacobs Pension and Trustee Services Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 November 2025.

Simon Hollingshead
Ombudsman