

The complaint

Mr D complains about the advice given by Financial Professionals (NI) Ltd ('FP') to transfer the benefits from his defined-benefit ('DB') occupational pension schemes to a personal pension plan. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In February 2017, Mr D approached FP to discuss the possibility of accessing his pension benefits. As Mr D was aged only 54 at that point, FP agreed it would speak with him again once he turned 55 in June 2017. In the interim, FP said it would conduct a fact-find to understand Mr D's circumstances and also that it would assess his attitude to risk ('ATR'). FP also requested information about one of the two DB schemes Mr D had.

The fact-find, carried out in around May 2017, recorded the following information about Mr D:-

- He was aged 54, in good physical health and married with two adult sons aged 28 and 25, one of which was recorded as being financially dependent on Mr D.
- He was employed earning £27,000 per year and took home a monthly net income of £1,740. Mr D's total monthly outgoings were £2,456. Mrs D was aged 56 and noted as being financially dependent on Mr D.
- Mr D owned his own home which was valued at £200,000 and had an outstanding mortgage of £54,000.
- He had an ISA worth £9,000 and a loan on his caravan which cost him £450 in repayments each month.
- Mr D was struggling to pay off debt and meet his monthly bills.
- He wanted to retire at age 60 and was a deferred member of his former employer's DB scheme as well as an active member of his current employer's DB scheme.
- His benefits under his former employer's DB scheme had a cash equivalent transfer value ('CETV') of £64,331 and his benefits under his current employer's DB scheme had a CETV of £71,724.

FP assessed Mr D's ATR to be 'balanced'. It also gave Mr D a generic 'Retirement Options Report' which set out the various options available for drawing pension benefits.

On 22 May 2017, FP provided Mr D with a transfer value analysis report ('TVAS') where it compared the benefits he was giving up under his deferred DB scheme with those available under a personal pension plan. FP noted that at age 65, Mr D's deferred scheme would provide him with tax-free cash ('TFC') of £9,829 and a reduced annual pension of £4,747. At age 60 the corresponding figures were noted as £9,829 and £4,012. The report stated that the annual investment growth (also known as the 'critical yield') that Mr D's transferred scheme would need to achieve by the scheme's normal retirement date ('NRD') of age 65 in order to match the benefits he was giving up was 9.28% (or 20.27% at age 60). Furthermore, he would need a fund of £138,782 in order to purchase an annuity to provide equal benefits to those that were available to him under his DB scheme at the NRD. Mr D's transferred pension was forecast to run out by the age of 78.

On 27 June 2017, Mr D signed a letter to say he understood the benefits he was giving up and the associated risk he was taking on by transferring to a personal pension plan. At a further meeting with FP it asked him whether there was any way he could reduce his expenditure. Mr D told FP that he was now only working a 3-day week and that his monthly pay had been further reduced to £980. He also explained that he had been off work for seven months due to stress caused by his financial worries. Mr D also told FP that whilst he had £9,000 saved in an ISA, he urgently needed to replace his 12-year old car which he used to get to work so he was going to use his ISA to do that. Mr D explained that his existing car had broken down twice in the last month and the repair bills were costing him too much.

On 5 July 2017, Mr D signed FP's client agreement and agreed to it charging him an annual ongoing advice charge of 0.5% of the value of his pension fund. On the same day Mr D also signed the application forms for the personal pension plan FP recommended he transfer to. Also on the same day, the pension provider (that I shall refer to as 'R'), provided an illustration to Mr D in respect of the transfer of his deferred DB scheme benefits valued at £64,331.

On 6 July 2017, FP sent the transfer documentation to R.

On 15 August 2017 Mr D signed his deferred DB scheme's transfer forms.

On 21 August 2017, FP provided Mr D with its suitability report where it recommended that he transfer his deferred DB scheme pension benefits into an income drawdown personal pension with R and invest the proceeds in its Governed Portfolio. The suitability report said the reasons for this recommendation were:-

- That Mr D's expenditure exceeded his income each month.
- Mr D wanted to pay off his loan and some of his mortgage in order to reduce his monthly outgoings.
- Mr D was unable to access his deferred DB scheme benefits before the age of 60 but he needed to access funds now.
- Mr D could access TFC of £16,083 upon transfer.
- Mr D wanted to crystallise £20,328 from his pension immediately - £5,083 of which was to pay toward his mortgage. Mr D also needed funds for house renovations.
- Other means of achieving Mr D's objectives were considered but because he had no investments they were not an option.

The transfer went ahead shortly after. FP charged Mr D a 3% transfer fee which came to £1,929 and an annual ongoing adviser fee of 0.5% of the fund value. R charged an annual management fee of 0.5% of the fund value.

It is unclear what happened next or what Mr D did with the funds he accessed from his transferred deferred DB scheme as no updated fact-find appears to have been completed but FP then proceeded to obtain up-to-date details about Mr D's active DB scheme. These were provided by the scheme administrators on 25 August 2017 and showed a CETV of £72,554.53 and that at the date of leaving the scheme he was entitled to an annual pension of £5,046.73.

On 11 September 2017, R provided Mr D with two illustrations, the first of which was for a personal pension income drawdown plan in respect of his second DB scheme which showed Mr D could access TFC of £18,138.63 immediately upon transfer whilst leaving the residual fund invested. The second illustration was a combined one based on the transfer of both his

DB schemes. This showed that Mr D would be able to access total TFC of £34,221.63 immediately upon transfer.

On 13 September 2017 Mr D signed R's application form for the transfer of his second DB scheme along with the scheme's discharge forms.

On 6 October 2017, FP provided Mr R with a TVAS in respect of his second DB scheme where it compared the benefits he was giving up with those available under a personal pension plan. FP noted that at age 65, Mr D's active DB scheme would provide him with an annual pension of £6,151. The report stated that the critical yield that Mr D's transferred scheme would need to achieve by the scheme's normal retirement date ('NRD') of age 65 in order to match the benefits he was giving up was 13.17%. Furthermore, he would need a fund of £216,460 in order to purchase an annuity to provide equal benefits to those that were available to him under his DB scheme at the NRD. Mr D's transferred pension was forecast to run out by the age of 77.

Also on 6 October 2017, FP provided Mr D with its suitability report where it recommended that he transfer his second DB scheme pension benefits into the existing income drawdown personal pension with R that he had recently set up. The suitability report said the reasons for this recommendation were:-

- That Mr D's expenditure exceeded his income each month.
- Mr D wanted to pay off a loan and some of his mortgage in order to reduce his monthly outgoings.
- The TFC from the transfer of his deferred (first) DB scheme had been insufficient to meet his financial objectives so he needed to access more TFC.
- Mr D was unable to access the full benefits from his second DB scheme benefits before the age of 65 but he needed to access funds now.
- Mr D could access TFC of £18,138.50 upon transfer.
- Mr D's priority was house repairs but he did not anticipate the need to draw an income from his pension as he was still employed with a steady income.
- Other means of achieving Mr D's objectives were considered but were discounted.

On 13 October 2017, R confirmed to FP that Mr D's transfer had been received and invested in his plan.

On 26 October 2017, FP forwarded an income sustainability illustration produced by R to Mr D.

In March 2018 Mr D met with FP primarily to discuss him enrolling in his employer's defined contribution ('DC') occupational pension scheme but also to review his financial situation. Mr D told FP his financial debts had been addressed which was due to him releasing cash from his DB schemes. He also told FP that he was glad that he had taken the course of action he had.

In February 2019, having met again with FP, Mr D commenced regular monthly gross contributions of £375 to his plan with R.

On 20 December 2023 Mr D, through his representative, complained to FP that it had provided him with unsuitable advice and that he had suffered a financial loss as a consequence.

FP looked into Mr D's complaint but didn't think it had done anything wrong. It said if fully considered his personal circumstances and ATR, that it held a number of meetings with him,

that it repeatedly warned him that he would lose his guaranteed benefits, that he would be taking on investment risk, that it explained a drawdown pension to him and that all the associated fees and charges were fully disclosed to him. Furthermore, FP said it discussed alternative means of achieving his objectives with Mr D and explained to him how his new plan would need to perform if it was to match the benefits he was giving up.

Unhappy with FP's response to his complaint, Mr D complained to the Financial Ombudsman Service. One of our Investigators looked into Mr D's complaint and recommended that it was upheld. He said that the transfer wasn't financially viable nor did he think that FP had done enough to understand what exactly Mr D's needs and objectives were. Our Investigator recommended that FP compensate Mr D in line with the regulator's guidance for non-compliant pension transfers.

FP disagreed with our Investigator's findings largely repeating points it had already made. In addition, it pointed out that reference to Mr D's Cash ISA was missing from the second suitability report because by that point he had spent it on a new car. It also said that Mr D was not obliged to rely on its advice and it asked our Investigator to consider very carefully Mr D's financial situation as it was at the time of the advice which it said was very difficult because his outgoings were greater than his income and it was causing him significant stress. Thus, FP said the only tenable solution was for Mr D to access his pension benefits thereby enabling him to reset his finances and begin saving again. It said it had made it very clear to Mr D that he was giving up valuable safeguarded benefits. FP said much of Mr D's complaint, as articulated on his behalf by his representative, wasn't true. And it said that it had considered alternative options for Mr D but the reality was there weren't any.

FP said that it disagreed that it had provided Mr D with advice that wasn't in his best interests. It agreed that in transferring, Mr D would lose his safeguarded benefits and that his retirement income would be impacted but it said, given Mr D's financial situation at the time, there was no other way forward.

Our Investigator thought about what FP had said but wasn't persuaded to change his mind.

The complaint was passed to me and I issued a provisional decision in July 2025. I made the following provisional findings: -

"Financial viability

FP carried out a transfer value analysis report (as required by the regulator) showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB schemes (the critical yield). Mr D was 55 at the time of the advice and it was recorded on one fact-find that he might retire at age 60 on another at age 65. The NRD for the deferred DB scheme was age 60 and the active DB scheme was age 65. The critical yield required to match Mr D's benefits in his deferred scheme at age 60 was 20.27% and for his active DB scheme at age 65 it was 13.17% (both rates are based on Mr D taking all his benefits as an annual pension).

And the TVAS noted that Mr D's income drawdown plan would need to attain a value of £138,782 in order to replicate his deferred DB scheme benefits at the scheme's NRD and a fund value of £216,460 in order to replicate his active DB scheme benefits at the scheme's NRD. It is worth bearing in mind too that the regulator's projection rates had also remained unchanged since 2014; 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 all this into account, along with FP's assessment of Mr ATR as 'balanced' and also the term to retirement. I think that it is unlikely that someone with a balanced ATR would, if it was fully explained to them, be willing to take the investment risks necessary to achieve

annual investment returns in excess of 20% and 13% just to match the scheme benefits being given up. In any event, there would be little advantage to giving up the guarantees associated with a DB scheme just to be able to match – let alone exceed – the benefits being given up. However, in this case, given the figures I've cited above, I think that Mr D's personal pension was unlikely to grow in a way that would make transferring financially worthwhile. In my view, I think that Mr D was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of transferring.

And FP's own transfer analysis tends to support this view given the funds it estimated would be needed to purchase an annuity of equal value to Mr D's existing DB scheme benefits at retirement. The transfer analysis establishes the true value of the benefits Mr D was giving up.

I've thought too about Mr D's capacity for loss and I think it is fair to say he didn't really have any. He had no savings save for the cash ISA (which was used to replace his car), assets, surplus monthly income or investments and his DB pensions were his only retirement provision aside from his state pension entitlement. So, on the face of it, his DB schemes' benefits weren't ones he could afford to lose.

It seems therefore that from a financial viability perspective, the transfers weren't in Mr D's best interests. And FP has admitted as much. But what I have set out here doesn't convey the full picture. 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 these below.

Reasons for transferring

As I have set out above, the starting point when advising a client on the transfer of a DB scheme is that there is a presumption of unsuitability; that giving up guaranteed, usually indexed linked, pension benefits is typically not in a client's best interests. Where an adviser recommends that a client transfer their DB scheme then the adviser is required to clearly demonstrate, on contemporary evidence, that the recommendation is the client's best interests.

I can see from the fact-finds and from the contemporaneous meeting notes that FP has provided that at the point Mr D approached it in February 2017 his personal finances were in some difficulty. Specifically, I can see that his monthly outgoings exceeded his income by some £716 per month. I can see from the evidence too that Mr D's financial situation was understandably causing him stress to the point he was signed off work. This appears to have made Mr D's financial situation even more perilous.

Clearly the situation with his finances was unsustainable and it was noted in both suitability reports that Mr D's principal objective was to reduce his monthly outgoings. It falls to me to consider here whether this was a sufficient enough reason to make the transfer suitable.

There are two distinct episodes of advice provided by FP to Mr D – the first in relation to the transfer of his deferred DB scheme and the second in relation to the DB scheme he was, at that point, an active member of. I will now look at each of these episodes in turn.

The First Advice

As I have already stated, FP's advice was not financially viable but, as its first suitability report makes clear, Mr D needed to reduce his monthly outgoings as they exceeded his monthly income by some margin. So, I've thought about the advice FP gave Mr D in his

particular circumstances and whether there existed any alternative means for him to achieve his objective without transferring his deferred DB scheme.

As can be seen from the information gathered by FP at the time of the advice, Mr D had no savings, assets or investments save for his £9,000 cash ISA and his mortgaged home. I can see that Mrs D did not have an income and was noted as being financially dependent on Mr D. So, there doesn't seem to have been any second income stream with which to assist Mr D with his financial difficulties.

I've thought about the Cash ISA and whether FP could have recommended Mr D use it to reduce his outgoings however, I can also see that Mr D told FP that his car was 12 years old, kept breaking down and needed expensive repairs. Mr D told FP that he used his car to commute to work, so I'm satisfied that it wasn't something he could afford to do without. Given the situation with his car, Mr D told FP that he was going to use his ISA to buy a new vehicle. So, it is clear to me that the £9,000 had been allocated by Mr D to address another pressing need and that it was thus unavailable to assist in reducing his monthly outgoings (as there was no reference to the existence of the ISA in the second suitability report, it is reasonable to assume that by that point Mr D had acquired a new car).

I can see that FP discussed the possibility of financing the purchase of a new car but that Mr D was adamant that he wanted to take on no more debt. Given that he did not have any capacity in his monthly income to service another debt, I don't think financing the purchase of a car in order to leave the Cash ISA available to reduce outgoings was a realistic alternative. And without any other savings or investments to his name, I can't see any other capital alternatives that Mr D had available to him to use to achieve his objective either.

It is worth stating at this point that the suitability report failed to capture and cite Mr D's precise financial circumstances. For example, I can find no mention of the outstanding term on his mortgage, nor on the caravan loan. I would have expected detail about both to be included in the report along with a demonstration that FP had considered whether there was any means for Mr D to improve his situation by altering either.

By way of example, I would have expected FP to have shown it had thought about Mr D's mortgage and perhaps have recommended that he talk to his lender. But I can't see that it made any attempt to so. That said, I can see that Mr D had an outstanding mortgage of £54,000 and had approximately ten years to go until he retired by which point he ideally needed to have repaid it in full. And whilst his lender may have agreed to a three or six month payment holiday for him, the fact remained that any such holiday would only have assisted Mr D in the short-term when what he needed was a long-term solution to his situation.

So, whilst I think FP's lack of detailed analysis in the suitability report was a shortcoming in the provision of its advice, it doesn't follow that I think that this meant an alternative potential means of Mr D achieving his principal objective was overlooked. That's because I think Mr D needed a permanent solution to his income deficit that a short mortgage payment holiday or a conversion to an interest only mortgage would have been unable to address.

It's clear from the evidence that I've seen that Mr D had a pressing need to reduce his monthly outgoings and that his financial situation was already affecting his health and ability to work (which in turn impacted his income). For the reasons I have set out here, I can't see any alternative means available to Mr D, in his circumstances as they were at the time, to reduce his outgoings. So, it's apparent that the only option open to him to achieve his objective was to transfer his deferred DB scheme and access the TFC so he could reduce his monthly outgoings. And I'm satisfied that Mr D wanted – and needed – to reduce his outgoings above all else.

And I am further satisfied from the documentation I have seen that FP warned him about the guarantees he was giving up. In the suitability report it said: -

“It was drawn to your attention that the [DB] pension was guaranteed and that by transferring out you would lose this guarantee. I also drew your attention that to achieve the same level of benefits at 60 your pension fund would need to grow by 9.28% per year. You signed an acknowledgement that you would lose these guaranteed benefits if you transferred out of your [DB] scheme.”

Leaving aside that FP quoted the incorrect critical yield in the above warning (it was actually 20.27% at age 60), I think the suitability report made it clear that he was giving up a guaranteed income. And I can further see from the letter Mr D signed on 27 June 2017 that the guarantees he would lose were listed there too and that by signing he confirmed he had read and understood that he would be losing them upon transfer. The letter also included an ‘Advantages and Disadvantages’ of moving to a flexi-drawdown policy document. There it was made clear that Mr D was surrendering a guaranteed level of income that was index linked and guaranteed for life and it listed the risks associated with doing so. So, I am satisfied that overall FP provided sufficient warnings to Mr D and that he understood the guaranteed benefits he was relinquishing and the associated risks. Notwithstanding the warnings he received from FP however, in Mr D’s view, his need to reduce his outgoings so they did not exceed his income overrode any guarantees offered to him by his DB scheme.

I’ve looked at the advice process undertaken by FP, and I’m mindful of the financial viability assessment of the transfer I have set out above, but I’m satisfied from the evidence I’ve seen that Mr D’s objective wasn’t to secure a better retirement income, it was to make sure his outgoings no longer exceeded his income. And I think FP made it clear to Mr D that its recommendation would help him to achieve that, but that this would result in lower overall retirement benefits for him.

There were aspects of the advice process that could, in my view, have been significantly better executed. For example, the suitability report should have been provided to Mr D before he made the decision to transfer (and completed the forms). And that report should also have included analysis about Mr D’s mortgage and the caravan loan even if the conclusion drawn was that neither provided any alternative means of assisting in the reduction of Mr D’s outgoings. It should also have included information about the outgoings Mr D intended to reduce and whether the TFC would be sufficient to achieve what he wanted. And I would have expected to see some analysis of Mr D’s retirement income needs and how they would be met once the transfer went ahead. I think if FP was having due regard to Mr D’s income needs all of this information should have appeared in the report accompanied by any analysis necessary.

However, in looking at the process overall, I’m not persuaded Mr D received unsuitable advice, despite any gaps in the advice process. I’m satisfied that FP made Mr D aware of the guarantees he was giving up and that he was provided with sufficient information to make a fully formed decision about what he wanted to do. I also think that even had FP undertaken a flawless advice process, that Mr D would have proceeded regardless such was his financial situation at the time. And had FP’s recommendation been not to transfer, it is possible it may have accepted Mr F as an ‘insistent client’ and facilitated the transfer that way. And I don’t think that would have been unreasonable, given Mr D’s objective and, in my view, his clear need to achieve it.

So, I don’t think any flaws in FP’s advice process adversely affected the decision Mr D made. I’m not sure what would have made such a difference to Mr D that he could have been persuaded to accept a recommendation not to proceed. The fact remains that Mr D

had a specific and clear objective which he needed to achieve. I think this is further underscored by the fact it was he that approached FP in the first instance. And as Mr D told FP in March 2018, he was glad his financial debts had been addressed and that he had taken the course of action he had.

So, I am satisfied that Mr D's objective of reducing his outgoings in order that they no longer exceeded his income made this transfer, a suitable one. I think, from the evidence I've seen, Mr D had a very specific objective, personal to his circumstances, that he was focussed on achieving. So, despite the risk of investment performance now being his to bear, the cessation of his anxiety over his financial situation outweighed the accrued guaranteed pension benefits he was giving up.

I'll now look at the second episode of advice FP undertook for Mr D.

The Second Advice

Although the second episode of advice FP gave to Mr D came very quickly after the transfer of his deferred DB scheme was concluded, the fact was that by the time it was provided to Mr D his financial situation had altered; so FP was providing him with separate advice about transferring his active DB scheme. By the point it was advising him, Mr D had taken TFC in excess of £16,000 from his new personal pension and, if the content of the first suitability report accurately reflected his intention, may have in fact crystallised an amount of £20,328. But I can't tell whether Mr D only took the TFC or whether he took any more than that from his new income drawdown plan, nor can I tell what he did with any money he took. That is because no second fact-find was completed and because any such information was omitted entirely from FP's second suitability report. So, I am unable to see now what Mr D's adjusted financial situation was post-transfer of his first DB scheme.

I think the failure to complete a fact-find and the omission of any information pertaining to Mr D's updated financial circumstances from the suitability report is a significant shortcoming in FP's advice process. There is no analysis in the second suitability report about what Mr D's new situation looked like or what he still needed to achieve. So, I am unable to see how FP is able to demonstrate that its advice to Mr D to transfer the CETV from the DB scheme of which he was an active member was in his best interests.

Mr D may well have 'needed' additional sums to complete his financial objective of reducing his outgoings in order that they did not exceed his income but FP, in advising him about how to achieve his objective, was required to act in Mr D's best interests and provide him with a suitable recommendation. FP had to pay due regard to Mr D's information needs and communicate with him in a way that was clear, fair and not misleading and by failing to set out his revised financial position, by failing to analyse what aspects of his objective remained unaddressed and in not considering alternative means of him achieving them, I don't think it complied with its regulatory requirements.

From the second suitability report I can see that Mr D's principal objectives were largely unaltered from the first report. This was despite the transfer of his deferred DB scheme and the access he had had to TFC (and possibly more). Mr D's main objective was still cited as being that he wanted to pay off a loan and some of his mortgage in order to reduce his monthly outgoings. It was noted that Mr D had told FP that the amount he had received had been 'insufficient'. But by how much it was insufficient is unrecorded. And whilst I note that FP stated in the second suitability report that Mr D thought he still needed to access more TFC so he wanted to transfer his active DB scheme to do so, it was FP's role – as the professional adviser, upon whom Mr D was relying and whose services he was paying for – to consider all alternatives for him and to set them out so that he could make a fully informed decision about what he wanted to do.

But, aside from FP briefly considering and dismissing the option of Mr D waiting until his NRD to take his DB scheme benefits, no alternatives were discussed within the report. I can see FP briefly referenced the generic 'Retirement Options Report' it had given Mr D sometime previously. It also said that all other options for vesting his pension had been discounted because Mr D wanted maximum TFC and didn't want to draw an income. But as with the first episode of advice FP gave to Mr D, it needed to consider if there were any alternative means of him achieving his objective without resorting to him leaving his current employer's DB scheme and transferring its CETV to his personal pension. And unlike with the first episode of advice, I think that on this occasion an alternative potential means of Mr D achieving his principal objective was overlooked by FP.

I say this because by the time it advised Mr D a second time, he had a personal pension plan, a plan that provided him with the flexibility he needed to achieve his objective. But I can't see that FP meaningfully considered advising Mr D to use it in order to achieve it. As I've said, no information exists about how much Mr D had already paid down and how much he still needed. But, insofar as he still needed access to a lump sum in order to finish reducing his outgoings to a point that they no longer exceeded his income, Mr D could first have withdrawn a further sum from his personal pension. If FP was acting in Mr D's best interests this option should have been put to Mr D. FP should have explained that it would come with a tax liability but that that would be preferable to leaving his employer's DB scheme, transferring it and giving up all the associated guarantees in the process.

I think that if FP had had due regard to Mr D's information needs and was treating him fairly then the alternative of using funds from his personal pension should have been put to him. FP should have set out what Mr D needed to achieve and how he could use his personal pension to achieve it. And whilst he said he didn't yet want to take an income from his personal pension with R, that did not preclude the consideration of the withdrawal of a further (taxable) lump sum in order to make sure his principal objective was achieved.

So, it appears to me that there was no clear need for Mr D to leave his employer's DB scheme and transfer the CETV to his personal pension. Furthermore, I can't see that any consideration was given by FP as to how Mr D would fare financially in retirement. There was no assessment of how much income he may need to meet his basic needs. I can see that Mr D was entitled to a full state pension but if he had remained a member of his employer's DB scheme it was forecast to provide him with an annual income of £6,151 at his NRD of age 65. It is by no means clear that this was an amount he could afford to do without.

If it was acting in his best interests, FP should have set all this out for Mr D so he could see alternative means of achieving his objective and understand whether he preferred to choose to take a taxable lump sum from his personal pension as it stood whilst remaining a member of his employer's DB scheme and keeping his valuable guaranteed benefits in place, or whether he wanted to transfer his active DB scheme regardless.

The shortcomings in FP's advice process meant Mr D made a decision to leave his then current DB scheme and transfer it to his personal pension without being in possession of all the information he needed with which to make a fully informed decision. FP should have looked at what Mr D's retirement income needs were likely to be and how he was going to meet them and it should have considered with him the alternative path of taking a further taxable lump sum from his personal pension plan instead of transferring his second DB scheme in order to 'access more TFC'. I am not persuaded it was necessary for Mr D to access more TFC to achieve his objective. Mr D needed access to a further capital lump sum, but I don't think FP has been able to demonstrate that the only way he could possibly do this is by transferring his second DB scheme. Furthermore, I am not persuaded that Mr D understood

that transferring his second DB scheme was not the only means of him accessing another capital lump sum to see through his financial objective.

So, not only was the transfer of Mr D's second DB scheme not financially viable, I am of the view it was also unsuitable. When advising Mr D a second time, FP should have revisited his new personal pension as an alternative means of achieving his principal objective. By recommending the second transfer to Mr D it meant he was firstly having to cease to be a member of his employer's DB scheme when he still had approximately a decade of work and scheme membership ahead of him, and secondly that he was giving up a guaranteed, index linked pension for life when he didn't need to in order to achieve his objective. I don't think either of these consequences could be said to be in Mr D's best interests.

Other reasons for transferring

The only other – and more minor - reasons Mr D gave across two episodes of advice for wanting to transfer were house repairs and a desire to help one of his sons set up his new home. I think that both of these objectives were more a 'want' than a 'need'. There was no information gathered by FP about the extent of the repairs Mr D wanted to undertake, what their likely cost would be or how pressing they were. So, I'm not persuaded that this was a real and pressing objective for Mr D that warranted the transfer of his DB scheme to achieve. Similarly, whilst I can understand the sentiment in wanting to help his son with his new home, the fact remains that a pension is there to provide an income in retirement and whilst Mr D's desire to help his son was not without merit, I can't agree that transferring his valuable DB scheme to achieve it was in his best interests.

Suitability of investments

As I'm upholding the complaint on the grounds that a transfer out of his second DB scheme wasn't suitable for Mr D, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr D should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

For Mr D, his concern and anxiety about his outgoings exceeding his income was both understandable and paramount. And in transferring his deferred (first) DB scheme he was (or would have been had he been suitably advised) able to achieve what he set out to do which was to reduce his loan and mortgage to the point that his outgoings were affordable and to end the uncertainty and anxiety around them costing him significantly more each month than the income he was bringing home. The transfer of his first DB scheme meant that Mr D was able to address the difficult financial circumstances he was in and, as he himself said to FP, he was glad that he had taken the action he had.

However, in relation to the second transfer, I don't think that the advice given by FP to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr D 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 D shouldn't have been advised to transfer out of the scheme in order to access a lump sum in the form of TFC to reduce his outgoings where an alternative means for him to achieve his objective already existed. Leaving his current employer's DB scheme to access TFC he did not need wasn't worth giving up the guarantees associated with his DB scheme for.

I don't doubt that having made the one transfer to access TFC, doing it a second time seemed the perfect solution to the financial problems Mr D was faced with. But FP wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

So, I think FP should have advised Mr D to remain an active member of his employer's DB scheme.

Of course, I have to consider whether Mr D would've gone ahead anyway with the transfer of his second DB scheme, against FP's advice. I've considered this carefully, but I'm not persuaded that Mr D would've insisted on transferring out of the second DB scheme, against FP's advice. I say this because Mr D was an inexperienced investor with a balanced attitude to risk and this pension accounted for a significant part of his retirement provision. So, if FP had provided Mr D with clear advice against transferring out of the DB scheme, explaining why it wasn't necessary in order for him to achieve his objective or in his best interests, I think Mr D would've accepted that advice.

I'm not persuaded that Mr D's desire for a second amount of TFC – when what he really needed was access to a second lump sum – was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If FP had explained that Mr D could meet his objective without risking his active guaranteed pension, I think that would've carried significant weight. So, I don't think Mr D would have insisted on transferring out of the DB scheme.

In light of the above, I think FP should compensate Mr D for the unsuitable advice it gave him to transfer his second DB scheme, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice."

Mr D's representative replied to my provisional decision on his behalf and made the following comments in respect of my provisional findings in respect of the 'first advice': -

- He had not seen the fact-find from May 2017 but regardless, Mr D was not in a difficult financial position at the time of the advice. He had equity in his home and his wife worked as a manager that she continues to do today. The fact-find therefore contains false information and/or did not consider his financial situation sufficiently thoroughly, an example of which would be failing to consider his wife's financial situation alongside his own.
- His outstanding mortgage in 2017 was in the region of £27,000 and not £54,000.
- My provisional decision is based on incorrect information provided by FP and this is causing suffering to Mr D.
- Mr D has not, in fact, withdrawn money from his cash ISA rather he has made further contributions to it and nor has he withdrawn any further money from his pension. Both facts demonstrate that he was not experiencing financial difficulties.
- The facts as recorded by FP in relation to the situation with his car were incorrect. Mr D had not needed a large sum of money to replace his car rather he upgraded using a deposit of £1,000 and car finance and his financial situation at the time was such that he was able to do so. FP had not explored this option with Mr D.
- FP told him he needed to demonstrate that he needed to transfer and thus 'led' rather than 'advised' him.

FP replied to my provisional decision and made the following comments: -

- That Mr D had previously gone directly to his employer's pension administrator and informed it that he wished to cease being an active member of the scheme.
- His employer's DB scheme administrator would be able to corroborate this which in turn would indicate that Mr D had already made up his mind that he wanted to transfer his active DB scheme benefits to access TFC.
- By September 2017 it was dealing with a deferred member of the second DB scheme who was adamant he wanted to access his TFC to ease his financial crisis.
- I had found provisionally that even had FP advised Mr D against transferring his deferred DB scheme then he would have proceeded regardless. That being the case the same was true for his active DB scheme – Mr D would have proceeded regardless.
- Mr D could not have accessed a lump sum from his new personal pension because it had yet to commence. This can be seen from R's welcome letter where it refers to both transfers being conducted simultaneously.

The complaint was returned to me for a final decision.

What I've decided – and why

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

I've 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

What follows 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 FP'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, FP should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr D's best interests.

I've thought carefully about the points both parties have raised in response to my provisional decision but, with regret for the disappointment this will cause, neither has persuaded me to depart from my provisional findings.

I'll address each of the parties submissions in turn starting with the points raised by Mr D's representative on his behalf.

Whilst I note that Mr D says he was not, in fact, in financial difficulty at the time of the advice and that his wife did indeed work, I can't reasonably ignore the documentary evidence I have seen to the contrary. It falls to me to decide, on the balance of probabilities, what may or may not have happened. And to do that I have to weigh up all the evidence I have – both documentary and oral. And in so doing, it would not be reasonable, in the absence of any documentary evidence to support Mr D's testimony, to overlook the documentary evidence that does exist for me to review.

In this case, the documentary evidence states – in numerous places – that Mr D was experiencing financial difficulties. It also states that his wife was financially dependent on him. And I can see that documents that referenced this information – including the two suitability reports – were provided to Mr D at the time of the advice. Whilst a potential explanation as to why Mr D failed to take steps to correct such inaccuracies in the reports at the time is that he had been coached by FP to show that he *needed* to transfer, I've not seen any evidence that this is indeed what happened. And to make a finding that it did, given the existence of other documentary evidence to the contrary, I would reasonably need to see some form of evidence in support of this point.

I accept that the fact-finding in Mr D's case did not include any information pertaining to his wife's circumstances beyond stating that she was financially dependent on him.

I note that Mr D's says that at the time of the advice, his outstanding mortgage was £27,000 and not £54,000. Both the undated initial fact-find, the digital fact-find completed on FP's systems and FP's own internal records all record Mr D's outstanding mortgage at the time as £54,000.

I understand Mr D's strength of feeling about the amount of his outstanding mortgage, along with the fact he says that FP has provided incorrect information upon which I am basing my decision. However, it's unfortunately the case that I've not seen any evidence which shows that in 2017 his mortgage was £27,000, such that I could, in all reasonableness disregard the available documentary evidence showing his mortgage, at that point in time, was £54,000. The same can be said to be the case in respect of Mr D's cash ISA. On its internal systems FP contemporaneously recorded: -

"Cash ISA: While he said he had a cash ISA of £9,000 he said he urgently needs to replace his 12 year old car which he uses to get to work. He will be using his cash ISA for this purchase. It has broken down twice in the last month and is costing him with expensive repair bills (e.g. Clutch replacement).

- *Financing car through loan: Both client and his wife expressed a strong view that they want to get out of debt not increase it.*
- *Income and expenditure: Asked if he could reduce his expenditure he explained that he is only now working 3 days a week and his monthly take home pay is now down to £980. He had been off work for 7 months due to stress caused by financial worries."*

I have also looked again at the comments Mr D made and which were provided to this Service by his representative in May 2024. There he made the following comments: -

“No debt, untrue, only mortgage to clear £26,000 I can prove...Household expenditure has never been greater, than income. I can prove with bank...Also 12 year old car was never urgently stated, I’ve never had real money problems as my bank will indicate. The only debt to clear and I wanted to clear was £26000 for my mortgage...perfectly clear I had no debts to worry about, as has always been the case. My bank will prove this since 1987 if required???”

I considered these comments provisionally but, in the absence of the proof Mr D alluded to being able to obtain, could not reasonably disregard the documentary evidence from FP which recorded very different circumstances.

Finally, I have seen no evidence that FP told Mr D that he had to demonstrate that he *needed* to transfer and thus that it ‘led’ rather than ‘advised’ him.

I will now consider the comments FP made in response to my provisional decision.

Whether or when Mr D had approached his employer’s pension administrator and informed them that he wanted to cease being an active member, along with when he made up his mind that he wanted to do so, does not absolve FP from its regulatory obligation to act in his best interests. To repeat what I said provisionally, a financial adviser’s role is not one of wish fulfilment – no matter how ‘adamant’ a client may be. The adviser is not there to transact what Mr D might have thought he wanted. The adviser’s role was to really understand what Mr D needed and recommend what was in his best interests.

The status of Mr D’s second DB scheme at the time of the second advice has not caused me to change the findings I made provisionally in respect of the suitability of the advice FP provided to him. The fact remains that even as a deferred member of his employer’s DB scheme, for the reasons I gave provisionally, the transfer was not in Mr D’s best interests. Had his DB scheme not been transferred, it would have provided Mr D with guaranteed, valuable, index-linked benefits at his NRD for the remainder of his life. Mr D’s recent cessation of active membership of his employer’s DB scheme did not remove from FP the regulatory requirement to act in his best interests by carrying out a thorough advice process or considering alternative means for him to achieve his objective.

I note FP’s comment that Mr D would have proceeded to transfer his second DB scheme regardless of any advice it gave him that it was not in his best interests, however, I already explained provisionally why I thought he would not have done so. FP has offered no further insight into why it thinks this would have been the case, thus it follows that I have nothing further to add to the comments I made provisionally about this matter.

As FP is well aware, there was no barrier to R setting up Mr D’s personal pension plan upon receipt of the first transfer – it did not *have* to wait for the second transfer in order to commence. I know that it *didn’t* commence until after the second transfer but that was through choice not necessity. That the plan hadn’t commenced before the second episode of advice does not excuse FP from the obligation to act in Mr D’s best interests by considering all the available options for him to achieve his objective. And one of those options would have been instructing R to commence the plan, given it had the funds from the first transfer, and making sure Mr D was fully informed that an alternative means of him achieving his objective by accessing a (taxable) lump sum from his new personal pension plan was available to him.

So, for the reasons I have given here, as well those I gave provisionally, I don't think the advice FP gave to Mr D to transfer his first, deferred, DB scheme was unsuitable. However, in relation to Mr D's second DB scheme I think the advice he received from FP was, in all the circumstances, unsuitable. Mr D shouldn't have been advised to transfer out of his second scheme in order to access a lump sum in the form of TFC to reduce his outgoings where an alternative means for him to achieve his objective existed. I think FP should have advised Mr D to remain a deferred member of his employer's DB scheme. In light of what I have said here in my final decision, together with the reasons I gave provisionally, FP should compensate Mr D for the unsuitable advice it gave him to transfer his second DB scheme 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 D, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would have most likely remained in his occupational pension scheme if suitable advice had been given.

FP 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 D 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 D'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, FP should:

- calculate and offer Mr D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
 - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts FP's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr D for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around his's end of year tax position.

Redress paid directly to Mr D 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), FP may make a notional deduction to allow for income

tax that would otherwise have been paid. Mr D'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 D's complaint in respect of the advice he received to transfer his second occupational DB scheme. My provisional findings now form part of this, my final decision.

Where I uphold a complaint, I can award fair compensation of up to £195,000, 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 £195,000, I may recommend that the Financial Professionals (NI) Ltd pays the balance.

Determination and money award: I uphold this complaint and require Financial Professionals (NI) Ltd to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £195,000.

Recommendation: If the compensation amount exceeds £195,000, I recommend that Financial Professionals (NI) Ltd pays Mr D the balance.

If Mr D accepts this final decision, the money award would become binding on Financial Professionals (NI) Ltd.

Any recommendation I make would not be binding. Further, it's unlikely that Mr D could accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision I make.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 September 2025.

Claire Woollerson
Ombudsman