

## The complaint

Mr R complains that he received negligent advice from Pensionhelp Limited ('Pensionhelp') to transfer monies from his Defined Benefit ('DB') scheme to a Self-Invested Personal Pension ('SIPP') with a provider who I'll refer to as 'Provider J'. Mr R says the advice he received wasn't suitable and that he's suffered loss as a result.

## What happened

Mr R has a representative and, for simplicity, I refer to Mr R throughout this decision even where the actions/submissions I'm referring to were, in fact, those of his representative.

We've been provided with a copy of a Pensionhelp "*Your Personalised Charges*" document for Mr R dated 18 March 2021. It was noted, amongst other things, in this document that:

- If Pensionhelp provided abridged advice, there was no charge. Abridged advice would either be where Pensionhelp was unable to conclude whether a transfer was in Mr R's interests, or else where it was advising against transferring.
- Where Pensionhelp gave abridged advice, Mr R would be able to request full advice but if he did so the full advice fee would be payable.
- If Pensionhelp provided full advice the initial advice cost would be £7,034.09. And this fee would be payable whether or not Mr R followed its advice.

We've been provided with a copy of Pensionhelp's abridged advice report for Mr R dated 23 March 2021. It's noted, amongst other things, in the report that:

- Abridged advice is a form of advice introduced by the Financial Conduct Authority ('FCA') which allows advisers to provide a low-cost alternative to 'full' advice. Abridged advice allows Pensionhelp to recognise clients for whom a pension transfer is unlikely to be suitable and provide them with advice, without them incurring the costs of the full advice process.
- There must be a very strong reason for it to recommend any alternative to the DB scheme.
- It had reviewed and discussed Mr R's circumstances and objectives. It had also considered the value of Mr R's assets and his attitude to investment risk and transfer risk. Following a review of all of these factors, there were some reasons that would support the transfer option, but based on the information provided, Pensionhelp didn't believe these reasons were sufficient for it to provide a positive recommendation to transfer. As such, its abridged advice to Mr R was to remain in his DB scheme.
- *"I believe that a pension transfer is unlikely to be suitable for you."*

*As stated in the introduction to this report, Pensionhelp take the position that for most clients with defined benefit pensions, that it is in their best interests not to transfer them. This is therefore the most common outcome for people who hold a defined benefit pension.*

*The scheme pension provides a safeguarded benefit that will increase broadly in line with inflation every year. If you stay in this scheme you will not have to carry the*

*investment risk associated with the transfer option. You currently hold an extremely valuable benefit.*

*In order for me to recommend a transfer, I need to be able to demonstrate that this route is the best one to meet your needs, and I have been unable to do this...*

A second regulated advisory firm, who I'll refer to as 'Firm C' in this decision, certified a copy of Mr R's passport on 4 April 2021, this document appears to have been amongst a number of documents that Mr R obtained following a subject access request that was made to Provider J.

Pensionhelp emailed both Firm C and Mr R on 6 April 2021 and explained that:

*"If you're both happy for us to go ahead on the understanding that [Mr R] is responsible for selecting where the transfer will go, then we're happy to produce the full report and Financial Advice Declaration.*

*For clarification purposes, Pensionhelp will not be treating [Mr R] as an insistent client, indeed we won't transact on an insistent basis. We will merely issue a Do Not Transfer report and Advice Declaration. After which, we will issue our invoice direct to [Mr R] for payment."*

Provider J wrote to Mr R on 13 April 2021 to thank him for his application and to confirm a Provider J SIPP had been established for him. It was also explained that an application summary was available online. We've been provided with a copy of the application summary, amongst other things, it records some details about Mr R, sets out his nomination of beneficiaries and incorporates a declaration Mr R agreed to. There's no mention of any adviser being involved in the letter of 13 April 2021 or in the application summary.

Pensionhelp sent a covering letter to Mr R on 14 April 2021 enclosing its full advice report. It was explained in the one-page covering letter that Pensionhelp was recommending Mr R not to transfer away from the DB scheme and to retain his DB scheme benefits. It was noted, amongst other things, in the full advice report that:

- In an initial section titled *"Introduction, Objectives and Recommendations"*, Pensionhelp said Mr R's DB scheme had a transfer value of a little under £378,000 and the advice for that arrangement was *"Retain Scheme for a level of secure income at retirement / review pension at a later date, closer to retirement."*
- Mr R wanted to raise £40,000 at age 55. In respect of this, Pensionhelp said in emboldened lettering that *"Although you wish to use tax-free cash from your [name of DB scheme] benefits at age 55, the FCA state accessing your defined benefit pension should be the last option. We therefore believe you should consider using your shares/savings already in place, importantly retaining your guaranteed income within the [name of DB scheme]"*.
- By retaining his DB scheme, and along with his wife's pension scheme and their combined state pensions, Mr R would have sufficient secure income in place from age 68 to meet his recorded total income/expenditure needs. And his retained DB scheme would potentially help reduce an income shortfall from age 60 to age 68 (dependent on when he accessed scheme benefits).
- Pensionhelp had been told by Mr R that *"Other work colleagues have been considering a transfer option and that as well as the size of my pension pot as a transfer value has got me considering it... I believe the fund versus a guaranteed income is better value for me in the long run and my family. Transfer and investment management will enable me to access more tax free cash to meet my retirement*

goals and give me a flexible income in retirement to supplement our state pensions. If I transfer and die the death benefits are so much better and it creates a family legacy, otherwise, lost if I stay in the scheme". Further that "Risks: If I die then my wife...will get a minimal pension. I will have to wait until 2033 to get £9,000 p.a. income and £29,000 tax free cash which isn't a lot of money. I might not live that long. I will not have the same lifestyle by leaving the pension in the scheme, the scheme benefits will be less than quoted if I want to access them before age 65. Benefits: None that I can see. The guarantee is meaningless - I am ready to give that guarantee income up". And that "Benefits: - investment growth over long term, access to more tax free cash, do not have to wait to age 65 to access benefits if retire at 60-62, and finally, death benefits to [wife's name] and Family. I understand risk investment involved and I would take middle range risk."

- Amongst, other things, in respect of Mr R's objective of obtaining greater flexibility and control over his pension benefits, Pensionhelp explained that "On balance, you are not looking to retire until age 60 pension age, which is a significant time horizon (circa. 8 years) and you even said you may continue until age 67 (if possible). Your circumstances may change during this time, and therefore you do not need to make the irrevocable decision to transfer out now. Although this may result in you not being access [sic] a tax-free lump sum (to gift to children, purchase a caravan etc.) you currently have sufficient savings / shares in place to fund this. Therefore we are not recommending you give up the secure income on offer within the Scheme." Further, that "At this moment in time, we feel the benefits of a secure pension outweigh the benefits available to you on transfer. We therefore recommend you retain the guaranteed income. In addition to this, by remaining in the Scheme you will retain your protected retirement age of 50."
- In respect of Mr R's objective of being able to pass on residual pension monies to his wife and/or children on death Pensionhelp explained, amongst other things, that "On balance, although you do not value the death benefits available within the Scheme and would prefer to restructure your death benefits, given the security the Scheme offers for both yourself and [name of wife] (and potentially your children), we recommend you retain the Scheme for now." Further, that "On balance, you understand the value of the spousal income on offer from the Scheme but would prefer to be able to pass on all residual funds to your wife and/or children. However, due to the importance of this pension, we do not believe that you have the financial capacity to take the risk of this course of action. If you effect a transfer, you would carry the investment risk and if this irrevocable gamble fails, you would have less income in retirement and therefore may not have the flexibility that you seek."
- At Mr R's normal retirement date of age 65, his DB scheme would provide an annual pension estimated to be worth a little under £10,000 a year and a pension commencement lump sum ('PCLS') of a little under £30,000. This would continue to be revalued each year until Mr R took benefits, died or transferred out of the DB scheme.
- Mr R had been offered a cash equivalent transfer value ('CETV') of £377,841 from the DB scheme. The transfer value was guaranteed until 18 April 2021.
- The critical yield needed to match the DB scheme benefits at age 65 was 2.26%, assuming the minimum PCLS was taken, or 2.01% if the maximum PCLS was taken. The respective figures at age 60 were 3.18% and 2.85%, and at age 55 were 8.33% and 7.58%.
- It would be more expensive to secure the same benefits Mr R (then) had if he transferred.
- Mr R's DB scheme was the most cost effective way to take lifetime guaranteed benefits.
- Based on a cashflow model in which monies were retained in the DB scheme, and Mr R took his full scheme pension and lump sum at age 60, the indication was Mr R's

existing savings/assets would meet his capital needs at age 55 and he would then meet his income/expenditure needs throughout retirement, with a higher level of secure/guaranteed income.

- Based on a cashflow model in which monies were transferred away from the DB scheme to a flexible arrangement, the indication was Mr R's income/expenditure needs could be met throughout retirement and he would be able to raise sufficient tax-free cash at age 55 to gift his children, purchase a caravan and so on. However, with this approach Mr R would take on the costs from the DB scheme and have the risk that his funds could deplete in his lifetime. And this was a risk Pensionhelp didn't feel that Mr R needed to take on at that time.
- Mr R's attitude to risk had been assessed as seven on a scale of one to ten, this was termed "*Growth*" and his capacity for loss was "*high*". Mr R had been assessed as being able to afford to "*take the risks associated with your chosen attitude and can withstand any under-performance*".
- Stated advantages of transferring away from the DB scheme included that:
  - "*You would be able to 'flexibly' access your pension as and when required and will have full control over your income and lump sum withdrawals. Allowing you to withdraw funds at any level desired, with up to 25% tax-free cash available.*
  - *You will be able to raise capital at age 55 (through a tax-free lump sum) which will allow you to gift funds to your children, reduce your mortgage, purchase a caravan etc. without receiving an unwanted taxable income.*
  - *You will be able to take on a higher level of investment risk and potentially achieve investment growth above the inflationary increases within the Scheme.*
  - *In the event of your death, you will be able to pass on all residual funds to your wife and/or your children."*
- Stated disadvantages of transferring away from the DB scheme included that:
  - "*You would be giving up a secure/guaranteed income which is index-linked and payable for life.*
  - *You are around 8 years away (or longer) from your intended retirement age and your circumstances may change during this time, and therefore you do not need to make the irrevocable decision to transfer out now.*
  - *You would be taking on the costs from the Schemes, the risk that your funds can deplete in your lifetime (longevity risk) and the risk that your funds may decrease as well as increase (market risk).*
  - *A transfer of benefits does not guarantee a greater pension income at retirement.*
  - *The future income from your pension fund continues to be subject to investment risk. Additionally, by remaining invested, your pension fund continues to be subject to charges which will erode the value of your fund.*
  - ...
  - *The value of shares and the income from them will rise or fall as the value of the underlying investments in which your money is invested changes. Therefore, when you sell your investment, it is possible that you may get back less than you invested."*
- Pensionhelp set out clearly and in emboldened lettering that "***Our recommendation is to take no action with your [name of DB scheme] and to retain the plan for a level of secure income at retirement***".

- It was explained that with any financial decision, there are aspects which are supportive of a course of action, and aspects which give pause for thought. And that getting the decision right requires considering the trade-offs each action would bring, and giving them a weighting in relation to Mr R's needs and aims. Further, having taken this into account Pensionhelp *"felt remaining in the Scheme / taking no immediate action is in [Mr R's] best interests."*

Mr R subsequently signed a Pensionhelp summary form confirming, amongst other things, that he understood by transferring his pension he would lose a guaranteed income, he would have to manage his funds, and he may run out (of monies) in his lifetime. Further, that no ongoing adviser charges would be applicable as the adviser was recommending that he retain/stay in the DB scheme.

We've been provided with a copy of an *"Advice confirmation form"* for a transfer from Mr R's former DB scheme that was signed by a Pensionhelp adviser on 14 April 2014. It appears this form was sent to Mr R alongside Pensionhelp's full advice report. And it's explained, amongst other things, in the form that:

- The form should be completed by the individual adviser who advised the member and it should then be returned with a covering letter and any other documentation requested in the form. Transfers couldn't complete without the form being completed.
- Mr R's name and details of the DB Scheme were recorded.
- There was a declaration in Part A of the form that said, amongst other things, that:

*"I confirm that I have given appropriate independent advice, as required by the Pension Schemes Act 2015, and that:*

*The advice I have provided to the Member named above is specific to the proposed transfer from the Scheme to:*

[The name of the receiving arrangement was left blank]"

The declaration was signed by a Pensionhelp adviser on 14 April 2021 and Pensionhelp's FCA reference number was given.

Mr R signed a Provider J *"SIPP transfer in form"* on 14 April 2021. The form records Mr R's Provider J SIPP account number and it's noted, amongst other things, that Mr R was seeking to transfer monies from his DB scheme to Provider J. It was explained in the form that if Mr R was transferring £30,000 or more from a final salary scheme, then he needed to enter the name and address of the firm that provided financial advice – and Pensionhelp's name and address is given in the form.

Provider J wrote to Mr R on 20 April 2021 to thank him for sending it a completed transfer form in respect of his DB scheme. Provider J also explained it had contacted Mr R's DB scheme to get the transfer in motion.

On 26 April 2021, Pensionhelp sent Mr R an invoice for the advice it had given him.

On 29 April 2021, Mr R emailed Pensionhelp and explained the trustees of his DB scheme needed an Advice Confirmation form and Mr R asked if Pensionhelp could assist with this.

On 30 April 2021, Mr R emailed the trustees of his DB scheme and said *"Good afternoon, I've been asked by pension help to forward this advice confirmation form to yourself."* This was followed by an email later the same day where Mr R said *"Afternoon again. Sorry I*

*needed to put in the Receiving Arrangement which is [Provider J].*” There is also an amended copy of Part A of the Advice Confirmation form in the records we’ve been provided alongside these emails. In the amended copy, the section with the details for the receiving scheme that I’d referenced above as previously having been left blank has been updated, and a version of Provider J’s name is recorded in the receiving scheme section.

Mr R was emailed by the trustees of his DB scheme on 12 May 2021 and it was explained that, before it was able to proceed to transfer his monies, Parts B and C of the Advice Confirmation form needed completed. Further, that Part B should be completed by the adviser and Part C by Mr R.

Mr R then emailed Firm C on 12 May 2021 and asked it to confirm whether the Part B section needed completed by Firm C or Pensionhelp. Firm C replied to Mr R the same day and explained the trustees of Mr R’s DB scheme had told it nothing was outstanding and that the trustees already had the Advice Confirmation form signed by Pensionhelp, which Mr R had previously sent to them. Further, the trustees had confirmed everything should be ok and it appeared to Firm C that nothing further was needed. Firm C also said it had clarified to the trustees that while it was Mr R’s “*day to day adviser*” Pensionhelp had given the transfer advice.

We’ve been provided with a copy of Part C of the Advice Confirmation form that was signed by Mr R on 12 May 2021. In this Mr R confirms that Pensionhelp had provided him with appropriate independent advice on the proposed transfer of his monies to Provider J.

Pensionhelp wrote to the trustees of Mr R’s DB scheme on 21 May 2021 and confirmed, amongst other things, that:

- Financial advice had been given to Mr R.
- The adviser was certified to provide necessary advice in accordance with the Pension Schemes Act 2015.
- The advice provided was specific to the type of transaction proposed by Mr R.

This letter appears to have been accompanied by an updated Advice Confirmation form. It’s explained, amongst other things, in the form that:

- The form should be completed by the individual adviser who advised the member and it should then be returned with a covering letter and any other documentation requested in the form. Transfers couldn’t complete without the form being completed.
- Mr R’s name and the details for the DB scheme were recorded.
- There was a declaration that said, amongst other things, that:

*“I confirm that I have given appropriate independent advice, as required by the Pension Schemes Act 2015, and that:*

*The advice I have provided to the Member named above is specific to the proposed transfer from the Scheme to:*

[The name of the receiving arrangement was left blank]”

The declaration was signed by a Pensionhelp adviser on 20 May 2021 and Pensionhelp’s FCA reference number was given.

On 2 June 2021, Provider J wrote to Mr R and confirmed receipt of a little under £26,000 from a defined contribution ('DC') scheme. This followed on from Mr R having signed a Provider J transfer in form the previous month to transfer the monies from his DC scheme.

Mr R's DB scheme wrote to Mr R on 9 June 2021 to confirm the transfer of pension monies from his DB scheme to the Provider J SIPP.

On 24 June 2021, Provider J wrote to Mr R to thank him for his application to open a different type of Provider J SIPP, an application summary was enclosed with the letter and it was noted, amongst other things, in this document that:

- A little under £404,000 was being transferred into the new Provider J SIPP from Mr R's existing Provider J SIPP.
- Mr R's adviser was Firm C and an initial fee of £1,000 was to be paid to the adviser.

On 25 June 2021, Firm C emailed Provider J forms for the transfer to the new Provider J SIPP, and these were then signed by Mr R and a Firm C adviser. Provider J subsequently wrote to Mr R and Firm C on 2 July 2021 to confirm that the transfer had completed.

Mr R complained to Pensionhelp in a letter dated 18 July 2024. It was noted in the letter, amongst other things, that:

- Pensionhelp gave him unsuitable advice to transfer from his DB scheme into a SIPP.
- The advice he received was negligent and he's suffered loss as a result. He would like to be restored to the position he would have been in but for the negligent advice.
- He trusted Pensionhelp to advise on the best options available for him.
- He wasn't sufficiently informed of the benefits he would be losing by transferring away from the DB scheme. Had this been discussed with him at the time he wouldn't *"have proceeded with the advice"*.
- By failing to inform him of the advantages and disadvantages of transferring, and by providing unsound advice, Pensionhelp failed in its duties.
- He had three or four telephone conversations with Pensionhelp, each lasting no more than 20 minutes. Telephone conversations weren't in depth and Pensionhelp didn't try to establish his understanding of documents posted to him.
- Pensionhelp failed to provide him with sufficient information to enable him to make an informed decision.
- Because Pensionhelp failed to tailor its advice to his needs he's lost out on the guarantees he previously had in his DB scheme.
- Pensionhelp had an overriding duty to ensure the advice provided was not only suitable, but also that it was provided in a manner which was clearly understood.
- He didn't possess any investment knowledge and relied heavily on the advice he received. The adviser ought to have tailored the advice to fit his needs and objectives rather than providing non-specific advice.
- Advice should only have been provided after Pensionhelp fully understood his circumstances and needs, and all the risks should have been fully explained to him. This didn't happen.
- There was a clear emphasis in the 14 April 2021 report that by transferring he could achieve his objectives.
- Rather than starting with the idea that he shouldn't transfer, Pensionhelp looked for reasons for him to transfer.
- Had Pensionhelp believed the transfer wasn't in his best interests, emphasis ought to have been placed on the reasons not to transfer.

- A reasonable man, who doesn't possess any pensions knowledge, if informed on several occasions that transferring would provide better returns and fit their objectives, would be enticed to transfer.
- He wanted to provide his children with his pension provisions should anything happen to him. He was unaware that he may have been able to incorporate his children within his existing DB pension by changing the beneficiary provisions and utilising an expression of wish or nomination form. Pensionhelp failed to make him aware that this was an option.
- He received no "follow ups" from Pensionhelp to check his understanding, he was unaware of the guaranteed nature of his DB scheme, Pensionhelp continued to promote the pension transfer and he proceeded with the transfer as he thought this was the best option available to him.
- Pensionhelp hasn't acted in his best interests.
- Pensionhelp failed to make him aware of the option to investigate whether his DB scheme allowed early access.
- Pensionhelp hadn't complied with the Conduct of Business Sourcebook ('COBS') rules and it had ignored the FCA's COBS 19.1.6G guidance.
- He wasn't looking to take any risk with his pension and transferred based on the advice he was given. By advising him to transfer to a SIPP, Pensionhelp exposed him to investment risk.
- The possibility he could risk losing his retirement income wasn't made clear to him.
- Pensionhelp should have advised against transferring as there was no just reason to do so, and many reasons not to do so.
- Advice was only provided on a limited basis, this wasn't appropriate.
- By transferring to the SIPP, his pension needed to obtain additional growth to cover the fees charged by various parties.

Pensionhelp replied to the complaint on 24 July 2024 and noted, amongst other things, that:

- Mr R undertook its triage process before deciding whether to seek regulated financial advice.
- Mr R agreed to its charges and understood these would be levied on a non-contingent basis.
- Pensionhelp's advice didn't cause the transfer.
- Pensionhelp advised Mr R not to transfer and to remain in his DB scheme.
- Mr R appears to have rejected this advice and transferred after making his own decision.
- Pensionhelp didn't facilitate the transfer and didn't treat Mr R as an insistent client.
- Pensionhelp's policy in 2021 was that it wouldn't agree to facilitate any transaction where it believed this to be against a client's best long-term financial interest.
- Mr R was made fully aware of Pensionhelp's advice during its dealings with him.
- As a member of a DB scheme, Mr R had a statutory right to transfer but was legally obliged to seek advice from an independent firm.
- Pensionhelp was obliged to complete the form confirming that Mr R had received advice.
- The 14 April 2021 report presents the options available to Mr R in a clear and balanced way. While the report does indicate that a transfer could meet the stated objectives of Mr R, it also clearly identifies that transferring the pension would not be in his best long-term financial interests.
- It had advised Mr R to "*Retain Scheme for a level of secure income at retirement / review pension at a later date, closer to retirement.*"
- It was also highlighted in the report that "*At this moment in time, we feel the benefits of a secure pension outweigh the benefits available to you on transfer. We therefore*



*recommend you retain the guaranteed income. In addition to this, by remaining in the Scheme you will retain your protected retirement age of 50."*

- Further, that *"Our recommendation is to take no action with your [name of DB scheme] and to retain the plan for a level of secure income at retirement."*
- Ultimately, whilst its assessment was that Mr R had the appetite for the transfer and that this would address his immediate objectives, it correctly assessed that it would not be in Mr R's best long-term financial interests to transfer his DB scheme monies and it advised him to retain membership of his DB scheme.

Mr R replied to Pensionhelp on 19 August 2024 and noted, amongst other things, that:

- The Advice Confirmation form Pensionhelp signed gave a reasonable impression that it had provided pension transfer advice to him. Pensionhelp wasn't obligated to sign that form, or to provide him with advice on the pension transfer, if it was not thought to be in his best interests. Nor was there a reason to charge him for the advice he received.
- He disagrees with Pensionhelp that there was no causative link between its actions and what transpired. Pensionhelp provided him with advice that Firm C couldn't, and Pensionhelp signed the declaration.

Mr R then referred his complaint to us for review in September 2024.

Mr R has noted, amongst other things, that:

- He had contacted another financial advisory firm, Firm C, following recommendations from his colleagues about a potential transfer. However, Firm C wasn't able to provide him with financial advice and it had recommended Pensionhelp.
- FCA guidance says advice ought to be tailored to a client's knowledge and understanding to ensure they are fully aware of the risks involved.
- He wasn't sufficiently aware of the benefits held within his DB scheme and so he wasn't put in a reasonable position to make an informed choice.
- He was given all of the relevant transfer documents by Pensionhelp. Provider J transfer forms were provided to him by Pensionhelp, and he signed and returned completed Provider J forms to Pensionhelp.
- Documents given to Mr R were highlighted for him to complete. And he was advised that he would only be able to achieve all his objectives by transferring.
- Firm C selected where Mr R's monies would be invested following the transfer to Provider J.

Pensionhelp has told us, amongst other things, that:

- It didn't enter into any ongoing advisory agreement with Mr R.
- It didn't provide any advice to Mr R on Provider J, on any investment, or on any withdrawals.
- It issued Mr R with an invoice for the fees for the full advice it had given. The final invoice was for £6,034.09 and this sum was paid to it directly by Mr R.
- DB scheme trustees must ensure that a consumer has received appropriate independent advice, as is required by section 48 of the Pension Schemes Act 2015. And the documentation Pensionhelp signed confirmed advice had been obtained.
- Pensionhelp's advice proposition, including the abridged advice process, is in line with the process expected by the FCA.
- It first issued an abridged advice report to Mr R at no charge. This stated its recommendation not to transfer and outlined the expected full advice charge.
- Mr R wasn't obliged to seek full advice but decided to do so.

- The FCA's rules on contingent charging mean that for full advice it must charge the same whether or not the advice is to transfer.
- Its full advice was not to transfer and to remain in the DB scheme, but Mr R chose to proceed against its advice and asked it to sign an Advice Confirmation form.
- Failing to sign the form confirming that advice had been given when requested would have been a breach of its professional duty. And would have left it open to litigation for breach of contract and/or negligence, and possibly disciplinary action by the FCA. Signing the letter was consistent with industry best practice.
- It's not the role of advisory firms to prevent a consumer from exercising their statutory right to transfer. The financial adviser's role is to provide the client with advice, whether or not this supports the outcome the client wants.
- It doesn't believe Mr R has been fairly represented in this complaint. It considers the complaint made by Mr R's representatives to be frivolous and the claim has caused Pensionhelp significant and irrecoverable costs.

One of our investigators reviewed the complaint, they considered the advice provided by Pensionhelp to be considered and balanced, and said that Pensionhelp reached the correct outcome that a transfer wasn't suitable. The investigator said that Pensionhelp hadn't done anything wrong and they didn't recommend that Mr R's complaint be upheld.

Mr R didn't agree with the investigator's findings and, amongst other things, said that:

- Firm C recommended Pensionhelp to him.
- Pensionhelp provided information to him regarding the potential transfer.
- Whilst Pensionhelp stated it wasn't recommending the transfer, it failed to establish whether he understood he was going against its advice.
- There is guidance in COBS 9.5A.3 about the rules around insistent clients. It's explained that where a firm proceeds to execute a transaction for an insistent client which isn't in accordance with a personal recommendation given by the firm, the firm should communicate to the insistent client, in a way which is clear, fair and not misleading. Further, that the firm should have regard to the client's information needs so that the client is able to understand the information. It's also noted that information the firm should communicate to the insistent client includes:
  - That the firm hasn't recommended the transaction.
  - That proceeding won't be in accordance with the firm's personal recommendation and why.
  - The risks of the proposed transaction and the reasons why the firm doesn't recommend the transaction.
- Under COBS 9.5A.4, the firm should obtain an acknowledgement from the insistent client that the transaction isn't in accordance with its personal recommendation, and that the transaction is being carried out at the request of the client.
- It's unreasonable to suggest he proceeded despite Pensionhelp's recommendation not to transfer.
- The relevant procedures haven't been carried out and the guidelines haven't been adhered to.
- From the outset, Pensionhelp confirmed it wouldn't be treating him as an insistent client, and it didn't challenge his thought process or reasons for having the objectives he did.
- Pensionhelp wasn't obliged to facilitate the transfer if it believed the transfer wasn't in his best interests. There were no discussions to counter the reasons he wanted to transfer, and there was no indication he was correctly treated as being insistent as set out by the FCA.

In response to Mr R's comments about the insistent client process, our investigator explained that for an individual to be considered an insistent client the firm would need to have facilitated or executed the transaction it had advised against. The investigator explained they had seen no evidence that Pensionhelp had executed or arranged the DB scheme transfer – they thought the extent of Pensionhelp's involvement amounted to advising Mr R not to transfer and confirming advice had been given by a suitably qualified financial adviser. The investigator highlighted the correspondence we've seen from Provider J, in response to Mr R's SIPP application and the transfer request, was sent to Mr R personally. Further, that it was Firm C and not Pensionhelp who certified the copy of Mr R's passport that was sent to Provider J. And there was no indication Pensionhelp was involved in the transfer after having given the advice not to transfer.

The investigator also explained that even if they were wrong about this, and even if the insistent client process *had* been followed by Pensionhelp, they didn't think Mr R would have acted differently. Such that Mr R would still then have been in the position he's currently in.

In response to this Mr R provided further submissions which included call recording transcripts he had obtained of conversations between him and Pensionhelp. The date calls occurred isn't recorded in the transcripts we've been provided. I've set out below a *summary* of what I consider to be some of the key points from the transcripts. But the list isn't exhaustive and before making this decision I carefully considered the transcripts in full:

- Mr R had read the information Pensionhelp asked him to review and was happy to proceed with regulated advice.
- Pensionhelp would assess not only what Mr R wanted to do but also the impact of doing that and whether it was likely to benefit Mr R.
- In the first instance Pensionhelp would either give abridged advice or full advice depending on what it thought about the transfer.
- If Pensionhelp didn't think the transfer "*stacks up*" it would give abridged advice explaining why it didn't think it was the right thing for Mr R to do.
- If abridged advice not to transfer was given, Mr R would then have three options; he could choose to accept that advice, he could go and seek a second opinion elsewhere or he could ask Pensionhelp to provide full advice.
- If Pensionhelp was asked to give full advice it would proceed with a full analysis. If at the end of that process its opinion was still that Mr R shouldn't transfer then, if Mr R wanted to proceed, he would have to find a financial adviser who was willing to effect the transfer against best advice.
- Mr R thought that he would have more flexibility by transferring and that he might have a better return on the monies. Mr R said he knew what he wanted and that he was willing to take the risk.

And from transcripts of phone calls that appear to have occurred after Pensionhelp issued its full advice report:

- Mr R's pension trustees had told him they needed a signed form and certificate. And Pensionhelp confirmed to Mr R this had been sent to the trustees previously.
- Later, a new adviser declaration was also sent to the DB scheme trustees by Pensionhelp.
- Mr R had registered with Provider J and the DB scheme trustees had been in contact with him about a page of a form. Pensionhelp understood that what the trustees were asking of Mr R was to complete a form Pensionhelp had signed, in which the name of the receiving scheme had been left blank, because Pensionhelp had advised Mr R not to transfer. It was understood by Pensionhelp that what the trustees were saying

was that Mr R would need to fill in the section with details of the provider he was sending his pension monies to, namely Provider J.

- Pensionhelp had got its full advice fees wrong previously. The actual price was £6,030.40 (i.e. a lesser sum than the £7,034.09 which had previously been indicated), and it would send Mr R a revised invoice in respect of this.

As agreement couldn't be reached the complaint has been passed to me for review.

### **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.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

The parties to this complaint have provided detailed submissions to support their position and I'm grateful to them for doing so. I've considered these submissions in their entirety. However, I trust that they won't take the fact that my final decision focuses on what I consider to be the central issues as a discourtesy. To be clear, the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

I think Pensionhelp gave clear, fair and not misleading advice to Mr R both in the abridged advice report and also in the full advice report. I don't think Pensionhelp's advice was unsuitable and I don't think it acted inappropriately in considering, and setting out, various advantages and disadvantages of transferring in the full advice report. I think it was very clear from the content of both of those reports that Pensionhelp's recommendation in both instances was that Mr R should not transfer his pension monies away from his DB scheme.

From the evidence provided, I'm not in agreement with Mr R that Pensionhelp didn't pay due regard to his communication needs. And I think the manner in which Pensionhelp presented its advice to Mr R was clear, fair and not misleading.

Pensionhelp was transparent from the outset about the level of charges Mr R would have to pay if he wanted to proceed to full advice, and Mr R ended up having to pay less than Pensionhelp had originally indicated to him. I also think Pensionhelp made it clear to Mr R *before* he committed to receiving, and paying for, full advice that it didn't think he should transfer. I think this was very obvious from both the contents of the abridged advice report and the email of 6 April 2021.

The 6 April 2021 email made it very clear that Pensionhelp would provide a full advice report and advice declaration if Mr R wanted it to, but that its advice would be not to transfer. Further, that if Mr R wanted to transfer, he would then be responsible for selecting where monies were transferred to, and Pensionhelp wouldn't be undertaking to effect the transfer for Mr R on an insistent client basis.

I don't agree that Pensionhelp acted inappropriately in providing advice to Mr R. From the evidence provided, including what Mr R had said to Pensionhelp before the full advice report was issued, I'm satisfied Mr R was looking at transferring monies from his DB scheme prior to Pensionhelp's involvement. And before he could transfer monies from his DB scheme, Mr R first needed to obtain appropriate independent advice. To that end he approached Firm C, but Firm C couldn't advise Mr R on the transfer of his DB scheme monies and recommended

Pensionhelp to him. And I don't think Pensionhelp acted inappropriately by then giving advice to Mr R when requested.

Pensionhelp had given clear advice not to transfer to Mr R in its abridged advice report and, as I've mentioned above, the expected costs involved if Mr R wanted to proceed to full advice were made clear to him. I think Pensionhelp also made it obvious to Mr R in its 6 April 2021 email, and before he was fully committed to receiving and paying for full advice, that if it gave full advice it would be issuing a report that said not to transfer. I think Mr R was put in an informed position about all of this and that, as was his prerogative, Mr R still decided he wanted to proceed to full advice. I also think that, having been transparent with Mr R about Pensionhelp's position on the transfer and the costs involved, Pensionhelp didn't act inappropriately by proceeding to provide Mr R with a full advice report when requested.

Pensionhelp assisted with the completion of the Advice Confirmation form, including engaging with Mr R and/or the trustees of his DB scheme on several occasions about this. I don't think Pensionhelp acted inappropriately by doing this or by providing confirmation that it had advised on the pension transfer. I think confirming advice had been given on the pension transfer was in line with COBS 19.1.10G.

Mr R has said Provider J transfer forms were provided to him by Pensionhelp, and he signed and returned completed Provider J forms to Pensionhelp, but we haven't been provided with any contemporaneous evidence that satisfies me this is what happened. And Pensionhelp has said it didn't facilitate the transfer and it didn't provide any advice on Provider J to Mr R.

The written correspondence we've seen from Provider J, in response to the application for the initial SIPP and the receipt of the transfer form, was sent to Mr R personally. And the copy of Mr R's passport that Provider J had amongst its records was certified by Firm C. There is nothing I've seen in the evidence provided that makes me think it's more likely than not Pensionhelp recommended Provider J to Mr R, or that it arranged or executed the DB scheme transfer to Provider J for Mr R.

Having carefully considered all of the evidence, I'm not satisfied, on the balance of probabilities, that Pensionhelp recommended Provider J to Mr R, or that it arranged the SIPP for Mr R, or that it arranged or executed the DB scheme transfer to Provider J for Mr R. And as it wasn't arranging or effecting the transfer for Mr R contrary to its own advice not to transfer, there was no reason for Pensionhelp to treat Mr R as an insistent client.

To summarise, overall, I don't think the advice Pensionhelp gave was unsuitable. I do think that Pensionhelp advised against transferring in a clear and appropriate manner. And I don't think Pensionhelp arranged or executed the transfer this complaint concerns. Accordingly, in respect of the issues Mr R has complained about, I find that Pensionhelp did nothing substantively wrong and I don't uphold this complaint.

For completeness, even if I'm wrong about what I've said about Pensionhelp not having arranged or executed the transfer this complaint concerns (and I'm satisfied I'm not for the reasons set out in detail above), and even if there were then failings in respect of a proper insistent client process not being documented and followed in that instance, it's my view that even if a proper insistent client process had been followed Mr R would still have sought to effect the transfer this complaint concerns in any eventuality.

I say that because I'm satisfied from the evidence provided, which includes the records of what Mr R had told Pensionhelp *before* it issued the full advice report on 14 April 2021, that Mr R came to Pensionhelp looking to effect the transfer and that, even after Pensionhelp had given clear, fair and not misleading advice not to transfer, Mr R still decided to proceed.

So, even if I thought Pensionhelp had arranged/executed the transfer for Mr R, which as I've explained above I don't, I would still conclude any failings in that process, including not having properly implemented, documented and followed an insistent client process, weren't causative of any losses Mr R actually suffered, and that no redress should be awarded. That's because I think it's more likely than not, from the content of the available contemporaneous evidence, that Mr R would still have proceeded on an insistent client basis if a proper insistent client process had been followed. Such that any losses that have been incurred, would have been incurred in any eventuality.

I understand that Mr R feels strongly about the concerns he's raised, and that this decision will come as a disappointment to him. I do sympathise with Mr R's position, but for the reasons I've explained I'm not upholding this complaint

### **My final decision**

For the reasons given above, my final decision is that Mr R's complaint about Pensionhelp Limited is not upheld and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 October 2025.

Alex Mann  
**Ombudsman**