DRN-5916468

The complaint

Mr S has complained to the On-Line Partnership Limited ('On-Line') about the advice he received to transfer his former employer's defined benefit ('DB') pension scheme to a Self-Invested Personal Pension ('SIPP').

Mr S is being represented in this complaint by a claims management company ('CMC').

What happened

Mr S received advice in 2009 from Brian Mellon Financial Limited trading as Mellon Money Managers ('MMM'). At the time MMM was an appointed representative of On-Line. So On-Line is responsible for MMM's actions and in turn for this complaint. Going forward I'll refer to only to On-Line.

The available information from the time of advice provides the following about Mr S's circumstances at the time of the advice to transfer:

- He was 54 years old (turning 55 two months later);
- He was single, with no dependents;
- He was unemployed, having recently been made redundant in July 2009;
- He had an immediate need for money to clear mortgage arrears of £12,000, with repossession action pending;
- His only pension provision was his DB pension. At age 60 this would have provided a pension of £10,553.24 per year, with a lump sum of £29,866.92;
- The transfer value of the DB pension scheme was a little over £212,000;
- On-Line had determined that Mr S had a balanced attitude to risk ('ATR').
- A transfer value analysis report ('TVAS') showed that a critical yield of 9.9% was required to match the DB pension benefits at age 60. This was based on the entire amount being transferred being invested in the new pension arrangement.

The suitability letter issued at the time set out On-Line's recommendation that Mr S transfer his DB pension to SIPP with a firm I'll refer to as Firm S. It also recommended that Mr S take the maximum tax free cash ('TFC') and invest the remaining funds within a governed portfolio with Firm S. It was suggested that a review of Mr S's business was completed in twelve months' time.

Mr S accepted On-Line's recommendations and his DB pension benefits were transferred to Firm S, with TFC being paid in September 2009. Just under a year later, On-Line advised Mr S to switch some of the funds within his SIPP to the EEA Life Settlements Fund ('EEA Life') and the Premier Group New Earth Solutions Recycling Facilities Fund ('New Earth'). The EEA Life fund was suspended in 2011.

In December 2017, On-Line wrote to Mr S with an offer of a one off payment in respect of the EEA Life fund. Mr S accepted this offer.

In July 2024, Mr S complained to On-Line that he was unable to access funds held in the

EEA Life fund. On-Line said it wouldn't be considering Mr S's complaint as he had already accepted an offer in full and final settlement. And even if he hadn't accepted this offer, On-Line thought the complaint had been made too late under the applicable time limits.

In November 2024, Mr S's CMC complained to On-Line about the advice it had provided to Mr S to transfer his DB pension to the SIPP. On-Line rejected the complaint as it thought the advice to transfer the DB pension had been suitable. However, it also explained that it believed Mr S had complained too late under the applicable rules.

Mr S referred his complaint to this Service but On-Line didn't consent to the complaint being considered. It said the complaint was time-barred under the applicable rules.

In September 2025, I issued a decision confirming that the complaint was one that could be considered as I was satisfied it was referred in time under the applicable rules. In October 2025, I issued a provisional decision on the merits of the complaint where I explained my intention to uphold it as I thought the advice to Mr S had been unsuitable.

Mr A accepted the provisional decision. On-line didn't provide a response.

I'm now in a position to issue my final decision on this complaint.

What I've decided – and why

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

As I didn't receive any further comments or arguments following my initial assessment, I see no reason to depart from the findings reached in my provisional decision. My final decision therefore largely repeats what I said in my provisional decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of On-Line'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, On-Line should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr S's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Scottish Life, on behalf of On-Line, carried out a TVAS (as required by the regulator) showing how much Mr S's pension fund would need to grow by each year in order to provide the same benefits as his DB pension (the critical yield).

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr S was 54 at the time of the advice (55 by the time the transfer completed) and wanted to retire at 60. The critical yield required to match Mr S's benefits at age 60 was 9.9%. However, this appears to have been based on the full transfer value being invested, when in fact Mr S was going to be taking his TFC immediately. So this wasn't based on correct information and I think it's likely the critical yield would have been even higher.

This compares with the discount rate of 5.4% per year for 5 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%.

I've taken this into account, along with the composition of assets in the discount rate, Mr S's balanced attitude to risk and also the term to retirement. There would be little point in Mr S giving up the guarantees available to him through his DB pension only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 9.9%, I think Mr S was likely to receive benefits of a substantially lower overall value than DB pension at retirement, as a result of investing in line with that attitude to risk.

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

<u>Mr S's immediate need to access TFC to clear his mortgage arrears</u>

The suitability report did set out that Mr S was likely to be worse off as a result of the transfer but he needed immediate access to his TFC, which appears to be why the adviser recommended the transfer. I understand Mr S had mortgage arrears and repossession action was pending. This is mentioned in the fact find and suitability letter on file. This is further supported by a letter on file from the adviser to the mortgage lender, explaining that Mr S was accessing his pension and would be taking his TFC. And the adviser asked that the mortgage lender afforded Mr S some time to bring his account up to date and to relieve some of the stress the situation was causing him.

Given the above, it seems Mr S did have a pressing need for funds that that time if he was to prevent his home being repossessed. The fact find and suitability letter also note that Mr S didn't have access to any other assets and was unable to raise funds by any other means as he was not working at that time.

So it doesn't seem unreasonable that Mr S was looking to access his pension benefits to clear his mortgage arrears. However, the DB pension information I have on file suggests that Mr S would have been entitled to the immediate unreduced payment of his pension benefits from the DB scheme. I've included an extract from the scheme booklet below.

> **What if my employer retires me on grounds of redundancy or business efficiency?**
> If you are aged 55 or over you will be entitled to the immediate unreduced payment of your LGPS benefits. However, if you were a member of the LGPS on 31 March 2008 and retire on grounds of redundancy or business efficiency before 31 March 2010 you will receive immediate unreduced payment of your LGPS benefits if you are aged 50 or more.

Mr S was 54 at the time of advice and had been made redundant from his role with the employer that provided the DB scheme on 19 July 2009. He'd been a member of the DB scheme for almost 29 years. So it seems he met the above criteria for accessing his pension benefits.

On-Line has said that it can't see that it asked the DB scheme if Mr S could take his benefits without adjustment. And it confirmed that it had no other record of any contact with the DB scheme; the initial deferred benefit statement was passed over from another financial adviser Mr S had initially instructed.

So based on the above extract, and in the absence of any information to the contrary, I think it's more likely that not that Mr S would have been entitled to a full unreduced pension from the DB scheme at the time of advice.

Mr S had mortgage arrears of £12,000 and his DB scheme would have provided a lump sum of a little under £30,000. This would have been sufficient to have cleared his mortgage arrears. Given that transferring the pension and taking his TFC would mean that Mr S would likely be worse off in retirement, I'm satisfied, based on the available information, that the advice provided to Mr S to transfer his DB scheme was unsuitable. I say this because it appears Mr S's DB scheme could have provided sufficient funds at that time to meet Mr S's objective of clearing his mortgage arrears. And it would have provided an immediate unreduced guaranteed pension for life, in excess of what he was projected to receive from the SIPP at age 60.

The sales paperwork suggests that Mr S didn't want to take an income at that time. But if he was entitled to an immediate unreduced pension, I see no reason why he would have been better off delaying taking the DB pension benefits. By delaying, he would be missing out of five years' worth of pension payments.

This was a crucial consideration that it appears On-Line failed to consider and as a result, I think it's likely Mr S has been left considerably worst off as a result.

Summary

Ultimately, I don't think the advice given to Mr S was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr S 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. While Mr S required immediate access to funds to repay his mortgage arrears, I'm satisfied that, having been made redundant at age 54, he was entitled to the immediate unreduced payment of his DB pension benefits. So Mr S shouldn't have been advised to transfer out of the DB pension as his objectives could have been met by the DB scheme.

Subsequent advice to invest in EEA Life and New Earth funds

Mr S received further advice from On-Line almost a year after the advice to transfer his DB pension. This was advice to invest in the EEA Life and New Earth investment funds. I understand these fund have since failed.

In 2017, Mr S accepted an offer from On-Line in respect of his investment in the EEA Life fund. So On-Line may argue that the EEA Life fund should be excluded from the redress calculation.

I have considered this further but I'm satisfied On-Line should not have recommended Mr S transfer out of his DB scheme. And it was only as a result of On-Line's advice to transfer that Mr S was able to invest in the EEA Life fund in the first place. On-Line's transfer advice was pivotal, since the EEA Life and New Earth investments were fully reliant on the funds being transferred first. If that hadn't happened, Mr S couldn't have invested as he did. So, in my view, the entirety of Mr S's loss stems from On-Line's unsuitable advice to transfer away from his DB pension and so, the EEA Life fund (and the New Earth fund) should be taken into consideration in any redress calculation.

However, any funds Mr S has already received from On-Line in respect of the EEA Fund can be deducted for any loss identified once the calculation has been completed.

Putting things right

In light of the above, I think On-Line should compensate Mr S for the unsuitable advice, in line with the regulator's 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, I think Mr S would've taken his benefits immediately at age 54 without reductions. So, compensation should be based on him taking benefits at this age.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S's acceptance.

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

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts On-Line's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given

the inherent uncertainty around Mr S's end of year tax position.

On-Line can deduct any funds it paid Mr S in 2017, in respect of the EEA Life fund, from the overall loss suffered.

Redress paid directly to Mr S 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), On-Line may make a notional deduction to allow for income tax that would otherwise have been paid. Mr 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 aim is to return Mr S to the position he would've been in but for the actions of On-Line. This is complicated because the EEA and New Earth funds may have since been suspended. So I think it's likely the investments are illiquid (meaning they cannot be readily sold on the open market) as their value can't be determined. But Mr S wouldn't have been in a position to invest in the EEA and New Earth funds, had it not been for On-Line's unsuitable advice to transfer.

So to calculate the compensation, On-Line should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs, and take ownership of the investment. If On-Line is unable to buy the investment, it should give it a nil value for the purposes of calculating compensation. The value of the SIPP used in the calculations should include anything On-Line has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted. And On-Line can deduct any funds it paid Mr S in 2017 from the overall loss suffered.

In return for this, On-Line may ask Mr S to provide an undertaking to account to it for the net amount of any payment he may receive from the investment. That undertaking should allow for the effect of any tax and charges on what he receives.

On-Line will need to meet any costs in drawing up the undertaking. If On-Line asks Mr S to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

If the SIPP only exists because of the illiquid investment. In order for the SIPP to be closed (should Mr S wish to move his investment portfolio) and further SIPP fees to be prevented, the investment needs to be removed from the SIPP. I've set out above how this might be achieved by On-Line taking over the investment, or this is something that Mr S can discuss with his SIPP provider directly. But I don't know how long that will take. Third parties are involved, and we don't have the power to tell them what to do.

To provide certainty to all parties, if the SIPP only exists because of the illiquid investment, I think it's fair that On-Line pays Mr S an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

My final decision

For the reasons explained, I'm upholding the complaint and I direct The On-Line Partnership Limited to calculate and pay redress as set out above.

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 business pays the balance.

Determination and money award: I uphold this complaint and direct On-Line to pay Mr S 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 On-Line pays Mr S the balance.

If Mr S accepts my final decision, the money award becomes binding on On-Line.

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