

## The complaint

Mrs R has complained that she was given unsuitable advice in August 2017 by Fidelius Ltd to transfer her Defined Benefit (DB) pension to a personal pension resulting in a loss of valuable guarantees.

## What happened

The investigator set out in his view a detailed summary of what had led up to Mrs R's complaint. Both parties have seen that and I don't think there's any dispute about what happened so I'm not going to repeat everything here. But, in brief:

In 2017 Mrs R was married, 52 years old, and in good health. She was employed, earning £126,000 pa. She and her husband owned their property subject to an interest only mortgage of £278,000. Mrs R had around £30,000 in cash savings. She was a member of her employer's DB pension scheme. She was also in receipt of another DB pension of £389 pm which would increase to £14,889.82 pa when she turned age 55. The total household expenditure was £4,178 pm which left £7,977 pm disposable income.

Mrs R completed a questionnaire on 8 August 2017. She ranked her pension priorities as:

- Increase her pension
- Tax-free lump sums at retirement
- Personally control her pension
- Ability to retire early
- Lump sum death benefits
- Provision for a dependant's pension

Mrs R's attitude to risk was assessed as 'Cautiously Balanced'.

Fidelius issued a suitability report on 14 August 2017. Amongst other things it said Mrs R was interested in accessing her pension early to withdraw tax-free cash to enjoy a comfortable retirement while she was still young. She was aware of the lifetime allowance (LTA) and questioned the benefit of accruing further pension provision as she'd likely be in breach of the LTA. She'd get a state pension as well as her other DB pension and she could enjoy the retirement she wanted by transferring. She'd also receive a 25% pay increase if she left the DB pension.

Fidelius calculated that the DB scheme would pay Mrs R a pension of £44,290 pa when she retired at age 60. Alternatively, she'd get a pension of £33,809 pa with a tax-free lump sum of £225,397. Or she could accept the Cash Equivalent Transfer Value (CETV) and forgo any income from the DB pension.

The critical yield the CETV of £1,038,871 would need to achieve to match the DB pension of £44,290 pa at age 60 was 12.3% or 10.90% if the reduced pension and tax-free cash was taken. If Mrs R drew from the CETV at the same income rate as the DB fund, based on the full DB pension, she'd run out of money by age 81 based on a low growth rate of 1% pa or by over age 99 at 4% pa. For the reduced pension it was age 82 at 1% pa and over age 100

at 4% pa. The suitability report noted that the investment returns required to match the DB benefits weren't achievable and, if replacing a risk free income was Mrs R's main priority, a transfer wouldn't be recommended. The projected income amounts that she'd receive from a personal pension compared to the DB scheme were also set out.

Mrs R had a target income in retirement of £40,000 pa in today's terms (as of 2017). Taking into account her other pension, she only needed £25,000 pa to meet that goal and so she wasn't dependant on the DB scheme to meet her needs. The DB scheme also wouldn't meet her requirement for a flexible income. She had the core objectives of wanting personal control of her pension fund, to be able to draw income flexibly and maximising capital growth in employment which, in turn, would hopefully provide a sound income in retirement. She wanted to use capital to repay her mortgage in the short term, which the recommendation would allow. She was planning on accessing tax-free cash at age 55 and leaving the balance invested for at least five years.

Fidelius recommended that Mrs R transfer to a personal pension and invest in a Cautiously Balanced portfolio which matched her risk profile and provided potential for capital growth. Mrs R accepted the advice.

She later lodged a complaint through a professional representative on 17 February 2025. Amongst other things, she said she'd lost valuable guarantees and had been exposed to too much risk. Fidelius also hadn't carried out ongoing reviews as agreed.

Fidelius agreed to refund some ongoing advice fees due to a review being scheduled late. But Fidelius didn't uphold the complaint about the transfer advice. It said the advice was suitable given Mrs R's objectives. Fidelius also argued that Mrs R had complained too late as more than six years had elapsed since the advice was given, and she'd been made aware she was giving up a guaranteed pension and putting her funds at risk when she was advised.

In his view issued on 3 September 2025, the investigator first considered jurisdiction – that is, whether the complaint had been made in time. For the reasons he gave he said the complaint hadn't been made too late. He went on to consider the merits of the complaint, which he upheld. His main points were:

- The benefits Mrs R had accrued in the DB scheme offered a guaranteed income for life and would form a significant part of her total pension provision. The DB scheme offered valuable benefits with virtually no risk.
- The regulator – the Financial Conduct Authority (FCA) – has made it clear that an adviser should – as a starting point – assume that transferring out of a DB scheme will be unsuitable unless it could clearly be demonstrated to be in the client's best interests.
- The first aspect to consider is financial viability – whether Mrs R was likely to be better or worse off as a result of the advice. It appeared that she was likely to receive benefits of a materially lower overall value than the DB scheme at retirement, as a result of investing in line with her attitude to risk. The investigator agreed with what Fidelius had said about the investment return required to meet the DB scheme income being unachievable.
- The advice was based on there being other reasons to transfer. The investigator referred to Mrs R's objectives as recorded in the suitability report. The DB scheme would've provided her with a '*sound income in retirement*' that would've been guaranteed for the rest of her life with index-linked increases. Leaving the DB scheme only introduced risk that Mrs R wouldn't achieve this. And also meant she was extremely likely to receive less income.

- A personal pension would allow Mrs R to vary her income but there was no specific reason why flexible income was needed and when it came at the cost of increased risk and probably less income.
- Mrs R had the option of taking tax-free cash from the DB scheme when she retired – Fidelity calculated £225,000 at age 60. She had an outstanding mortgage but the payments were affordable, and Mrs R could have used the DB scheme tax-free cash to pay any mortgage balance off at retirement. The household disposable income of over £7,000 pm could've been used towards paying down the mortgage and covering the cost of a new kitchen.
- Mrs R had a relatively cautious risk profile – which also lends weight to the fact that she shouldn't have been introducing extra risk where none was needed.
- The suitability report noted the possibility that Mrs R might retire abroad at some point. But it's unclear how the transfer would help her achieve that objective, as both the DB and personal pensions would still be based in the UK and have the same restrictions.
- Fidelity also referenced the LTA but, at the time of the advice, Mrs R's pension values were below the LTA. There was every chance she was going to exceed this in time by accruing a greater DB income but the CETV also exceeded the LTA so wasn't a valid reason to transfer.

Mrs R's representative accepted the investigator's view. Fidelity maintained the complaint had been made too late and said that jurisdiction should be decided before considering the merits.

The complaint was referred to me. I issued a jurisdiction decision on 22 October 2025. I said the complaint had been made in time. Mrs R was complaining about the transfer of her DB scheme benefits in 2017. She'd complained, through her representative, to Fidelity in February 2025. So her complaint had been made outside the primary six year period in DISP (Dispute Resolution) 2.8.2R (2) (a). But I said, for the reasons I set out, that her complaint had been made within three years from when she became aware (or ought reasonably to have become aware) she had cause for complaint. So the complaint hadn't been made too late and we could consider it.

Fidelity made some further comments about the merits of the complaint. In summary:

- The investigator's conclusion that the advice to transfer was unsuitable didn't reflect Mrs R's personal circumstances or her documented objectives at the time the advice was given, which Fidelity set out.
- The advice had been given in accordance with the prevailing rules and guidance, specifically COBS (Conduct of Business Sourcebook) 19.1 and the Pension Transfer Specialist requirements then in force. And the suitability report stated that the investment returns required to match the DB scheme benefits weren't achievable and if replacing a risk free income (pension with dependants' protection) was Mrs R's main priority, a transfer wouldn't be recommended.
- The low level of risk which the DB scheme represented was discussed and that, if Mrs R was averse to investment risk, she shouldn't consider a transfer. She understood but concluded she had an adequate underpin of secure benefits and was happy to take some risk in exchange for personal control over the funds. She had the financial capacity and the personal risk appetite to accept the transfer risk. She and her husband weren't reliant on the income from the DB scheme to maintain their standard of living.
- Mrs R made an informed decision. She'd actively sought the transfer and the contemporaneous meeting notes and written acknowledgements demonstrate a clear understanding.

- Fidelius set out some further details and said the finding of unsuitable advice gave disproportionate weight to the regulatory presumption against transferring without due regard to the specific facts and context in this case.

### **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.

In reaching my conclusions 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 COBS. The below isn't a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Fidelius' advice.

- 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.
- The provisions in COBS 19 which specifically relate to a DB pension transfer. And which include COBS 19.1.6G (2) which says, when a firm is making a personal recommendation for a retail client who is a member of a pension scheme with safeguarded benefits (which benefits in a DB scheme are) and who is considering whether to transfer, a firm should start by assuming that a transfer will not be suitable.

Having considered all of this and all the evidence and information in this case, I've decided to uphold the complaint and for the same reasons as the investigator. Although I've read and taken into account all Fidelius has said as to why it disagrees that the transfer was unsuitable, I've focused on what I see as key so I won't necessarily comment on every point that's been raised.

The regulator, the FCA, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. Fidelius should've only considered a transfer if it could clearly demonstrate that the transfer was in Mrs R's best interests.

I've considered first financial viability. I note what Fidelius has said about the importance of taking into account Mrs R's particular circumstances and objectives. And that the suitability report said the investment returns required to match the DB scheme benefits weren't achievable. I think Fidelius accepts that the transfer wasn't financially viable but Mrs R knew and was prepared to accept that – and she could afford to take the risk as she wouldn't be dependent on the DB pension when she retired.

I've gone on to consider Mrs R's objectives below. But I still think financial viability is an important factor. It gives an indication as to whether the transfer value offered represents good value in relation to the benefits being given up. And, although an investor may have certain objectives, those have to be weighed against the cost of likely being poorer in retirement. Even if an investor has other retirement benefits or assets which mean that their income requirements and standard of living in retirement can be maintained, that doesn't mean that the benefits under consideration aren't valuable.

Fidelius has pointed out that it carried out a TVAS (Transfer Value Analysis) as required by the regulator showing the critical yield – that is by how much Mrs R's pension fund would need to grow by each year in order to provide equivalent benefits to those given up in the DB scheme. The critical yield at age 60 was 12.30% based on a full pension income and 10.90% assuming Mrs R took a pension commencement lump sum (tax-free cash).

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 we published similar rates on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. The critical yield of 10.9% compares with a discount rate of 3.4% for the seven years to retirement in Mrs R's case.

The investigator also referred to the regulator's projection rates (which had remained unchanged since 2014) of 8% (upper), 5% (middle) and 2% (lower). I've taken this into account, along with the composition of assets in the discount rate, Mrs R's cautious/balanced attitude to risk and the term to retirement. Like the investigator I think Mrs R was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with her attitude to risk.

The cashflow analysis undertaken (to determine how long the CETV would last if Mrs R took an income equivalent to the DB scheme pension) showed more achievable growth rates. But that was simply to match the DB scheme and showed there was a risk the fund would run out in Mrs R's lifetime.

So the transfer wasn't financially viable and was likely to leave Mrs R worse off in retirement.

But, and as Fidelius has argued in this case, financial viability isn't the only consideration when giving pension transfer advice. I of course accept there may be other factors which might mean a transfer is suitable, despite providing overall lower retirement benefits. So I've considered whether the transfer was justified for other reasons.

According to Fidelius' suitability report, Mrs R's objectives included having personal control of her pension fund and being able to draw income flexibly. But that seems somewhat at odds with what she'd said on the questionnaire about her most important objectives being to increase her pension and cash lump sums. Fidelius' role wasn't just to transact what Mrs R may have thought she wanted. Fidelius had to fully understand what she needed and recommend what was in her best interests. It was up to Fidelius to explore with Mrs R what her priorities really were, including identifying any inconsistencies and challenging her motives. I note Fidelius' suitability report refers to having questioned Mrs R's objectives but she'd discounted that as not being a significant priority. But that isn't sufficient. It was up to Fidelius to make a suitable recommendation which might've meant advising Mrs R not to do what she was planning.

I don't doubt that achieving flexibility and control through a personal pension would've sounded attractive to Mrs R. But the issue is whether she really needed those features. And whether, as a relatively cautious investor, the risk that strategy introduced was justified. I don't think there's any clear evidence that Mrs R needed variable income throughout her retirement. I'm not sure why the ability to vary her income would've been particularly useful and at the expense of giving up guaranteed benefits in retirement and probably receiving a lower income. Further, Mrs R was already well placed if she wanted to reduce her working hours in a few years' time – she'd have her (reduced) income from employment, her existing

DB pension in payment which would increase when she turned 55, and she could've explored early retirement options from the DB scheme at that stage.

As to control, I've seen little evidence to suggest that Mrs R had any real wish to manage her pension fund herself. I haven't seen that she had significant investment experience. I think control was more the consequence of transferring rather than a real objective for Mrs R. And I don't think any worries that the DB scheme might stop allowing transfers was a genuine and overriding concern. It may have introduced an unnecessary element of urgency and I think Mrs R could've been reassured on that point.

Fidelius has pointed to what Mrs R wanted to achieve by transferring – including repaying her outstanding mortgage and funding a new kitchen. But she and her husband had sufficient income to meet the mortgage repayments and to pay additional amounts to reduce the outstanding capital. The tax-free cash that Mrs R would get from the DB scheme when she retired could be used towards any remaining balance. Similarly, I think Mrs R and her husband were in a position to fund a new kitchen from their disposable income.

By transferring/opting out of the DB scheme, Mrs R would receive a 25% increase to her basic pay in return for the loss of future pension rights. That may have seemed attractive although, given her overall income, she'd be paying higher or additional rate tax and there'd be a reduction to her annual allowance which would reduce the net benefit. The LTA has also been mentioned and the suitability report records that Mrs R had questioned if it was worthwhile continuing to accrue further pension provision that would ultimately be subject to penal tax charges. But Fidelius said that Mrs R would have benefits above the LTA whether she accessed her DB scheme benefits directly or if she transferred. So Fidelius' advice wasn't given on the basis that Mrs R would be mitigating her (then) LTA position.

Fidelius says Mrs R made a fully informed decision. But, as I've said, Fidelius' role went beyond ensuring that Mrs R understood what she was doing. It was up to Fidelius to give suitable advice. It wasn't enough that Mrs R was apparently prepared to accept there might be some downsides to transferring and even if her financial position was such that she could afford to take some risk and had some capacity for loss.

Ultimately, I don't think the advice to transfer was suitable. Mrs R was giving up a guaranteed, risk free and increasing income. By transferring her retirement benefits would likely be lower. In my view, Mrs R's objectives didn't justify giving up a guaranteed, risk free income which would increase in retirement.

I've considered whether Mrs R would've gone ahead anyway, and against Fidelius' advice if Fidelius had advised against transferring. I note what's been said about Mrs R having got in contact with Fidelius because a number of her colleagues had transferred out and her husband was in the process of doing that too. But I don't get the impression that Mrs R was determined to transfer out at all costs. Fidelius had assessed her as a relatively cautious investor. The suitability report records that, although she had a working knowledge of her current investments, she admitted her investment knowledge wasn't thorough. I don't think she'd have had the confidence to make her own decisions. She'd gone to Fidelius for professional advice and I don't see any reason why, if Fidelius had advised her against transferring out of the DB scheme and explained why it wasn't in her best interests, she wouldn't have accepted that advice and remained in the DB scheme.

In the circumstances Fidelius should compensate Mrs R for the unsuitable advice, using the regulator's methodology. I've set out below what Fidelius needs to do, which follows the investigator's recommendation.

## **Putting things right**

A fair and reasonable outcome would be for Fidelity to put Mrs R, as far as possible, into the position she'd now be in but for the unsuitable advice. I consider she'd have likely remained in the DB scheme.

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

For clarity, Mrs R has not yet retired, and she has no plans to do so at present. So compensation should be based on the DB scheme's normal retirement age of 60, 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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs R's acceptance.

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

- calculate and offer Mrs R redress as a cash lump sum payment,
- explain to Mrs R before starting the redress calculation that:
  - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mrs R receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mrs R accepts Fidelity's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mrs R for the calculation, even if she ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs R's end of year tax position.

Redress paid directly to Mrs R 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), Fidelity may make a notional deduction to allow for income tax that would otherwise have been paid. Mrs R'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**

I uphold the complaint. Fidelity Limited must redress Mrs R as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 17 December 2025.

Lesley Stead  
**Ombudsman**