DRN-5965453

The complaint

Mrs R complains that Steven Day (trading as A J Life) gave her unsuitable advice to transfer the deferred benefits in her occupational pension scheme ('OPS') to a Self-Invested Personal Pension ('SIPP'). She explains that she suffered investment losses and believes she will now be worse off in retirement because of the advice.

What happened

Mrs R held a defined benefit ('DB') OPS with her then employer. After Mrs R turned age 55 she wanted to retire from work and was considering how to use her OPS.

Mrs R was in contact with Steven Day about that and, in February 2021 it carried out a fact-find with her. Steven Day documented the following circumstances:

- Mrs R was approaching age 56.
- Mrs R was married to Mr R and they were to move to a new home in March 2021 and would be mortgage free.
- Mr and Mrs R had three children, the youngest of which was at university and still financially dependent on them.
- Mrs R had an annual salary around £60,000. Mr R earned around £65,000 plus £35,000 in overtime. Their net household income was estimated to be £8,800 a month.
- Their monthly expenditure was estimated to be between £2,500 to £4,800.
- Mrs R wished to stop working, possibly by late 2021.
- It was estimated that after the forthcoming house move, they would have a property valued around £900,000 with £300,000 in cash reserved remaining after all costs and expenses.
- Mr and Mrs R anticipated the need to spend around £150,000 to £200,000 on work on their new home during 2022/23.

Steven Day followed up its fact-find with Mrs R with an email in which it acknowledged that she wanted to transfer her OPS but that it needed to check 'the numbers' and make sure that she understood the facts. Steven Day obtained Mrs R's authority to obtain scheme information from the OPS administrators which it proceeded to do.

On 22 April 2021 Steven Day met with Mrs R. It explains that it set out how the OPS worked and the type of benefits it would provide. Steven Day documented, from that meeting, that Mrs R's father had worked for the same employer as Mrs R and had retired taking the defined benefits available in the OPS. But he sadly passed away relatively shortly after retirement. The benefits continued to be paid to her mother who had passed away prior to the advice. And the pension offered no death benefits to further beneficiaries. Notes from the meeting indicate that Mrs R had been keeping track of the cash equivalent transfer value ('CETV') throughout 2020/21 and was described as already being well informed about the option of a flexi-access drawdown fund prior to seeking advice.

On 13 April 2021 Mrs R informed Steven Day that she intended to opt out of the OPS prior to working her notice period, and then to transfer her deferred OPS benefits. And on the same day Mrs R emailed her employer to inform it that she wished to opt out of the OPS.

On 26 April 2021 Steven Day emailed Mrs R with an update. In that, it acknowledged that Mrs R opted out of her OPS and explains that it is still waiting for a guaranteed CETV which could not be generated until the member had left the scheme. It also went on to indicate to Mrs R that, if she and Mr R retired, using an investment base of £300,000 plus whatever tax free cash their schemes could provide, flexi-access drawdown could provide a comfortable £9,500 to £10,000 a month after tax assuming a 5% annual return.

On 28 April 2021 Mrs R confirmed to Steven Day that she'd submitted her opt out forms to her OPS on 27 April 2021.

On 29 July 2021 the OPS provided a transfer statement with a CETV of £982,657 that was guaranteed for three months. The OPS has a normal retirement age of 65.

On 28 August 2021 Steven Day wrote to Mrs R. It explained the benefits available to Mrs R from her OPS. It explained that if the CETV of £982,657 was not invested, then taking the same income that she could take from her OPS would exhaust the fund by age 80. It told her that an investment return of 5.228% was needed on her CETV for her to be able to take the same level of income through drawdown and still preserve the capital value of her pension. This letter recommended to Mrs R that transferring from her OPS was a suitable idea for her.

By late September 2021 Mrs R's deferred OPS transferred to a SIPP. Around £246,000 was paid to Mrs R in tax free cash. £20,000 of this was placed in an ISA account and the remainder in a General Investment Account. These sums were invested in line with Steven Day's recommendation. The remaining fund in the SIPP, after the payment of the adviser charge, was around £722,000. This was similarly invested.

In early 2022 Mrs R contacted Steven Day as she was concerned by what she saw as large drops in the value of her fund. The losses to her portfolio were in the region of £91,000.

By late 2023 Mrs R had sought alternative financial advice and ended up transferring her SIPP to a new scheme.

She complained to Steven Day, in March 2024, that it had given her unsuitable advice. In summary she complained that:

- She'd been given unrealistic expectations about the investment returns she would receive.
- Only £20,000 of the tax-free lump sum was ever moved to an ISA. Leaving too much money in a taxable environment.
- She didn't feel that ongoing advice was provided.
- She no longer felt that she had a secure basis for a retirement income.
- She believed she would have been better off in retaining her OPS benefits.

Steven Day responded to Mrs R's complaint by explaining why it didn't think it should be upheld. I summarise the reasons as follows:

- It explained that it had maintained contact with Mrs R after the transfer, providing ongoing service.

- It said that Mrs R was already considering transferring her OPS benefits before seeking advice.

- It referenced Mrs R's decision to opt out of her OPS so didn't accept that remaining in it as an active member was ever realistic.

- Its attitude to risk' questionnaire indicated that Mrs R was prepared to accept falls in the pension value. And explained that 2022 had been an exceptional year with unforeseen events having an impact on investment performance.

- Its advice was based on her needs and objectives at the time.

Mrs R disagreed and referred her complaint to our service.

Our investigator looked into what happened and explained why he thought Mrs R's complaint should be upheld. Steven Day rejected our investigator's opinion providing detailed responses. So this case was referred for an ombudsman's decision.

I considered the evidence and arguments in this case and I was in agreement with our investigator on the outcome. But, because of my additional reasoning, I issued a provisional decision to give both parties the opportunity to consider my view and offer any comments or evidence that they considered relevant. I summarise the reasons why I thought Mrs R's complaint should be upheld as follows:

- I set out the rules, regulations and requirements that I considered to be relevant to the type of advice that Steven Day was providing Mrs R.

- I then explained why I didn't think that Steven Day's advice had met the regulatory requirements. My reasons for this were, in brief:

    - I considered that Steven Day's correspondence with Mrs R was, from an early stage, supportive of Mrs R's desire to transfer out of her OPS. Overall, I didn't think that it was compliant with the FCA presumption of unsuitability for these types of transfers.

    - I then explained that, because Steven Day hadn't provided correct Appropriate Pension Transfer Analysis ('APTA') or a Transfer Value Comparator ('TVC'), its advice did not appear to be compliant with COBS 19 (which I will detail later in this decision). I was of the opinion that meant that Mrs R was denied access to the type of comparative information that the Regulator had determined was necessary for consumers to make informed decisions about a transfer.

- I explained that I didn't think that Steven Day's recommendation letter included the kind of detailed assessment that I am accustomed to seeing in suitability reports for such types of advice. But I explained that I considered all of the documents that Steven day provided in order to decide what I thought Mrs R's most likely objectives were. And I agreed that Mrs R had the objective of stopping work with her employer. And that it was a realistic goal given her overall circumstances.

- I recognized that, prior to obtaining financial advice, Mrs R was aware that the death benefits available from a transferred pension fund would be different to the limited spouse benefit that her OPS offered.

- I explained why I wasn't persuaded that Steven Day had correctly represented

Mrs R's available DB benefits. I was concerned that it had not correctly used the OPS rules, basing its assessment on early retirement benefits that differed from those of a deferred member.

- I explained that, because Mrs R and her husband had other savings in the region of £300,000, there was no immediate need for her to take benefits from that pension. So I didn't think it was reasonable of Steven Day not to consider these scenarios in the advice it gave to Mrs R.

- I considered the overall financial viability of the transfer and wasn't satisfied that the approach that Steven Day took with its analysis demonstrated that the transfer was financially in Mrs R's best interests.

- I explained that I was not persuaded that Mrs R needed the flexibility of the transfer to meet her objectives. I noted that Steven Day's advice lacked any planned income drawdown, and I could not see that there was any purpose to taking the tax-free cash with no plan to use it. Other than to re-invest it in a different platform.

- I noted that the death benefits through the SIPP were likely to be an attractive option for Mrs R. But I wasn't persuaded that it provided a reason that made it in her best interests to give up the guaranteed benefits in her OPS.

- I acknowledged that this case was finely balanced. But concluded, on balance, that Steven Day's recommendation to transfer the OPS was not suitable. So I then considered what Mrs R was likely to do if she had been given suitable advice. I weighed the evidence and concluded that Mrs R would most likely have followed a recommendation from Steven Day not to transfer for the following reasons:

    - I thought that Mrs R was going to retire irrespective of Steven Day's recommendation.

    - I also thought that Mrs R approached Steven Day with a pre-determined idea about transferring.

    - But I couldn't see why a well-reasoned recommendation from Steven Day would not have been followed. Given that she followed the recommendation that Steven Day did make. I thought that a more suitable recommendation would have made it clearer to Mrs R how her objectives could more safely be met without transferring her OPS.

Mrs R responded to accept what I had said in my provisional decision.

Steven Day responded to explain why it fundamentally disagreed with the provisional decision that I reached. Its response provided commentary on many of the points that I made in my provisional decision. It didn't provide any additional evidence for me to consider. I am of the opinion that many of the disagreements that it voiced regarding my provisional decision are similar to those that were raised in response to our investigators view. I have considered all of Steven Day's comments and summarise its issues as follows:

- Steven Day suggested that I had sidelined the issue of causation.

- It argued that Mrs R would always have transferred her OPS irrespective of the recommendation that it made. And considered that I had agreed that Mrs R's path was already set prior to its advice.

- It didn't agree with the way in which I interpreted its correspondence with Mrs R in the run up to its recommendation.

- It re-iterated its view that Mrs R had taken her own decision to opt out of her OPS whilst still eligible to be a member of the scheme.

- It took issue with my understanding of the OPS scheme rules and the penalties applied to early retirement.

- It accepted that it had not provided the APTA or TVC that was required under COBS 19. But insisted that it didn't matter in Mrs R's case, essentially, because she wanted to transfer irrespective of what information it had provided.

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

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 Steven Day'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. I make specific reference to the following requirements set out within COBS 19 because it's my view that these are a mandatory requirement for giving suitable and compliant regulated financial advice on such a transfer:

- Since October 2020 this rule meant that firms MUST carry out *appropriate pension transfer analysis* ('APTA') and produce the *transfer value comparator* ('TVC').

- The firm must take reasonable steps to ensure that the client understands how the key outcomes from the APTA and TVC contribute towards the personal recommendation.

- COBS 19 sets out the way that the regulator expected a firm to carry out the APTA. It said, amongst other things, that firms had to:
    - Use rates of return that reflect the investment potential of the assets that would be invested in under the proposed arrangement.
    - Use assumptions under COBS 19 Annex 4C to project the level of income likely to be paid under the ceding arrangement at point of retirement.
    - Have regard to the likely pattern of benefits that might be taken from both the ceding arrangement and proposed arrangement.
    - Undertake a comparison of benefits and options consistently.
    - Consider how each arrangement would play a role in meeting the client's income needs in retirement; and the provision of death benefits, where relevant (including comparisons on a fair and consistent basis between the ceding and proposed arrangement).
    - Where a firm provides cashflow analysis it must do so using the CPI rate given in Annex 4C (which was 2%) and must include stress-testing scenarios to enable the client to assess more than one potential outcome.

- COBS 19.1.6G states that the starting assumption for a transfer from an OPS like Mrs R's is that it is unsuitable (the presumption of unsuitability). So, Steven Day should have only considered recommending this transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mrs R's best interests.

I have considered all of the evidence, arguments and comments in full again. I understand that Steven day doesn't agree with the view reached by our investigator or with my provisional findings. Essentially, however, it has provided no additional evidence. And, whilst I am grateful for the time that Steven Day took to respond to my provisional findings in such detail, I find its arguments were mostly the same ones that had already been offered and I'd already taken into consideration. My final decision therefore remains the same, and I set out again my reasoning below.

Did Steven Day provide a recommendation that met the regulatory requirements?

For similar reasons that our investigator gave, I don't think that Steven Day provided Mrs R with appropriate advice. I will explain why I've reached this conclusion.

Referring to the above presumption of unsuitability, I believe that Steven Day should, from the outset, have adopted this approach. Steven Day argues that it did. But, I simply don't agree that its approach appeared to genuinely follow this rule. And I don't think that was how its correspondence would reasonably have been interpreted by Mrs R.

Steven Day started by recognising that Mrs R already considered that transferring was a good idea. She had a layperson's understanding and had been following the CETV of her OPS. So she understood that she could transfer a fund approaching a million pounds. This was understandably attractive given her layperson's understanding. So I do not doubt that this was a big motivation for exploring this option.

Prior to obtaining a CETV from the OPS I note that Steven Day was in correspondence with Mrs R regarding her options. In an email on 4 February 2021, Steven Day acknowledged that Mrs R wanted to transfer but said it should check the numbers and that she understood the facts. It implies that, at a very early stage it held back from endorsing Mrs R's opinion.

Prior to any finalised recommendation being given however, Steven Day's correspondence was already supportive of Mrs R's idea to transfer. Prior to providing her with any detailed analysis. I say that because of the type of language Steven Day was using, including the following examples:

- In its email to Mrs R of 26 April 2021 Steven Day said, "*the position for you is that being debt free, with c£400k plus of cash and investments along with the schemes themselves, then life can be whatever you want to make it, as we saw, even allowing for house spending budgets, just using an investment base of £300k plus whatever tax free cash can be taken from pensions (assumes you both retire) then with FAD* [Flexible-Access Drawdown] *you could look at a comfortable £9,500-£10,000 per month after tax and that requires a net annual return of say 5% per year. Hardly the tallest requirement we have ever seen. Take it to 6% then the income can rise to closer to £10,500-£11,000 per month rising at c£1,000 pm for every 1% extra return we factor in*".

- In the same email Steven Day went on to say, "*So the situation at this time is that the transfer for* [Mrs R] *at arm's length makes sense especially when we consider the requirement to ensure that the funds can be passed on to the children and of course remain outside of your estates for Inheritance Tax Purposes. As to whether we include* [Mr R's] *transfer at this time remains to be seen…*"

I think it is worth noting that these comments were made after the point that Mrs R had informed Steven Day that she intended to opt out of the OPS prior to leaving the employer. And it was immediately after this correspondence, on 27 April 2021, that she submitted her opt out form to her OPS. Knowing her intentions, I would expect to see Steven Day cautioning Mrs R to wait until it had provided full advice before opting out. Which was, after all, an irreversible decision. But I think the message Steven Day gave to Mrs R here was instead encouraging the idea of flexible access drawdown and Mrs R's already held belief that the transfer was in her interests. Which I think went against the FCA's presumption of unsuitability. I think that Steven Day's presumption from an early stage was that this was likely to be suitable even before detailed transfer analysis was completed. I think that the email of 26 April 2021 was overwhelmingly supportive and likely encouraged Mrs R to opt out of her OPS prior to even giving up work for her employer.

I think that my finding that Steven Day was not following the presumption of unsuitability is further backed up by the comments that Steven Day made in its 'recommendation letter' of 28 August 2021. In that it referred to the regulator's presumption of unsuitability in, what appears to be, quite dismissive terms where it expressed the following opinion;

> "*The key parts of the scheme are detailed on the enclosed summary comparison, but in simple terms the key parts of the scheme are such that the Regulators of the advice industry would insist and perhaps given their own way ban the ability for all members of such schemes to transfer benefits, their motivation is understood on some parts but not in others.*
>
> *The basic premise is that all DB schemes should be left where they are until the schemes normal retirement age is attained and not transferred. The bit that is missing is "unless in exceptional circumstances". The exceptional circumstances are the individuality of the individuals own circumstances…"*

I acknowledge Steven Day's comment that its commentary here was factual and was okay. But my point is that this was part of a pattern of correspondence which collectively conveyed the impression that the regulatory stance to OPS transfers was flawed and ought not to apply to Mrs R's case. But the presumption of unsuitability did not prevent such transfers. It instead sought to recognise the very good value such schemes represented and that a transfer should only be recommended where an adviser could clearly demonstrate that, given the circumstances, it was in a customer's best interests. This is not 'missing' from the FCA's rule.

I will consider the question now of whether or not Steven Day carried out the appropriate analysis. The regulatory requirement for advice of this type was clear. Steven Day needed to undertake APTA as directed by COBS 19 and to provide Mrs R with a TVC. Steven Day has been asked to provide evidence that it did this and has been unable to do so. It has suggested that it was not relevant in this case because Mrs R was taking her benefits already. But the regulator's requirement did not allow Steven Day to dispense with this requirement if it didn't think it was relevant. The TVC was part of the key information that was required to evidence to Mrs R the comparative value of her CETV. This information was never given to her and it should have been.

I do not accept Steven Day's arguments that this failure did not matter. COBS 19 sets out the requirement in order to bring consistency to the quality of advice. Steven Day argues that it instead provided comparative explanations in a form Mrs R could understand. But I do not agree that it provided the same information. The information it provided did not serve to highlight the comparative value of the OPS with the SIPP it recommended. This was a failing and it meant that Steven Day's advice did not comply with COBS 19 requirements for OPS transfers. By this alone, Steven Day's advice was not suitable for this type of transfer.

Just because Steven Day's advice failed to comply with COBS 19, does not necessarily mean that the recommendation was unsuitable. Put simply, it could have come to a suitable recommendation albeit in the incorrect way. So I will now go on to consider whether the issues I've identified with Steven Day's advice process caused Mrs R any harm.

What were Mrs R's objectives?

Here I am considering what Mrs R's objectives were and whether Steven Day identified and understood these.

Steven Day has explained that its email to Mrs R of 28 August 2021 is its 'recommendation letter'. As our investigator stated, this doesn't take the form of the type of suitability report that I am used to seeing in pension transfer advice. I appreciate from Steven Day's comments that it cannot be taken in isolation. Which I think is fair. After all, Steven Day has sent us hundreds of pages of handwritten notes and emails as well as spreadsheets comparing the OPS with drawdown. So, whilst the 'recommendation letter' didn't set out Mrs R's objectives in a clear way I have reviewed all of the material we've been provided to determine what I think they most likely were.

I think that Mrs R had a clearly defined objective of stopping work with her then employer. She had a lot of years working with them and had already accumulated a valuable pension. She was already aware of the approximate CETV prior to seeking Steven Day's advice. And Steven Day documented that Mrs R had a clear idea that a transfer was what she wanted to do. This is documented throughout the correspondence between these parties. Were these things not the case I would have expected Mrs R to have corrected Steven Day at the time. So I am persuaded that these were the things that Mrs R thought was in her best interest prior to obtaining advice from a trained pension professional.

It is documented that Mrs R was also motivated by a desire that her pension provide death benefits for her children. And I'm persuaded that this was the case. Mrs R's father had worked for the same employer and had taken the defined benefits from the OPS. Sadly he'd passed away early in his retirement and the spouse benefit had paid his wife until her death. But Mrs R was understandably aware that the pension benefits ended on her mother's death. She had already established that her CETV was in the region of a million pounds and it is understandable, in her case, that she would be interested in a way to use the pension that may provide death benefits in a different way. Put simply, I think that this was a genuine objective that Mrs R appeared to have already weighed up and looked into prior to seeking advice.

I will provide additional clarity on this as Steven Day appeared to misconstrue my meaning in my provisional decision. What I am recognising here is that Mrs R had defined objectives. And was aware of the options for her OPS, which included potentially transferring a CETV to take control of her pension benefits. But it is not my finding that Mrs R had already made her mind up about what to do with her OPS, or that she was not open to financial advice.

I note that it was documented that Mrs R wanted to take £250,000 in tax free cash in order to add to the £300,000 they already had. This could be invested in order to generate an income. However, I am not persuaded that this was really an objective. I see this more as an outcome of a transfer and availability of tax free cash. The idea of increasing a cash reserve by £250,000 would be attractive. What was lacking was any rational reasons for wanting that. Which is where I would expect financial advice to add value.

So, in summary, I think that the objectives that Steven Day were considering for Mrs R was an imminent early retirement, and a desire that any pension provide her with an income as well as a way to preserve a fund that would form a legacy for her children when she died.

I am also persuaded that Mrs R's decision to stop work was already made and was not unreasonable. The overall financial position that she and her husband were in made that a realistic objective. I therefore consider that, irrespective of the recommendation that Steven Day made, then Mrs R would still have been in the position to stop work. It means that, although Mrs R may not have had preserved OPS benefits when Steven Day started the advice process, she would still have ended up in that position when she left her companies employ. But whether she would need to take immediate income from this pension would depend on their household income needs.

Did Steven Day fairly represent Mrs R's available DB benefit options?

A key part of any APTA is establishing the benefits of the existing scheme. I have been provided with the OPS member handbook and I am not sure that Steven Day has correctly interpreted the potential impact of Mrs R taking her benefits early. Or that it calculated the revalued benefits she would be entitled to at the OPS retirement age of 65.

I can see that Steven Day was in repeated contact with the OPS administrators in order to try to establish which of the early retirement penalties Mrs R would have been subject to. The correspondence I have seen was throughout April 2021.

Steven Day was asking which of the two categories Mrs R would fall under if she retired at her own request. It was seeking an answer to this question by late April 2021, which was after the point that it had been told Mrs R intended to opt out of her scheme. For clarity, Mrs R emailed the OPS on 13 April 2021 explaining her intention to opt out. Steven Day was copied into this correspondence. It meant that Steven Day was potentially asking the OPS the wrong question.

By opting out of the OPS Mrs R would have a preserved pension. Her options, according to the OPS Handbook, would be to either transfer the CETV to a different scheme or to take the deferred OPS benefits. The scheme retirement age was 65 and the eventual benefits would be subject to an actuarial reduction if taken prior to that age. In addition to this it was clear that any early commencement would be subject to the consent of the principal employer.

What this effectively meant is that Mrs R did not have an automatic right to take the benefits from her OPS early. In this case, I have seen no evidence that Steven Day made any enquiry from the OPS to determine whether or not such consent was likely to be given.

Mrs R has suggested in her complaint that she would have been better advised to have waited until age 58 in order to take her OPS benefits without reduction. But I think that she misunderstands the options available to her. The option to retire without reduction at age 58 was only available to employees who were still members of the scheme. And only with the employer's consent. Once she had opted out of the OPS this option was no longer available to her. However, I am of the opinion that this misunderstanding exists because of the lack of clear information from Steven Day about the way the OPS benefits in deferment worked.

Steven Day has failed to persuade me that my interpretation of the scheme rules is incorrect. Nor do I agree with it that it was not its role to ensure that Mrs R was provided with clear and not misleading information about her OPS scheme. In order for it to reasonably weigh her options for her it needed to have an accurate understanding of the benefits that she would be entitled to as a deferred member.

In its 'recommendation letter' of 28 August 2021 Steven Day set out the options available to Mrs R from her OPS. These are set out in the body of the text but for clarity I summarise Steven Day's findings as follows:

- An estimate of the potential pension at the scheme retirement age of 65 as being £45,824. It appears to have taken this from an OPS benefit statement that Mrs R received in March 2020, rather than its own projection of the likely revalued pension. It is a figure that presupposed Mrs R remained a member to age 65. So, I am not persuaded that it is an accurate reflection of what the benefits would revalue to by age 65 once in deferment.

- It correctly explained that the benefits would pay Mr R a 50% spouse pension in the event that she died ahead of Mr R. There would be no benefits to any of their children once they were no longer in full-time education.

- It told Mrs R that retiring and taking benefits in the scheme immediately would mean that the accrued income of £35,338 would be reduced to £27,928 by using the 'Pre30/11/2006 Joiners' early retirement factors. As I have outlined already, this was a reduction calculation that would be applied to an active member. Which Mrs R no longer was. It meant that this information was miscalculated and therefore likely to be wrong.

Aside from the fact that I believe Steven Day gave Mrs R incorrect information about the benefits in her scheme, she had the option of deferring starting her benefits. And the closer she got to age 65 the less the actuarial reduction would have been. I make this point because the closer she got to age 65, the more likely it was that the level of income available would have met her income needs. This is relevant because Mrs R was documented as having other savings in the region of £300,000. And her husband was continuing work and his income covered the documented expenses that the couple had.

It meant that there was, arguably, no immediate need for her to access benefits in this pension as soon as she stopped working, even though Steven Day argue that she wanted to. I think this is further demonstrated by the fact that Steven Day's advice contained no recommendation for any drawdown of income from either the SIPP or the transferred CETV. Steven Day argue they were leaving it up to Mrs R to decide on her required income when the time came. But I do not see that it could advise that the OPS benefits available were not already sufficient without understanding what income Mrs R was targeting.

In summary, Mrs R was in a financial position where she could give up work as she planned and use her savings for a number of years. Especially given the fact that Mr R did not plan on stopping work. So I think that balanced financial advice should have included the comparative scenarios of deferring taking benefits from this pension to a point where it was actually necessary. But it did not. It provided no detail about the likely value of the OPS benefits if deferring taking the starting income to different ages.

So, for the reasons that I have set out above, I am not convinced that Steven Day's analysis of the benefits available to Mrs R from her OPS was accurate or comprehensive in its scope.

Financial Viability Test

As I've already explained, Steven Day didn't carry out APTA or obtain a TVC in order to demonstrate that this transfer was likely to provide equivalent or superior benefits. It disregarded the potential benefits available to her through the scheme later in deferment by assuming that Mrs R needed to take benefits immediately. Which I don't think was necessary given her other levels of savings. Steven Day argues that Mrs R would have an immediate need of income when she stopped work. But I am not persuaded that was a reasonable conclusion. The lack of any specific drawdown strategy being recommended or any documented income requirement, leads me to conclude that Steven Day most likely understood that Mrs R was not in immediate need of income from the pension in order to meet expenditure.

A TVC would have explained to Mrs R how likely it was that she could replicate her benefits in the future. But Steven Day didn't provide this.

In the absence of the correct APTA from Steven Day I have turned to other sources of information to understand the financial viability. Pension illustrations were given by the SIPP provider. In section 7 of that it suggested that, after tax free cash was taken, the CETV could purchase an annuity of £14,199. This would only have been purchased with 75% of the fund value. The SIPP provider wasn't providing this information in order to compare it to the OPS benefits. That wasn't the SIPP providers role. Here it was instead providing some form of estimate of the returns needed to match the annuity at 75, which was not really relevant to Mrs R's transfer recommendation. But it does indicate to me that any TVC would have shown a gap in the fund needed to replicate the OPS benefits. I therefore think that a TVC, had Steven Day provided that, would likely have shown Mrs R that the transfer offered comparatively worse value. And that would have needed to be addressed in the event of the recommendation that Steven Day were giving. It would have provided Mrs R with a clear representation of the comparative value, which would have been valuable insight for her.

Nonetheless, Steven Day has demonstrated that it carried out a different comparative exercise of the OPS against flexi access drawdown from a SIPP. This was limited to an exercise in demonstrating that an equivalent drawdown income could enable the capital of the policy to be preserved.

I can see that, given Mrs R's objective of securing a residual fund for death benefits that this was a useful exercise to carry out. But I am not persuaded that it was based on any specific drawdown strategy that Mrs R had. As I've said, she had not stipulated a desire to replicate the OPS benefits in the same way, or demonstrated a need to take those immediately. But the exercise could have demonstrated that the OPS income could be matched in a sustainable way.

Unfortunately, as I will explain, I am not persuaded of the accuracy of this information from Steven Day either.

I will start by considering the first and most straightforward comparison that Steven Day gave in its recommendation of 28 August 2021. It considered how long a fund of £982,674 would last if it was not invested and income was taken (which it called a 'biscuit tin' analogy). It suggested that it would last for 35 years taking Mrs R almost to age 91. I imagine this would have been very reassuring. But I am not persuaded it was accurate, and therefore fair. I say that because the amount available to Mrs R from the transfer would not be £982,674 after the advice fee (of £14,740) deducted. And it appears to be based on a flat rate of income of £27,928 being taken each year. Aside from the fact that wasn't necessarily the correct figure for the early OPS benefits (as I explained above), the benefits would have been subject to annual increases for thirty years. But Steven Day's calculation appears to merely divide the CETV by its assumed starting income.

Given that Steven Day's other drawdown calculations assumed an escalating income then I cannot see why it departed from this for its 'biscuit tin' analogy. Had it presented a more consistent, and in my view, fairer picture, it should have factored similar increases for its uninvested comparison. Using a similar spreadsheet calculation that Steven Day used when comparing an escalating drawdown, an increasing income taken from the fund would in fact run out when Mrs R was in her mid 80's. This would likely have been less reassuring than the picture that Steven Day painted. But it still wasn't a very realistic model to be referring to because the point of assuming control of the fund would be to generate investment returns.

In order to demonstrate a form of financial viability Steven Day used a spreadsheet to model the drawdown. It has provided this and it uses a starting income of £987,657. Which appears to be an error inflating the actual CETV of £982,674. But again fails to adjust for the initial advice fee. So a fairer starting figure for the model should have been £967,934. Which I note Steven Day accepts. It gives an assumption of charges as 1.5%. Given the SIPP illustration this appears to be a reasonable estimate of the platform fee, ongoing investment charge, and ongoing advice fee.

Correcting for what I see as an error on Steven Day's part, it changes the outcome of the calculations. But not materially. It means that taking a drawdown in line with the highest OPS increases of 2.22% a year would still leave a significant residual pension in excess of £930,000 after 30 years of drawdown. And would still leave a residual fund in excess of £400,000 by the time Mrs R reached age 100. So, the point that Steven Day was making might still have been valid if I could be certain that it was mapping out a correct income. But, I've already explained why that wasn't the case.

Overall, I am not satisfied that the approach that Steven Day took demonstrated that this transfer was in fact financially viable. There are too many issues with the analysis that it did for me to be satisfied that was the case. Simply demonstrating that a drawdown strategy could sustainably replicate the lowest possible OPS option was insufficient to demonstrate this was in Mrs R's best interests.

Flexibility and income needs

I have already determined that Mrs R wanted to retire early. And that this was a realistically achievable objective. But I am not persuaded that Mrs R needed to access tax free cash from her pension or to take benefits from her pension in a significantly different way to achieve this. There was no actual plan for the tax free cash other than to invest it separately from the pension in a general investment account. If it was to generate cashflow / income as Steven Day now suggest, I would have expected to have seen that accounted for in its recommendation.

Steven Day did not pin down the level of income that Mrs R wanted to take. It didn't provide any actual indication of what income Mrs R could sustainably take from her pension other than to indicate that a similar level to its incorrect assumption about her OPS pension would be sustainable. This was in stark comparison to Steven Day's earlier indications to Mr and Mrs R about levels of combined income of £9,500 to £10,000 a month. In the end it provided no information to Mrs R about the impact that such drawdown levels might have on the sustainability of her transferred fund. Which would have a direct bearing on what residual fund might be left as death benefits.

Overall, I don't think Steven Day did enough to be satisfied that Mrs R actually needed the benefit of flexibility that such a transfer offered. It was not clear that Mrs R needed to immediately access the actuarially reduced OPS benefits. It seems more likely to me that there would be a point in the future where benefits would more likely be taken by which time the benefits available via the OPS would be higher. The actuarial reduction was less impactive with every year nearer to age 65. The options already available to Mrs R meant that her main objective of early retirement could already be met with her existing OPS.

Death benefits

Death benefits are an emotive subject. And I accept that Mrs R had a pre-determined idea about what was likely to be in her interests here. And that was based on family experience of her type of OPS. The lump sum death benefits on offer through a personal pension was therefore already an attractive feature to her. The priority here was for Steven Day to advise Mrs R about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Steven Day explored to what extent Mrs R was prepared to be faced with potentially lower retirement income, in the event of a market downturn, in exchange for potentially higher death benefits. It explains that it discussed stress testing regarding its recommended portfolios. But I have not seen any evidence that it was paired with any kind of understanding of the potential impact such downturns would have on the type of income that would then be available.

I also think the existing death benefits attached to the DB scheme were underplayed. Had Steven Day carried out the APTA that it ought to have done, it should have made the comparative value of the different forms of death benefits clearer. It made no effort to explain the value of what was already on offer through the OPS. I don't mean that Mrs R was unaware that her scheme offered a 50% spouse pension should her husband survive her. But, as a lay person, she didn't understand the value of such a guarantee. Steven Day has asked how it could demonstrate how the differing death benefits compared. But I would point out that COBS 19 Annex 4AR 1(8)(b) sets out this expectation for compliant APTA. Had it followed that requirement then I could be satisfied that Mrs R was treated fairly. In this case, she was not.

Furthermore, if Mrs R genuinely wanted to leave a legacy for her children, which didn't depend on investment returns or how much of her pension fund remained on her death, I think Steven Day should've instead explored life insurance as an option. But I've seen no evidence that it did.

I do understand that the different death benefits on offer were not Steven Day's sole reason for its recommendation. However, on this point, I don't think different death benefits available through a transfer to a SIPP provided enough reason for Steven Day to conclude that the transfer was clearly in Mrs R's best interests either. And I don't think that insurance was properly explored as an alternative.

Summary

I have outlined above why I don't think Steven Day provided Mrs R with a suitable recommendation. I have found issues with the way that it's approach to this specific case departed from the regulatory requirements. Because of this, I don't see how I could reasonably conclude that the advice that it gave was suitable.

I am also of the opinion that this case is finely balanced. Mrs R's pension was able to provide valuable retirement benefits either as the OPS or a transferred pension. She was ultimately in a good position. Steven Day's lack of suitable analysis though has meant that it's been difficult to determine whether more appropriate analysis might still have ended up with the same recommendation being made. On balance however, I don't think that it would. The real issue with Steven Day's recommendation in this case is that it fundamentally failed to demonstrate that Mrs R actually needed the flexibility of a transfer. Mrs R's overall expenditure, that it established, appears to have been perfectly reachable within the existing benefits. Without having to take on any investment risk. More emphasis should have been placed on that by Steven Day.

I have also given serious consideration to the issue of death benefits in this case. That's because Mrs R herself appears to have identified the value of this to her. And I don't underestimate that. And, of course, now that she has transferred, she will have the benefit of lump sum death benefits. But I am still not persuaded that Steven Day gave this full consideration. I don't think it was sufficient for Steven Day to conclude that the presumption of unsuitability did not apply in Mrs R's case.

Overall, I think that Steven Day should actually have been advising Mrs R not to transfer what were very valuable OPS benefits. Even though the CETV was high.

Having determined that Steven Day's advice was, on balance, unsuitable, I also need to determine what Mrs R was likely to have done had she been given suitable advice. And I say that because I already accept that Mrs R was likely to retire and had a pre-determined idea about what she wanted to do. But, I would clarify to Steven Day that nothing in my reasoning to this point implies that I think that Mrs R would have transferred regardless of advice to the contrary. I merely recognise that she had a well formed idea prior to obtaining considered and professional pension transfer analysis.

It is impossible to say with total certainty what would have happened if Steven Day had provided advice in accordance with COBS 19 as it should have. So it falls to me to determine what Mrs R would, more likely than not, have done if she was given well-reasoned advice to retain her OPS benefits. And here I disagree with Steven Day. It believes that it wouldn't have mattered what advice it gave, or what reasoning it offered. But I don't think that it's fair or reasonable to conclude that Mrs R was not open to a well-reasoned recommendation from a pension specialist, whose advice she had sought and was paying for. I think that such an opinion would have carried weight for her.

I've seen no evidence that a well-reasoned recommendation from Steven Day not to transfer would not have been followed. She would have been provided with the type of APTA and TVC that the FCA rules mandated. I've explained above that would have highlighted to Mrs R, in clear terms, how much better value her existing OPS represented. Steven Day's fact find ought to have highlighted that Mrs R did not have an immediate income requirement. So more suitable advice could have provided her with income projections to different age points. Which I think would also have been impactive. And finally, Mrs R did follow the recommendation that Steven Day gave her to transfer to a SIPP, take tax free cash and invest in exactly the way it recommended. So, on balance, I think that she was open to Steven Day's recommendation and trusted the advice it was providing. So I think that would equally have been true had that recommendation been not to transfer. It would have been provided alongside an explanation about how her objectives could be more safely met without doing so.

Putting things right

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

Steven Day 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, although Mrs R is retired, she has not taken any of her benefits. So, compensation should be based on the scheme's normal retirement age of 65, which is in line with 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 Mrs R'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, Steven Day should:

- calculate and offer Mrs R redress as a cash lump sum payment,
- explain to Mrs R before starting the redress calculation that:
    - her 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 her redress prudently is to use it to augment her DC pension
- offer to calculate how much of any redress Mrs R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs R accepts Steven Day'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 her 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), Steven Day 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 40%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £430,000, 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 £430,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and direct Steven Day to pay Mrs R the compensation amount as set out in the steps under 'Putting things right' above, up to a maximum of £430,000.

Recommendation: If the compensation amount exceeds £430,000, I also recommend that Steven Day pays Mrs R the balance.

If Mrs R accepts my final decision, the money award becomes binding on Steven Day. My recommendation would not be binding. Further, it's unlikely that Mrs R can accept my final decision and go to court to ask for the balance. Mrs R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Steven Day must pay the compensation within 28 days of the date on which we tell it Mrs R accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Steven Day considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs R how much it's taken off. It should also give Mrs R a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 January 2026.

Gary Lane
Ombudsman