

The complaint

Mr R complains that Frenkel Topping Limited gave him unsuitable advice to transfer the value of benefits he had in an employer's defined benefit (DB) pension scheme to a self invested personal pension (SIPP).

What happened

Mr R met with an adviser from Frenkel Topping in April 2019. Mr R was coming up to his 60th birthday in May 2019. He'd received an offer to transfer out of the employer's scheme and he wanted advice about what to do. Frenkel Topping completed a fact find to establish Mr R's circumstances and financial objectives. Mr R's attitude to risk was assessed as cautious to moderate.

Frenkel Topping issued a suitability report dated 29 April 2019 recommending that Mr R transfer his DB benefits to a SIPP, along with two other (personal) pensions he held. Frenkel Topping noted Mr R's objectives, on which the recommendation to transfer was based:

- retire imminently and be able to have a net income of £51,000 pa to maintain lifestyle in retirement
- have control of the pension funds and flexibility to draw funds as circumstances change in retirement
- the DB scheme death benefits offered poor value for money compared to the benefits available to Mr R's wife or future generations if he transferred (noted as a concern given Mr R's family history)
- maximise the value of the estate for Mr and Mrs R's children to inherit.

Mr R accepted Frenkel Topping's recommendation and the transfer took place on 6 May 2019. The amount transferred was £1,006,630.91.

Through his representative, Mr R complained to Frenkel Topping on 10 December 2024 that the advice had been unsuitable. The main point was that Mr R had given up valuable benefits – and index-linked guaranteed income for life – and he's likely worse off in retirement. Mr R was in good health and neither of his parents had died early and, as his mother was also a client, Frenkel Topping knew that. Mr R could've provided for his children without losing his guaranteed benefits, by putting his tax-free cash entitlement in trust for them. Frenkel Topping accepted that the transfer probably wasn't financially viable but said Mr R's other objectives outweighed that.

The complaint was considered by one of our investigators. He issued his view on 20 May 2025. He upheld the complaint. His main points were:

- The benefits Mr R had accrued in the DB scheme offered a guaranteed income for life. Mr R had significant other assets, including two other pensions with a combined value of around £250,000, but the DB scheme was the largest part of his pension provision and his capacity for loss for that pension was low, especially taking into account his stated annual expenditure.

- The regulator has made it clear (COBS 19.6.1G) that an adviser should start by assuming a transfer won't be suitable. The suitability report did say that, generally, transfers from DB pension schemes aren't considered to be in a client's best interests.
- The suitability report set out that the critical yield required to match Mr R's full DB benefits at age 65 was 13.47%. The regulator's projection rates (unchanged since 2014) were 8% (upper); 5% (middle); and 2% (lower). Taking into account Mr R's attitude to risk and the term to retirement, he was likely to receive benefits of a materially lower overall value than the DB scheme would've provided, as a result of investing in line with his attitude to risk. The suitability report confirmed that – it said the critical yield at 13.47% was relatively high and the recommended investment strategy was unlikely to achieve that annual return.
- Financial viability isn't the only consideration. Frenkel Topping had said Mr R's main objective was to ensure he could pass his pension fund on to his wife and/or children. But, for the reasons he set out, the investigator didn't think that the death benefit considerations, although passing on his pension fund to his wife and/or children would've seemed attractive, justified the likely lower retirement benefits. The adviser's priority was to recommend what was best for Mr R's retirement. The adviser hadn't done enough to explore to what extent Mr R was prepared to accept a lower retirement income in exchange for death benefits paid as a lump sum and which would depend on how much remained – the longer Mr R lived, the less could be passed on.
- The spouse's pension provided by the DB scheme would've been useful to Mr R's wife, if he predeceased. The adviser hadn't highlighted the value of that benefit. And the DB scheme benefits were guaranteed and escalating.
- The adviser should've done more to explore life assurance as an alternative. And instead of the sum assured being equivalent to the transfer value, based on how much, ideally, Mr R would like to leave to his wife/children.
- The suitability report referred to a family history of early death but Mr R's parents had lived to 79 and 94 and were known to Frenkel Topping. It was possible that Mr R would exceed his life expectancy meaning the pension fund would need to last longer and Mr R would be dependent on investment returns.
- The suitability report recorded that Mr R wanted flexibility and that he was intending to retire imminently. But he was still employed and that hadn't been considered in enough detail. Most people would likely say they'd want to retire early if they could but that would depend on having the financial means to support themselves through retirement. Mr R had no debts and substantial additional savings that could've been used to provide income before using the funds from the DB scheme.

The investigator set out what Frenkel Topping needed to do to put things right for Mr R. The investigator said Mr R had planned to retire at age 65 so compensation should be based on Mr R taking his benefits at that age. The investigator also said £500 should be paid for distress and inconvenience.

Mr R's representative accepted the provisional decision but said that Mr R was still working. Frenkel Topping said the crux of the case was whether or not Mr R wanted to preserve the capital from his pension to pass on to his children. Mr R's goals were to retire imminently with a total income from all sources of £4,250 net pm and to ensure the value of his pension could be passed on. Those objectives weren't compatible with taking income from the DB scheme. Transferring was the right thing to do to achieve both objectives – retiring immediately with some hope of passing on a significant sum of money. Frenkel Topping also said that actuaries had been instructed to undertake a loss calculation.

We shared those comments with Mr R's representative who said Frenkel Topping's argument was based on a false dichotomy – that Mr R couldn't meet both objectives without transferring from the DB scheme. Financial planning involves trade-offs and risk assessment. It was up to Frenkel Topping to explain the value and guarantees inherent in the DB scheme; assess whether Mr R's objectives were realistic or required adjustment; and stress test alternative retirement strategies. Death benefits were often misunderstood and the role of advice was crucial. The transfer risked irreversible harm and suitability meant demonstrating the risks were justified. The life assurance option hadn't been properly explored. Mr R may have had multiple objectives but Frenkel Topping failed to assess whether a DB transfer was the most suitable and less risky way to achieve them.

Frenkel Topping told us that a loss calculation had been undertaken by actuaries which showed a nil loss. A copy was provided which was shared with Mr R's representative. The investigator said, as it appeared that Mr R hadn't lost out as a result of transferring, it wouldn't be reasonable to still award £500 for distress and inconvenience.

Mr R's representative didn't agree that the calculation had been undertaken correctly. In particular, a 40% tax rate had been used and the commutation factors were from 2019.

The investigator asked for some more information about Mr R's income to decide if he'd likely be a higher rate taxpayer in retirement. The investigator shared what we were told with Frenkel Topping. The investigator said, as Mr R's current salary was within the basic rate band, he didn't see how, with his pension income, he'd be a higher rate tax payer. The investigator also said that up to date commutation figures could be obtained from the DB scheme. So the investigator didn't think the loss assessment had been carried out on a reasonable basis.

In response, Frenkel Topping said it had sought the actuaries' view who'd said the calculation would still show a substantial gain even if the tax rate was 20%. The investigator also reminded Frenkel Topping about what he'd said about the out of date commutation factors being used. Frenkel Topping said it was in the process of contacting the DB scheme trustees to obtain the actual commutation rates. Frenkel Topping later apologised for the delay. However, despite chasing the DB scheme trustees, the information hasn't been forthcoming.

The investigator issued a further view on 2 January 2026. He said Frenkel Topping had carried out one loss assessment which showed no loss but there'd been correspondence about the assumptions used. Frenkel Topping had been chasing for additional information to carry out a second loss assessment. But we were unable to keep a complaint open indefinitely, so the investigator was issuing a further view. The investigator hadn't changed his mind that the advice to transfer had been unsuitable. But he wasn't recommending an award for distress and inconvenience. Mr R's representative had dealt with things which had limited the inconvenience to Mr R. And his fund had grown since the transfer so there'd been limited distress as the fund hadn't suffered. The investigator said Frenkel Topping should undertake a (further) redress calculation.

Frenkel Topping said it was in the process of carrying out a further calculation, but it was dependent on the DB scheme trustees in terms of timescales.

Mr R's representative said, about the removal of the payment for stress and inconvenience, that, throughout the complaint process, the prolonged absence of a conclusion had caused Mr R ongoing uncertainty and avoidable distress – he'd been unable to achieve closure or plan with confidence while the matter remained unresolved.

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.

This complaint has been allocated to me to make a final decision. Frenkel Topping has indicated that it's prepared to carry out a further loss calculation but has been awaiting information from the DB scheme trustees for some time. As I've noted above, Frenkel Topping has chased things up. The last I've seen is that the information was promised in early December 2025 but, as far as I'm aware, remains outstanding to date.

I recognise Frenkel Topping's difficulties but, as the investigator pointed out, we can't keep a complaint open indefinitely and it's been some considerable time that Frenkel Topping has been trying to get information to enable it to ask its actuaries to undertake a revised loss calculation. Hopefully issuing a final decision will bring an element of certainty to the matter, at least in terms of the outcome of the complaint.

Having considered everything that's been provided, I don't have much to add to what the investigator has said about the merits of the complaint. I've summarised his findings above, with which I agree. So I'm upholding the complaint for the same reasons as the investigator gave. Frenkel Topping's advice to transfer out of the DB scheme wasn't suitable for Mr R.

As to what needs to be done to put things right, although an indicative loss assessment was undertaken, it's now out of date, having been based on a valuation date of 1 July 2025. The up to date fund value might be different. And, as the redress calculation will take account of prevailing market conditions at the valuation date, a different result might be produced.

I agree with the investigator that the loss assessment should be on the basis that Mr R would've taken his DB scheme benefits at the scheme's normal retirement age of 65. That reflects the presumption in DISP App 4.3.16R. Mr R may still be working but I think, if he hadn't transferred, he'd have taken his DB scheme benefits at his normal scheme retirement age.

The indicative loss assessment was also on the basis that Mr R would be a higher rate taxpayer in retirement. Frenkel Topping says that, even if the calculation is based on Mr R being a 20% taxpayer, there's still no loss. For the avoidance of doubt, I accept that Mr R should be treated as a basic rate taxpayer as I've noted below.

However, the loss assessment records that cash commutation (and late retirement factors) were obtained from the DB scheme in 2019. As the commutation factors in place then were lower than the default factors specified by the FCA for the purpose of redress calculations, the FCA's default factor of 20 to assess redress had been used. But it was noted that, if the actual commutation factors used by the DB scheme at the assumed retirement date were more generous than the FCA default factor, then the value placed on the DB pension would increase, which could mean that redress was required.

As I've noted above, Frenkel Topping (with Mr R's authority) has been trying, but without success, to obtain details of the applicable commutation factors from the DB scheme. I think Frenkel Topping should make further reasonable attempts to obtain that information to enable a revised redress calculation to be undertaken using the actual commutation factors. However, should that ultimately not prove possible, DISP App 4.3.38R (C) does say that, where the actual commutation factors for the consumer's DB scheme haven't been used in the calculation, an explanation of the approach used and its impact on the redress offer should be included. If further and renewed reasonable enquiries continue to prove fruitless, using the FCA's default factor doesn't appear to me to be unreasonable.

I've set out below what Frenkel Topping needs to do to put things right for Mr R. It follows what the investigator said in his further view. I haven't made any award for distress and inconvenience. I note what Mr R's representative has said but I agree with the investigator that the increase in Mr R's fund value would've been reassuring and the fact that he's had a representative to deal with the complaint would've limited the inconvenience to him. I agree he's suffered some uncertainty over several months but I think that's largely arisen from a matter outside Frenkel Topping's control – delay by the DB scheme trustees in providing the requested information.

Putting things right

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

Frenkel Topping 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, Mr R has not yet retired and he has no plans to do so at present. Compensation should be based on the DB scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr R's acceptance.

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

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr 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 Mr R receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr R accepts Frenkel Topping's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr R for the calculation, even if he 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 Mr R's end of year tax position.

Redress paid directly to Mr 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), Frenkel Topping may make a notional deduction to allow for income tax that would otherwise have been paid. In the indicative loss assessment, it was assumed that Mr R's likely income tax rate in retirement would be 40%. However, I'm satisfied that Mr R's likely income tax rate in retirement should be 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. Frenkel Topping Limited must calculate and pay redress (if any) as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 March 2026.

Lesley Stead
Ombudsman