DRN-3501289

Financial Ombudsman Service

The complaint

Mrs P complains about the advice she was given by Better Retirement Group Limited (Better Retirement) to transfer her deferred Occupational Pension Scheme (OPS) benefits into a self invested personal pension (SIPP), and thereafter to invest into what she believes were high risk underlying assets. She also complains about the advice to transfer her personal pension plan (PPP) as well. She says this has led to her suffering a loss to her pension fund and would like to be put as close to the position she would now be in without the previous advice.

What happened

In October 2017 Mrs P, having spoken with her adviser about remortgaging, was advised by that adviser to speak with Better Retirement to discuss her retirement planning, particularly with respect to her deferred OPS – which had a cash equivalent transfer value of £71,364. At the time Mrs P was 44 years old and worked for the civil service and belonged to its OPS.

Mrs P says the advice she was given was to transfer the benefits from her five and a half years' service in the previous OPS, and the fund value of a PPP into a SIPP, so that she could repay some of her existing mortgage from the tax free lump sum that would be available to her at age 55. When the transfer completed in November 2017, the funds – valued at £74,913.59 after the deduction of fees, were invested by a Discretionary Fund Manager (DFM) across a variety of shares and corporate bonds.

Mrs P received a SIPP statement in October 2018 which showed the SIPP to have a total value of £70,517.88, and by April 2019 this had fallen to £68,647.66. In June 2019 Mrs P complained to Better Retirement about the suitability of the advice through a representative. She made the following points of complaint:

- She wasn't provided with any detail of the proposals being put forward. She wasn't made aware of the guaranteed benefits she'd be giving up on transferring or given any alternative proposals.
- The recommendation wasn't fully explained to her and she wasn't made aware of how the SIPP would work. She understood her transfer would be to a more "lucrative" style PPP.
- She had no great knowledge of pensions or investments in general and thought of herself as a cautious investor – maybe with a "medium" attitude to risk (ATR) at best.
- Better Retirement's first statement on its suitability report said, "*our initial assumption is that you should not transfer your benefits*", but it then concluded that there were more important reasons to transfer than the financial outcome and encouraged and facilitated the transfer.
- It was clear the transfer wasn't in her best interests so Better Retirement should have simply recommended that she remained within her OPS.
- She hadn't approached Better Retirement for advice, and it had based its recommendation purely on her thoughts of paying off her mortgage at some point in the future. It should have had a more robust discussion with her about her reasons for transferring which she said would have led to a greater understanding of Better Retirement's advice.

- She wanted to be put as close to the position she would be in now had she received suitable advice and not transferred.

Better Retirement said it was satisfied with its advice and remained of the view that it explained all the risks and alternatives to Mrs P. It said she should await the regulator's investigation into the DFM's parent company – it was in administration – to see if any compensation was due from the losses arising from the DFM's investment strategy. At this time Mrs P's SIPP had little value apart from some cash being used to pay the ongoing fees.

Unhappy with this response Mrs P brought her complaint to us where it was considered by one of our investigators. She said it should be upheld and gave the following reasons in support of her findings:

- Three of Mrs P's four financial objectives noted in the suitability report couldn't be achieved for another 11 years.
- Although Better Retirement said Mrs P could attain 32 years' service in her existing OPS this couldn't be guaranteed – which wasn't considered as part of the recommendation.
- Mrs P was advised to transfer her guaranteed OPS benefits into an investment backed plan and couldn't achieve her objective of paying off her mortgage for another 11 years. She didn't think this was suitable advice. In addition no details of the mortgage were provided and it would seem that the outstanding balance would have been reduced in 11 years as it was a repayment mortgage – and Mrs P had sufficient disposable income to consider overpaying on her mortgage in order to pay it off earlier.
- Mrs P said she was a low/medium risk investor while Better Retirement recorded that she was medium/high. The differential should have been discussed robustly and the outcome recorded instead of simply deciding the extra risk was acceptable to Mrs P.
- The overall costs of the SIPP were significantly higher than the OPS and with a critical yield of 7.69% required to match the overall OPS benefits at the retirement age of 65, it would have been difficult to offset the effect of these charges based on Mrs P's ATR.
- Looking at the discount rate used by this service when considering what growth rates would have been reasonably achievable, and taking into account the regulator's projected assumptions of growth at the time, it seemed unlikely that the SIPP would be able to provide a higher pension over the term of Mrs P's investment horizon.
- She didn't think the transfer was in Mrs P's best interest nor did she think the transfer of the PPP – which she said was arranged by Better Retirement as well, was in her interests either.
- The underlying investment strategy was too complicated and expensive and wouldn't have been required in any case if the transfer hadn't been recommended.
- Better Retirement should undertake a redress calculation in line with the most recent pension review methodology and pay £300 for the disruption caused to Mrs P's retirement planning.

Better Retirement didn't agree – making the following points in response:

- The fact find that was completed noted that Mrs P had smoked for over 20 years and was classed as medically obese. These facts were top indicators for mortality risk.
- Mrs P had recently remortgaged to a new £100,000 repayment loan over 16 years.
- The ATR questionnaire posed industry standard questions and created an independent report. It was designed to prompt slightly contradictory answers, but this was further reviewed during the rest of the "*know your client*" process. So it thought

Mrs P was aware of the ATR definition on which its investment strategy recommendation was based.

- Mrs P had indicated in the fact find that security of her pension fund was her number one priority which reflected her view of the OPS.
- It was correct to include the service from the current OPS in its calculation of Mrs P's income in retirement. It ensured that, while it said there was potential for 31 years of service, it didn't assume that service within its calculation. And Mrs P didn't suggest she wouldn't remain a member of the scheme – given the ongoing opportunity. Essentially the current OPS service that Mrs P had already attained along with her state pension meant that her required income at retirement would be covered without including income from the deferred OPS or the PPP.
- Mrs P would have been aware that the CETV she'd been offered was enhanced – which wasn't unusual where schemes were looking to de-risk. In line with Mrs P's view of the scheme and potential for a referral to the pension protection fund (PPF) it meant an analysis of whether a transfer was in her best interest ought to be carried out.
- It had been conservative in its assumptions which is why it only used the medium assumed growth rate (5%) in its comparisons.
- It had confirmed, on a number of occasions, the guarantees Mrs P was giving up and she was fully aware of them. It was Mrs P that decided a mix of the guarantees she would get from her current OPS and state pension, along with flexibility of a SIPP housing her transferred OPS benefits, would provide the best scenario for her in retirement.
- Our comparison of charges between the OPS and SIPP wasn't fair. The cost of running a defined benefit OPS is high, and the members are asked to meet those costs. But the costs are opaque and spread between the members whereas the SIPP has individual charges which are always disclosed and easy to understand. This meant that when comparing schemes each charge and fee from the SIPP and adviser could be incorporated into the analysis. And as the end result was a recommendation which said the transfer was in Mrs P's interest there was no reason to look any closer to determine which scheme had the higher costs.

The investigator wasn't persuaded to change her view and gave the following responses:

- The reasons Better Retirement gave for the increased mortality risk weren't discussed at the time of the advice, so she was unable to consider them as valid reasons now. She also explained that Mrs P was considered to be in good health as noted by the fact find from 2017 – and Mrs P had indicated that lump sum death benefits and providing a spouse's/dependants' pension were ranked among the least important factors when prioritising her reasons for transferring.
- She also thought there was a discrepancy regarding Mrs P's ATR and felt a more robust conversation should have taken place to confirm the position. She noted that Mrs P regarded herself as a cautious investor so perhaps ought not to have transferred from a guaranteed pension into an investment backed plan invested into higher risk assets.

- Although the critical yield wasn't the only factor to consider when transferring, it provided an accurate measure of what growth the SIPP needed to achieve in order to match the OPS. In this case the required critical yield of 7.69% would have been difficult to achieve given Mrs P's low medium ATR.
- Mrs P was 11 years away from being able to access her tax free lump sum. So the transfer could have waited until nearer that time in order for Mrs P to still be able to achieve her objective of repaying her mortgage.

- She had noted that Mrs P had some capacity for loss from the SIPP as she had over 10 years' service in her current OPS. But she thought Better Retirement hadn't recorded this information within the fact find so it wasn't possible for Mrs P to have taken that aspect of her retirement income into consideration when deciding whether to transfer the deferred OPS benefits.

Better Retirement said:

- Everything contained within its fact find had been discussed. Whilst it didn't consider Mrs P to be in good health, she considered herself to be in good health. But it used the factual information and took this into consideration when making its recommendation.
- Mrs P had a number of motivations for transferring. But it made the recommendation on the basis of the drawdown reports which said that her retirement income would match the OPS benefits until a life expectancy of 93.
- It was surprised at our comments regarding the discrepancy in the ATR and the need for "*a robust conversation*" which it thought it had evidenced. However, regardless of any dispute it still believed it had recommended a low/medium portfolio for Mrs P to invest into.
- It no longer believes that critical yield gives a useful indication of the returns needed to justify a transfer and thinks that "cash flow forecasting" is seen as a more accurate measure. In Mrs P's case it showed that a gross return of just 5% would be sufficient to provide the same benefits as she could expect from the OPS.
- It accepted that the transfer could have waited but thought the pension transfer report showed that the transfer was in Mrs P's best interest at that time. In addition, it put forward a number of possible changes that might happen in the following 11 years which gave some context to the possible disadvantage of delaying the recommendation.
- It believed that Mrs P's other retirement income covered her core income requirement and therefore gave more rationale around its belief that this transfer was suitable.
- It would continue to support Mrs P in relation to the unfortunate issues with the DFM.

But as no resolution could be found the complaint was passed to me for review.

My provisional decision

In my provisional decision I said the complaint should be upheld, giving the following reasons to support my findings:

- The main objective of Better Retirement's recommendation to transfer seemed to be that Mrs P could draw her tax free cash at age 55, pay off (some of) her mortgage and consolidate her pensions. But those objectives couldn't be met for a further 11 years and it was difficult to ensure the new SIPP wouldn't lose value in that time. So I looked to see if there were other compelling reasons that the transfer was in Mrs P's best interests.
- There was no evidence to support Mrs P's financial position at age 55 with regards to her mortgage. I thought that, if repayment of the mortgage was such an important factor in the transfer, then Better Retirement ought to have quantified how the objective would be achieved. So I wasn't persuaded about the justification to recommend the transfer of the OPS benefits in 2017.
- I'd looked at the regulator's Code of Business Sourcebook (COBS) in force at the time and I couldn't see any evidence to support Better Retirement's claim that the regulator didn't regard "critical yield" as a useful way of comparing benefits from the

OPS and the SIPP. I thought the regulator's message wasn't to promote any specific method that could be used to compare, but to ensure the outcome was explained fully to a consumer and that a consumer understood the conclusions.
- In Mrs P's case the "critical yield" comparison suggested that the transfer wasn't in her best interest, and the other two methods used suggested the advice might be suitable based on a mid-rate growth rate.
- But I hadn't seen any evidence to show why Mrs P's original low medium risk profile was subsequently amended to "high medium", or that a robust discussion was undertaken and recorded to explain the disparity. I thought the risk in giving up a guaranteed, index linked scheme in favour of investment backed scheme – which was further complicated by the use of a DFM, was beyond the level of risk I thought Mrs P was comfortable with. And although the DFM subsequently ceased trading, I didn't think Mrs P would have suffered the losses she did without Better Retirement's involvement.
- I thought the fees that Mrs P would incur on transferring were unlikely to be offset over the rather limited likely investment horizon and might have meant Mrs P was worse off at retirement because of them.
- I wasn't satisfied that any of the other objectives Better Retirement noted were primary reasons for why the transfer might be in Mrs P's best interests.
- I didn't think there was sufficient justification for the advice to transfer the PPP benefits into the SIPP as well.
- Better Retirement needed to calculate redress which put Mrs P as close to the position she'd now be in had the advice been to remain in the OPS and PPP that she already held.

Responses to the provisional decision

Mrs P said she had nothing further to add to my provisional decision and Better Retirement chose not to reply to our requests for a response.

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.

And as both parties haven't provided any further submissions following my provisional decision, I see no reason to depart from its findings. So I'll set out my final reasoning.

<u>The objectives and reasons for the transfer</u>

In 2001 the regulator's COBS noted, for the first time that, *"when advising a customer who is, or is eligible to be, an active member of a defined benefits occupational pension scheme whether he should opt out or transfer, a firm should:*

(a) Start by assuming it will not be suitable and
(b) Only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interest."

So I've started by looking at the various reasons Better Retirement gave for transfer as well as what it recorded as Mrs P's objectives – to see if the reasons were compelling enough to clearly demonstrate the transfer was in Mrs P's best interest.

Draw the tax free cash, pay off mortgage and consolidate pensions.

Better Retirement said that Mrs P's main objective was to draw tax free cash from her plan at age 55 and use it to repay some of her outstanding mortgage. But that objective couldn't be achieved for another 11 years at that point – so there seemed to be little point in carrying out the transfer in anticipation of that objective when there wasn't another clear reason to do. Better Retirement wasn't in a position to ensure the new SIPP was able to match the OPS benefits at the end of the 11 year period because it was an investment backed plan which would fluctuate in value according to the prevailing financial market conditions. So there seemed little value in Mrs P taking such a risk simply to draw her tax free cash in 11 years' time.

But, if the objective of repaying the mortgage was Mrs P's main objective, then I would have expected Better Retirement to set out how the transfer would have helped to achieve that goal. I would have expected it to have quantified how much needed to be paid off and how that might be achieved from the tax free sum available. But there's no evidence of any such evaluation from Better Retirement and it's hard to establish even if there would have been an outstanding mortgage at the time. Better Retirement said Mrs P had recently remortgaged for a term of 16 years, but she had sufficient (joint) disposable income to overpay on the loan – so it might have been possible for her to have either paid off the mortgage before age 55 or to have reduced it down to a much smaller amount.

So I'm not satisfied that this objective justified the advice to transfer. And I'm not persuaded by the suggestion that Mrs P wanted to transfer to consolidate her pensions, as she only had two pensions which were the OPS and the PPP. I don't think the ongoing administration of these two plans would have been too onerous for Mrs P and, in any case, they were quite different pensions (defined benefit based and fund value based) which, in my view, didn't lend themselves well to being consolidated into a purely fund based alternative.

The fees

Better Retirement's initial fee for the transfer advice was 4% of the fund. In addition, it charged £1,350 for analysis of the OPS and a 1% ongoing advice fee. There was also an annual SIPP fee of £250 plus VAT, with another 1% fee for the services of the DFM. This compares to a monthly administration fee of £4.17 on Mrs P's existing PPP – along with annual management charges (AMCs) on each of the invested funds, although these AMCs were also applicable to investments within the SIPP. Any fees associated with the OPS which were paid by scheme members were deducted before the scheme benefits were set out in Mrs P's deferred benefit statement.

I think it's clear that the SIPP contained higher fees than Mrs P's PPP. And when taken alongside the other advice fees that were deducted on completion of the transfer, they would most likely have eroded the fund so that it would have been unlikely that the effect of them would have been negated over the likely investment horizon. So I think it's more likely than not that the fees involved here meant that Mrs P was likely to be financially worse off by transferring.

The other objectives

Better Retirement noted a number of other objectives Mrs P had which it said would be achieved as a result of transferring and were good reasons to justify the recommendation. These were:

- A substantial existing OPS, which was one of a number of fixed incomes which would be coming into Mrs P's household in retirement and would cover her core expenditure. This would allow her to have some flexibility within the deferred OPS if it was transferred.

- Her existing OPS could go into the PPF and the opportunity to transfer would then be lost.
- The enhanced CETV Mrs P had been offered might be withdrawn at any time.
- Mrs P wasn't in good health and might better benefit from the SIPP's death benefits. And her non-dependent child wouldn't benefit from the OPS benefits either.
- When she wanted to draw the tax free cash at age 55 she didn't want to have to draw an income.

I think these factors would have been of some interest when considering a transfer, but I don't think they would have been significant drivers for Mrs P. And each objective could be seen differently and viewed as reasons not to transfer. There was no evidence to suggest that Mrs P was in poor health or had reasons to be concerned about the death benefits available from the scheme. And there was little reason to think the OPS might enter the PPF or that it was in Mrs P's interest to transfer simply because of an enhanced CETV.

I also don't think it was guaranteed that Mrs P would achieve 32 years' service in her existing OPS, I note at that point she'd only completed around 10 years' service. There was nothing guaranteed about her service and it could have ended at any point. So I don't think it was reasonable to base a recommendation on the fact that Mrs P would have had sufficient guaranteed income in retirement to be able to take some risk with the deferred OPS benefits. Indeed, consideration of the transfer nearer to her 55th birthday, when the objective of using tax free cash would have been more appropriate, would also have allowed Better Retirement to use the objective of "guaranteed" incomes with more confidence.

So, while these factors would undoubtably have entered into the overall discussion about the suitability of any advice to transfer, I think by far the most important reason for transferring was whether Mrs P would have been better off financially and whether it was in her best interest. So I've gone on to consider that aspect of the recommendation.

The comparison of the financial outcomes

Better Retirement said that, when considering the comparisons that were made to Mrs P, it thought that its "cash flow" approach was the most appropriate way to determine if the transfer was viable. It said that the regulator had by this point moved away from suggesting "critical yield" was the most important comparison tool. So I looked at the requirements as set out in regulator's handbook from the time. They stated that:

A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

In addition the comparison itself should :

(1) take into account all of the retail client's relevant circumstances.

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) *be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested*.

The regulator didn't specify which comparison method should be used, simply that the comparison should be clear enough for the consumer to make an informed decision and that it should be understood, and a copy should be given to the consumer. So I've looked at the information Better Retirement set out – which noted three methods of comparing benefits to determine the viability of the transfer through a Transfer Value Analysis (TVAS) report. These were all compared against the OPS benefits Mrs P had accrued from her service which was an annual pension income of £1,945.29 at the time she left and was estimated to be £4,796.59 per year at normal retirement age (NRA).

The first measure looked at what age an income, equivalent to the OPS pension, would be exhausted if it were paid from the SIPP at the NRA. In this case the report said the age would be 79 if based on a low growth rate of 2%, and 92 if based on a medium growth rate of 5%. But, I've looked at the assumption that was made about charges here, which was based on a 1% fee. However, the reality of the transfer was that a 1% DFM charge and a 1% adviser fee was included – which would suggest that the comparison was unlikely to be accurate as it was based on assumed charges which were significantly lower than the actual SIPP. So I'm not persuaded that Mrs P was placed in an informed position with regards to the "*equivalent income comparison*".

The next measure was the "hurdle rate" which looked at the growth rate needed to maintain sufficient capital to provide an annuity equivalent to the OPS pension at NRA. The rate was calculated to be 4.59% but didn't include any additions to a basic annuity proposition. So Mrs P wouldn't have been able to compare against an annuity with a spouses' pension, a guarantee payment period or an escalation for example. But of more concern was the fact that the fund required to purchase the annuity was £198,802.28 which was nearly three times the CETV from 2017.

The final measure was the critical yield rate, which calculated the growth rate required by the SIPP to produce an income equivalent to the OPS at NRA. This was known as being "*financially viable*."
Better Retirement's advice was given after the regulator gave instructions in *Final Guidance FG17/9* as to how a business could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website.

Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they do provide a useful indication of what growth rates would have been considered reasonably achievable.

The critical yield required to match Mrs P's OPS at retirement was 7.69% per year. The closest discount rate to this time which I'm able to refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and is 4.5% per year for a term of 21 years to retirement. So I think it's clear that the investment return would need to be significantly higher than expected in order for the transfer to be in Mrs P's financial interest. But there would little point in transferring just to match the existing benefits, so I think it's reasonable to assume that the SIPP needed to achieve further growth on top of the critical yield to ensure additional benefits of sufficient value to have made the transfer worthwhile.

It would seem therefore that it was unlikely that the critical yield required to exceed the OPS would be achieved in this case – especially when considering the limited investment horizon. But it could be argued that the other comparison measures might be seen as suitable when based on or around the mid-range growth rate of 5% that was set out by the regulator at the time. However, in order to assess whether that was likely, I've looked at Mrs P's ATR, to see whether mid-range growth was consistent with the level of risk she would have been prepared to accept.

Mrs P described herself as a "low medium" investor. This was mainly based on the assertion that she hadn't previously held any investments. And, looking at the information that was gathered at the time of the advice, I've seen no evidence to contradict that position. The only investment I've seen any evidence of was Mrs P's PPP- which was funded by her national insurance contributions after she contracted out of the State Earnings Related Pension Scheme (SERPS). So she didn't invest any personal contributions and the money itself was invested into default managed funds.

Better Retirement said that it defined Mrs P as a high medium investor when it completed an industry standard risk questionnaire with her, and it continued to test that definition through further questions during the "fact finding" process. But I haven't been provided with sufficient evidence to support that claim. I haven't seen evidence of a robust discussion about the difference between the initial view of Mrs P's low medium ATR and the subsequent upwards revision after completing the questionnaire. And I haven't seen an explanation for why the higher ATR was used in order to determine the eventual investment strategy. I would have expected to see the reasons for the change set out within the documentation prior to the recommendation.

So it's my conclusion that Mrs P was most likely a low medium risk rated investor who didn't have the necessary appetite required to take the risks to ensure the mid-range rates of growth were consistently achieved. It's difficult therefore to justify the recommendation to transfer based simply on the other two measures of comparing the OPS benefits with the SIPP.

But I think there were other risks involved as well here. Mrs P held guaranteed benefits in an OPS, which would have increased in line with RPI up to and after her retirement. By agreeing to transfer she exchanged these guarantees in favour of investment into a variety of funds/portfolios – which would have carried investment risk beyond that which I believe she had the appetite and capacity to accept.
As a DFM was involved in the investment strategy, a further layer of charges and risk was also included. This extra risk was eventually the reason for the failure of the investment as the DFM ceased trading.

But I don't think Mrs P would have invested without the involvement of Better Retirement and I think it's advice for Mrs P to transfer her OPS benefits wasn't suitable for all the reasons I've set out above.

The PPP transfer

The PPP that Mrs P held had a fund value of around £8,000. But it wasn't a plan Mrs P had made personal contributions into – she'd simply agreed to have her national insurance contributions directed into the plan in order to contract out of SERPS. I think any advice Mrs P received at that time would have made her hopeful that she'd be better off by "contracting out", so I think it's unlikely she would have viewed a recommendation to transfer the benefits into a SIPP as being in her best interest.

But even if my assumption is wrong, there's little evidence to show the transfer in 2017 was suitable. As I've already explained the fees that applied to the SIPP were higher than those of the existing PPP, so it was unlikely Mrs P would have been better off by transferring. And, when applied solely to the PPP fund of around £8,000, it would have been extremely unlikely that growth on the SIPP would have negated the likely significant impact of those fees on such a small fund.

I've already said that I think advice to transfer the OPS benefits was unsuitable. So I don't think advice to transfer the PPP would have been suitable either as standalone advice or in conjunction with the overall advice to transfer both pensions.

Putting things right

The advice to transfer the OPS benefits

A fair and reasonable outcome would be for Better Retirement to put Mrs P as far as possible, into the position she would now be in but for the unsuitable advice. I consider she would have remained in the occupational scheme. Better Retirement must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.*

This calculation should be carried out as at the date of any final decision along these lines, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs P's acceptance of the decision.

Better Retirement may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs P's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mrs P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs P's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs P as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount should where possible be paid to Mrs P within 90 days of the date Better Retirement receives notification of her acceptance of any final decision along these lines. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Better Retirement to pay Mrs P.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

<u>The PPP transfer</u>

My aim is that Mrs P should be put as closely as possible into the position she would probably now be in if she had been given suitable advice not to transfer her PPP.

I take the view that Mrs P would have remained with her previous PPP provider. I'm satisfied that what I've set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

What must Better Retirement do?

- To compensate Mrs P fairly, Better Retirement must:

- Compare the performance of Mrs P's investment with the notional value of the PPP had it remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable.

  If the notional value is greater than the actual value there is a loss and compensation is payable.

- Better Retirement should add interest as set out below:

- Better Retirement should pay into Mrs P's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Better Retirement is unable to pay the total amount into Mrs P's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs P won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mrs P's actual or expected marginal rate of tax at her selected retirement age.

- For example, if Mrs P is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs P would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mrs P £300 for the distress caused by the loss of virtually the whole investment.

Income tax may be payable on any interest paid. If Better Retirement deducts income tax from the interest it should tell Mrs P how much has been taken off. Better Retirement should give Mrs P a tax deduction certificate in respect of interest if Mrs P asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists but illiquid	Notional value from previous provider for PPP.	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the investment. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. Better Retirement should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. The amount Better Retirement pays should be included in the actual value before compensation is calculated.

If Better Retirement is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Better Retirement may require that Mrs P provides an undertaking to pay Better Retirement any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Better Retirement will need to meet any costs in drawing up the undertaking.

Notional value

This is what the PPP would have been worth at the end date had it remained with the previous provider. The provider has issued us with that information previously – so Better Retirement will be able to obtain it – although it would need to be updated to the date of this decision.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Better Retirement totals all those payments and deducts that figure at the end.

The SIPP wrapper only exists because of illiquid investments. In order for the wrapper to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Better Retirement taking over the investment, or this is something that Mrs P can discuss with the wrapper provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Better Retirement is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mrs P an upfront lump sum equivalent to five years' worth of SIPP wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the wrapper to be closed.

My final decision

I uphold Mrs P's complaint against Better Retirement Group Ltd.

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Better Retirement Group Ltd should provide details of its calculation to Mrs P in a clear, simple format.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Better Retirement Group Ltd should pay Mrs P the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Better Retirement Group Ltd pays Mrs P the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Better Retirement Group Ltd. It is unlikely that Mrs P can accept my decision and go to court to ask for the balance. Mrs P may want to consider getting independent legal advice before deciding whether to accept this decision.

If Better Retirement Group Ltd does not pay the recommended amount, then any investment currently illiquid should be retained by Mrs P. This is until any future benefit that she may receive from the investment together with the compensation paid by Better Retirement Group Ltd (excluding any interest) equates to the full fair compensation as set out above.

Better Retirement Group Ltd may request an undertaking from Mrs P that either she repays to Better Retirement Group Ltd any amount Mrs P may receive from the investment thereafter or if possible, transfers the investment to Better Retirement at that point.

Mrs P should be aware that any such amount would be paid into her pension plan so she may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 June 2022.

Keith Lawrence
Ombudsman