

The complaint

Mr M complains that Brown Shipley & Co Limited ('Brown Shipley') gave him unsuitable advice to transfer the benefits from two defined benefit (DB) occupational pension schemes to a self-invested personal pension ('SIPP') but has not provided appropriate redress.

What happened

Mr M was a deferred member of two of his former employers' DB schemes. I will refer to those as scheme 1 and scheme 2.

In 2017 Brown Shipley advised Mr M to transfer the cash equivalent value of £538,142 from scheme 1 into a named SIPP. Brown Shipley charged Mr M £6,000 for its advice and arranging the transfer.

In 2018 Brown Shipley advised Mr M to transfer the value of his scheme 2 benefits, which was £480,879, to the same SIPP. Brown Shipley charged Mr M £4,000 for its part in the transaction.

In 2022 Brown Shipley contacted Mr M to say it was reviewing the transfer advice it had given to him. It said it would instruct a firm of actuaries to calculate if he had suffered a financial loss as a result of the transfers.

In 2023, after the actuaries had completed their work, Brown Shipley wrote to Mr M. It acknowledged that its transfer advice wasn't in his best interests. But it said actuaries had calculated that he hadn't suffered a financial loss.

Mr M complained. Amongst other things he said Brown Shipley had charged him £10,000 in total for its advice and felt it should refund those fees. He also raised a number of queries concerning the redress calculations.

Brown Shipley replied. It said actuaries had performed the redress calculations in line with the regulator's – the Financial Conduct Authority's ('FCA') – methodology for doing so. And that methodology includes factoring in the fees paid.

Mr M brought his complaint to us. One of our Investigators looked into it. She didn't think Brown Shipley needed to take any further action. Mr M didn't agree. He repeated that he didn't think it was fair that Brown Shipley had retained its fees even though its advice hadn't been in his best interests. He also said he hadn't seen an analysis of each of the schemes separately. He didn't think it was fair that a surplus from one of the schemes might be offset against a loss from the other. He provided his own calculations to show why he thought that might be the case.

As the matter wasn't resolved informally it's been passed to me to make a final determination.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In raising his complaint Mr M has referred to a number of points. I've considered carefully everything on file. But in this decision I don't intend to address each point raised during the complaint process. Instead I will focus on what I see as the key outstanding issues following our Investigator's complaint assessment and the reasons for my decision.

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

Brown Shipley has acknowledged its advice for Mr M to transfer out of his DB schemes wasn't in his best interests. So I don't intend to comment further on that. Instead I will focus on the point still at issue which is whether or not Brown Shipley has done enough to put things right.

In response to our Investigator's complaint assessment Mr M has produced his own analysis of how he thinks the two schemes should be broken down. He says that analysis shows he has lost a considerable sum of money on one scheme which is being offset by the other scheme. But Mr M's analysis isn't a recognised method of working out redress resulting from unsuitable DB transfer advice and I don't think it would be fair to apply it here.

As both Mr M and Brown Shipley know the FCA has set out how firms (or the actuaries they appoint) must calculate redress for non-compliant pensions transfer advice. The aim of the redress is to put the consumer, as near as possible, into the position they would have been in had they stayed in their DB scheme(s).

When doing so firms are required to calculate whether the consumer concerned, in this case Mr M, has enough money in their personal pension (or SIPP) to replicate the benefits they would have enjoyed if they remained in their DB scheme(s). If the calculation shows there is not enough money in the consumer's personal pension to match their DB scheme(s) benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's personal pension then no redress is due.

The calculations are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. The FCA updates these assumptions on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

I've looked at the data inputs Brown Shipley's actuaries used when calculating the redress which are individual to Mr M. Those include his personal details, the benefits from his DB schemes at the dates he left those and the value of his SIPP. Based on what I've seen, it would appear the calculations use the appropriate data and I've found no inaccuracies with it.

I'm aware Mr M believes that, using his own method of calculation, that one of his scheme's shows a loss which is being offset by the other. As I've said above, Mr M's calculation method doesn't accord with the regulator's guidance or any other accepted method of calculating losses in such circumstances. And I don't think it's a fair way of calculating whether or not he's suffered a loss. In any event, I'm satisfied that it's not the case that gains

from one of the schemes is supporting a loss from the other. I'll explain why.

The actuaries' report shows a summary of its calculations which do combine the two schemes values when summarising its conclusions. That summary shows that, after comparing the value of Mr M's SIPP with what his two schemes would have been worth if he'd stayed in them (what I've referred to as the "scheme value" below), Mr M is £29,204 better off. The summary does show the individual scheme values but the other figures in the summary are a combination of the two schemes. But, it's not the case that the actuaries didn't calculate any potential losses from each scheme on a separate basis.

Within the actuaries report are calculations for each scheme individually which show the scheme values and their current value since being transferred to the SIPP. The actuaries' summary calls that quantity the "Value of the transfer proceeds not yet taken" but I've referred to it as the "SIPP value" below. However, as I understand it, the SIPP value figures are before adjusting for any benefits Mr M had already taken from the SIPP. As I understand it the actuaries calculated the following for each scheme:

	Scheme 1 (£)	Scheme 2 (£)
Scheme value	562,749.52	502,390.51
SIPP value	565,922.18	501,884.94
Potential loss	-3,172.66	508.57

As the SIPP value for scheme 1 is higher than the scheme value there is no loss concerning that transfer. The figures above indicate scheme 2 might have suffered a small loss. But, those figures are before making an adjustment for the sums Mr M has withdrawn from the SIPP. I understand that amount is £26,540.77, which, when applied to the figures above show that Mr M has not suffered a financial loss against either scheme but is cumulatively £29,204 better off.

It would appear that Brown Shipley's actuaries have not attempted to apportion the withdrawals from the SIPP against either scheme proportionately. That's most likely because Mr M only made those withdrawals after both transfers had been completed. So the deductions would apply to both schemes equally. This would explain why the actuaries combined the two schemes' SIPP values – before making the adjustment for withdrawals when they produced their calculation summary.

However, having looked at the data inputs I can't find anything to indicate: the actuaries' figures are not accurate; are in any way unfair; or that they have used a gain from one scheme to offset a loss from the other. So I think the actuaries calculations show that Mr M has not suffered a financial loss as a result of the transfers.

Mr M added that Brown Shipley's should separately refund the fees he paid for its advice. Brown Shipley has previously explained that the actuaries factored into their calculations an allowance for the fees. But Mr M's argument goes beyond that. If I have understood him correctly, he thinks that as the advice wasn't in his best interests Brown Shipley shouldn't benefit from the fees it charged.

While I can understand Mr M's argument Brown Shipley has already accounted for his fees when performing the loss calculation. And if he had suffered a loss then Brown Shipley

would have compensated him appropriately. That's not the case here. But I don't think that means Brown Shipley must refund his fees.

Advising on a DB transfer is a complicated matter. It generally involves a number of stages and a considerable amount of analysis. And it's usual for firms to expect to be paid for that work, even where their recommendation is not to transfer. Further, as Brown Shipley's actuaries' calculations have shown, Mr M has benefited from the transfers. In those circumstances I don't think it would be fair to instruct Brown Shipley to refund the fees, particularly as those are factored into the redress calculation.

My final decision

For the reasons given above I'm satisfied that the steps Brown Shipley & Co Limited has taken are fair and reasonable; so I don't intend to instruct it to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 January 2024.

Joe Scott
Ombudsman