

The complaint

Mr J complains that he was given advice by Pennymatters Limited to transfer his deferred benefits from his defined benefit (DB) pension to a personal pension. He says the advice was negligent and that he has lost out financially as a result.

What happened

Mr J says he was cold called in 2018 and offered a review of his pension. He says he was told a new pension would perform better than his DB scheme.

IPS Financial Advice Ltd (IPS), a firm regulated in Ireland, was the firm who contacted Mr J's DB scheme and requested his benefit details. The intent was to transfer his DB scheme into a Recognised Overseas Pension Scheme (ROPS) registered in Malta.

IPS then asked Pennymatters to provide a pension transfer analysis report. They provided Pennymatters with a background form (on Pennymatters' headed paper) which included some basic details about Mr J and a risk profile report. IPS also provided Pennymatters with details about Mr J's DB scheme benefits.

The documents showed:

- Mr J was 49 years old, married and earning £15,400 a year.
- He was expecting a state pension of £8,296 per year and a pension from his DB scheme at age 62 of £10,495 per year. He also had a personal pension with a value of £34,000.
- His desired territory for retirement was Malta
- He had met with an adviser and had completed paperwork
- His attitude to risk was recorded as "Growth" which was a higher risk classification.
- The transfer value from his DB scheme was £174,136

With regards to how Mr J would be invested once transferred IPS said:

'Interested in Euro equity, Global Equity and Absolute Return Funds. Looking at funds which have seen double digit returns over the past 5 years.'

Risks – usual equity risks

Charges – up to 1.7% AMC and 0.5% for trading account'

Based on the above, Pennymatters then issued a transfer analysis report (TVAS) and a report which detailed the Background/Objectives as *'to establish what factors there are to consider in the case of a potential final salary transfer to a prospective money purchase scheme, which could be onshore SIPP or a QROPS.'*

Pennymatters also issued a transfer advice declaration form on their headed paper which said:

To be completed by an Independent Financial Adviser (IFA) who is giving pension transfer advice to a pension scheme member with safeguarded benefits with more than £30,000.

It then showed the IFA's details as an adviser from Pennymatters and their FCA authorisation number and signature.

The form went on to say:

'In relation to the potential transfer of the plan holder's safeguarded benefits, I hereby declare that:

In my view appropriate independent advice has been given to the plan holder [Mr J] to quantify the issues surrounding a potential transfer of benefits out of the British Steel Pension Scheme.

I, as an IFA, have permission under Part 4A of the Financial Services and Markets Act 2000 or resulting from any other provision of that Act, to carry on the regulated activity in Article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the Order") (pension transfer advice).'

The TVAS, report and transfer declaration were returned to IPS with an invoice to Mr J of £660 plus VAT for the documentation they issued.

I've also seen a separate adviser statement form which was provided by the DB scheme and which again showed Pennymatters' adviser's name, FCA authorisation number and a firm stamp including their address and contact details. It was signed the same day as all the other paperwork Pennymatters provided and said:

I, the adviser named above, confirm:

- that the advice that I have provided is specific to the type of transaction proposed by the member;*
- that I have permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provisions of that Act, to carry on the regulated activity in article 53E of the Regulated Activities Order;*
- That the firm reference number of the company or business for which I work is authorised by the FCA to carry on the regulated activity in article 53E of the Regulated Activities Order; and*
- That the advice I have given is in relation to the member of Scheme named on this Statement and relates to their existing rights of safeguarded benefits.'*

Pennymatters' adviser says he has no recollection completing this particular declaration. He says it isn't completed in his handwriting but the signature looks similar to his.

Mr J subsequently transferred his DB scheme benefits to a ROPS registered in Malta.

In 2023, Mr J complained about the advice he received and that he suffered financial loss by giving up his DB benefits. Pennymatters say they didn't advise Mr J to transfer out of the DB scheme nor did they facilitate the transfer. They had no involvement with Mr J's investments and they were only tasked to evaluate and quantify a potential transfer of benefits from the DB Scheme.

Our investigator upheld the complaint. Pennymatters disagreed and so the complaint was passed to me for an ombudsman's decision.

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.

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations, regulator's rules, guidance and codes of practice, and what I consider to have been good industry practice at the time. 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.

I agree with Pennymatters that based on the information available they didn't provide Mr J with a personal recommendation to transfer his DB scheme benefits or how to invest once the monies were transferred. Given that the paperwork indicates it was IPS who initiated the transfer process and arranged it, I think it's more likely than not it was IPS or an unregulated investment firm who told Mr J he would be better off outside the DB scheme.

However, whilst Mr J's complaint is that Pennymatters gave him negligent advice, as a service we have an inquisitorial remit which allows me to consider what lies at the heart of his complaint. And it's clear to me that the complaint ultimately relates to Pennymatters' involvement in Mr J's pension transfer advice process which is what I've considered here.

Pennymatters was a FCA regulated financial advisory firm who were providing a service to Mr J in relation to a possible pension transfer and investment in a ROPS. They were making arrangements with a view of him transferring his pension into a ROPS and investing it mainly in equity funds. And they were charging a fee for this. In accordance with the FCA's Principles for Businesses they had to:

- conduct their business with integrity (PRIN1)
- conduct their business with due skill, care and diligence (PRIN2)
- pay due regard to the interest of their customers and treat them fairly (PRIN 6)

The Pension Schemes Act 2015 introduced the obligation for pension trustees to check that consumers had taken advice from an authorised independent adviser before giving up safeguarded benefits over £30,000. This is set out in Section 48 of the Act. An authorised independent adviser is a person who has permission under Part 4A of the Financial Services Act 2000.

This requirement for advice was brought in to protect consumers and making sure they receive appropriate advice before giving up valuable benefits. Financial advisers generally tend to complete a transfer advice declaration, like Pennymatters did, which can be shown to trustees and enable them to release safeguarded funds.

IPS wasn't an authorised independent adviser for the purposes of Section 48, so they couldn't issue a transfer advice declaration which would be needed to complete a DB transfer. And this is where Pennymatters involvement becomes crucial. Both IPS and Pennymatters would have known that a transfer couldn't happen without confirmation that Mr J received UK regulated advice.

In my view the transfer advice declaration gave the reasonable impression Pennymatters had given pension transfer advice. The form states at the beginning that it should be completed by the IFA who gave the advice and it includes Pennymatters' relevant permissions and authorisations. Also there was no apparent other reason why this form needed to be completed other than to provide it to the DB trustees. So I think Pennymatters ought to have reasonably known that this is how such a declaration would be used and interpreted.

I acknowledge that Pennymatters say they don't recall completing the second adviser declaration on the DB scheme form. However, on balance I think it's more likely than not they did sign this too. It was signed on the same day as all other paperwork they completed

and it includes their firm stamp and signature. In any event, I think the declaration they did complete on its own would have been sufficient to give the misleading impression they gave advice.

In my view Pennymatters knowingly helped IPS to circumvent UK legislation. They knew the law required Mr J to receive advice from an adviser with specific UK pension transfer advice permissions and they produced paperwork which gave the impression he had received this, even though they say they didn't advise him.

I can't even see that Pennymatters had any real insight to what IPS's advice process looked like. With regards to their processes they told us previously: *'We had no detailed knowledge or visibility of the products being used....The only information that we had was that given by [IPS], and we wrote the reports based upon their information. We were paid a fixed fee in this regard and did this, we believe, in line with what we were meant to do at the time.'*

The starting assumption for a DB transfer is that it is unsuitable for most people and it needs to be demonstrated that it is in a consumer's best interest. (COBS 19.1.6 G)

Mr J was a manual worker on a relatively low income and was planning to transfer his main pension provisions into an overseas pension with significant charges.

Based on the limited information I have seen I can't see that it was in Mr J's best interest to transfer his DB pension. He had no recorded investment experience or knowledge and even Pennymatters themselves have said if they had advised him they would have advised against a transfer.

The background form showed Mr J wanted to retire in Malta and the Pennymatters' report mentions possible advantages of the investment being converted from Sterling to Euro which could negate adverse movements in Sterling after Brexit.

Mr J says a move abroad in retirement was never intended. He simply signed forms that had been completed for him. However, even if that had been the case the fact alone that someone might move abroad in the future does not automatically make a transfer out of a DB scheme and/or a transfer to a ROPS suitable.

As I said initially, Pennymatters didn't recommend a transfer to Mr J. However, where Pennymatters have acted not in Mr J's best interest is when they completed at least one transfer advice declaration that gave the impression they had given advice. They were aware that Mr J was looking to transfer his DB pension to a ROPS and that he was being advised by a firm outside the UK who didn't have the necessary authorisation and permissions. They had no insight what Mr J was being told by IPS and they knew Mr J was planning to invest in an overseas pension with fairly high costs.

Without the declaration completed by a UK regulated adviser with the relevant permissions, the transfer could not have proceeded. And Pennymatters would have known this. So my view remains that they should only have completed the declaration if they had actually given advice. Without their involvement, Mr J wouldn't have been able to transfer out of his DB scheme.

Pennymatters helped IPS to circumvent UK legislation which was designed to protect Mr J. IPS needed Pennymatters' transfer declaration in order to transfer Mr J's benefits from a DB scheme. And I think Pennymatters ought to have known that their declaration would be used in this way. There was no other reason why such a declaration needed to be issued. If Pennymatters had just wanted to confirm they had carried out a transfer analysis, they could have done this in a separate confirmation which in no way resembled a transfer advice

declaration needed for the purposes of Section 48 of the Pension Schemes Act 2015. In my view Pennymatters should not have issued a transfer advice declaration without giving advice to Mr J. They carried out business in a way that wasn't in the best interest of Mr J and not in line with PRIN.

In my view they ought to have either refused to issue the transfer advice declaration or offered to provide advice to Mr J. If they had refused to provide the declaration, IPS might have approached another business for their assistance. However, on balance I think any reasonable adviser would have rejected this proposal.

And if Pennymatters had provided advice to Mr J, they would have had to properly consider the receiving scheme and intended investments. And I think they ought to have recommended against a transfer. I can't see any persuasive reason why it was in Mr J's best interest to give up guaranteed benefits.

Overall, I think if Pennymatters didn't act in Mr J's best interest and didn't treat him fairly. If they had acted differently, Mr J likely would not have transferred his DB pension.

I appreciate Pennymatters say they were only paid a fixed fee for the report and I acknowledge that several other parties were involved in Mr J's transfer and they might also have contributed or caused the same losses. However, I'm considering Pennymatters' involvement here and their actions. I appreciate they seem to think they only played a negligible role in Mr J's pension transfer. However, I disagree. They could have prevented Mr J transferring his DB pension and in my view they played a significant role in enabling this unsuitable transfer.

I'm satisfied that their actions were material to Mr J transferring his DB pension and investing into a ROPS. If they had not issued the declaration they would have more likely than not prevented the transfer. Mr J wouldn't have been exposed to any investment risk and unsuitable investments and wouldn't have suffered any losses. So whilst I recognise Pennymatters doesn't seem to have been involved in Mr J's investment strategy, their actions left Mr J exposed to risks he shouldn't have been exposed to in the first place.

So in the circumstances I think it's fair and reasonable that they compensate Mr J for all of his losses he suffered by transferring out of the DB scheme. If they feel other parties are also responsible, they are free to pursue them if they wish once they paid Mr J in full.

Putting things right

My aim is to put Mr J as much as possible back into the position he would have been in if it wasn't for Pennymatters inappropriate actions. As said above I think he likely would not have transferred out of the DB scheme.

Pennymatters must 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>.

I understand some of Mr J's investments are in loan notes (bought immediately after the transfer in September 2018) which are now illiquid and he cannot access his pension which has wanted to do since he turned 55 this year. Given that Mr J would have accessed his pension by now if he could, I think it's reasonable to assume he would have accessed his DB benefits early too. I say this because his representatives have told us he currently isn't working due to ill health, he is desperate to access his tax-free cash and is vulnerable due to the lack of funds.

His representatives say early retirement from the DB scheme would have likely only been possible with significant exit penalty charges. They also say that if Mr J was considering taking DB benefits now he would be receiving financial advice and alternatives to accessing his pension would be explored like loans, borrowing from friends and family or seeing whether benefits would be available to him. Mr J has told them he is only looking for funds short-term so an adviser would have taken this into account. Mr J's representatives think Mr J unlikely would have opted for early retirement from the DB scheme due to the penalties and believe an assumed retirement age of 62 should be used (the normal retirement age in Mr J's previous DB scheme).

I carefully considered these arguments, but still believe on the balance of probabilities Mr J would have accessed his DB benefits at 55 if he had remained in the scheme. Early retirement isn't subject to penalties but benefits are reduced to recognise that they are being paid for longer. And this isn't much different to taking lump sums from a drawdown arrangement early which will also reduce benefits later on in retirement.

I also note that in order to take benefits from his DB pension Mr J wouldn't have needed financial advice, so I don't think it can be assumed he likely would have sought this. His representatives have said he was looking to access his pension as a last resort, so it doesn't sound like he has alternative options to raise funds in any event or if he had whether he would have wanted to use these.

Overall, I think it's reasonable to assume Mr J would have accessed his DB benefits at 55 when he needed funds desperately and so this is the age which should be assumed for calculations.

The redress calculation should be carried out using the most recent financial assumptions in line with 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 Mr J's acceptance of my final decision.

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Pennymatters may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr J's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Not being able to access his pension over the past few months due to illiquid investments and realising what benefits he has lost in his DB scheme have caused Mr J considerable worry and distress. I think paying him £500 for this is reasonable in the circumstances.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £170,000 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 £170,000 I may recommend that the business pays the balance.

Determination and money award: I uphold the complaint and require Pennymatters Limited to pay Mr J the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000 I also recommend that Pennymatters Limited pays Mr J the balance.

If Mr J accepts this final decision, the money award is binding on Pennymatters Limited. My recommendation is not binding on them. Further, it's unlikely that Mr J can accept a final decision and go to court to ask for the balance. He may want to consider getting independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 January 2024.

Nina Walter
Ombudsman