DRN-2868840

The complaint

Mr R complains about the advice given by Wealthmasters Financial Management Ltd ('WFM') to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). The BSPS was a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him.

Mr R is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr R.

What happened

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In September 2017, the BSPS provided Mr R with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £290,872.12. And in October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere.

Mr R approached WFM in October 2017 to discuss his BSPS pension.

WFM completed a fact-find, on 20 October 2017, to gather information about Mr R's circumstances and objectives. It noted he was 42, married with children, in good health and employed full time. His monthly income exceeded his outgoings. He had a mortgage, but it was noted that this was due to be repaid by age 55.

In addition to the benefits held in the BSPS, Mr R was also a member of his employer's new defined contribution pension scheme. He and his employer were making combined contributions to this equivalent to 16% of his salary. And it was noted Mr R may increase his contributions to that scheme, in the future. That pension arrangement had only recently begun and the BSPS benefits made up the significant majority of his retirement provisions at that time.

It was recorded that Mr R hoped to retire at age 57 and expected to need an income of approximately £20,000 per year in retirement. He didn't anticipate having a need for a tax-free cash ('TFC') lump sum. And WFM said Mr R had already decided he intended to transfer his benefits away from the BSPS and understood he'd already spoken to several other independent financial advisers.

WFM also carried out an assessment of Mr R's attitude to risk ('ATR'), which it deemed to be 'moderately adventurous'.

On 25 October 2017, WFM advised Mr R to transfer his pension benefits from the BSPS into a SIPP. The suitability report said the reasons for this recommendation were that the BSPS was in deficit and Mr R had been offered a competitive CETV. WFM's analysis showed that the pre and post retirement death benefits following a transfer would be greater – something WFM said was really important to Mr R – and the lump sum nature of these benefits better suited his circumstances. The flexibility in terms of how benefits could be drawn best suited Mr R's needs and circumstances. And the SIPP would not apply penalties if Mr R took benefits from age 57, whereas the BSPS, PPF and the BSPS2 would. So, WFM felt a transfer was suitable. It recommended a specific SIPP provider and that Mr R use a managed portfolio service and invest in three specific 'wrappers' which WFM felt best matched his ATR. WFM would also provide ongoing servicing of the pension, at a cost.

Mr R complained in 2019 to WFM about the suitability of the transfer advice. In summary he said he didn't think WFM had properly considered his circumstances and hadn't made the nature of the benefits, he was giving up by transferring, clear – particularly bearing in mind his lack of investment experience. So overall, he didn't think the recommendation was suitable.

WFM didn't uphold Mr R's complaint. It said it had adhered to the regulations binding it when advising Mr R and that the advice was suitable as it was based on what Mr R had told it and best met his objectives and requirements. WFM reiterated Mr R had already decided to transfer his pension from the BSPS prior to contacting WFM and had already spoken to several other advisers. WFM said Mr R was made fully aware of the benefits he'd be giving up and the risks. It said Mr R clearly set out an intention to retire at age 57, wanted the flexibility to be able to draw his benefits without incurring a penalty for early retirement and wanted to ensure that the pension was passed to his dependents in the event of his death. And WFM said Mr R didn't think the PPF or the BSPS2 would've allowed him to meet these objectives, as they were too restrictive.

Mr R referred his complaint to our service. An investigator upheld the complaint and required WFM to pay compensation and £250 for the distress caused. He didn't necessarily agree with WFM that Mr R had a moderately adventurous attitude to risk. But in any event, the Investigator thought Mr R was always unlikely to improve on the guaranteed benefits he would've received under the PPF or the BSPS2 by transferring. And he didn't think the other objectives Mr R had expressed an interest in were urgent or justified the likely reduction in his pension benefits. So, he didn't think Mr R should've been advised to transfer and felt he most likely would've subsequently joined the BSPS2.

WFM did not accept our Investigator's opinion, so the complaint was referred to me to make a final 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.

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 Business ('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 WFM'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, WFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

WFM instructed a transfer value analysis ('TVAS') report be produced – as obtaining a TVAS was required by the regulator. The purpose of which was to indicate the likelihood of Mr R being able to match or exceed the guaranteed benefits he was entitled to under his DB scheme by transferring his pension. And the TVAS report included a calculation of how much a new pension would need to grow by each year in order to allow Mr R to purchase equivalent benefits to those the DB scheme guaranteed (the critical yield).

The critical yield figures appear to have been based on matching Mr R's existing scheme, the BSPS, based on the revaluation assumptions noted. But Mr R didn't have the option to remain in the BSPS as it was. He either needed to opt into the BSPS2 or move with the BSPS to the PPF. While critical yield figures were calculated in respect of moving to the PPF, which was appropriate, there was no comparison to the BSPS2. And I think there should've been. By the time the advice was given here, sufficient details around the BSPS2 had been provided for a meaningful comparison to have been made. So, the TVAS doesn't provide as useful a comparison as it ideally should have. But nevertheless, I've considered the report when looking at whether the transfer was in Mr R's interests from a financial viability perspective.

The TVAS said that the critical yield required to match the full pension the BSPS would've provided at age 65 was 6.28%. To match the maximum TFC and reduced pension the BSPS would've provided at age 65, the critical yield was 5.04%.

To match the full pension that the PPF would provide at age 65 (estimated to begin at £16,740.87 per year) the critical yield was 4.42%. Or to match the maximum TFC the PPF would provide at age 65 (£88,027.94) and the reduced starting annual pension (£13,204.19) the critical yield was 4.11%.

Critical yields were also calculated on the basis of retiring at age 57 – which WFM says Mr R wanted to do. To match the full pension the BSPS would've provided at age 57 the critical yield was 8.1%. And to match the TFC and reduced pension the BSPS could've given at that age the critical yield was 6.26%.

To match the full pension the PPF would've provided from age 57 (starting at £12,702.18 per year) the critical yield was 6.37%. Or to match the TFC (£70,248.98) and reduced starting pension (£10,537.34) the PPF would've provided at age 57, the critical yield was 5.97%.

Again, the critical yields applicable to the BSPS2 benefits were not calculated – although I think they should have been. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat in comparison to the BSPS. But in my experience, they would've likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses 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 provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.5% per year for 22 years to retirement (which would be the case if Mr R retired at age 65). And for 14 years to retirement – which would be the case if he retired at age 57 – the discount rate was 4.2%. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, the 'moderately adventurous' attitude to risk that WFM suggested Mr R had and also the term to retirement. There would be little point in Mr R giving up the guarantees available to him only to achieve, at best, the same level of benefits outside the DB scheme. But here, I think for retiring at age 57, which WFM says was Mr R's main objective, he was always likely to receive benefits of a lower overall value than those he would've been due under the BSPS2 or the PPF as a result of transferring and investing in line with his recorded attitude to risk. And for retiring at age 65, I think the same is true and he was unlikely to improve on the guaranteed benefits he'd have been due.

So, from a financially viability perspective, I don't think a transfer was in Mr R's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits which WFM has suggested is the case here. I've considered this below.

Flexibility and income needs

WFM says Mr R was clear that he intended to retire at age 57 and that he expected to need £20,000 per year in retirement. So, his circumstances meant he required flexibility to take his pension benefits early, take more from his private pension arrangements in the early years and then reduce this when he became entitled to receive the state pension at age 67. And transferring was also the only way to take benefits from age 57 without incurring penalties.

Mr R was 42 at the time of the advice. There were still over 12 years until he could think about accessing his pension benefits at all and over 14 years until WFM says he intended to do so. I don't doubt he was interested in retiring early if possible – I think most consumers would be when asked. And he may even have tentatively planned to do so. But I don't think those plans were finalised and could've been subject to change, just as his circumstances and needs may have altered.

Mr R also had the option of taking his pension benefits from age 57 under either the PPF or the BSPS2. So, he didn't need to transfer in order to access his benefits from that age.

It is true that if Mr R drew his benefits at age 57 under either the PPF or the BSPS2 the amount he could take would be subject to actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by retiring at age 57 Mr R would've been receiving his pension for eight years longer. It was a trade-off, rather than a 'penalty'. Yet WFM made several references to this being a penalty, which I don't think gave an appropriately balanced explanation.

I also don't think Mr R needed to transfer, in order to meet his retirement income needs. WFM has said he needed to be able to take more from his private pension to begin with than he could've done under the more rigid structure of the DB scheme in order to meet this goal. But I don't agree this was the only way of doing this.

Again, the TVAS didn't include any calculations of what Mr R would've been entitled to under the BSPS2. But it did say that from age 57, under the PPF it was estimated Mr R could draw a full pension of £12,702.18 per year or take £70,248.98 TFC and a reduced starting pension of £10,537.34 per year. The yearly pensions would've escalated while in payment. Neither of these starting yearly pension amounts, at age 57, would've achieved the annual income of £20,000 Mr R indicated he expected to need. But he had options in how he could take the DB scheme benefits and over 14 years until they'd be drawn, in which time he could continue to build his other retirement provisions.

Mr R indicated he didn't think he'd have a need for TFC. Which would suggest he may've been more inclined to take the full pension available under the DB scheme – which gave a higher starting annual pension income. But he could've taken the lump sum and the lower starting pension and used the TFC to supplement his pension income in the initial years of retirement. And again, the annual pension would still have increased.

Mr R was also a member of the new defined contribution pension scheme his employer had put in place after the BSPS had closed. And, I haven't seen any suggestion he intended to change employer prior to retirement. He and his employer's contributions to this new scheme were equivalent to 16% of his salary. And based on the information recorded in the fact-find, before even accounting for increases in salary, investment growth or Mr R increasing his contributions, by age 57 this fund was likely to be worth in excess of £100,000. This fund could've also potentially been used flexibly from age 57, to supplement the income from the DB scheme. And I think this would've allowed him to meet his income objectives if he did retire at age 57 until his state pension became payable. At which point the state pension and the DB scheme pension, which would've escalated in the intervening period, would've met his income needs.

And the DB scheme benefits, regardless of which point they started, were guaranteed for life. Whereas the amount he could take under a flexible personal pension was entirely dependent on the sum remaining in the plan.

Taking all of this into account, given the time until he was intending to retire, I don't think Mr R's plans or needs were known and certainly were not finalised. So, I don't think he had a need for flexibility at the time of the advice. Nor do I think this was the only option for meeting the objectives he may've been considering at the time. And I don't think it was a suitable recommendation for Mr R to give up his guaranteed benefits when he did. If Mr R later had reason to transfer out of his DB scheme I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think WFM explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr R was married and so the spouse's pension provided by the DB scheme could've been useful to his spouse if Mr R predeceased her. WFM says Mr R didn't feel this was as valuable as the potential to leave a lump sum. But the spouse's pension was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr R drew in his lifetime.

It was noted that Mr R had concerns about his potential life expectancy, as there has been a history of early death in his family. The indication being he may not have drawn benefits for that long before he died. But Mr R was noted as being in good health. Him not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr R's pension would need to last longer. If Mr R transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the income he needed and any death benefits.

The TVAS report also said that if Mr R drew an income equivalent to that he'd have been entitled to under the BSPS from either age 65 or age 57, assuming a medium rate of return was achieved, Mr R's pension fund would run out by age 83. So, given the apparent intention was for him to in fact draw a higher income in the early years of retirement from the personal pension, it appears likely that the value of the pension would've been significantly depleted by the time that it came to be passed on to his beneficiaries. So, the pension may not have provided the legacy that Mr R may have thought it would.

The fact find also recorded that Mr R had death in service benefits from his current employer, which appear to me to have been a more appropriate method by which to leave a legacy to his family. The new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB scheme. And, if Mr R didn't think these were enough and genuinely wanted to leave a further legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think life insurance should've been considered. But I can't see that this was discussed.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr R.

Concerns over financial stability of the DB scheme

I don't doubt Mr R, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general lack of optimism. I also think Mr R may've been concerned his pension would end up in the PPF and he'd likely heard negative things about the PPF. It's also quite possible that Mr R was leaning towards transferring because of these concerns. However, it was WFM's obligation to give Mr R an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. The "Time to Choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated some of Mr R's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that WFM should've reassured Mr R that the scheme moving to the PPF wasn't as concerning as he thought. He didn't have firm retirement plans. But, as I've explained, it appears likely his other provisions, in conjunction with the pension payable under the PPF, would've provided what he needed in retirement. Although the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk and, as I've explained, I think he was likely to receive benefits of a lower overall value as a result of transferring. So, I don't think that the concerns Mr R may've had when talking to WFM should've led to it recommending he transfer out of the DB scheme altogether.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr R. But WFM wasn't there to just transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income (either through the BSPS2 or the PPF). By transferring, Mr R was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. I don't think he *needed* flexibility to achieve his objectives and I certainly don't think a decision on this needed to be made at the time it was – given how long he had until his retirement. And I also don't think the alternate death benefits he could potentially receive made transferring in his best interests. So, I don't think he should've been advised to transfer.

Mr R had over 14 years before he reached the age at which he'd indicated he might like to retire. But his plans were in any event unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. I say this because while it is true the PPF would've provided a more favourable reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction he accepted would end up being offset by this more favourable reduction. And by opting into the BSPS2, Mr R would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think if WFM had correctly advised him against transferring Mr R would've opted into the BSPS2.

Of course, I have to consider whether Mr R would've gone ahead anyway, against WFM's advice. WFM says Mr R had already spoken to several other independent financial advisers before he contacted it. And it says he had already decided to transfer.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against WFM's advice. Even if Mr R had already spoken to several other firms, the fact that he asked WFM for its advice indicates to me he hadn't made a decision, otherwise he would've had no need for seeking further advice.

From the information I've seen Mr R was an inexperienced investor and this pension accounted for the majority of his retirement provision, meaning he had a low capacity for loss. As I've already explained, I don't doubt he was concerned about what may happen to his pension, particularly given the consultation that had been ongoing. And he might've thought that transferring was a good idea. But if WFM had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr R's concerns about the consultation, or the potential appeal of alternative death benefits and flexibility were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If WFM had explained that Mr R could meet his objectives without risking his guaranteed pension, either through the BSPS2 or the PPF, meaning he didn't need to be overly concerned about the prospect of the pension entering the PPF, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of the DB scheme.

In light of the above, I think WFM should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that WFM also pay Mr R £250 for the distress caused by the unsuitable advice. I don't doubt that Mr R has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for WFM's unsuitable advice. I consider Mr R would have most likely opted to join the BSPS2, if he'd been given suitable advice. So, WFM should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr R whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance / rules to come into effect. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for the new guidance to come into effect.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr R.

WFM 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.

For clarity, Mr R has not yet retired, and I understand he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision 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 Mr R's acceptance of the decision.

WFM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R'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 Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 Mr R 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 his 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 payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Mr R within 90 days of the date WFM receives notification of his acceptance of my final decision. 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 WFM to pay Mr R.

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.

If the complaint hasn’t been settled in full and final settlement by the time any new guidance or rules come into effect, I’d expect WFM to carry out a calculation in line with the updated rules and / or guidance in any event.

In addition, WFM should pay Mr R £250 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Y Determination and money award: I uphold this complaint and require Wealthmasters Financial Management Ltd to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Wealthmasters Financial Management Ltd to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Wealthmasters Financial Management Ltd to pay Mr R any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Wealthmasters Financial Management Ltd pays Mr R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts this decision, the money award becomes binding on Wealthmasters Financial Management Ltd.

My recommendation would not be binding. Further, it’s unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 12 January 2023.

Ben Stoker
Ombudsman