

## **The complaint**

Mr M complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

In March 2016, Mr M'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.

Mr M was concerned about what the announcement by his employer meant for the security of his pension. So, he contacted NTM for advice. Mr M met with NTM in September 2017 and they completed a fact-find to gather information about his circumstances and objectives. It noted that Mr M was 45; he was separated; he owned his own home; he had an outstanding mortgage of around £80,000 with a remaining term of 18 years; and Mr M's objective was to retire at 55 and have an income of £1,500 net per month.

NTM also carried out an assessment of Mr M's risk appetite, which they deemed to be 'Average' or small to medium.

In October 2017 Mr M's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in BSPS which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017.)

Toward the end of October 2017, NTM issued a suitability letter advising Mr M to transfer his BSPS benefits to a personal pension arrangement and invest the proceeds in an investment fund which NTM deemed matched Mr M's attitude to risk. In summary, the suitability report said the key reasons for this recommendation were:

- To take control of his pension and away from the control of his employer – Mr M was concerned about the changes to the BSPS.
- While the DB scheme would provide Mr M with better income benefits, a transfer to a personal pension arrangement would meet Mr M's objective for flexible benefits and the ability to vary his income in retirement.
- It enabled Mr M to pass on his pension to his family upon his death.

- It gave him the option to retire early.

Mr M accepted the advice and around £425,000 was transferred to Mr M's new personal pension.

In 2021, using the services of a representative Mr M complained to NTM about the suitability of the transfer advice.

NTM didn't provide a final response to Mr M's complaint – so on the assumption that it didn't uphold his complaint, Mr M referred his complaint to our Service. An investigator upheld the complaint. They thought the opportunity to improve on the benefits available through the DB scheme was low – something NTM noted itself in the recommendation letter. While they said this alone didn't mean the advice was unsuitable, they didn't think they were any other compelling reasons for the transfer. For example they said Mr M didn't need flexibility; life assurance could've been set up instead to cater for lump sum death benefits; and overall remaining in the DB scheme would've met most of Mr M's objectives. They said NTM should've advised Mr M to opt into the BSPS2 and they recommended that NTM should compensate Mr M for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

NTM disagreed. In summary it said:

- The investigator had mis-applied the rules – specifically COBS 19.1.6G – and incorrectly used this as the starting point for suitable advice and not COBS 9.
- At the time BSPS2 wasn't guaranteed to go ahead. This as well as the time sensitive nature of the guaranteed transfer value needs to be taken into account when considering the suitability of the advice.
- The investigator referred to the wrong critical yield figure – the appropriate comparator was the PPF as this was the only certain alternative at the time. While it acknowledged this didn't alter the broader conclusion that the investment return required to match the scheme benefits wasn't viable, it makes the performance a lot closer. As a consequence it believes the other factors in favour of transferring do not have as much to outweigh.
- The investigator failed to identify and given proper weight to Mr M's objectives. He wanted to retire at 55, draw an income of £1,500 a month, have access to a higher tax-free cash lump sum and to support his children after his death all of which were met by transferring. Neither the proposed BSPS2 nor the PPF met Mr M's objective.
- Mr M accepted that his overall income would decrease as a result of transferring, but overall income wasn't his priority. The advice was suitable and transferring was in Mr M's best interests.

The investigator wasn't persuaded to change their 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 NTM'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. My reasons are set out below.

I can see that NTM referred to the regulatory requirements it was under a duty to abide by and said the investigator had made the wrong assumptions about the starting point. As I've set out above, I agree that COBS 9 deals with the obligations when giving a personal recommendation and assessing suitability, including COBS 9.2.1 which says NTM was required to take reasonable steps to ensure that its personal recommendation to Mr M was suitable for him. But additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

#### *Financial viability*

NTM produced a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – referred to as the critical yield. It appears this was based on his existing scheme benefits. But Mr M didn't have the option to remain in the BPS. At the time the TVAS was produced, the BPS2 was formally announced as progressing.

And at the time the suitability report was produced and sent to Mr M, which was in the latter part of October 2017, details of the scheme had been provided (it's also possible Mr M had received his "Time to Choose" information.) The BPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr M through the BPS2 should've been factored in with this advice so that he was able to make an informed

decision. Afterall, Mr M either needed to opt into the BSPS2 or move with the scheme to the PPF.

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.

Mr M was 45 at the time of the advice and the advice paperwork said he wanted to retire early at 55 if it was possible. The TVAS set out the relevant critical yields; at age 55 it was 10.9% if he took a full pension or 8.66% if he took tax-free cash and a reduced pension. The critical yield required to match the benefits provided through the PPF was 7.19% if Mr M took a full pension and 6.58% if he took tax-free cash and a reduced pension. But as I've said above, Mr M remaining in his existing DB scheme wasn't an option at the time of the advice. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

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 3.7% per year for nine years to retirement. 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, Mr M's 'Average' attitude to risk and also the term to retirement. In my view there would be little point in Mr M giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, the lowest critical yield was 6.58%, which was based on Mr M taking a reduced pension and a cash lump sum through the PPF at age 55. The critical yield if Mr M took the same benefits through his existing scheme at 55 was 8.66%. So, if Mr P were to opt into the BSPS2 and take the same benefits at age 55, I think the critical yield would've been somewhere between those figures, but most likely closer to 8.66%. Given the discount rate of 3.7% and the regulator's middle projection rate of 5%, I think Mr M was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with an 'Average' appetite for risk. And I don't think the position was any different under the PPF.

In my view to have come close to achieving the level of growth required would have required Mr M to take significantly higher investment risk than he'd indicated he was willing to take. And even then I think it's more likely than not Mr M would be worse off financially at retirement if he transferred out.

I can see that NTM said the investigator referred to the wrong critical yield figure – the appropriate comparator was the PPF as this was the only certain alternative at the time. But I've already said why I think NTM should've provided critical yield figures based on the BSPS2. And in any event, this doesn't alter the overall conclusion that Mr M was likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension.

So given Mr M was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. I can see that in its suitability report, NTM said that it felt the critical yields were too high and that it would be difficult to justify recommending a transfer out of the BPS for this factor alone. I think in the circumstances NTM should've stopped there and not recommended the transfer for this reason alone. But I accept, as NTM has argued in this case and as it went on to set out in the suitability letter, financial viability isn't the only consideration when giving transfer advice. There might be other considerations, which mean a transfer is suitable and in Mr M's best interests, despite providing overall lower benefits. I've considered these below.

### *Flexibility and income need*

NTM has said Mr M had a clear objective to retire at 55 and draw an income of £1,500 a month and that he couldn't achieve this by remaining in his DB scheme.

I've already said that I don't think it was financially viable for Mr M to transfer out to meet this objective. But importantly here, Mr M was only 45 – he still had 10 years to go before he wanted to think about accessing his pension. And while I accept he might reasonably have begun to think about his retirement plans, I'm not persuaded that his plans could reasonably be described as set in stone. For example Mr M had not clearly thought about his expenditure needs in retirement – the income and expenditure recorded in the fact-find can, in my view, only reasonably be described as sparse. I can see this was something NTM acknowledged in a file note of an advice meeting following the issuing of the suitability letter. Here it says Mr M wasn't clear on his expenditure because of his recent divorce and because his wife took care of things. But if Mr M didn't know his expenditure needs now, he wasn't in a position to know what they would be at 55 and so what his income need would be. I'll come back to this again.

Furthermore nothing about Mr M's circumstances leads me to conclude he had a real need to retire at 55. Mr M had a mortgage – but he didn't need to repay it at this time. From what I can see it was on a repayment basis with a remaining term of 18 years, so the balance was reducing. And it appears to have been affordable. Mr M's other debts were also serviceable from his income and would likely be repaid in the relative short term. So I don't think Mr M needed to access his tax-free cash at 55 to repay these. It's recorded that Mr M wanted a lump sum to possibly help his children out to buy a house. But I think this was only a possibility at the time. I can see that it was noted that people in Mr M's profession have a lower life expectancy – but it's also recorded that Mr G was in good health. So I don't think Mr M's health demonstrates a need to retire early at 55.

I accept Mr M likely told NTM, when asked, that he wanted to retire early – I think if asked most people would say the same thing. But NTM's role wasn't simply to facilitate a customer's objective and what Mr M might have thought he wanted. Mr M's desire to retire early doesn't outweigh NTM's responsibility to provide him with suitable advice and act in his best interests.

So I don't think NTM should have advised Mr M to transfer out for the possibility of him being able to retire early when I don't think he had concrete plans to do so at this stage. Because of this I'm not persuaded Mr M had a genuine need for flexibility in how or when he took his pension benefits, or that it was a real objective at this stage – I think it was simply a consequence of transferring out to a different arrangement.

Of course Mr M already had the option to retire early - he didn't have to transfer out to achieve this. But if Mr M's needs developed later on and he had reason to transfer, I think

this could've been explored closer to his intended retirement age, which as I've said was still many years away. While this wouldn't have been possible if Mr M's scheme moved to the PPF, if he opted to join the BSPS2 he would've retained the ability to transfer out nearer to retirement, if indeed it was required.

Turning to Mr M's income need and notwithstanding the above, NTM appears to have recommended the transfer because Mr M couldn't achieve his income objective of £1,500 per month by remaining in his DB scheme. I've already said above that I don't think a transfer was financially viable. And as I also touched on above, I'm not persuaded that NTM did enough to interrogate Mr M's retirement income objective to determine whether or not it was realistic or achievable. Crucially NTM did not carry out a thorough expenditure in retirement analysis to determine whether £1,500 a month was what Mr M actually needed to fulfil his retirement goals. Mr M's comment recorded in the file note that he was sure he could live comfortably off this figure was not based on any analysis and I don't think it was reasonable for NTM to have relied on it.

I also think in the circumstances, as part of the analysis it would've been helpful to show Mr M what income he could expect from his DB scheme at say age 60 to show how delaying his retirement goal by five years increased the income he could expect. Mr M's outstanding mortgage balance at this time would have been significantly lower as it only had a couple more years to run - so Mr M wouldn't have a need for a large cash lump sum. NTM could've then explored the role Mr M's workplace Defined Contribution scheme along with his DB scheme could've played in meeting his needs.

Ultimately, NTM had to determine whether giving up the secure, guaranteed benefits available through the BSPS2 or the PPF was in Mr M's best interest. And as part of this, I think it was necessary to carry out this analysis. Importantly, if NTM didn't think Mr M's plans were realistic it should've made that clear to him. This would've given Mr M the information and opportunity to re-consider things, including re-thinking his target retirement income. Because I'm not persuaded this was carried out clearly, I don't think NTM did act in Mr M's best interests and I don't think Mr M was able to make an informed decision.

### *Control and death benefits*

The suitability report recorded that Mr M wanted his family to benefit from his pension upon his death – albeit I also note it said this was a secondary priority.

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 M given the circumstances. But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr M about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement. So I don't think the potential for different or greater death benefits should have been prioritised over this and Mr M's security in retirement.

And I say potential, because the sum left on Mr M's death was dependent on investment returns – so if he lived a long life, and/or investment returns were lower than expected, there may not have been a large sum to pass on anyway.

I think NTM ought reasonably to have known that Mr M had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his children to receive if he hadn't already done so. And it also knew that Mr M was paying into the current DC scheme and he would've

been able to nominate his children as beneficiaries of this plan too – again if he hadn't already done so.

I can see that NTM produced a life assurance quote based on a whole of life policy but this was discounted by NTM due to its cost. But the quote was simply based on the transfer value. I think if Mr M genuinely wanted to leave a legacy for his children over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think NTM should've instead explored additional life insurance properly.

In my view the starting point ought to have been to ask Mr M how much he would ideally like to leave to his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be affordable to provide given Mr M's age, his recorded good health and the level of his disposable income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease in retirement benefits for Mr M. And I don't think NTM did enough to explore or highlight the alternatives available to Mr M to meet this objective.

### *Concerns over BSPS*

The advice paperwork makes reference to Mr M's concerns about his pension scheme and specifically about it moving to the PPF. And I have no doubt that Mr M was concerned about his pension at this time – there was lots of negative sentiment about the PPF. I think this is likely the reason Mr M sought advice in the first place and it's possible that Mr M was considering transferring because of these concerns about his employer and what might happen.

But it was NTM's obligation to give Mr M 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. So, the advice should've properly taken the benefits available to Mr M through the BSPS2 into account and I think this should've alleviated Mr M'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 NTM should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, importantly the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to NTM recommending Mr M transfer out of the DB scheme altogether.

### *Summary*

I accept that Mr M was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr M. But NTM wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. I'm not persuaded Mr M's early retirement plans were sufficiently established at the time of the advice to justify a need for flexibility of income. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr M was likely to obtain lower retirement benefits. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr M's best interests to transfer his DB scheme to a personal pension at this time when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. While Mr M said he wanted to retire at 55, I'm not persuaded this was set in stone. Mr M had ten years before he said he wanted to retire, and he didn't know what his needs in retirement would likely be. So, 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, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme nearer to his retirement age if his needs demanded it. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think NTM should've advised Mr M to opt into the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against NTM's advice.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the BSPS against NTM's advice. I say this because, while Mr M was motivated to transfer when he approached NTM, on balance, I still think Mr M would've listened to and followed NTM's advice if things had happened as they should have and it recommended he opt into BSPS2. Mr M was an inexperienced investor who in my view neither possessed the necessary knowledge, skill nor confidence to go against the advice they were given. Furthermore Mr M's pension accounted for the majority of his retirement provision at the time. So, if NTM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M's fear about the PPF was 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 NTM had explained that Mr M could likely meet all of his objectives by re-considering his retirement and income plans following proper analysis and without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr M would have insisted on transferring out of his scheme against NTM's advice.

In light of the above, I think Vale should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £500 for the distress and inconvenience the matter has caused Mr M. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish NTM - which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr M. Taking everything into account, including that I consider Mr M is at the age when his retirement provision is of greater importance, I think the unsuitable advice has caused him distress. And I think an award of £500 is fair in all the circumstances.



## Putting things right

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 M 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.

Mr M has chosen not to wait for the new rules / guidance to come into effect to settle his complaint.

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 M.

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for NTM's unsuitable advice. I think NTM should've advised Mr M to opt into the BPS2 - so is the benefits available to him through the BPS2 that should be used for comparison purposes.

NTM 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, compensation should be based on Mr M's 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 M's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M'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 M 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 M within 90 days of the date NTM 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 NTM to pay Mr M.

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 NTM to carry out a calculation in line with the updated rules and/or guidance in any event.

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**

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

In addition to require NTM Financial Services Ltd to pay Mr M £500 for the distress and inconvenience the unsuitable advice has caused.

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

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

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

If Mr M accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 3 January 2023.

Paul Featherstone

**Ombudsman**