DRN-3310773

## The complaint

Mr G complains about the advice given by F.P. Consulting Limited 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 G'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 G was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr G contacted F.P. Consulting following an introduction by a work colleague. Mr G met with F.P. Consulting in July 2017 and it completed a fact-find to gather information about his circumstances and objectives. F.P. Consulting also carried out an assessment of Mr G's attitude to risk, which it deemed to be 'highest medium' – a rating of 7 on a scale of 1-10.

In September 2017, F.P. Consulting advised Mr G to transfer his BSPS benefits into a personal pension and invest the proceeds in a managed fund, which it said was appropriate for Mr G's attitude to risk. In summary the suitability report said the reasons for this recommendation were that a transfer away from the BSPS would provide Mr G with the flexibility and control to determine when and how much income to take from his pension; provide the ability to retire at 55; the investment returns required to provide the income were deemed achievable; and it would allow any remaining funds to be left to his family upon his death.

Mr G accepted the advice and in October 2017 around £418,000 was transferred to Mr G's new personal pension.

In 2021 Mr G complained to F.P. Consulting about the suitability of the transfer advice.

F.P. Consulting didn't uphold Mr G's complaint. In summary it said Mr G had a clear set of objectives, which could only be met by transferring out – so its advice was suitable. It said it conduced the advice process meticulously in which the risks were explained, including that there was little likelihood of matching the guaranteed income Mr G was giving up. It said Mr G understood the risks involved and was able to make an informed decision. Dissatisfied with its response Mr G asked this service to consider his complaint. And an investigator upheld the complaint and required F.P. Consulting to pay compensation. In summary they said a transfer wasn't suitable. They said a transfer to a personal pension was unlikely to improve on Mr G's DB scheme benefits given the level of growth required to match them at age 65. They also questioned Mr G's recorded attitude to investment risk of *'highest medium'* given his investment experience and given he said that he wanted *'low risk* *funds*' in email correspondence with F.P. Consulting. They said Mr G's true attitude to risk made it more unlikely that the transfer was financially viable.

They went on to say that, despite Mr G indicating that he wanted to retire early – between 55 and 60 – all F.P Consulting's analysis was based on a retirement age of 65. As such they said the actual investment growth required to at least match Mr G's DB scheme benefits was likely higher than quoted. They also said that F.P Consulting should've provided analysis as part of its advice on what level of benefits Mr G could've received from the DB scheme if he wanted to take early retirement to show if it was affordable.

The investigator went on to say that F.P Consulting should've waited for details of the new defined-benefit scheme ('BSPS2') under consideration, which might have helped allay Mr G's fears about the BSPS moving to the Pension Protection Fund ('PPF.) And finally they said the potential for different death benefits offered by a personal pension arrangement didn't make the advice suitable.

F.P. Consulting disagreed. In doing so it has provided a substantive response and has provided a number of cash flow analyses in support of its arguments. I have read everything in detail. But in summary F.P. Consulting said:

- Mr G had clear objectives and he identified himself as an experienced investor, which was supported by his actions.
- By transferring out, as demonstrated by the cashflow analysis, Mr G could afford to retire at 55 and take his desired income, whereas if he remained in the scheme this wasn't possible.
- Mr G wanted to transfer out to avoid 'losing' the fund as he saw it when he died - at the point he retired from the scheme or in went into the PPF he wouldn't be able to pass on the fund value to his family. Mr G valued this as much as, if not more than retiring early.
- To achieve his objectives of retiring at 55, take an income of £1,800 a month and provide death benefits to his sister, he had to transfer out. Mr G didn't want a guaranteed income with no death benefits.
- It believes it acted in Mr G's best interests.
- Reference to the critical yield is irrelevant in this case because Mr G was single and had no intention of buying guaranteed income – it did not recommend the transfer to try to beat his guaranteed income. The more appropriate test of suitability is the investment return needed to provide the same benefits as the scheme and preserve the fund Mr G was worried about losing when he died.
- Mr G had spoken to other advisers prior to approaching F.P. Consulting, so he was clearly intent on transferring regardless.
- BSPS2 wasn't available at the time of the advice and a lot of talk was that BSPS would end up in the PPF.

The investigator wasn't persuaded to change their mind, so the complaint was referred to me to make a final decision.

In submitting further evidence for my consideration, F.P. Consulting broadly repeated much of what it had said before.

**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 F.P. Consulting'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.

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, F. P. Consulting should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

*Financial viability*

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr G had just turned 51 at the time of the written advice and it's recorded that he wanted to retire early between 55 and 58 – it later said 60 at the latest. Despite that F.P. Consulting's analysis was based on a retirement age of 65. This showed that the critical yield, or investment return required to match the DB pension scheme's benefits at age 65 was 8.47% assuming Mr G took a full pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 4.66% per year if Mr G took a full pension and 4.17% per year if he took a tax-free cash lump sum and a reduced pension.

This compares with the discount rate of 4.1% per year for 13 years to retirement in this case. For further comparison, 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 G's recorded attitude to risk of 'highest medium' and also the term to retirement. In my view there would be little point in Mr G giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, the critical yield of 8.47% was greater than the regulator's upper projection rate and more than twice that of the discount rate. And while I have concerns about how F.P. Consulting arrived at classifying Mr G's attitude to risk as 'highest medium' given he told them he wanted to invest in low risk funds, even if I thought this was the level of risk Mr G was prepared to take with his pension, I think it was clear he was likely to receive benefits of a substantially lower overall value than his DB scheme at retirement as a result of investing in line with that attitude to risk. In my view, to have come close to achieving the level of growth required, would have required Mr G to take significant investment risk and far greater risk than I think he was prepared to take. And even then I think it's more likely than not Mr G would be worse off financially at retirement if he transferred out.

It's not clear to me why F.P. Consulting only produced this transfer analysis based on a retirement age of 65 when Mr G stated his objective was to consider retirement between 55 and 60 – it strikes me that this should have formed a key part of F.P. Consulting's advice in arriving at a suitable recommendation and ought to have been included or referred to in its suitability report. This means the critical yields needed to match Mr G's benefits through the BSPS or the PPF at 55 and/or 60 aren't available. But I find it unlikely they would have been lower than the growth required based on retirement at 65 — and most unlikely to have been lower than the regulator's middle growth rate or the discount rate. If anything I think they were likely to be higher given the shorter term to retirement and the fact benefits would've needed to be paid for longer. So in the scenario of Mr G taking benefits earlier than 65, I don't think he was likely to even match the same pension benefits if he transferred out of the BSPS, let alone exceed them.

But F.P. Consulting says the critical yield is irrelevant here because Mr G wasn't planning to buy a guaranteed income using an annuity with his pension funds. It says a more appropriate test of suitability is the investment return needed to provide the same benefits as Mr G's scheme. Furthermore, it said it didn't recommend the transfer to try to beat Mr G's guaranteed income. And I can see that in the suitability report, the advisor said that it was unlikely that investment growth of 8.47% a year could be achieved.

But I don't think the importance of the critical yield figure should be downplayed here. While I accept that Mr G was single and it's likely the critical yield figure was based on the BSPS also providing a spouses pension, which wouldn't have been important to Mr G, I still consider it gives a good indication of the value of benefits Mr G was considering giving up. It's also the case that the regulator required F.P. Consulting to provide it and so deems it a necessary and important part of the decision-making process.

I can see the suitability report said that a growth rate of 8.47% wasn't achievable and Mr G may therefore have understood this.

But I can't see that F.P. Consulting made it clear whether it thought the growth rate required to match the PPF benefits of 4.66% / 4.17% was achievable, which was perhaps the more important figure given that Mr G's DB scheme might end up moving to the PPF. In any event, simply disclosing the risks doesn't make an unsuitable recommendation suitable.

I've also considered a series of cash flow forecasts F.P. Consulting has provided, which it says demonstrates Mr G could meet his income need, including retiring early at 55 as well as maintaining his pension fund to pass on to his family upon his death.

Firstly, none of this analysis F.P. Consulting has provided here is shown or referred to in the advice paperwork including the suitability letter – so it's not clear that this was discussed with Mr G or that it formed part of its advice and recommendation process so Mr G could make an informed decision. In any event, I can see that two of the forecasts are based on Mr G taking the same level of income at 55 and 60 F.P. Consulting estimated Mr G would be entitled to by taking early retirement from his DB scheme. But as I said above, I consider there would be little point in Mr G giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

I've also considered the forecast, which shows Mr G could retire at 55 taking his desired income of £1,800 a month at the same time as retaining a pension fund worth around £400,000 at age 90. But not only is this only achieved with a net investment return of over 5%, which in my view would be unlikely on the basis that Mr G said he wanted to invest in low risk funds, it also required Mr G to substantially reduce his income withdrawal at his state pension age instead relying on this to make his funds last. Notwithstanding this, I'm mindful too that the analyses assumed a static inflation rate and a consistent investment performance return – there was no stress testing to account for potential rises in inflation or periods of lower investment performance to show how this would impact the sustainability of Mr G's income withdrawal and whether he might run out of money sooner.

Overall, even if the BSPS had moved to the PPF and Mr G's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr G would be financially worse off in retirement. So based on this alone, I don't think a transfer was in Mr G's best interests.

But I accept that financial viability isn't the only consideration when giving transfer advice, as F.P. Consulting has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered below whether such other reasons applied here.

*Flexibility and income needs*

F.P Consulting has said that it was Mr G's clearly stated aim to retire at 55 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 G to transfer out to meet this objective. But crucially here, I'm not persuaded that it was Mr G's clearly stated aim to retire at 55 – I don't think the evidence supports this. The fact-find document recorded an intended retirement age range of 55 – 58. But reference was also made in the advice paperwork to a maximum retirement age of 60. I don't think this supports a clear aim or a firm plan to retire at 55.

Furthermore nothing about Mr G's circumstances leads me to conclude he had a real need to retire at 55 – for example Mr G didn't have significant debts that he needed to repay at this time and the only means of repayment was his tax-free cash lump sum entitlement. It's also recorded that Mr G was in good health.

In addition, I can see that the fact-find records Mr G wanted to finish shift work at 55 and then either do day work if the option was available (it appears Mr G worked nights), work part-time, or if neither was possible he would leave his employer. But crucially it doesn't say that Mr G wanted to stop working all together and take his pension benefits at this stage. It strikes me that Mr G's key objective was to change his work pattern at 55, which depending on what transpired might dictate his retirement plans. And importantly Mr G wouldn't know this until this became clear, which most likely wouldn't be for a few more years.

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

So I don't think F.P. Consulting should have advised Mr G 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 G 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.

Turning to Mr G's income need and notwithstanding the above, F.P. Consulting appears to have recommended the transfer because Mr G couldn't achieve his income objective of £1,800 a month by remaining in his DB scheme. I've already said above that I don't think a transfer was financially viable. But in addition there's no evidence that F.P. Consulting interrogated Mr G's retirement income objective to determine whether or not it was realistic or achievable to help Mr G make an informed decision. For example there's no evidence in the advice paperwork that F.P. Consulting clearly set out what income Mr G's DB scheme would likely provide him with at 55 through to 60, including if the BSPS moved to the PPF and how that compared with his actual income need. Furthermore F.P. Consulting didn't consider the role Mr G's Defined Contribution pension could play in his future income generation or how his state pension could add to things later on. I also think in light of Mr G considering future part-time work, this could've been explored and whether a blend of earned and retirement income from his DB scheme could've met his needs.

In terms of Mr G's desire for a retirement income of £1,800, it strikes me that for a single person this was quite high – it is only £300 less than Mr G's take-home pay. I consider it likely that Mr G's expenditure would be lower in retirement – notwithstanding Mr G's mortgage repayment was not significant - so his income need would also be lower. I would've expected F.P. Consulting to have interrogated this to determine whether £1,800 a month was what Mr G actually needed to fulfil his retirement goals. And this should've involved a thorough expenditure in retirement analysis. But I can't see F.P. Consulting did so – the income and expenditure recorded in the fact-find can, in my view, only reasonably be described as sparse.

While not shown in the advice paperwork as I said above, F.P. Consulting's files show that the annual income Mr G could expect from his DB scheme at age 60 was around £16,500. Given Mr G had other sources of income he could use to supplement this – he had savings and his DC workplace pension – I think it's likely that combined this could've met Mr G's actual income need.

Ultimately, F.P. Consulting had to determine whether giving up the secure, guaranteed benefits available through the BSPS or the PPF was in Mr G's best interest. And as part of this, I think it was necessary to carry out this analysis. Importantly, if F.P Consulting didn't think Mr G's income need was realistic or necessary it should've made that clear to him.

This would've given Mr G 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 F.P. Consulting did act in Mr G's best interests and I don't think Mr G was able to make an informed decision.

*Control and death benefits*

F.P. Consulting says Mr G wanted control over his pension fund and that it was equally, if not more important for him to pass his fund to his friends and family when he died over receiving a guaranteed income.
Death benefits are an emotive subject and of course when asked, I think most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr G. That said, I'm mindful that Mr G was single and he had no dependants – so it strikes me as odd that Mr G would place significant weight on wanting to leave any remaining pension fund upon his death to non-dependant family members, particularly over his own security in retirement.

Nevertheless, I accept death benefits might have been important and Mr G might have thought it was a good idea to transfer his BSPS benefits because of this.

But again, F.P. Consulting's responsibility wasn't simply to transact what Mr G thought he wanted or he thought was a good idea - the priority here was to advise Mr G about what was best for *his* retirement provisions. A pension is primarily designed to provide income in retirement and not a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this. And I say potential, because the sum left on Mr G'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.

Overall I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr G.

*Concerns about financial stability of BSPS*

While not a key reason for recommending Mr G transfer his pension benefits, the advice paperwork makes reference to Mr G's concerns about his pension scheme and specifically about it moving to the PPF. And I have no doubt that Mr G 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 G sought advice in the first place and it's possible that Mr G was considering transferring because of these concerns about his employer and what might happen.

It was F.P. Consulting's duty to give Mr G an objective picture and recommend what was in his best interests. At the time of the advice – specifically around the time the suitability report is dated – the available information from the scheme trustees indicated that, while not guaranteed, the new BSPS2 scheme would likely go ahead. I think this is what F.P. Consulting should've told Mr G to help alleviate his concerns. But there's no mention of this in the advice paperwork.

And in terms of Mr G's concerns about the scheme moving to the PPF, despite the 10% reduction in starting benefits and the fact the increases in payment in the PPF were lower, importantly the income was still guaranteed. And while I accept the suitability report referred to the advantages of remaining in the scheme and reference was made to the pension being guaranteed, I think F.P. Consulting ought to have specifically reassured Mr G that, even if there was a chance the BSPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or was led to believe.

*Summary*

I accept that Mr G 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 different death benefits on offer through a personal pension would have sounded like attractive features to Mr G. But F.P. Consulting wasn't there to just facilitate what Mr G might have thought he wanted. The adviser's role was to really understand what Mr G needed and recommend what was in his best interests, which I think it failed to do.

Ultimately, I don't think the advice given to Mr G was suitable. I'm not persuaded Mr G'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 and by transferring, I think Mr G was likely to obtain lower retirement benefits.

And in my view, there were no other compelling reasons which would justify a transfer and outweigh this - the potential for different or higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I think F.P. Consulting should've advised Mr G to remain in the BSPS.

Of course, I have to consider whether Mr G would've gone ahead anyway, against F.P. Consulting's advice. F.P. Consulting argues that this is the case here – it says Mr G had seen a number of advisers before it met with them and the language he used in his correspondence indicates he'd made up his mind to transfer regardless of what they said. I can see it has also referred to Mr G being an experienced investor and says Mr G's question about the initial charge on his funds demonstrates he knew what he was doing.

I've considered this carefully, but I'm not persuaded that Mr G would've insisted on transferring out of the BSPS against F.P. Consulting's advice. I say this because, while Mr G was motivated to transfer when he approached F.P. Consulting, on balance, I still think Mr G would've listened to and followed F.P. Consulting's advice if things had happened as they should have and it had recommended he stay in the scheme. I accept the fact-find records that Mr G had done share dealing previously, but he didn't hold any investment products at the time of the advice. And while Mr G might have been familiar with some investment terminology, I'm not persuaded he could reasonably be described as an experienced investor or someone who possessed the necessary knowledge, skill or confidence to go against the advice they were given in pension matters. Furthermore, while Mr G may have had some investment experience, I don't think he had any real capacity for loss - Mr G's BSPS benefits accounted for the majority of his retirement provision. So, if F.P. Consulting had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think on balance he would've accepted that advice.

I'm also not persuaded that Mr G's concerns about his employer 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.

For these reasons, I don't think Mr G would have insisted on transferring out of his scheme against F.P. Consulting's advice.

If Mr G had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2.

While Mr G said he wanted to retire early and 55 was the starting point, I don't think his plans were concrete – it's possible Mr G would've continued working if he'd secured different shift patterns at 55.
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. I'm also mindful the annual indexation of his pension when in payment was also more advantageous under the BSPS2 and by opting into this scheme, Mr G would've retained the ability to transfer out of the scheme (if his needs demanded it) nearer to retirement..

So overall, I think F.P. Consulting should compensate Mr G 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 £250 for the distress and inconvenience the matter has caused Mr G. 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 F.P. Consulting – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr G. Taking everything into account, including that I consider Mr G is now at the age when his retirement provision is of greater importance, I think the unsuitable advice has caused him distress. So I think an award of £250 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 has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has 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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr G whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published.

Mr G has chosen not to wait for any new 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 G.

A fair and reasonable outcome would be for the business to put Mr G, as far as possible, into the position he would now be in but for F.P. Consulting's unsuitable advice. I consider Mr G would have most likely remained in his DB scheme and then chosen to move his benefits to the BSPS2 if suitable advice had been given.

F.P. Consulting 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 G has not yet retired, and 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 G's acceptance of the decision.

F.P. Consulting may wish to contact the Department for Work and Pensions (DWP) to obtain Mr G'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 G's SERPS/S2P entitlement.

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

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.

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.

To note - 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 F.P. Consulting to carry out a calculation in line with the updated rules and/or guidance in any event.

**My final decision**

Determination and money award: I uphold this complaint and require F.P. Consulting Limited to pay Mr G the compensation amount as set out in the steps above, up to a maximum of £160,000.

In addition to require F.P. Consulting Limited to pay Mr G £250 for the distress and inconvenience the unsuitable advice has caused.

Where the compensation amount does not exceed £160,000, I would additionally require F.P. Consulting Limited to pay Mr G any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require F.P. Consulting Limited to pay Mr G any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that F.P. Consulting Limited pays Mr G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr G.

If Mr G accepts this decision, the money award becomes binding on F.P. Consulting Limited.

My recommendation would not be binding. Further, it's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G 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 G to accept or reject my decision before 25 November 2022.
Paul Featherstone
**Ombudsman**