DRN-3313430

The complaint

Mr D complains about the advice he was given by bdhSterling Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused him a financial loss.

What happened

Mr D and his wife were considering emigrating to Australia. Towards the end of 2014, Mrs T went to a Queensland Government Seminar to find out about what was required in order to emigrate. Whilst at the seminar, Mrs D met a representative of bdhSterling who told her that it was possible to transfer Mr D's DB scheme and that there was a deadline that existed (of 5 April 2015) for doing so. The deadline related to the government's decision to prohibit the transfer of benefits from the specific DB scheme Mr D was a member of to a personal pension arrangement.

On 11 December 2014, Mrs D emailed the bdhSterling representative in response to his request to provide more information about Mr D's DB scheme. She stated *"My husband was in the army and has a pension, which hopefully, with your help we'd be able to transfer before the April deadline. We haven't started the visa application process so won't have anywhere in Australia to transfer it to, but to ensure we beat the deadline will need to transfer it to a UK holding until the visas come through".* Most of the communication going forward was with Mrs D on the basis she normally dealt with the financial matters, but no face-to-face meetings took place.

After some delay, information gathering documents were completed in March 2015 including a fact find where Mr D recorded his attitude to risk as "*Conservative*", or level two on the rising scale of one to six. The fact find noted the departure/arrival date of the move was unknown as the visa application had not yet been submitted.

On 11 March 2015, prior to the 5 April 2015 deadline, bdhSterling approached the DB scheme with an information request. The DB scheme provider confirmed the transfer of benefits would be honoured as the application was received prior to the deadline and *"The offer will remain open and valid for 12 months from the date of calculation"* (the calculation date was 17 June 2015).

On 11 May 2015, a questionnaire was completed over the phone with bdhSterling and Mr D's attitude to risk profile was noted as having increased slightly, and was recorded as just within the *"Moderately Conservative"* banding (or level three on the rising scale of one to six).

A Pension Transfer Analysis Report was sent to Mr D in June 2015 which, together with the fact find document, noted the following:

- Mr D was aged 47, married, in good health and intended to retire at age 65.
- He had no financially dependent children but had three grown up children from a previous relationship, none of whom had emigrated or were planning to emigrate.

- He was a self-employed builder/carpenter earning around £38,000 a year.
- He had no assets other than the DB scheme.
- He had liabilities of £29,200.
- Mr D's attitude to risk was just within the "*Moderately Conservative*" banding, or just within level three on the rising scale of one to six.
- No plans had yet been made to move to Australia and the visa application/s hadn't yet been lodged.
- Mr D had 8 years of service in the DB scheme. At scheme normal retirement date (age 60) this would provide an estimated income of £3,688 a year with the option to take tax free cash and a reduced income. Spousal benefits were also available.
- The DB scheme could be transferred with a transfer value of £42,692.58 (guaranteed for three months).

High priorities were recorded as:

- Tax efficiency both pre and post retirement.
- Maximising potential death benefits.
- Access to lump sums in retirement and the ability to adjust the pension income.
- Eliminating short- and long-term currency risk *"…now that you are migrating* ".
- The potential to grow pension benefits in excess of inflation.

Low priorities were recorded as:

- The guaranteed benefits within the DB scheme.
- The ability to control or influence investment strategy.

A TVAS report showed an investment growth, or critical yield, of 10.89% per year, was required in order to match the benefits the DB scheme pension would've provided at retirement assuming the full tax-free lump sum entitlement was taken at age 60. The critical yield increased to 11.86% if no tax-free lump sum was taken.

The report went on to confirm:

"Please note that we would neither recommend a transfer of your benefits from any UK Defined Benefit (Final Salary) Scheme… nor an onward transfer to an Australian QROPS unless it is your clear intention to become and remain a permanent Australian resident i.e. live, work and spend your retirement in Australia".

bdhSterling recommended Mr D transfer his DB scheme to a UK based SIPP and then onwards later to an Australian Superannuation Fund, (the QROPS). Some of the benefits of transferring were reported as:

- The tax efficiency of drawing benefits from an Australian Superannuation Fund.
- The control and flexibility offered by being in charge of the retirement funds and the estate planning benefits.
- As a UK based interim pension could be set up relatively quickly, the transfer value quoted by DB scheme could be secured.

The report recommended the funds were initially transferred to a UK based SIPP within a wrap provided by T, with V appointed as the Discretionary Fund Managers (DFM). The associated charges were declared as:

- Initial adviser charge - 3% on the value of pension funds
- Ongoing annual management fee - 0.5% per year

- T annual portfolio charges - 0.5% per year
- V DFM charge - 0.25% (plus VAT)
- Wrap charges - £20 a quarter

The application to transfer was completed and the funds were transferred on 9 December 2015. On 11 December 2015, the funds were invested in V's 'Balanced Portfolio'.

Mr and Mrs D never emigrated to Australia and in May 2020, through a combination of the media and seeking additional clarification from an independent financial adviser, Mr D raised a complaint with bdhSterling about the suitability of the advice to transfer out of the DB scheme.

Mr D complained that he wasn't made aware by bdhSterling of the guaranteed benefits he was giving up by transferring his DB scheme and that he felt rushed into making a decision by the transfer deadline. He said that the critical yield was unattainable given his attitude to risk (ATR). And he said that he had no experience in managing investments so wasn't interested in having control over his pension fund in retirement. Mr D said that he had no dependents except for his wife so he didn't the death benefits offered by the SIPP rather his wife would need the spouse's benefit of the DB scheme if he predeceased her. Finally he said his pension was now worth far less than it would have been if he'd never transferred it and it was his only major pension, which he wouldn't have transferred if he fully understood what he was giving up.

bdhSterling looked into Mr D's complaint but didn't uphold it. It said the pension transfer (suitability) report it sent Mr D had explained the guaranteed benefits of his DB scheme and that one of the disadvantages of transferring would be the loss of these benefits. It also said it had pointed out that the pension income would be subject to a currency risk. bdhSterling said the critical yield was less relevant given that the scheme was to be moved to Australia where the pension system was markedly different to that in the UK. It said the critical yield identified in the report was based on the assumption that the pension remained in the UK.

bdhSterling went on to say that it hadn't placed any undue pressure on Mr D to transfer his benefits. It said there were significant advantages to transferring his pension which included the favourable tax treatment of pensions in Australia. It said it would normally have waited to do the transfer until Mr and Mrs D had settled in Australia but the circumstances were such that the option of transferring would not have been available after 5 April 2015 so a decision had to be taken. bdhSterling said its recommendation was based on Mr D's personal circumstances and the cross-border tax and legislative regimes in place at the time. It said that if there was any indication Mr D wouldn't emigrate then its analysis would have taken a very different shape.

Unhappy with the outcome of bdhSterling's investigation into his complaint, Mr D complained to this service. Our investigator looked into the complaint and recommended it was upheld. He thought the advice to transfer Mr D's DB scheme had been unsuitable because the transfer wasn't financially viable and wasn't in his best interests. Our investigator thought that bdhSterling should pay Mr D compensation so that he was – as far as possible – put back in the position he was in before the advice was given.

bdhSterling disagreed with our investigator's findings. It said emigration where the currency matching of assets and liabilities and/or tax differences outweigh the loss of guaranteed income was one of the situations the regulator (the Financial Conduct Authority) noted as being suitable for a transfer. And it said the FCA was of the opinion that recommendations shouldn't be based solely on the critical yield because a client's personal circumstances were also very important. It said it was very difficult to establish a single annual rate of return for an Australian Superannuation Scheme to match the benefits of Mr D's existing DB scheme because the nature of the benefits and tax rules in each jurisdiction were so different. Finally it said that the reasonable assumptions it used had shown it was in Mr D's best interests to transfer. It said there was enough evidence to support the fact Mr and Mrs D were serious about moving to Australia and the upcoming deadline for making the transfer was crucial to the advice it gave. It said if it hadn't recommended the transfer and the move to Australia had gone ahead, it could have been liable for not assisting its client in making a move that was in his best interests.

Our investigator wasn't persuaded to change his 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

What follows 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 bdhSterling'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 19.1.16 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, bdhSterling should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D'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.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 10.89% per year. This compares with the discount rate of 4.4% per year for 12 years to retirement in this case. And the critical yield is the minimum investment return needed to match – not exceed – the existing benefits that were available to Mr D under his DB scheme. A higher rate of investment return would have needed to have been achieved to improve on Mr D's existing benefits. There is little advantage to transferring a pension just to match the benefits that already exist.

For further comparison, the regulator's upper projection rate at the time 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 D's attitude to risk and also the term to retirement. Overall I think Mr D was likely to receive benefits from the SIPP of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his attitude to risk.

I've considered bdhSterling's comments that the critical yield was less relevant given that the scheme was to be moved to Australia where the pension system was markedly different to that in the UK. Whilst the TVAS compared the DB scheme with an Australian Superannuation Scheme, it provided no such comparison between the DB scheme benefits and that offered by the SIPP.

I can see that bdhSterling's advice was based on Mr D emigrating to Australia. However, at the time of the advice any emigration was by no means a certainty. Mrs D had undertaken a skills assessment and an English language test but no other plans to move to Australia neither had yet been made nor any visa applications lodged. Mrs D told our investigator that at the time of the advice they were still in the process of obtaining information about what was needed to make the move, such as whether both of them could apply, and if so what tests or assessments were needed beforehand. Mrs D also said that no accommodation, jobs or bank accounts had been lined up. So I can't agree with bdhSterling that the critical yield was less relevant given the scheme was to be moved to Australia. It wasn't known, at the time the advice was given, whether that move would go ahead. It was indeed a very real possibility that it wouldn't so consequently the critical yield – based as it was on the assumption the pension remained in the UK – was very relevant. But bdhSterling's advice contained no analysis of the advantages and disadvantages of the SIPP compared to the DB scheme if Mr D didn't emigrate. So I can't see that Mr D had the information he needed in order to make an informed decision here.

Given Mr D's ATR was *'moderately conservative'* I can't see how investment growth of 10.89% a year was achievable. In order to obtain a return greater than 10.89% each year, Mr D would need to have taken a higher level of risk. But he had no other assets available to him, didn't own his own home, nor did he have any previous investment knowledge or experience. So I don't consider him to have had any real capacity for loss, or the necessary ATR needed in order to seek the potentially higher returns that were necessary to achieve the critical yield identified. And based on the target and realised returns the DFM cited as likely when invested in a 'balanced portfolio' Mr D's SIPP stood little chance of coming close to achieving the critical yield necessary.

Given his lack of previous investment experience, it's highly likely Mr D didn't fully understand the extent to which a transfer out of his DB scheme would expose his retirement plans to such risk. Indeed I can see that in his complaint he has said as much.

Nor can I agree that Mr D was willing to accept the higher level of risk required to make the transfer worthwhile. So instead of recommending he transfer to a SIPP where the benefits he could attain were dependent on investment performance, with no guarantees, bdhSterling should have advised Mr D to remain in his DB scheme.

I can see that an expected long-term average return in line with Mr D's ATR based on Australian growth rate assumptions was also provided – this was 7.5% per year. Whilst I acknowledge it may be difficult to provide a single annual rate of return that would be required by an Australian Superannuation Scheme to match the benefits provided by a UK DB scheme, the inescapable fact remains that Mr D was advised to exchange guarantees and certainty in retirement for significant investment risk if he wanted to try, at the very minimum, to match his DB benefits. I don't consider that the level of risk he needed to take was appropriate for someone in his circumstances

And I can see that bdhSterling thought the same as it said in its suitability report that it *'would neither recommend a transfer of your benefits from any UK Defined Benefit (Final Salary) Scheme …. nor an onward transfer to an Australian QROPS unless it is your clear intention to become <u>and remain</u> a permanent Australian resident'.* If that was indeed bdhSterling's position I don't think it did enough here to make sure Mr and Mrs D were doing just that. And that is despite noting on the fact-find what the situation currently was, namely that there was no departure date and that no visa application had been lodged.

That being the case I am unclear why bdhSterling didn't follow its own stated position of declining to recommend the transfer. Because at the time the advice to transfer was given it wasn't possible to say with any certainty that Mr D's *'clear intention was to become and remain a permanent Australian resident'*. As bdhSterling itself has said, if there was any indication Mr D wouldn't emigrate then its analysis would have taken a very different shape; unfortunately for bdhSterling I think the evidence I've referred to here indicates Mr D was by no means certain to emigrate and, as such, its analysis should indeed have taken a very different shape.

Nor can I reasonably ignore the various charges involved (as listed above) in the transfer recommendation that will have impacted Mr D's retirement plans. Such charges clearly impact the fund value and any potential growth of a pension plan which is already dependent on market conditions for growth. The applicable charges unnecessarily erode the fund value whereas Mr D's DB scheme was subject to no such charges.

So, it follows that I think financial viability alone meant a transfer out of the DB scheme wasn't in Mr D'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. I've considered these below.

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 D. Indeed the TVAS notes that maximisation of death benefits (both pre and post retirement) for his beneficiaries was a key objective for Mr D. But whilst I appreciate death benefits are important to consumers, and Mr D 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 D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think bdhSterling explored to what extent Mr D 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. And I can see that in the TVAS bdhSterling only compared the DB scheme death benefits with those of an Australian Superannuation Scheme. So Mr D had no means of comparing what the effect the transfer to a SIPP would have on his death benefits. And, as I've said above, at the time the advice was given it was by no means certain that Mr D would emigrate. But I can't see that bdhSterling provided Mr D with any analysis of what would happen if he transferred his DB scheme and *didn't* subsequently emigrate. So there was little information for Mr D to be able to compare what he was giving with what he'd get from the SIPP in the event of his death.

Mr D was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr D predeceased her. I don't think bdhSterling made the value of this benefit clear enough to Mr D. Whilst the Australian Superannuation Scheme appears by comparison to have favourable death benefits, Mr D would need to be a member in order to benefit from them. And at the time the advice was given, it was uncertain he ever would be. The spouse's pension under the DB scheme however, was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in the SIPP is. And as the analysis in the suitability report shows, the fund would have run out by the time Mr D reached the age of 68. In any event, bdhSterling should not have encouraged Mr D to prioritise the potential for higher death benefits in a plan that he was by no means certain to ever join over his security in retirement.

Furthermore, if Mr D genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think bdhSterling should've instead explored the option of life insurance. But I can't see that it did. Mr D was aged 47 at the time of the advice and was a non-smoker in good health. But the option of life cover wasn't explored by bdhSterling.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr D. And I don't think that insurance was properly explored as an alternative.

Control and flexibility

I think Mr D's stated desire for control over his pension benefits and the flexibility to alter income streams to suit his circumstances was overstated. Mr D was not an experienced investor and I cannot see that he had an interest in, or the knowledge to, be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr D – it was simply a consequence of transferring away from his DB scheme.

Use of DFM

bdhSterling recommended that Mr D use a DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr D, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr D should have been advised to remain in his DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

Summary

I don't doubt that the flexibility, favourable tax treatment and potential for higher death benefits on offer in the Australian Superannuation Scheme would have sounded like attractive features to Mr D. But before he could benefit from anything that scheme offered, Mr D had to first emigrate and transfer out of his DB scheme to a UK based personal pension or SIPP. And I don't think bdhSterling thoroughly assessed Mr D's actual circumstances enough before advising him to transfer. At the time of the advice, Mr D's emigration was far from certain to go ahead. I appreciate there was a deadline in order to secure a transfer away from Mr D's DB scheme, but in order to have advised him fully, bdhSterling should have discussed with him what not emigrating would mean if he transferred from his DB scheme. But I can't see that it did this. And bdhSterling wasn't there to just transact what Mr D might have thought he wanted – namely to take his pension with him in the event his fledgling plan to emigrate materialised. bdhSterling's role was to really understand what Mr D needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring and not emigrating, Mr D was very likely to obtain lower retirement benefits. And even had the emigration proceeded as first envisaged, the transfer from the DB scheme attracted the risk of currency fluctuations and the investment growth identified as being necessary in the Australian Superannuation Scheme in order to match Mr D's DB scheme benefits was also unlikely to be attained given Mr D's ATR. In my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr D shouldn't have been advised to transfer out of the scheme just to beat a deadline *in case* he ultimately ended up emigrating.

So, I think bdhSterling should've advised Mr D to remain in his DB scheme even if that had meant missing the deadline for transferring his benefits.

Of course, I have to consider whether Mr D would've gone ahead anyway, against bdhSterling's advice. I've considered this carefully, but I'm not persuaded that Mr D would've insisted on transferring out of the DB scheme, against bdhSterling's advice. I say this because Mr D was an inexperienced investor with a low to medium attitude to risk and this pension accounted for the majority of Mr D's retirement provision. Mr D would lose the opportunity to transfer his DB scheme if he didn't move ahead with it then. But I think, if bdhSterling had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, given his plans to emigrate weren't concrete, I think he would've accepted that advice.

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

I think that Mr D has been caused by some trouble and upset as a result of the advice he received from bdhSterling for which I think it should pay him compensation of £300.

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 D whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance /rules to be published.

He 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 D.

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for bdhSterling's unsuitable advice. I consider Mr D would have most likely remained in his DB scheme if suitable advice had been given.

bdhSterling 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 D has not yet retired, and he has no plans to do so at present. So, compensation should be based on his scheme's normal retirement age of 60, 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 D's acceptance of the decision.

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

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

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 bdhSterling 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 bdhSterling Limited to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000 and to pay Mr D compensation of £300 for the trouble and upset he was caused.

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

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

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

If Mr D accepts this decision, the money award becomes binding on bdhSterling Limited.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 16 November 2022.

Claire Woollerson
Ombudsman