

The complaint

Mr C complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a personal pension plan.

AJH Financial Services Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "AJH".

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2.

Mr C was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to AJH which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time were broadly as follows:

- Mr C was 45 years old, married and with two dependent children and two other children. He was in good health and at that point he had accrued around 22 years of pension benefits with the BSPS.
- Mr C earned £34,000 per year and Mrs C also worked. They lived in a home valued at approximately £275,000 with a £118,000 repayment mortgage, which had around 15 years to run.
- They also owned two rental properties which generated a combined income of around £800 per month. AJH's records showed the total mortgages outstanding on these were £35,000 (repayment) and £74,000 (interest only) respectively. Again these had around 15 years left to run, payable as they were, in 2032.
- Mr C had significant personal life insurance policies, with assured sums of over £200,000 in the event of his death. Mr and Mrs C had £2,000 in savings.
- The cash equivalent transfer value (CETV) of Mr C's BSPS was approximately £378,340 and the normal retirement age (NRA) was 65. AJH said Mr C wanted to retire early, if possible, at the age of 58.

AJH set out its advice in a suitability report on 17 November 2017. It advised him to transfer out of the BSPS and invest the funds in a type of personal pension plan. AJH said this would

allow Mr C to achieve his objectives. Mr C accepted this advice and so transferred to a personal pension. In 2021 Mr C complained to AJH about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr C referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, AJH said it hadn't done anything wrong and was acting on the financial objectives Mr C had at the time. It also thinks Mr C hasn't actually incurred any losses by transferring.

As the complaint couldn't be resolved informally, it's come to me for 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 also 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'). 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 AJH'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.

I have further considered that 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, AJH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests.

I've used all the information we have to consider whether transferring away from the BPS to a personal pension was in Mr C's best interests.

I don't think it was, so I'm upholding his complaint.

Financial viability

AJH referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how

likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

However, before assessing the critical yields in Mr C's case, I think it's important to point out that AJH could have taken time to compare the benefits of the BPS2 with transferring out, rather than using the current BPS for comparisons. It commissioned three different transfer analysis exercises, based on comparisons with three different types of plans, each with different providers.

But these were comparisons with the BPS, rather than the BPS2. The first analysis was dated 22 September 2017, the second was 3 October 2017 and the final one was dated 21 November 2017.

Several weeks before the suitability report which contained the recommendation, which was dated 17 November 2017, we know BPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BPS members and more details of the BPS2 were emerging at the time AJH produced its suitability report. I think it's reasonable to conclude that AJH would have been monitoring events closely.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr C the best opportunity to make an informed decision about what to do. I think it's also fair to say that despite some uncertainty at the time, the BPS2 critical yields were likely to be between the BPS and PPF yields, but most likely much closer to the existing scheme (BPS).

Our investigator pointed out what he considered were some anomalies in the timeframe. For example, the final transfer analysis report (the 'third' analysis) seems to have been calculated and published *after* the suitability report. But I've taken the view that Mr C and AJH were probably in contact with each other over several weeks. And whilst the critical yield rates are all different in each transfer analysis document, these are explainable differences and indeed, small. So, I don't think this affects the outcome.

Focussing on what the suitability report (and therefore the recommendation to transfer) actually said, for a retirement at the age of 65 (the NRA) the critical yields were 7.5% if Mr C was taking a full pension. And the yield was 6.5% if he was taking a reduced pension and tax-free lump sum. For a retirement at the age of 58 the critical yields were 9.2% and 7.5% respectively.

The advice was given just after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.4% per year for 19 years to retirement (age 65), which is well below the critical yield figures I've referred to above. For an early retirement, at the age of 58 for example, the discount rate was only 4%.

This infers that reaching the critical yields above would be unlikely. And there would be little point in transferring if Mr C was likely to receive lower pension benefits in the longer term.

However, I've also considered some other issues. I've also kept in mind, for instance, that the regulator's upper projection rate at the time of the advice was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. AJH said Mr C's attitude to risk (ATR) was "lowest-medium", so I think a growth assumption below the regulator's mid-rate was appropriate here, and close to the discount rate. This was also inferring the likely growth was below the critical yields I've set out above.

AJH told Mr C that the critical yield figures could be achieved as it assumed future growth rates of above these limits. But in my view, there was simply no justification for this. Past performance is not necessarily a reliable indicator of future performance and everything I've shown above points to future growth being properly assumed as being around 3 - 5% and therefore significantly below AJH's own critical yield figures. In my view, AJH's growth assumptions were too high and it didn't explain enough to Mr C what the risks were.

Elsewhere in its transfer analysis, AJH also made mention of the PPF, which it described as a compensation scheme providing a "*safety net*" for pension schemes when the sponsoring employer becomes insolvent. AJH set out the critical yields to match the benefits available through the PPF. But these yields related to the *reduced* benefits available with the PPF and AJH itself says Mr C wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension would have further reduced the likely growth.

As a further comparison, I can also see that AJH's transfer analysis showed that in order to purchase an annuity to provide benefits of equal value to the existing scheme at retirement at age 65, the funds required would be around £1.16 million – far in excess of Mr C's 'current' CETV. Even in order to purchase an annuity at 65, to provide benefits of equal value to the estimated benefits of the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required was £511,184. And for the same at aged 58 it was £421,898. In my view, these costs provide a revealing window into the real value Mr C could lose if he transferred out to a personal pension plan.

Finally, I've also considered some projections AJH used to help show that if he transferred out to a personal plan, the funds could last Mr C well into retirement. But it's also fair to say these were certainly not comparing like-with-like. What AJH was showing Mr C were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

However, to be clear, AJH's recommendation that he should transfer out to a personal pension was not wholly predicated on the financial comparisons with his current scheme alone. Rather, AJH said Mr C had additional reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned above.

I've considered these below.

Flexibility and other needs

AJH recommended a transfer to a personal pension based on what it said were Mr C's wider objectives. I have summarised the following themes as supporting the recommendation to transfer away and which were included in the suitability report. I've summarised these as:

- Mention was made in several places of Mr C retiring early, if possible, at around 58.
- In a personal pension he could draw his desired retirement income / lump sum more flexibly.
- There would be more flexible death benefits in a personal pension.
- The future of the BPS was a concern and he didn't want to enter the PPF or BPS2.

So, it seems the supporting reasons that AJH recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr C. I have therefore considered all these issues in turn.

- *Retiring early*

AJH mentioned that Mr C had said he wanted to retire early. I don't doubt that Mr C might have genuinely hoped to retire as early as 58. But I've seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr C was only 45 years old at the time and I don't think it's credible that he had any concrete plans for retirement at that point.

Even if I were to consider the unlikely scenario that Mr C's retirement plans were more fixed than the mere aspirations set out by AJH - and he really did want to retire early - I think AJH should have better assessed the possibility of achieving this goal whilst being a member of the BPS2, for example. Early retirement under the BPS2, or indeed the PPF, would still have been an option for Mr C, but I think this was discounted by AJH and portrayed negatively. The advice simply focussed on him transferring away completely. AJH referred several times to retiring early under the BPS as incurring "penalties". But what retiring earlier under the BPS2 (or PPF) meant was that Mr C's pension benefits would have been somewhat different due to him accessing the pension earlier and for longer. I therefore don't think this explained early retirement under the DB scheme fairly to Mr C and I'm not surprised this approach turned him off the idea of remaining in a DB type scheme.

So, whilst I accept the notion of retiring early might have been appealing, this needed to be considered against the other options Mr C faced, including opting for the BPS2. AJH said that Mr C's estimated full annual pension upon his NRA in the "ceding scheme" was around £22,392 per year, or a reduced pension of £14,840 with a tax-free lump sum of £98,931. As a DB pension this was guaranteed and index linked.

However, as he was still quite young in pension terms and he had a family, mortgages and other income(s), including Mrs C's, it wasn't possible to say what Mr C's financial and income needs were likely to be in retirement. I certainly haven't seen anything to persuade me that Mr C *wouldn't* have been able to meet his likely retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan.

This is because, as well as retirement being a long time away, we know Mr C had already joined his employer's new defined contribution ('DC') scheme and would have been making contributions to it for up to 19 years more, until he retired. Mr C's contributions to this 'second' pension were being added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme (in BPS2).

I think therefore, that by retirement, Mr C could have been in a good position if he'd transferred to the BPS2. On one hand he'd have had a long-standing DB pension, and one

with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial DC pension over many years.

- *Flexibility*

The adviser recorded that Mr C had said he wanted to have the flexibility to use his tax-free lump sum as he pleased and that this might mean he wouldn't want to access it all at once. There is nothing wrong with wanting flexibility but in this context it comes with a price. What AJH needed to do was really understand Mr C's needs and to advise what was in his best interests, rather than to just transact what he thought he wanted.

AJH therefore needed to balance any desire for flexibility with what Mr C would be giving up in the form of a guaranteed pension with indexation, certain benefits and a known pension for the rest of his life. The case for needing any flexibility to take cash at different times or vary his retirement income certainly wasn't made clear, in my view. Mr C still had 19 years to his NRA and despite AJH referring many times to him retiring at 58, he also implied he'd work beyond that age, particularly if there was a less physical role available.

Mr C's mortgages on his main home and one of his buy-to-let investment properties had repayment mortgages with 15 years left to run according to information in the 'fact-find'. So in all likelihood these could be paid off completely in 2032 and Mr C would only be 60 years old. Mrs C would have been 52 by this point. And the remaining investment property could continue to be financed in the traditional buy-to-let model of the interest being met from rental income. Alternatively this could be sold and the equity released, if there was any, although the current 'trajectory' in this regard looked positive in 2017.

It seems to me that the AJH adviser failed to also really consider Mrs C's income and / or pension affairs as the evidence here is that these weren't discussed. But I think they may have been relevant. What I've seen tends to suggest their joint incomes left them with a disposable sum at the end of each month and whilst I'm sure their family would have come first, there may have been the opportunity to further pay down the mortgages modestly in the years before retirement.

Overall, I've seen nothing else which shows Mr C had either a wider desire or capacity to exercise personal control over his pension. Mr C's previous exposure to investing was very limited and he had no such investments at the time. So, I think Mr C's circumstances were much more aligned to him transferring to BPS2 and retiring from that when he felt he was ready to do so, and then drawing a DB pension. Because he also had a 'second', DC pension, this supported that strategy, in my view. I've also noted Mr and Mrs C owned investment properties which generated £800 per month as of 2017.

I have therefore considered what AJH said about retiring early and the potential flexibility brought about by transferring to a personal plan: it said this would include how funds were invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element.

However, I don't think recommending a transfer-out based on these reasons was suitable because he was still relatively young in pension terms, and so little was known about what his retirement would look like.

I therefore think the much more suitable option was for Mr C to access his DB pension in the way it was originally intended. Using this, together with his other assets put him in a good retirement position, when it eventually came.

- *Death benefits*

AJH implies that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr C died. But I'm afraid I think this was no more than a 'stock' objective with no real relevance to Mr C's situation.

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 probably made to look like an attractive feature to Mr C. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer the BPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think saying Mr C's death benefits would improve in a personal pension because he could pass over all his funds needed putting into context. Only in his forties and in good health, he and Mrs C had a family. In my view, the likely death benefits attached to the new DB scheme were therefore highly relevant to Mr and Mrs C and they were also substantially underplayed.

The spouse's pension provided by the BPS2 would have been useful to Mrs C if Mr C predeceased her and I don't think AJH made the value of this benefit clear enough. And as a father, I think the child specific benefits would also have been meaningful to Mr C, even though we know these would have ceased at some point when the children left full time education. These benefits were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

There may also not have been a large sum left anyway in a personal pension upon Mr C's passing, particularly if he lived a long life. AJH should therefore not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement. It also doesn't appear that AJH took into account the fact that Mr C could have nominated Mrs C as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr C had already ensured part of his pension wouldn't 'die with him'.

Finally, at 45 years old I think life insurance would have been a reasonably affordable product if Mr C really did want to leave a larger legacy for Mrs C and eventually their children. I've noted he had this already and I'm sure this was discussed. But to leave a legacy didn't require obtaining a life policy which replicated his BPS type death benefits. In his case that would have been too expensive and unnecessary in my view, given the cover he already had and which could be added to with an affordable 'term' policy.

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 C. I think this objective was no more than a generic comment and not meaningful to Mr C's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr C, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and AJH said he lacked trust in the company. He'd heard negative things about the PPF and AJH said he could have more control over his pension.

So, it's quite possible that Mr C was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was AJH's obligation to give Mr C an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were emerging and it seemed likely it was going ahead. So, I think this should have alleviated Mr C's concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that AJH should have reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to AJH's recommendation to Mr C to transfer out of a DB scheme altogether.

Summary

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

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr C was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think AJH ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that BSPS2 was likely to be going ahead. Mr C still had many years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr C would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr C was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr C chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think AJH should have advised Mr C to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr C would have transferred to a personal pension in any event. I accept that AJH disclosed some of the risks of transferring to Mr C, and provided him with a certain amount of information. But ultimately it advised Mr C to transfer out, and I think Mr C relied on that advice.

I'm not persuaded that Mr C would have insisted on transferring out of the DB scheme, against AJH's advice. I say this because Mr C was an inexperienced investor and this pension accounted for almost all of his retirement provision at the time. So, if AJH had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr C's concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if AJH had explained Mr C was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I am upholding this complaint. I think AJH should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for AJH's unsuitable advice. I consider Mr C would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, AJH should use the benefits offered by BSPS2 for comparison purposes. Compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 C whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He doesn't want to wait for the new guidance to come into effect. I am therefore satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr C.

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 C's acceptance of the decision. As I've said above, compensation should be based on his normal retirement age of 65

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

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

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

I've considered the impact on Mr C of the unsuitable advice and transfer. Our investigator recommended that a sum of £250 should be paid to Mr C by AJH for what he referred to as the trouble and upset caused by this unsuitable transfer. I've taken into consideration Mr C's age and circumstances and also that by retirement this DB pension would still have been a very significant part of his overall pension entitlement. So I think the thought of losing benefits would have negatively impacted Mr C. I therefore agree that AJH should also pay Mr C this £250, for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I've decided to uphold this complaint and I now direct AJH Financial Services Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

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

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

If Mr C accepts my final decision, the money award becomes binding on AJH Financial Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 27 February 2023.

Michael Campbell
Ombudsman