DRN-3386107

The complaint

Mr M has complained about the advice he received from Gemini Wealth Management Limited in respect of transferring a defined benefit occupational pension (which I'll refer to as the "work pension") to a personal pension.

What happened

Mr M was a deferred member of his employer's work pension scheme. In October 2017 the employer provided him with information about his work pension – including that the cash equivalent transfer value was £799,898.36.

On 19 October a fact find document was completed which outlined Mr M's financial position and objectives. Of note, it was recorded that:

- Mr M was 54 and was considering phasing in his retirement from age 55
- he wanted to consider transferring the work pension to a personal pension where he could access his funds via a drawdown
- he intended to retire from full-time employment and move to part-time, so he needed a flexible retirement income
- he felt the death benefits via a drawdown were better suited to his circumstances than the 50% spouses pension available under the work pension
- he was interested in using a significant amount of the tax-free cash available by transferring for home improvements
- he considered himself to be a low to medium risk investor.

A separate risk profile questionnaire recorded Mr M's attitude to risk as 3/10 (with 1 being low). Gemini classed this as 'cautious'.

A file note made at the time by the advisor said that having given consideration to the various risks Mr M was of the view that an income drawdown best suited his retirement needs.

Mr M emailed the advisor on 12 December confirming that he intended to transfer his work pension because:

- he would have full control over it
- the death benefits under the new arrangement could be utilised by his wife and children
- he could take early retirement, and
- he was confident with the risk of an investment fund rather than his employer's offer.

Mr M told us the advisor visited him and asked that he send this email so that he could pass it to his compliance department. He also told us the reasons he gave in the email were the words of the advisor.

On 13 December Gemini provided Mr M with its recommendation report. The report summarised much of what I've outlined above and:

- said the work pension was projected at age 65 to provide Mr M with an estimated annual retirement income of £25,186; or a reduced retirement income of £17,775 having taken £118,500 as tax-free cash
- outlined the various risks of transferring
- said the critical yield (which is how much the new pension needed to grow by in order to match the benefits of the work pension) was:

Retirement age	Pension taken	Critical yield
55	Full	over 50%
55	Reduced, with tax-free cash	39.56%
60	Full	11.67%
60	Reduced, with tax-free cash	8.4%

- said the critical yield for all options was unlikely to be achieved
- listed various pros and cons in transferring, including:
    - pros = Mr M had control over where his funds were invested; he could take the benefits flexibly, he could phase taking his benefits
    - cons = the work pension provided guaranteed benefits; the critical yields were high; transferring exposed Mr M to risks he wouldn't have with the work pension.

Gemini recommended that Mr M transfer the work pension to a personal pension. The reasons given for the recommendation were that his wife would have more choice for how she took benefits upon his death; and the new plan allowed Mr M the flexibility of retirement options and a suitable range of funds to invest in.

Mr M followed the recommendation and his work pension was transferred to a personal pension. The transfer was completed in February 2018.

What I provisionally decided – and why

I issued a provisional decision which set out why I thought the complaint should be upheld. The relevant parts of my provisional decision are outlined below, and they form part of my final decision.

Relevant rules/considerations

- There were various rules and principles that Gemini had to abide by/follow at the time it gave the advice. Three I thought were particularly important were:
    - the advice had to be suitable
    - Gemini had to work on the basis that advice to transfer the work pension was unsuitable; and it only became suitable if it could be clearly shown to be in Mr M's best interests, and
    - Gemini had to treat Mr M fairly and act in his best interests.

General observations

- My overall impression of Gemini's defence in this case was that the recommendation to transfer was suitable because it met Mr M's objectives and transferring was the only way his objectives could be met. I didn't think that argument in itself was persuasive because what a consumer wanted (ie their objectives) and what was actually suitable for them or in their best interests might be two different things. In essence, Gemini shouldn't have recommended a transfer simply because it met a consumer's objectives. If the transfer was unsuitable then it was unsuitable, and the recommendation should be to not transfer. And if the consumer then wanted to ignore the advice and transfer anyway that was their prerogative.

- Gemini mentioned that our investigator hadn't set out how Mr M's objectives could have been met. It's not our role to explain what options were available to Mr M. There may have been a variety of options available to a consumer that met their objectives, but it might be that none of them were suitable or in their best interests. Sometimes it might have to be explained to consumers that their objectives/expectations are either unrealistic or only achievable if they take action that is unsuitable for them.

Was the advice suitable?

- While there are other factors, in most cases the key issues in me deciding whether or not advice to transfer was suitable are the critical yield, the consumer's attitude to risk and their capacity for loss of their pension.

- Gemini argued the critical yield was irrelevant in this case as Mr M never intended to buy an annuity but I disagreed. This was because Gemini had a responsibility to explain to Mr M in a clear way how a transfer would compare with what he was giving up. COBS 19.1.7 said that when a business advises a retail client on a pension transfer it should consider the client's attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up. So I thought the critical yield was important in determining whether Mr M's pension might be worth more or less by transferring.

- Our investigator referred to 'discount rates' being a good indicator of what level of growth would have been considered reasonably achievable; and she quoted a discount rate of 3.1% per year for five years to retirement – which was well below any of the critical yields needed. Based on the figure quoted, I concluded it was very unlikely the critical yield would have been achieved – particularly given Mr M's relatively low attitude to risk (which meant his funds would be invested in low risk investments, which would unlikely grow to the required level).

- In respect of Mr M's capacity for loss of his pension, as he had a separate personal pension he could fall back on there was an argument that he could absorb some loss of his work pension funds. However, at the time of the advice the personal pension was said to have a value of around £300,000 (compared to the nearly £800,000 for the work pension). So the work pension was expected to be Mr M's main provision for retirement income. And his capacity for losing the value of his work pension was therefore lower than it might otherwise have been.

- I also thought the fact Mr M had another personal pension (the value of which increased significantly a few months after the transfer of the work pension was complete) was relevant to the transfer advice. That was because death benefits, the ability to take income flexibly and the ability to take tax-free cash were all mentioned in respect of Mr M's objectives and as reasons for the transfer of the work pension. It appeared to me that these needs could have been met by the personal pension.

- For the death benefits, although it was understandable how Mr M felt about passing his pension to his wife if he died Gemini's role was to advise him about the realistic situation (given that he was in good health – which called into question the likelihood of him actually dying early) and the implications for him and his family. It also needed to be remembered that the primary purpose of Mr M's pension was to provide an income in retirement – it wasn't to provide life insurance cover.

- Gemini broadly set out the situation with the death benefits in the recommendation report. But I thought there were some weaknesses in the information it provided. One example was that under the 'pros and cons' section of the report it said that if Mr M died before he reached age 75 his wife could receive the remaining fund value – which it quoted as approximately £800,000. I thought that messaging was unclear because in the body of the report Gemini warned that Mr M's funds might run out if he lived longer than expected, if the investment returns were lower and/or if he drew too much income over the years – which in turn would mean there would be little or no death benefits to pass on upon his death.

- The report also said that Mr M's wife would prefer a flexible income upon Mr M's death rather than the guaranteed income that would be provided by the work pension. But I couldn't see that Gemini had assessed what income Mr M thought his wife would need if he died. I couldn't therefore see that Gemini considered whether the spouses pension available from the work pension, together with her own pension provisions and any death benefits she could/would receive from Mr M's personal pension, would have been sufficient to meet this need. So while it might have been preferable upon Mr M's death for his wife to receive a lump sum payment, it hadn't been shown that this was actually necessary or that it was worth giving up the guaranteed benefits of the work pension for.

- For the flexible income, I hadn't seen anything which showed that any analysis was done in respect of how Mr M could alternatively use his personal pension to "top up" any income requirements that weren't met by the work pension. Similarly, I couldn't see that any analysis was done in respect of how Mr M could potentially take tax-free cash from his personal pension to use for home improvements. I thought this was particularly important given that the compensation paid into the personal pension a month or so after the work pension transfer completed was significant – which meant the value of the personal pension was essentially the same as the transfer value of the work pension. So any need for flexible income and/or tax-free cash Mr M had could easily have been met by the personal pension.

- Finally, based on what was known at the time (ie the personal pension having a value of around £300,000), Gemini's recommendation meant Mr M went from a position of being unlikely to exceed the lifetime allowance ("LTA") to one where he definitely would – thus exposing him to a LTA charge on the funds over and above the LTA. It's not always the case that advice to transfer a work pension is unsuitable just because the consumer will exceed the LTA. However, I thought in this case it added to the issues I'd outlined above.

- It turned out that the personal pension was eventually valued at around £840,000, which meant Mr M would have exceeded the LTA even if he hadn't transferred the work pension. But the increase in the personal pension value meant Mr M significantly exceeded the LTA by transferring, which in turn meant his LTA charge would also significantly increase. I accepted that at the time of the advice it was thought the personal pension would 'only' be valued at £300,000; however, Gemini knew compensation was most likely going to be paid into the personal pension. And Mr M was still a few months away from turning 55 (he couldn't take the tax-free cash until then). So I thought consideration ought to have been given to either delaying the advice until the amount of compensation was actually known, or to advising Mr M that if he was going to transfer the work pension it would be worth waiting until it was known how much the compensation for the personal pension would be before doing so.

- I thought this was also relevant to Gemini's argument that the £800,000 transferred from the work pension could easily provide a Mr M secure retirement income. If that was the case, then it was also true that it wouldn't have been necessary (had consideration been given to delaying the advice or the transfer) for Mr M to transfer the work pension at all because the personal pension could/would have provided that same secure retirement income – without Mr M having to take any risk with his work pension.

- Even without the value of the personal pension increasing, there was an inherent risk in Mr M transferring the work pension of his funds running out completely – due to lack of growth (or even loss), ongoing charges and/or withdrawals. Gemini referred in its recommendation to the funds lasting until Mr M reached 90 based on how much he said he would withdraw in the future; but it also referred to them running out by the time he reached 73 if losses of 35% were suffered.

- Many of the issues I'd outlined were detailed in the recommendation report and were highlighted as risks. However, Gemini was required to do more than give Mr M information to enable him to make an informed choice of what to do – it was also required to give advice/a recommendation that was suitable and in his best interests.

- I concluded that the recommendation to transfer the work pension was unsuitable because:
    - the critical yield was unachievable
    - (based on the information available at the time regarding the personal pension) Mr M didn't have the capacity to lose much of his work pension funds
    - death benefits, the ability to take income flexibly and the ability to take tax-free cash could have been met by the personal pension
    - no analysis was done regarding Mr M's wife's income needs upon his death; or on whether those needs could have been met by the existing pension arrangements
    - no analysis was done in respect of how Mr M could use his personal pension to "top up" any income requirements that weren't met by the work pension; or of how Mr M could take tax-free cash from his personal pension for his immediate needs
    - of the implications in respect of the LTA and the LTA charge
    - no consideration was given to delaying the advice or the transfer until the compensation had actually been paid into the personal pension
    - there was a risk of Mr M's funds running out.

Would Mr M have transferred anyway?

- The various risks were pointed out to Mr M in the recommendation report. So I thought it likely that Mr M decided to transfer with his eyes open ie he was aware of the risks involved. However, there was nothing I'd seen which suggested to me that Mr M was a particularly sophisticated or experienced investor. The fact find recorded that he had some knowledge of investments and how they worked, but that was a fairly sweeping statement that didn't tell me much. The only actual experience that was recorded related to some shares – but that could mean Mr M simply bought a few shares. So I thought Mr M was in a position where he was wholly reliant on the advice of a professional advisor.

- Accordingly, if the advice had been suitable – ie to not transfer as it wasn't in his best interests – I thought it was most likely that Mr M would have heeded that advice. I wasn't persuaded that his desire to leave his stressful job would have changed that.

Responses to my provisional decision

Mr M asked various questions about how the compensation would be calculated and whether my final decision would be binding; but he didn't comment on the conclusions I'd reached.

Gemini didn't agree with my provisional decision as, in summary, it felt the recommendation met Mr M's needs in circumstances where they weren't being met by the work pension. It also said the risks of transferring were communicated to Mr M. Gemini made various points, which I address below as necessary.

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.

Nature of the complaint

Gemini argued that Mr M's complaint concerned the suitability of the investment advice he received, as opposed to the suitability of the advice to transfer his pension. It therefore felt I should focus on the complaint about the investment advice.

Gemini made the same argument previously and I responded to it in my provisional decision. As there are no new points for me to consider, my position remains as outlined previously, which was (in summary):

- although Mr M's complaint to Gemini centred on the investment strategy, we have an "inquisitorial remit" in our approach to complaints which means we aren't limited to considering the exact complaint that was made – we can consider issues that are closely related to the crux of the complaint and have some bearing on it
- the overall advice process includes the advice to transfer the pension *and* the advice on where/how to invest the underlying funds – they essentially go hand in hand; and Mr M's overall concern is that his retirement income has been put at risk due to Gemini's advice
- I therefore think it's appropriate for me to consider the transfer advice as part of the complaint.

Suitability

In response to my provisional decision Gemini said, amongst other things:

- I couldn't reasonably conclude that the transfer advice was unsuitable as it allowed Mr M to meet his needs
- it wasn't bound by the 'presumption of unsuitability' as this was only guidance rather than a rule
- it explained the work pension to Mr M and gave him various warnings of what he would be giving up and what might happen if he transferred
- the advisor's role was to consider Mr M's priorities and to identify a suitable solution that achieved his objectives – and it did this in this case by striking a balance between the financial security offered by the work pension and Mr M's circumstances/lifestyle choices he was looking to achieve.

Gemini went on to explain how the transfer met Mr M's stated needs eg flexibility, control over retirement benefits, death benefits.

There are occasions when advice to transfer from a defined benefit occupational pension scheme is suitable, but they're rare – hence the 'presumption of unsuitability'. I'm aware of

Gemini's view that its advice allowed Mr M to meet his objectives; however, I've already explained that I don't think advice is automatically suitable simply because it enables a consumer to meet their objectives. I don't think an argument along these lines stands up to scrutiny if other factors make the transfer unsuitable or not in the customer's best interests. As Gemini has said, a balance needs to be struck between:

- how realistic the objectives are given the consumer's attitude to risk/capacity for loss
- whether the objectives are 'wants' rather than 'needs'
- what is being given up.

In my provisional decision I set out various areas where I felt the advice process fell down. I don't think Gemini has provided me with anything further in this respect which persuades me to change my mind – it's essentially repeated its arguments that the advice was suitable and explained how it feels it met Mr M's needs.

I disagree with Gemini's view on the 'presumption of unsuitability'. In my view, there's a clear statement by the regulator to the effect that when advising a customer about transferring from a defined benefit pension scheme the advisor should start by assuming it will be unsuitable and it will only be suitable if it can be shown to be in the customer's best interests. Irrespective of any technical argument about whether this is "just guidance" or "a rule" it, in my opinion, represents good industry practice and it should therefore be followed in order to treat customers fairly.

I'm aware of the various pieces of information (eg the critical yield not being achievable) and warnings (eg about the LTA) that Gemini gave to Mr M. I referred to this in my provisional decision when I said I felt Mr M that had his 'eyes open' when he decided to transfer her pension. However, the advisor was making a recommendation here. So he needed to do more than just give Mr M information and warnings – he had to provide Mr M with advice that was suitable and in his best interests.

Gemini repeatedly made reference to the fact that I hadn't explained how various objectives could otherwise have been achieved. I refer back to what I said in my provisional decision about our/my role – it's to ultimately decide whether or not Gemini treated Mr M fairly by giving him suitable advice. I'm not a financial advisor so I don't know what options were available at the time – so it's not for me to explain how Mr M's objectives could have been met, or whether it was even possible. I can only look at what did happen and make a judgement on whether the advice was suitable/in Mr M's best interests.

Critical yield

Gemini argued this was irrelevant as Mr M hadn't raised it as an issue, it clearly told Mr M it was unlikely the critical yields would be achieved, and Mr M said he wasn't considering buying an annuity (and it hadn't received anything to suggest he'd changed his mind). The relevance of the critical yield is something I addressed in my provisional decision. And while I note Gemini's comments, I remain of the view that the critical yield is relevant for the reasons outlined above.

Risk warnings/attitude to risk

Gemini feels that the underlying investments reflected Mr M's attitude to risk and capacity for loss. It also pointed to my description of Mr M's attitude to risk as "low" when in fact it was cautious; and to Mr M painting a different view now (ie that he was extremely cautious) to the information he provided at the start. Ultimately, Gemini feels that I placed greater weight on Mr M's unsupported version of events.

I don't think the point about whether the investments reflected Mr M's attitude to risk is relevant to the outcome of this complaint. That's because I concluded that the advice to transfer the pension was unsuitable. So had suitable advice been given, Mr M would never have been in the position of investing as he did.

Although a 3/10 rating might be 'cautious' on Gemini's risk scale, I'm satisfied that my reference to Mr M having a "relatively low attitude to risk" was accurate. This is because, *using everyday language*, it wasn't 'medium' (which I think is somewhere in the vicinity of 5 or 6 out of 10) or 'high' (which I think is somewhere in the vicinity of 8, 9, or 10 out of 10).

I also disagree that I placed greater weight on Mr M's version of events in this respect. The only reference to Mr M's attitude to risk that I made in the 'Findings' section of my provisional decision was my conclusion that it was unlikely the critical yield would have been achieved. And this is a point Gemini agrees with.

Causation

Gemini said that Mr M had already received a transfer value from his work pension and had received 'advice' from a colleague who had already transferred his pension. So it feels Mr M had already made the decision to transfer, which lessened the argument that he was reliant on the advice it gave. Gemini also felt too much emphasis had been placed on Mr M's mental health and the correlation with investment risk.

I accept that Mr M receiving information from his employer about his work pension is suggestive of the fact he was thinking about the possibility of transferring the pension. However, I think there's a difference between *thinking* about it and actually *doing it* having received advice to the effect that it's unsuitable and not in your best interests. Of course, it's possible that Mr M was going to transfer the work pension irrespective of the advice he received from Gemini. But I have to decide this case based on what I think is most likely in all the circumstances. And for the reasons outlined above, if Mr M had received suitable advice I think it's most likely that he wouldn't have transferred his work pension.

I don't think Gemini's reference to Mr M's mental health carries any weight. I say this because I didn't at any stage in my provisional decision refer to Mr M's mental health as a reason why I felt the advice was unsuitable. In fact, the only reference I made to Mr M's health was in respect of the death benefits, and that was based on the advisor recording Mr M's health status in the fact find as 'good'.

Summary

For the reasons outlined above it remains my view that the recommendation to transfer the work pension was unsuitable. It also remains my view that had Mr M received suitable advice he most likely wouldn't have transferred his work pension.

Putting things right

There are two potential areas where Mr M might have lost out – in respect of loss due to an increased LTA charge, and in respect of the transferred pension itself.

Increased LTA charge

I think Gemini should pay compensation because by transferring the work pension Mr M's overall pension value for LTA purposes is in the vicinity of £1.64m (the transfer value of the work pension plus the value of the other personal pension). And this is much higher than it would have been had he not transferred the work pension – which in turn means the LTA charge Mr M will be required to pay due to exceeding the LTA will also be much higher than it would have been.

Mr M provided me with further information on what he most likely would have done and what he most likely will do going forward:

- In respect of what he would have done had he not transferred his work pension and he kept it where it was, he told me he might have stayed working for his employer but in a less stressful role. He also said he's still working and intends to do so for the foreseeable future. He thinks it's likely he would have drawn from the personal pension first, before accessing the work pension.

- In respect of the benefits he has actually drawn from his pensions so far, he told me he crystallised £789,856.30 in October 2018 from the work pension he transferred and took £197,464.07 in tax-free cash and designated £592,392.23 to a Flexi access drawdown. He also crystallised £240,143.70 of his other personal pension in November 2018 and took £60,035.92 in tax-free cash and designated £187,273.02 to a Flexi access drawdown. He said his records show that he's used 99.98% of his LTA.

  He said he took regular income from the crystallised pots of £36,000 per annum until two years ago when he stopped withdrawals and then recommenced at £20,000 per annum to supplement income.

- In respect of his future plans to take benefits from his pensions between now and his 75th birthday, he told me he's now taking £2,500 per month gross from the crystallised funds and he doesn't see this changing much until circumstances change as he gets older.

Based on what Mr M said:

- the total amount he placed in drawdown at the end of 2018 was just under £780,000
- the income he's taken is £92,000 (ie £36,000 in 2019 and 2020 and £20,000 in 2021); and he's now taking £30,000 per annum, which he's going to do until he's 75 – so for around 17 years in total
- so that will make Mr M's total withdrawals around £602,000 (ie £92,000 plus 17 x £30,000).

This means the £780,000 Mr M placed into drawdown should, on the balance of probabilities, be sufficient to cover his income needs until he turns 75. That in turn means it's unlikely that Mr M will need to crystallise any more funds and, therefore, pay any LTA charge until he turns 75. For completeness, it also means that if Mr M hadn't transferred his work pension his personal pension would most likely have covered his income needs on its own.

Given the above, I think it's fair to work on the basis that if Mr M hadn't transferred his work pension he would most likely have continued working until 65. According to Gemini's recommendation report, the indexed deferred work pension was £25,186 per annum, which means it had an LTA value of £503,720 (20 x £25,186). This combined with the other personal pension gives an approximate total LTA value of £1.34m (compared to the £1.64m it is by transferring). This in turn means that Mr M is going to have to pay the LTA charge on an extra £300,000 when he turns 75.

I therefore think Gemini should pay Mr M £75,000 (ie 25% of £300,000) compensation in respect of this. This compensation is independent of any losses Mr M might have suffered on his pension by transferring. So it should be paid to Mr M within 30 days of the Financial

Ombudsman Service confirming to Gemini that Mr M has accepted my final decision. Interest must be added to this 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 30 days, that it takes Gemini to pay Mr M.

I appreciate my calculations aren't perfect because I don't know precisely what Mr M is going to do in the future, and what he's told me about what he likely would have done had he not transferred the work pension does involve a degree of hindsight. However, there are many variables in working out this type of redress and I'm tasked with making a decision based on what I think is fair and reasonable in all the circumstances. And on that basis I think it's appropriate to work with what Mr M has said.

Pension transfer

A fair and reasonable outcome would be for Gemini to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. As above, I consider he wouldn't have transferred the pension and he would have worked until he was 65. Gemini 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, based on Mr M retiring at 65.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of the decision.

Gemini may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should be paid directly to Mr M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – which I assume to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

This compensation amount must where possible be paid to Mr M within 90 days of the date Gemini 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 Gemini to pay Mr M.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Award limit

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.

Determination and money award: I require Gemini to pay Mr M the compensation amounts as set out above, up to a maximum of £160,000. Where the compensation amounts don't exceed £160,000, I additionally require Gemini to pay Mr M any interest on that amount in full, as set out above. Where the compensation amounts already exceed £160,000, I only require Gemini to pay Mr M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amounts exceed £160,000, I also recommend that Gemini pays Mr M the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award will be binding on Gemini. My recommendation won't be binding on Gemini. Further, it's unlikely that Mr M can accept my final decision and then go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

I uphold this complaint. I require Gemini Wealth Management Limited to settle the matter as per the 'Putting things right' heading above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 April 2022.
Paul Daniel
Ombudsman