DRN-3470022

The complaint

Mr M complains about the advice given by Makemson & Company Limited (Makemson) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

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 M's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr M approached Makemson in November 2017 to discuss his pension and retirement needs. Mr M had concerns about the stability of the BSPS and he wanted to increase his benefits when he retired. He wanted more control of his pension arrangements. He said he heard about Makemson through colleagues.

Makemson completed a fact-find to gather information about Mr M's circumstances and objectives. This showed that:

- He was 37 years old, married and had two dependent children.
- He was employed by Tata Steel and had an annual income of £52,000.
- Mr and Mrs M owned their own home subject to a modest mortgage which would be repaid in the very near future.
- He had no savings or investments.

In respect of his pension arrangements Mr M had his deferred pension with the BSPS. He received a transfer value on 18 September 2017 that showed its value was £97,145.95. He had just under nine years in the scheme and the pension at the date of leaving was £4,632.48.

The fact find showed that he had a small personal pension and I understand he joined Tata Steels new defined contribution ('DC') scheme. He, and his employer, would contribute 16% of his salary into this.

Makemson also carried out an assessment of Mr M's attitude to risk. It concluded that he was an above average risk investor with a moderate capacity for loss. And Mr M signed to confirm a handwritten statement (it's not certain who wrote it) that said:

'I have a very high attitude to risk in respect of these benefits. I have considered very carefully whether I should transfer into BSPS2 to access the guarantees. My Advisor has pointed out that the benefits in the new scheme are not inflation proofed and feel I am young enough to achieve greater benefits from a personal pension under my control. I'll also be paying into a scheme which has been made by my employer who will also be contributing'.

On 30 November 2017, Makemson advised Mr M to transfer his DB scheme pension benefits into a personal pension and invest the proceeds in one of the providers funds that met his attitude to risk. Mr M had the ability to change the funds if he wanted to. The suitability report said the reasons for this recommendation were:

- While invested the fund will benefit from tax advantaged growth and Mr M would receive tax relief on his contributions.
- Benefits could be taken at any time from age 55 (which is when Mr M ideally wanted to retire).
- 25% of the uncrystallised pension fund could be taken as a tax-free lump sum.
- There was a broad range of investment opportunities and flexibility in how the investment worked.

Mr M complained in 2021 to Makemson about the suitability of the transfer advice. Mr M said Makemson didn't uphold his complaint. I've not seen Mr M's initial complaint and Makemson's response to it. But it's clear that that Mr M has complained to Makemson and it has responded (not upholding the complaint).

Mr M referred his complaint to our service. An Investigator upheld the complaint and recommended that Makemson pay compensation. He said it was likely that Mr M would receive lower benefits due to the transfer and so it wasn't in his best interests, particularly as he wanted to increase his retirement benefits. And the other reasons given for the transfer were not enough to justify it. And whilst Mr M probably had genuine concerns about his employer, and the future of the scheme, this also wasn't a good enough reason to transfer. If the situation had been properly explained to Mr M he would have likely stayed in the scheme and ultimately joined the BSPS2.

Makemson disagreed, saying:

- Mr M had a high attitude to risk, and he did not want his benefits to remain under the control of his employer or the BSPS2. He had considered the BSPS2 and didn't want to join it.
- Makemson clarified in detail the income and benefits from the BSPS2 scheme and the potential of the personal arrangement to better these.
- Whilst it did produce critical yields they were of limited relevance as they were based on the BSPS scheme. And the FCA has said that over reliance on these calculations isn't right.
- Mr M was happy at the time with the arrangement and proceeded despite the information he was given

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

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Makemson'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 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Makemson should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Makemson carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

This analysis was based on his existing BSPS scheme benefits, but Mr M didn't have the option to remain in the BSPS; he either needed to opt into BSPS2 or move with the existing BSPS scheme to the PPF.

Makemson did provide the estimated income, and the other benefits, that the BSPS2 could provide in the suitability letter. But it didn't base the critical yield calculation on these figures. So, the information Mr M had wasn't entirely correct.

Makemson has said that BSPS2 may not have gone ahead, so the only meaningful comparison it could provide was with the benefits available to Mr M through the BSPS or the

PPF. But I think Makemson overestimated the chance of this not happening; Mr M had received his “Time to Choose” pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would’ve offered the same income benefits but the annual increases would’ve been lower. And I think Makemson could have changed its analysis to fully reflect the options Mr M had. Or waited until it could properly do this.

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

Mr M was 37 at the time of the advice and wanted to retire at 55 ideally. The critical yield required to match Mr M’s benefits at age 65 was 7.05% if he took a full pension and 6.27% if he took tax-free cash and a reduced pension. The same figures at Mr M’s age 55 were 10.04% and 8.85% respectively.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 5.76% per year if Mr M took a full pension and 5.53% per year if he took tax-free cash and a reduced pension.

The critical yields applicable to the BSPS2 benefits weren’t calculated. The lower annual increases under the BSPS2 would’ve likely decreased the critical yields somewhat in comparison to the BSPS. But I still think they would’ve likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

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 4.6% per year to Mr M’s age 65 and 4.4% to his age 55. I’ve kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M’s ‘above average’ attitude to risk and also the term to retirement.

Makemson says that Mr M’s attitude to risk was high, and the documentation does support this to some degree. But Mr M’s circumstances seem at odds with this. I would expect a higher risk investor to have some investment experience which doesn’t seem to be the case here. And one of his aims is maximising his pension income, rather than having a ‘high tolerance to risk’ with the DB scheme. And Mr M says he was guided by the adviser in this respect. Given everything I’ve seen; I’m not persuaded that his attitude to risk was as high as the point of sale documentation indicated.

There would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was over 5.5%, I think Mr M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his likely tolerance to risk. This would be the case even if the scheme moved to the PPF.

Makemson has provided cashflow models which it says show that Mr M would've been able to meet his needs despite the high critical yields in some circumstances. It that estimated that at his age 55, in the BSPS2 he would receive £5,499 per year and at age 65 this would be £8,663.

Makemson firstly compared this with what Mr M could expect if the personal pension achieved an average return of 1% a year. It said that in this case his fund would have fallen to £82,746 (adjusted for inflation) at his age 55. If this was the case a level drawdown income of £2,820 each year would lead to the fund being reduced to zero by Mr M's age 80.

If the return was 5% per year, the fund would grow to £225,819 (adjusted for inflation) at age 65. In this scenario, a level income of £17,632 taken per each year would lead to the fund being used up by his age 103. So, it's clear there was a significant risk here of the drawdown arrangement providing less than the benefits Mr M gave up.

Also, as Makemson will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

And Makemson estimated that a fund of between £316,288.31 to £388,046.12 was needed to provide the same benefits as the BSPS at Mr M's age 65 9 (depending on the amount of tax-free cash taken). And at 55 the same fund values were between £165,238.93 and £190,173.81. These are high amounts and above what it could reasonably be expected that Mr M's fund would grow to, given Mr M's tolerance to risk. They give a revealing insight into the 'cost' of the benefits he was giving up.

Makemson also says that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. Makemson says Mr M didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required Makemson to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr M could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for around another 17 years at the earliest. It's entirely possible that Mr M would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

For this reason alone, a transfer out of the DB scheme wasn't in Mr M's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Makemson has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

Makemson says that Mr M wanted to take his pension benefits flexibly at retirement. In considering this I think it's reasonable to firstly say there was very little detail recorded about Mr M's circumstances at the time of sale. And there was very little analysis, or information about, his retirement wants or needs.

If Makemson had taken a more detailed look at Mr M's retirement circumstances it could have provided robust planning as to how he could meet his aims or challenged them if his aims weren't realistic or achievable. For example, I don't think it's reasonable to say that Makemson seriously looked into, or challenged, Mr M's objective of early retirement and questioned how realistic that was for him. So, I don't think it met its obligations to determine his objectives in the light of what he would be giving up. Given the amount of information recorded, it's difficult to see how Makemson could have properly advised Mr M.

That said one of the main reasons that Makemson recommended this transfer was for the flexibility and control it offered Mr M. The point of sale documentation shows that Mr M wanted to retire at age 55, if possible. And if he did this his income needs may fall from state pension age. So, varying his income could be useful.

It's evident that Mr M could not take his DB scheme benefits flexibly in this way. Although he could choose to take tax-free cash and a reduced annual pension, Mr M had to take those benefits at the same time. But I'm not persuaded that Mr M had any concrete need to take tax-free cash and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective. And Mr M hadn't set on a retirement age yet anyway.

It was noted that the DB scheme would provide an income of around £9,500 per year or tax-free cash of £41,171 and a reduced annual pension of £6,175. And Mr M would also receive his state pension of around £9,000. He would also have his DC scheme benefits, which given the time he had left until his retirement could be used either to provide an income or some flexibility. I think it's reasonable to say Mr M would have enough to meet his income aims at 65.

Of course the amounts are much lower at Mr M's age 55 and if he joined the BSPS2 these would be lower still. Makemson said that he would receive an income of around £5,500 per year in this scenario. But, as I've said, Mr M was a member of his new employers DC scheme and he and his employer were contributing a combined total of 16% of his salary each month into this. If he remained in this over the next, say, 17 years, and his salary remained the same at around £50,000, both him and his employer would have contributed around £136,000 into to it. And this would likely be increased by investment performance. Added to this they were due to repay the mortgage soon, and so could possibly increase the amounts they could save.

But given all of this, I'm not persuaded that Mr M needed to make significant changes to plan to retire early. I think the right advice here would be for Mr M to remain in his DB scheme and anticipate that this would form a core guaranteed income. And Mr and Mrs M could continue to build up funds and other provision elsewhere to enable them to be flexible about their retirement when they had a better idea what they wanted to do. It's entirely possible that Mr and Mrs M could have saved up enough to enable them to make up any income shortfall their pension arrangements would leave them with at early retirement.

I don't think advising him to transfer the DB scheme increased Mr M's flexibility, due to the lower income provided, I think it decreased it.

Overall, I'm satisfied Mr M could have met his income needs in retirement by maintaining the guaranteed income available to him through the PPF or the BSPS2. So, I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility that he didn't really need. And if Mr M found that his circumstances changed and he did in fact need flexibility, if he'd opted to go into the BSPS2 he would've retained the ability to transfer out closer to his actual retirement age. So, ultimately, I think any need for flexibility could've been addressed nearer to his retirement.

I don't think it was a suitable recommendation for Mr M to give up his guaranteed benefits now when he didn't know what his needs in retirement would be.

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 M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Makemson explored to what extent Mr M 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. Mr M was married and had children and so the spouse's and dependent's pensions provided by the DB scheme would've been useful to his dependents if Mr M predeceased them. I don't think Makemson made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left particularly if Mr M lived a long life. In any event, Makemson should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr M genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Makemson should've instead explored life insurance.

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

Control and concerns over financial stability of the DB scheme

The advice was given on the basis that Mr M was very worried about the future of the pension scheme and his employer.

It's clear that Mr M, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.

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

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should've alleviated Mr M's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Makemson should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would've still provided a significant amount of income at his retirement. And the critical yields show he was unlikely to be able to exceed this by transferring out. 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’ve led to Makemson recommending Mr M transfer out of the DB scheme altogether.

I also think Mr M’s desire for control over his pension benefits was overstated. Mr M 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 M – it was simply a consequence of transferring away from his DB scheme.

It seems to me that Mr M’s stated desire for ‘control’ related more to moving his pension away from an employer that he didn’t trust than to any resolution on his part to begin to manage his investment.

But it ought to have been explained that Mr M’s employer and the trustees of the BSPS2 were not the same. And in any event, Mr M was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn’t achieve a ‘break’ from his employer. Mr M says that he has now moved his pension back to the Tata DC scheme. So had Makemson explained that Mr M’s belief regarding the control Mr M’s employer had over his pension was misplaced, I think he would have been reassured by this.

Would Mr M have joined the BSPS2 going forward

My decision is that Mr M should have been advised to stay in the DB scheme. I appreciate that the BSPS2 wasn’t in place when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. As I’ve outlined above, Mr M would need to choose whether to move to the PPF, or go to the BSPS2, in the near future.

I don't think that it would've been in Mr M’s interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Even though Mr M did want to retire early, I’m not persuaded that he would have needed to take the benefits from his DB scheme if he did this. And by opting into the BSPS2, Mr M would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, Mr M 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 M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

So I think if Makemson had advised Mr M to stay in the BSPS scheme he would have opted in the future to join the BSPS2. And so, this is what compensation should be based on.

Suitability of investments

Makemson recommended that Mr M invest in a range of funds. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr M, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the investments in the funds wouldn’t have arisen if suitable advice had been given.

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 M. But Makemson wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income within BSPS2 (or the PPF). By transferring to a personal pension Mr M was, in my view, 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. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme to a personal pension now when he had the opportunity of opting into the BSPS2.

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

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against Makemson's advice. I say this because Mr M was an inexperienced investor and this pension accounted for the majority of Mr M's retirement provision. So, if Makemson 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've accepted that advice.

I'm not persuaded that Mr M's concerns about his employer and the scheme were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If Makemson had explained that Mr M could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr M would have insisted on transferring out of the BSPS. As I said above, he has said that he has moved his pension arrangements back to his employers DC scheme.

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

Our Investigator recommended that Makemson also pay Mr M £500 for the distress caused by the unsuitable advice. I don't doubt that Mr M has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

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

Makemson must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Makemson should use the FCA's BSPS-specific redress calculator to calculate the redress. If Makemson does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr M and our Service upon completion of the calculation.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. 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.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Makemson should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Makemson's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Makemson may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. 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 – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Makemson should pay Mr M £500 for the distress the poor advice caused him.

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

<u>Determination and money award</u>: I uphold this complaint and require Makemson & Company Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Makemson & Company Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Makemson & Company Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 August 2023.

Andy Burlinson
Ombudsman