DRN-3470360

The complaint

Mr J complains about the advice given by Wealthmasters Financial Management Ltd ('WFM') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a Self-Invested Personal Pension 'SIPP'.) He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr J'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 October 2017 Mr J's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in BSPS which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017.)

Mr J was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr J first met with another business – but because they didn't have the necessary regulatory permissions to advise on pension transfers they referred Mr J to WFM. Mr J met with WFM on 13 December 2017 and it completed a fact-find to gather information about his circumstances and objectives. In summary it noted Mr J was 38, married with two children, he owned his own home with an outstanding mortgage of around £100,000 and his preferred retirement age was 58. WFM also carried out an assessment of Mr J's attitude to risk, which it deemed to be ''moderately adventurous'.

On 4 January 2018 WFM advised Mr J to transfer his BSPS benefits into a SIPP and invest the proceeds in a managed investment portfolio which WFM deemed matched Mr J's attitude to risk. In summary the suitability report said the key reasons for this recommendation were: to provide the potential for a higher cash lump sum; to address Mr J's concerns about the BSPS moving to the PPF; to provide for early retirement; to provide flexibility both now and at retirement; and to ensure Mr J's family benefitted from his pension upon his death.

Mr J accepted the advice and around £221,900 was transferred to his new personal pension.

In 2021 Mr J complained to WFM, through a representative, about the suitability of the transfer advice.

WFM didn't uphold Mr J's complaint. In summary it said that Mr J made it clear from the outset that he was not prepared to entrust his future pension provision to the BSPS or the PPF. It said the recommendation was suitable because it met Mr J's stated objectives, including providing greater flexibility, offered tax efficiency and ensured that his family would benefit in the event of his death. It said Mr J was clearly made aware of the risks of transferring away from the DB scheme.

Dissatisfied with its response Mr J asked this service to consider his complaint. And an investigator upheld it and said WFM should pay Mr J compensation. In summary they said they didn't think the advice was suitable. They said Mr J was likely to receive lower overall benefits at retirement as a result of transferring and there were no other particular reasons to outweigh this – for example there was nothing to show that Mr J's plans for retirement were known given his age and there was nothing to show that he needed flexibility. They said that Mr J should've been advised to remain in the DB scheme and that had things happened as they should have, Mr J would've followed that advice.

While WFM indicated it disagreed with the investigator's conclusions and it said it would be providing a response, it hasn't provided anything further. We've recently reminded WFM that it can provide a response, but again nothing has been received. I'm satisfied WFM has been given the opportunity to respond and I think that if it wanted to do so it would've done so by now.

Because things couldn't be resolved informally, the complaint was referred to me to make a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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 WFM'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 broadly the same reasons as the investigator. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, WFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests. And having looked at all the evidence available, I'm not persuaded that it was in his best interests.

I firstly want to address what I consider is the important matter of the timing of the advice in this case. As I said above, in October 2017 Mr J received his 'Time to Choose' information asking him what he wanted to do with his preserved DB scheme benefits. And the deadline to make his choice was 11 December 2017, later extended to 22 December 2017. Mr J met with WFM in December 2017, which was during this period.

But none of WFM's advice paperwork refers to him having to make this decision about his preserved benefits - there was no reference to the 'Time to Choose' period, no mention of the deadline or any sense of urgency about things when I consider there should have been. Mr J sought advice because of the decision he was being asked to make by the December deadline. I accept that when Mr J approached WFM time was running out and it's possible that WFM was unable to complete its advice process even it had hurried things and prioritised its advice to Mr J.

But I don't think this means WFM should've ignored the looming deadline and so remove Mr J's choice to opt into the BSPS2. I think if it wasn't possible to hurry its advice process, at the very least, I think WFM should've considered whether it was in Mr J's best interests to opt into the BSPS2 as a precautionary measure while it completed its advice (the time to choose leaflet says someone can opt in but cancel their choice if they decide to transfer out before the new scheme started.). WFM understood Mr J's circumstances and objectives because it had completed a fact-find. It also had Mr J's 'Time to Choose' leaflet - so I think it's fair to say WFM was in a position to advise Mr J on his choice here.

As I will explain in my decision, I think it was in Mr J's best interests to opt in to the BSPS2 rather than remain in the scheme and move with it to the PPF. This is because if Mr J took his full pension, which it what I think he would likely do, at his documented preferred retirement age of 58, I think the income was likely greater than was available under the PPF. While Mr J has provided a copy of his 'Time to Choose' leaflet, which contained the information about the benefits he could receive under the BSPS2, the examples shown are at ages 55, 60 and 65 – not 58. So I can't say for certain this was the case.

But based on this and the analysis WFM did of Mr J's benefits had the existing scheme stayed in place, it appears to me that if Mr J took his full pension at 58, the benefits available to him through the existing scheme were better than those provided by the PPF. The analysis shows Mr J could take a full annual pension of £10,061 through the existing scheme and £9,181 through the PPF. And while the BSPS2 wouldn't provide Mr J with as generous benefits as the existing scheme (because of the lower revaluations and escalations), at 58 I think the BSPS2 would produce benefits somewhere between the existing scheme and the PPF (but closer to the existing scheme.) So I think it's likely the BSPS2 benefits would've been higher than those provided by the PPF.

This means I think it is more likely than not the BSPS2 would provide Mr J with greater benefits in the circumstances I've described.

Of course at the time of the advice in January 2018, Mr J's choice to join the BSPS2 had expired – so his only option at this stage was to remain in the scheme and move with it to the PPF or transfer out. But if things had happened as they should have and WFM had advised Mr J to opt into the BSPS2 as a precaution in case it wasn't in his best interests to transfer out, it would've been appropriate for WFM to refer to and compare the benefits available to him under the new scheme. So this is what I've considered here.

Financial viability

WFM carried out a transfer value analysis report (as required by the regulator) showing how much Mr J's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). But this was based on his existing scheme benefits and as I discussed above, Mr J didn't have the option to remain in the BSPS – at this stage he would move with the scheme to the PPF.

But because of what I discussed above about what I think ought to have happened, it is the benefits available to Mr J through the BSPS2 that should've been factored in with this advice so that he was able to make an informed decision.

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 J was 38 at the time of the advice, and the paperwork records that his preferred retirement date was 58. WFM produced a Transfer Value Analysis ('TVAS') report, which show that that growth rate required to match Mr J's benefits under the existing BSPS at age 58 if he transferred to a personal pension was 6.28% assuming he took a full pension and 4.91% if he took tax-free cash and a reduced pension. The critical yield required to match the benefits provided through the PPF was 4.6% if Mr J took a full pension and 4.36% if he took tax-free cash and a reduced pension.

But as I've said above, Mr J remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided instead. The lower annual increases under the BSPS2 would've likely decreased the critical yields to some degree, but I still think they would've likely been higher than those reflecting the PPF benefits.

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% for 19 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr J's recorded 'moderately aggressive' attitude to risk and also the term to retirement. In my view there would be little point in Mr J giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Here, the critical yield if Mr J took a full pension (which is what I think he would likely do as I will discuss later on) through his existing scheme at age 58 was 6.28%. So, if Mr J were to opt into the BSPS2 and take the same benefits at age 58, I think the critical yield would've been somewhere between 6.28% and 4.6%, but most likely closer to 6.28%. This figure was higher than the discount rate and higher than the regulator's middle projection rate.

I can see that WFM classified Mr J as a 'moderately adventurous' risk investor. But while I accept Mr J was relatively young and the term to retirement was reasonably long, Mr J lacked any investment experience. In my view he was inexperienced. I'm mindful too that in assessing Mr J's attitude to risk in which he was asked a number of questions to arrive at a risk profile, he was specifically asked the question about which statement best described his attitude to risk. And he answered that he was willing to accept a moderate risk – the middle answer of five possible answers. So taking everything into account, I think a medium risk attitude, or moderate risk as WFM described it, was appropriate here and more in line with the level of risk I think Mr J was prepared to take with his pension.

Given this I think it was clear Mr J was likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 if he transferred to a person pension, as a result of investing in line with a medium or moderate attitude to risk. Because of the required sustained growth rate, I think it is clear the transfer was not compatible with Mr J's attitude to risk. To have come close to achieving the level of growth needed, in my view it would have required Mr J to take a higher level of risk than his recorded appetite. And even then I think it's likely Mr J would have been no better off financially at retirement if he transferred out.

The critical yield required to match the benefits provided through the PPF was 4.6% if Mr J took a full pension and 4.36% if he took tax-free cash and a reduced pension. 4.6% is still above the discount rate. And while I accept both rates were lower than the regulator's middle projection rate, they were lower only by what I consider to be a small margin. It's also the case that these rates are only those to match the PPF benefits – not exceed them. So given the small difference, I think it's likely that, at best Mr J would end up receiving benefits of broadly the same overall value as those he would receive through the PPF, as a result of investing in line with a medium or moderate attitude to risk. There of course still remained the real risk that Mr J might end up with benefits of a lower overall value than those provided by the PPF.

So given Mr J was likely to receive lower overall retirement benefits by transferring to a personal pension, or at best match those if the scheme moved to the PPF, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice. I accept there might be other considerations which mean a transfer is suitable and in Mr J's best interests, despite providing overall lower benefits. And it appears WFM believed to be the case. I say this because in the suitability letter, the adviser appears to acknowledge that the annual growth rate might not be achieved - albeit the reference to the critical yield was the one to age 65 and not 58. The adviser doesn't appear to have expressed an opinion on the likelihood of this figure being achieved, which was the more relevant figure in this case given the advice was predicated on Mr J retiring early at 58.

I've considered below whether such other reasons applied here.

Flexibility and income needs

One of the key reasons WFM recommended the transfer was because it would provide Mr J with flexibility – it would meet his need to choose his level of income and provide the ability to alter it according to his circumstances at the time.

But I don't think Mr J knew with any certainty whether he required flexibility in retirement. And in any event I don't think he needed to transfer his DB scheme benefits to achieve it.

Importantly in this case Mr J was only 38 years old and there's nothing to show or suggest that he had anything that could reasonably be described as concrete plans for retirement. And this isn't surprising – he still had a significant period of his working life in front of him. Because of this, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr J to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

The suitability letter said a reason for recommending the transfer was because the tax-free cash lump sum available through a personal pension arrangement was larger than the DB scheme offered. But the fact-find records that when asked about how much and what Mr J needed a cash lump sum for he said it was "*too early to decide".* Again this demonstrates in my view that it was too soon to make any decision about transferring. I can see Mr J had a mortgage with around £100,000 outstanding balance. But Mr J has said the mortgage was on a repayment basis, so it's possible this would've been repaid by the time Mr J wanted to retire, so he might not have needed a lump sum. But if he did, it's possible the cash lump sum available through the DB scheme would've met any needs Mr J might have had once he reached retirement, so there was no need to risk his pension at this stage for the potential of a higher amount that it wasn't clear he needed anyway.

Furthermore Mr J also had his workplace defined contribution ('DC') scheme, which both he and his employer were contributing at a combined rate of 18%. At Mr J's current income and with the potential of 20 years' contributions ahead, this had the potential to be worth in excess of £160,000 not accounting for any growth. Given the nature of a DC scheme, this already provided Mr J with flexibility – he wasn't committed to take these benefits in a set way. He could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr J retained his DB pension, this combined with his new workplace pension, would've given him the flexibility to retire early - if that's what he decided – and meet his income needs.

So in any event, Mr J didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr J did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still many years away. While this wouldn't have been possible if Mr J's scheme moved to the PPF, if he opted to join the BSPS2 he would've retained the ability to transfer out nearer to retirement, if indeed it was required. This ought to have been explained by WFM.

Turning to Mr J's income need – while I'm not persuaded Mr J could reasonably know with any degree of certainty what his income need in retirement would be, it was recorded that he would need £1,200 based on his expenditure at the time. Looking at Mr J's circumstances, I've seen nothing to indicate that he needed variable income. And nothing to indicate that either opting into the BSPS2 or moving with the scheme to the PPF wouldn't have provided Mr J with a solid income foundation upon which his other provision could supplement, to meet his overall need.

For example, at age 58 under the existing BSPS Mr J would receive an annual pension of £10,061 if he took a full pension – under the PPF it was £9,181. Under the BSPS2 I think Mr J's income would likely been between these two figures and closer to the BSPS. Given Mr J didn't have any known need for a cash lump sum, I think Mr J could've met his income needs until his state pension became payable at age 68. I think any shortfall could've been met by accessing income and/or by taking his tax-free cash entitlement from his DC scheme. Mr J would've likely had a not insignificant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I think it's also the case that Mr J didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

If Mr J had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 58 Mr J would've been entitled to a pension of around £9,181 a year. This was likely to be lower than the pension he'd be entitled to under the BSPS2. But I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr J would've had his DC scheme to draw on until his state pension became payable. So, I still think Mr J could've met his needs in retirement even if the scheme moved to the PPF.

Overall, I think Mr J could've likely met his income needs in retirement through the BSPS2 or the PPF based on a retirement age of 58. So, I don't think it was in Mr J's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

Death benefits

The suitability report said that Mr J wanted to ensure his family benefited from his pension in the event of his death, by obtaining the best death benefit options.

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 J. But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr J about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr J's security in retirement. And I say potential, because the sum left on Mr J's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

I also think the existing death benefits within the DB scheme were underplayed. I think the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr J predeceased her. They were guaranteed and escalated – under the BSPS2 the spouse's pension would also be calculated as if no tax-free cash had been taken. It's also the case that it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Furthermore, I think WFM ought reasonably to have known that Mr J had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his wife to receive if he hadn't already done so. And it also knew that Mr J was paying into his DC scheme and he would've been able to nominate his wife as beneficiary of this plan too – again if he hadn't already done so.

Furthermore, if Mr J genuinely wanted to leave a legacy for his spouse over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think WFM should've instead explored additional life insurance. And in my view the starting point ought to have been to ask Mr J how much he would ideally like to leave to his family, after taking into account the above existing means.
And this could've been explored on a whole of life or term assurance basis, which was likely to be cheap to provide, particularly as Mr J was relatively young and in good health.

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 J. And I don't think WFM did enough to explore or highlight the alternatives available to Mr J to meet this objective.

Control and concerns about financial stability of BSPS

I have no doubt that Mr J was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF.

So it's quite possible that Mr J was leaning towards the decision to transfer because of the concerns he had about his employer and what might happen. But it was WFM's obligation to give Mr J an objective picture and recommend what was in his best interests.

As I've already explained, by this point details of the BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr J through the BSPS2 into account, and I think this would've alleviated Mr J's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, I think that WFM should've reassured Mr J that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe.

As I set out above, the income available to Mr J through the PPF would've still provided a solid base, which his other means could supplement to likely meet his income need at retirement. He was also 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 Mr J's concerns should've led to WFM recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr J was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr J. But as I said earlier, WFM wasn't there to just transact what Mr J might have thought he wanted. The adviser's role was to really understand what Mr J needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr J was, at best, likely to receive broadly the same overall retirement benefits at his preferred retirement age of 58. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension at this time when he had the opportunity of opting into the BSPS2.

So, as I discussed earlier on I think WFM should've advised Mr J to opt into the BSPS2. I appreciate that the BSPS2 wasn't guaranteed to go ahead when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. Mr J had around 20 years before he expected to retire, and he didn't know what his needs in retirement would likely be.

So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr J would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, because Mr J was married 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 J chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course I have to consider if things had happened as they should have, whether Mr J would've gone ahead in any event, against WFM's advice.

I've considered this carefully, but I'm not persuaded that Mr J would've insisted on transferring out of the BSPS against WFM's advice. I say this because, while Mr J was motivated to transfer when he approached WFM, on balance, I still think Mr J would've listened to and followed WFM's advice if things had happened as they should have and it recommended he opt into the new scheme. Mr J was an inexperienced investor who in my view neither possessed the necessary knowledge, skill nor confidence to go against the advice they were given. Furthermore Mr J's pension accounted for the majority of his retirement provision at the time. So, if WFM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr J's concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If WFM had explained that Mr J 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 J would have insisted on transferring out of his scheme against WFM's advice.

In light of the above, I think WFM should compensate Mr J for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £250 for the distress and inconvenience the matter has caused Mr J.

So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish WFM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr J. Taking everything into account, including that I consider Mr J's retirement provision is of great importance to him, I think the unsuitable advice has caused him distress. So I think an award of £250 is fair in all the circumstances.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and 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 J whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

Mr J has chosen not to wait for the new rules to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr J.

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for WFM's unsuitable advice. I consider Mr J would have most likely transferred his benefits into BSPS2 if suitable advice had been given. So WFM should use the benefits offered by BSPS2 for comparison purposes.

WFM must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, as per the usual assumptions in the FCA's guidance, compensation should be based on a normal retirement age of 65 in this case.

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 J's acceptance of the decision.

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

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

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

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

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Wealthmasters Financial Management Ltd to pay Mr J the compensation amount as set out in the steps above, up to a maximum of £160,000.

Wealthmasters Financial Management Ltd should also pay Mr J £250 for the distress and inconvenience caused in this matter.

Where the compensation amount does not exceed £160,000, I would additionally require Wealthmasters Financial Management Ltd to pay Mr J any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Wealthmasters Financial Management Ltd to pay Mr J any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Wealthmasters Financial Management Ltd pays Mr J the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr J.

If Mr J accepts this decision, the money award becomes binding on Wealthmasters Financial Management Ltd.

My recommendation would not be binding. Further, it’s unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 17 January 2023.
Paul Featherstone
Ombudsman