

## The complaint

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

Makemson & Company Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "MCL".

## What happened

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T's employer would be set up – the BSPS2.

From October 2017, members of the BSPS were being 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 T was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to MCL which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time were broadly as follows:

- Mr T was 35 years old, married and with four dependent children. He was in good health and at that point he had accrued around 13 years of pension benefits with the BSPS.
- Mr T earned £36,000 per year and Mrs T earned around £3,000. They lived in a home valued at approximately £170,000, which had an outstanding mortgage of around £138,000 with 31 years to run. Mr and Mrs T had no savings.
- The cash equivalent transfer value (CETV) of Mr T's BSPS was approximately £157,437 and the normal retirement age (NRA) was 65. The 'fact-find' said Mr T expected to retire at 65, but MCL says he was considering early retirement.

MCL set out its advice in a suitability report on 27 November 2017. It advised him to transfer out of the BSPS and invest the funds in a personal pension plan. MCL said this would allow Mr T to achieve his objectives. Mr T accepted this advice and so transferred to a personal pension. In 2021 Mr T complained to MCL about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr T referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, MCL said it hadn't done anything wrong and was acting on the financial objectives Mr T had at the time.

As the complaint couldn't be resolved informally, it's come to me for a final decision.

### **What I've decided – and why**

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

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

#### *The applicable rules, regulations and requirements*

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of MCL's actions here.

- *PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*
- *PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- *COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, MCL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr T's best interests.

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

#### *Financial viability*

Our investigator referred in his 'view' to the critical yield rate. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is one of several factors that can help determine whether transferring from a DB pension was financially viable. I've considered some other factors too.

However, before assessing the critical yields in Mr T's case, I think it's important to point out that in its pension transfer report of 20 November 2017, MCL used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2. Whilst this doesn't

fundamentally change the outcome of this complaint, MCL could have taken time to compare the benefits of the BSPS2 with transferring out.

I say this because several weeks before the suitability report, which was dated 27 November 2017, BPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BPS members and more details of the BSPS2 were emerging at the time MCL produced its suitability report.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr T the best opportunity to make an informed decision about what to do.

Having said this, I've noted MCL did make some estimated calculations about what the BSPS2 pension might pay at retirement and it seems Mr T was sent his personalised "Time to Choose" document on 30 November 2017. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

However, MCL ultimately told Mr T that whilst there were no guarantees, it thought its recommendation to transfer to a personal pension would outperform all the other options. But I don't see evidence to support such a statement. The pension transfer report itself, commissioned by MCL, said that "*in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme at retirement*" the critical yield was 6.65% at the age of 65. If taking a reduced pension and tax-free lump sum, the critical yield was 5.93%. For an earlier retirement, at the age of 55 for instance, the critical yields were even higher – 9.16% and 8.08% respectively.

So, in my view, it should have been obvious to MCL that these critical yield figures were high and probably *not* achievable. There would also be little point in transferring, from a financial perspective, only to achieve lower pension benefits in the long run. These figures were suggesting this was the case.

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.

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 only 4.7% per year for 29 years to retirement (age 65), which is well below the critical yield figures I've referred to above. And for early retirement at the age of 55, the discount rate was 4.6%. These rates strongly infer that reaching the critical yields above would be unlikely. This is particularly clear when applying the critical yields for a retirement at 55. MCL promoted this possibility throughout its advice to Mr T, but the discount rates suggest growth of around only half the critical yield rates was likely.

I've noted too, the attitude to risk (ATR) categorisation which MCL applied to Mr T was described as being "adventurous", or a level of 5/7. This was evidently based on some questions about investment risk Mr T had answered on a form provided by a fund manager.

But I think this ATR categorisation was too high for Mr T. And I don't think it's likely Mr T really understood what being placed in this category could mean for his pension funds if he transferred out. I've noted in the suitability report that there was a reference to Mr T having previous investment experience, but I've seen no evidence of this. Everything I've seen about Mr T suggests he was probably inexperienced in these matters.

I say this because in the same report, for example, when addressing his capacity for loss, it also says he had 'sufficient other assets'. However, from what I've seen, this simply isn't right. In fact, the evidence from the time shows Mr T had previously entered an Individual Voluntary Arrangement and had experienced difficulties with getting credit. This is more suggestive of him previously having money difficulties. And in 2017 he had no savings, had a relatively high loan-to-value mortgage with 31 years still to run, and was supporting four children. In my view, given everything I've seen – including some comments apparently made by Mr T himself during the advice – demonstrates a lack of investment experience and only a modest capacity for loss.

So I think the ATR applied to Mr T was unrealistic as it was apparently based wholly on answers to general questions about investments. I do accept that his relatively young age did provide some scope for pension investments to grow in the future by ironing out peaks and troughs in the years ahead, but I think Mr T's ATR should have been moderated down as his obvious circumstances simply didn't appear to support what was mentioned on a form where the questions were both generalised and pre-formatted.

I've also kept in mind that the regulator's upper projection rate at the time of the advice was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. So given everything I've said above, around the middle regulator's rate and close to the discount rate of 4.7% was much more like the growth that Mr T could realistically expect. This was well below the critical yields I've described above – and even small percentage points, year-on-year, can make meaningful differences to growth over time.

In short, MCL was not justified in saying Mr T's pension outside the scheme could grow to an extent that made transferring worthwhile.

Elsewhere in its transfer analysis, MCL also made mention of the PPF, which it described as a compensation scheme providing a "safety net" for pension schemes when the sponsoring employer becomes insolvent. MCL said the critical yield to match the benefits available through the PPF at age 65 was 5.45% per year (5.22% if taking a tax-free lump sum). These were still higher than the growth assumptions I think was reasonable. But these yields also related to the *reduced* benefits available with the PPF and MCL itself says Mr T wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension would have further reduced the likely growth.

As a further comparison, I can also see that MCL's transfer analysis showed that in order to purchase an annuity to provide benefits of equal value to the existing scheme at retirement at age 65, the funds required would be around £497,909 – far in excess of Mr T's 'current' CETV. Even if I were to consider a comparison with buying an annuity to provide benefits of equal value assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, this still came in at £282,724 (age 65) and £254,841 (age 55). In my view, these costs provide a powerful indication of the real value Mr T would lose if he transferred out to a personal pension plan at such a young age.

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

I've considered these below.

### Flexibility and other needs

MCL recommended a transfer to a type of personal pension. It based this on what it said were a number of reasons which were all set out in its suitability report. I've summarised the main themes below:

- Mr T could take the benefits from the age of 55. In a personal pension he could take a tax-free cash sum. MCL also said that transferring away could lead to a seamless transition into a drawdown pension arrangement in due course, which could prove advantageous when taking benefits in the future.
- There were a broad range of investment opportunities offering enhanced flexibility. While invested, the funds could "*benefit from tax advantaged growth*". MCL implied he'd have more control over his pension. It said this included greater investment opportunities, varying / switching funds and managing the account on-line.
- It was implied there would be more flexible access to death benefits in a personal pension.
- There were certainly underlying reasons of trust, given the situation with Mr T's company at the time.

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

- *Retiring early / taking tax-free cash*

Our investigator correctly pointed out that the documents from the time seemed to suggest an anomaly in that Mr T had said he would expect to retire at 65, whilst MCL mentioned several times that 55 was when he could retire if he transferred to a personal pension arrangement. However, I accept that what MCL was probably trying to do was to describe the options that might be presented by the new 'pension freedom' rules.

But I also think this demonstrates the overall weakness in MCL's approach. The obvious issue here is that Mr T was only 35 years old and it's simply not credible that he had any plans for retirement at that point. As of 2017, this pension represented almost Mr T's whole retirement provision and contained a number of useful guarantees and benefits commensurate with a DB scheme.

It's certainly possible there was a discussion about potentially retiring early and Mr T might have genuinely hoped to retire as early as 55. But I've seen nothing that shows this was anything more than something he might have aspired to do at that stage, as opposed to being part of a formulated plan. And in determining what Mr T's income retirement needs could be, anyone judging these would be making no more than a guess. In my view, it was therefore much too soon to be advising Mr T to transfer to a personal pension based on age.

I've noted too, that several comments were made to Mr T inferring his 'new' personal pension would benefit from tax advantages. So, whilst it was true he might benefit from "tax advantaged growth" and that he would "receive tax relief on his contributions" these were somewhat mis-leading statements since Mr T already enjoyed such advantages under the DB scheme he was being advised not to transfer into (BSPS2).

MCL also promoted to Mr T that he could access tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum when he reached the age of 55. It's often the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But extra tax-free lump sums being removed from a personal pension, potentially from his mid-50s in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease. I've noted this was pointed out to Mr T but the advice was to transfer, nevertheless.

Even if I were to consider the unlikely scenario of any early retirement aspirations Mr T had were more fixed - and he really did want to retire early - I think MCL should have been clearer about the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr T, although this would have meant Mr T's pension benefits would have been somewhat different due to him accessing the pension earlier and for longer. Again, I accept this was probably discussed, but I think this was discounted by MCL as the recommendation focussed on him transferring away completely.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other options Mr T faced, including opting for the BSPS2. I can't see that Mr T required flexibility in retirement in the way MCL suggested. As he was so young, it wasn't really possible to say what Mr T's financial and income needs were likely to be in retirement. And I haven't seen anything to persuade me that Mr T wouldn't have been able to meet his *likely* retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan.

This is because, as well as retirement being a long time away, we know Mr T had already joined his employer's new defined contribution ('DC') scheme and could have been making contributions to it for up to 29 years more, until he retired. Mr T's contributions to this 'second' pension were being substantially added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme (in BSPS2).

I think therefore, that by retirement, Mr T could have been in a good position if he'd transferred to the BSPS2. On one hand he'd have had a long-standing modest DB pension, but one with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial DC pension over many years, which, if he later found he did require flexibility, this pension could have provided it.

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

However, I don't think recommending a transfer-out based on these reasons was suitable because so little was known about what his retirement would look like. MCL also implied that Mr T would be able to have complete control over the pension if he transferred out. But I've seen nothing which shows Mr T had either the desire or capacity to exercise personal control

over his pension. As I've pointed out earlier, Mr T's previous exposure to investing was not really known and he had no such investments at the time. And to grow the transferred funds in the way MCL later said he could, a much higher degree of risk exposure would have been required.

So, I think Mr T's circumstances were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so, and then drawing a DB pension. Because he also had a 'second', DC pension, this supported that strategy, in my view.

I therefore think the much more suitable option was for Mr T to access his DB pension in the way it was originally intended.

- *Death benefits*

MCL says that death benefits were discussed at the time and the personal pension could better enable the retention of the value of the funds if Mr T died.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr T. But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think that inferring Mr T's death benefits would improve in a personal pension because he could pass over all his funds needed putting into context. Only in his 30s and in good health, he and Mrs T had a family of four. In my view, the likely death benefits attached to the new DB scheme were therefore highly relevant to Mr and Mrs T and they were also substantially underplayed.

The spouse's pension provided by the BSPS2 would have been useful to Mrs T if Mr T predeceased her and I don't think MCL made the value of this benefit clear enough. The evidence tends to suggest Mrs T didn't have a pension of her own and her income was currently low. As a father, I think the child specific benefits would also have been meaningful to Mr T. These were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left anyway in a personal pension upon Mr T's passing, particularly if he lived a long life. MCL should therefore not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

It also doesn't appear that MCL took into account the fact that Mr T could have nominated Mrs T and / or their children as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr T had already ensured part of his pension wouldn't 'die with him'.

I can't see the extent to which, life insurance was discussed in this case. But at 35 years old, this would have been a reasonably affordable product if Mr T really did want to leave a legacy for Mrs T and eventually their children.

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 T.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr T, 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 MCL said he lacked trust in the company. He'd heard negative things about the PPF and MCL said he could have more control over his pension fund.

So, it's quite possible that Mr T was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was MCL's obligation to give Mr T an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated Mr T's concerns about the scheme moving to the PPF.

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

- *Other issues*

MCL has implied there has ultimately been no loss incurred as a result of its advice to transfer out, a theme rejected by Mr T. However, I understand MCL's calculations were also based on him retiring early - again, a theme rejected by Mr T.

MCL has repeatedly said that retiring early was what Mr T said he wanted to do. This was repeated after the investigator issued their view (recommending we uphold the complaint) and was mentioned, I'm sure, in the context of any redress which might be payable to Mr T by MCL, if his complaint were indeed to be upheld.

I've covered the issue of age and early retirement already in this final decision. But for the avoidance of doubt, MCL's position about him retiring early merely substantiates what I've said about the danger of transferring from a DB pension, whilst still relatively young. Mr T had no concrete retirement plans at the time of the advice, and to have any thoughts at all would have been mere aspirations in his case, aged as he was, just 35 years old. In any event, there's evidence recorded from the time of the advice showing Mr T accepted that retiring at 65 was what he expected – retiring earlier was therefore an aspiration in this case, if it was even properly discussed at all.

MCL also says there's no evidence Mr T received his "Time to Choose" letter from the BPS. I don't propose to go into great detail about this issue as I reject MCL's implications of its relevance. From what I've seen, the "Time to Choose" letter was sent to Mr T in late November 2017. Given the circumstances of the time, I think MCL would or should have been following these British Steel events closely. And MCL is responsible for the advice it gave to Mr T to transfer to a type of personal pension plan. He was paying for that advice and had every right to be guided through the process.

### Summary

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

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

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

I think it was clear to all parties that BSPS2 was likely to be going ahead. Mr T still had many years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr T would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr T 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 T chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

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

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

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

I'm also not persuaded that Mr T's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if MCL had explained Mr T was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think MCL should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for MCL's unsuitable advice. I consider Mr T would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been

given suitable advice. So, MCL should use the benefits offered by BSPS2 for comparison purposes. Compensation should be based on his normal retirement age of 65.

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 T whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He doesn't want to wait for the new guidance to come into effect. So, 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 T. For clarity, Mr T has no plans at present to retire any earlier than age 65. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of the decision.

MCL may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T'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 T's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T'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 T 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 T within 90 days of the date MCL 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 MCL to pay Mr T.

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

I have also considered the impact on Mr T of the unsuitable advice and transfer. Our investigator recommended that a sum of £300 should be paid to Mr T by MCL for what he referred to as the worry caused by this unsuitable transfer. I've taken into consideration Mr T's age and circumstances and also that by retirement this DB pension would still have been a significant part of his overall pension entitlement, so I think the thought of losing benefits would have negatively impacted Mr T. I therefore agree that MCL should also pay Mr T £300 for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning.

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

### **My final decision**

Determination and money award: I've decided to uphold this complaint and I now direct Makemson & Company Limited to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

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

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

If Mr T accepts my final decision, the money award becomes binding on Makemson & Company Limited.

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

reject my decision before 15 February 2023.

Michael Campbell  
**Ombudsman**