DRN-3559780

The complaint

Mr D complains about the advice given by Creative Benefit Wealth Management Limited ('CBWM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension plan (PPP). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr D's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (his 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.

Mr D was concerned about what the announcement by his employer meant for the security of his pension. So, he contacted a financial adviser (which I'll refer to as 'Firm A') for advice. Mr D met with Firm A in August 2017 and it completed a fact-find and an assessment of his risk appetite. The fact-find noted Mr D wanted to discuss transferring his DB scheme to a personal pension. As Firm A didn't hold the relevant permission from the Financial Conduct Authority ('FCA') to advise on the transfer of his DB scheme, it told Mr D he would be referred to CBWM.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to 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).

In October 2017 CBWM completed its own fact-find to gather information about Mr D's circumstances and objectives. It noted Mr D was aged 42 and married with two young children. He owned his home and had an outstanding mortgage of £44,000 which was due to be paid off in five years. He also had a loan of £12,000, also due to be repaid in five years. Mr D and his wife had significant life insurance and savings of around £9,000. It was recorded that Mr D wanted to retire at age 65, and have an income of £1,500 per month net. He was contributing £450 per month to his employer's new defined-contribution ('DC') scheme.

CBWM carried out an assessment of Mr D's attitude to risk, which it deemed to be 'balanced'. But as it thought Mr D's capacity for loss was high and Mr D said he wanted to take a higher risk, it classified him as a 'balanced to adventurous' investor.

On 6 December 2017, CBWM issued a suitability report advising Mr D to transfer his BSPS benefits into a personal pension and invest the proceeds with a provider in a moderately adventurous fund. The suitability report said the reasons for this recommendation were, in summary:

- It enabled Mr D to pass on his pension to his children upon his death.

- It gave him the option to retire early without penalty.
- Mr D wanted control over his pension and to be able to access his pension benefits flexibly.
- It enabled Mr D to take a higher sum of tax-free cash ('TFC') without him having to take income at the same time.
- Mr D was concerned about the financial security of the BSPS.

Mr D accepted the recommendation and the transfer went ahead. In March 2018, £150,382.92 was received into the personal pension. CBWM received an initial advice fee of £4,259.57. The servicing of Mr D's pension was then transferred to Firm A, who would be taking a 1% fee to provide ongoing advice.

In September 2021 Mr D complained to CBWM about the transfer advice via a representative. Mrs D's representative said the advice was unsuitable as there was no prospect of Mr D matching or improving on the benefits he would've been entitled to had he moved to the BSPS2.

CBWM didn't agree with Mr D's complaint. It said it couldn't have advised Mr D to opt into the BSPS2 as it wasn't clear if it would be going ahead at the time it gave the advice. It said if Mr D had opted in, and it didn't go ahead, he would've moved with the scheme to the PPF. CBWM said Mr D was concerned about the lower escalations applicable to his pension in payment under the PPF and the BSPS2. And as Mr D wanted the option of retiring early, having flexibility and the ability to pass on the capital value of his pension on his death, the advice was suitable.

Mr D referred his complaint to our Service. An Investigator upheld the complaint. He thought the opportunity to improve on the benefits available through the DB scheme was low, particularly as he wasn't persuaded that Mr D had more than a 'cautious' attitude to risk. So, he didn't think that transferring to a personal pension was in Mr D's best interests. The investigator also wasn't persuaded that Mr D had any genuine retirement objectives that needed to be addressed at the time – he was over 20 years away from retirement so thought any need for flexibility could be addressed nearer to retirement. The investigator also thought the death benefits attached to the DB scheme were underplayed. Overall, he thought Mr D should've been advised to opt into the BSPS2, the details of which were known at the time of the advice. The investigator recommended that CBWM should compensate Mr D for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

Mr D accepted the investigator's findings.

CBWM didn't agree, saying the investigator had assessed the case on the wrong basis. It said its adviser wasn't required to guarantee that the transfer would be in Mr D's best interests. Instead, the adviser was simply required to take reasonable steps to ensure the advice was suitable for him. CBWM also said the discount rate used by the investigator wasn't relevant, nor were the critical yields because Mr D didn't want to take an annuity; he wanted flexibility.

CBWM said that Mr D had made a fully informed decision to proceed with the transfer, which had been ignored. It maintained that the BSPS2 was not a sure thing and so was not an option at the time of the advice. CBWM thought Mr D would've gone on to transfer in any event.

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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, 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').

Having done so, I'm upholding the complaint for largely the same reasons as the investigator. I'll explain why.

CBWM says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr D. I agree that under COBS, CBWM was required to take reasonable steps to ensure that its personal recommendation to Mr D was suitable for him (COBS 9.2.1). However, additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr D's best interests (COBS 19.1.6). So, I've considered all of the applicable regulations here. And having looked at all the evidence available, I'm not satisfied the advice to transfer was in Mr D's best interests. I'll explain why.

Financial viability

CBWM carried out a transfer value analysis report (as required by the regulator) showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). However, this was based on his existing scheme benefits and Mr D didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

CBWM has strongly argued that BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr D through the PPF. But I think CBWM overestimated the chance of this not happening; Mr D 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. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr D through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision.

According to the fact-find and suitability report, Mr D expected he would retire at age 65, although he wanted the option to retire early if he could afford to do so. The TVAS dated 14 November 2017 set out the relevant critical yields; at age 65 it was 7.7% if he took a full pension or 6.7% if he took TFC and a reduced pension. The critical yield required to match the benefits provided through the PPF was 5.8% if Mr D took a full pension. The TVAS didn't provide the critical yield for a reduced pension and TFC. But as I've said above, Mr D remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

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. 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 closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.5% per year for 22 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 D's attitude to risk and also the term to retirement. The investigator thought that Mr D most likely had a 'cautious' attitude to risk, whereas according to the suitability report, CBWM considered Mr D to be a 'balanced to adventurous' investor. However, CBWM, in response to the investigator's view, confirmed that it assessed Mr D's attitude to risk as 'balanced'. For the avoidance of doubt, I consider that Mr D was likely to be a balanced risk investor given he had over 20 years before he expected to retire, so he had the capacity to build pension funds in between and tolerate some losses.

There would be little point in Mr D giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 5.8%, which was based on Mr D taking a full pension through the PPF at age 65. The critical yield if Mr D took the same benefits through his existing scheme at age 65 was 7.7%. So, if Mr D were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 7.7%. Given the discount rate of 4.5% and the regulator's middle projection rate of 5%, I think Mr D was most likely to receive benefits of a lower overall value than those provided by the PPF and the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk.

CBWM says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would've been considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr D's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

CBWM 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. CBWM says Mr D didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required CBWM 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 D 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 at least another 20 years. So, it's entirely possible that Mr D would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Given Mr D was likely to receive lower overall retirement benefits by transferring to a personal pension, 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, as CBWM has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr D's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It seems the main reason that CBWM recommended this transfer was for the flexibility and control it offered Mr D. Having considered the evidence, I don't think Mr D needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

It's evident that Mr D could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr D had to take those benefits at the same time. But I'm not persuaded that Mr D had any concrete need to take TFC 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.

Furthermore, CBWM's point ignores the retirement funds that Mr D would be building up over the next 20 years, through his employer's DC scheme. The fact-find says Mr D was contributing £450 per month. It isn't clear whether these were contributions his employer was making on his behalf or whether this was Mr D's own contributions. But even without taking investment growth into account, it would be worth in the region of £120,000 after 22 years. And by assuming modest net growth of 2% over 22 years, the funds could be worth in the region of £150,000 by the time Mr D retired.

If Mr D opted into the BSPS2, at age 65 he could take a pension of around £11,000 per year. This fell short of the £1,500 per month CBWM says Mr D needed. But I still think Mr D could've met his income needs until his state pension of around £9,000 became payable at age 68. I think any shortfall could've been met by Mr D's wife's pension and/or by Mr D accessing income or TFC from his DC scheme. Mr D would have likely had a significant pension to draw on flexibly by that point, to top up his income or take additional lump sums for the three years until he started to receive his state pension. So, I don't think Mr D would have had to sacrifice flexibility in retirement by opting into the BSPS2.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr D had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr D would've been entitled to a pension of £9,667.17 per year. This was likely lower than the pension he'd be entitled to under the BSPS2, but I don't think it would've been substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr D would've had his DC scheme to draw on until his state pension became payable, as well as his wife's pension to supplement their household income. So, I still think Mr D could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Furthermore, the fact-find noted that Mr D and his wife had savings of around £9,000 and they were saving an additional £350 per month. Mr D's mortgage and loan would be paid off in five years, meaning he would have more disposable income to put towards his savings thereafter. But even if Mr D continued to save at the same level of £350 a month, this could have given him potential savings of around £100,000 at retirement that he could've also accessed flexibly to top up his retirement income.

CBWM says Mr D wanted £1,500 per month in today's terms, meaning that in reality his income at retirement would need to be a lot higher to produce £1,500 per month. It says that the value of the scheme income at age 65 would be around £7,300 per year rather than £11,580. But I don't think that demonstrates that it was in Mr D's best interests to transfer to a personal pension. As I've set out above, Mr D was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So, I still think Mr D had a better chance of achieving his target retirement income of £1,500 per month by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension. He then could've used his DC scheme funds and savings to top up his income as and when it was needed.

Overall, I'm satisfied Mr D could have met his income needs in retirement through the BSPS2 or the PPF at age 65. So, I don't think it was in Mr D's best interests for him to transfer his pension just to have flexibility that he didn't need.

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 D. But whilst I appreciate death benefits are important to consumers, and Mr D 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 D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. And I don't think CBWM explored to what extent Mr D 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 D was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr D predeceased her. There was also provision for a children's pension up to age 23 if they remained in full-time education. I don't think CBWM made the value of these benefits clear enough to Mr D. They were guaranteed and escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, these benefits were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. CBWM's cashflow modelling shows Mr D's pension fund would be depleted by age 88 if he achieved an annual investment return of 4.38%, so there may not have been a large sum left, if any at all, to pass on when he died. In any event, CBWM should not have encouraged Mr D to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

If Mr D genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CBWM could've explored life insurance further. Mr D already had a significant death in service benefit through his employer and he and his wife had individual life insurance of £200,000, ending in 2031. So, arguably, Mr D already had sufficient life cover in place. But if he wanted an extra sum specifically for his children, he could've taken extra cover out on a whole of life basis and written it in trust for the benefit of his children.

I appreciate that CBWM has shown it provided quotes for a whole of life policy with a sum assured equal to the transfer value. I presume this was discounted due to the cost, around £120 per month. But I'm not sure why that would be the case; the monthly premium wasn't unaffordable. To my mind, the fact this wasn't explored further suggests to me that greater death benefits wasn't a genuine objective for Mr D – instead, it was simply a consequence of transferring his pension.

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 D.

Control or concerns over financial stability of the DB scheme

It's clear that Mr D, 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 D 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 CBWM's obligation to give Mr D 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, the advice should've properly taken the benefits available to Mr D through the BSPS2 into account and I think this should've alleviated Mr D'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 CBWM should've reassured Mr D that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr D through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. 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 CBWM recommending Mr D transfer out of the DB scheme altogether.

Summary

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

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a PPP Mr D was, in my view, likely to obtain lower retirement benefits at age 65. 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 D'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.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr D had over 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 D would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to – this was explained in the "time to choose" booklet. Also, Mr D 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 D chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think CBWM should've advised Mr D to opt into the BSPS2.

CBWM says that regardless of the advice given, Mr D made an informed choice to proceed with the transfer. And it believes Mr D would've transferred in any event – it says there's no evidence to suggest otherwise.

I accept that CBWM disclosed the risks of transferring to Mr D, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr D to transfer out, and I think Mr D relied on that advice.

I'm not persuaded that Mr D would've insisted on transferring out of the DB scheme, against CBWM's advice. I say this because Mr D was an inexperienced investor and this pension accounted for all of his retirement provision at the time. So, if CBWM 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 D's fear about the PPF was 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. And if CBWM had explained Mr D was 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've carried significant weight.

I'm aware that in some communications with CBWM Mr D appeared motivated and anxious to get the transfer out completed. But Mr D had received advice from CBWM that he should transfer out of the DB scheme. So, I think his words have to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to opt into the BSPS2. So, I don't think demonstrates he'd have gone against CBWM's advice.

In light of the above, I think CBWM should compensate Mr D 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 D, as far as possible, into the position he would now be in but for CBWM's unsuitable advice. I consider Mr D would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, CBWM should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has 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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published.

Mr D has chosen not to wait for any new guidance 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 D.

CBWM 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, Mr D 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 D's acceptance of the decision.

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

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

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 CBWM 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

Determination and money award: I've decided to uphold this complaint and require Creative Benefit Wealth Management Limited to pay Mr D 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 Creative Benefit Wealth Management Limited to pay Mr D any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Creative Benefit Wealth Management Limited to pay Mr D any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Creative Benefit Wealth Management Limited pays Mr D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D accepts my final decision, the money award becomes binding on Creative Benefit Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 9 December 2022.

Hannah Wise
Ombudsman