DRN-3582790

## The complaint

Mr H complains about the advice given by Futures Assured Ltd to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

## What happened

In March 2016, Mr H'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 H'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 H was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr H contacted Futures Assured following an introduction by another firm. Mr H met with Futures Assured in October 2017 and it completed a fact-find to gather information about his circumstances and objectives. Futures Assured also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'moderate' – a rating of 5 on a scale of 1-8.

In November 2017, Futures Assured advised Mr H to transfer his BSPS benefits into a personal pension and invest the proceeds in a managed fund, which Futures Assured said matched Mr H's attitude to risk. The suitability report said the reasons for this recommendation were that a transfer away from the BSPS would allay Mr H's fears about the future funding of the BSPS2 and entering the PPF. It also said it would provide Mr H with flexibility in when and how he took his pension benefits; provide greater death benefits; and provide the potential for a larger tax-free lump sum, which would make Mr H's retirement planning more tax efficient.

Mr H accepted the advice and in March 2018 around £554,000 was transferred to Mr H's new personal pension.

Mr H later complained to Futures Assured about the suitability of the transfer advice – Mr H said he believed he'd been given bad advice.

Futures Assured didn't uphold Mr H's complaint. In summary it said, that while Mr H had a good understanding of the situation his BSPS pension was in, he remained concerned about the future of his pension. It said the only option available to allay Mr H's concerns was to transfer to a personal pension arrangement, which it deemed suitable. It said a personal pension also met Mr H's objective for flexibility and to retire at age 60.

It went on to say that, while Mr H's DB scheme would've provided sufficient guaranteed income, he would've paid tax on the surplus income unnecessarily which wouldn't have been the case in a personal arrangement. Futures Assured also said the transfer met Mr H's other objectives of providing better death benefits for his family, providing an increased tax-free cash lump sum for efficient retirement planning and an investment strategy to match his attitude to risk.

Dissatisfied with its response Mr H asked this service to consider his complaint. And an investigator ultimately upheld the complaint and required Futures Assured to pay compensation. In summary they said a transfer wasn't suitable. They said a transfer to a personal pension was unlikely to improve on Mr H's DB scheme benefits given the level of growth required to match them. They said there was no evidence that Mr H needed flexibility of income – his DB scheme would've met his income requirements, which was guaranteed offering him peace of mind. They also said that improved death benefits wasn't a good enough reason to transfer in the circumstances – the primary purpose of the pension was to provide a retirement income. They said life assurance was a better means of meeting this objective, which was likely affordable.

Furthermore they said that, while early retirement would be appealing to most people, there was no evidence that Mr H had set plans to do so – he could've transferred closer to retirement. And finally they said Futures Assured should have provided reassurance around the options of the PPF and BSPS2 and better managed Mr H's concerns about them. Overall they said Futures Assured should have recommended Mr H retain his benefits in the DB scheme and move them to BSPS2 – advice they said Mr H would've likely followed.

Futures Assured disagreed. In summary it maintained the advice was suitable; it said each option available to Mr H was disclosed along with the advantages and disadvantages of each; and the recommendation met Mr H's documented objectives including providing a tax efficient retirement income.

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

In submitting further evidence for my consideration, Futures Assured has said that, notwithstanding its defence of the advice in this case, it argues that any redress calculation should be based on Mr H's pension benefits moving to the PPF and not BSPS2. It says that at the time of the advice BSPS2 was only a proposal and it wasn't guaranteed to go ahead and the structure of the scheme wasn't known until later on and after the 'Time to Choose' exercise. It says its advice was based on known facts at the time. But it says the facts of BSPS2 weren't known - so using this as a metric to measure against isn't taking into account the facts in this matter.

**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 Futures Assured's actions here.

PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19, which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. 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, Futures Assured should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

*Financial viability*

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 H was 51 at the time of the advice and he told the adviser he wanted to stop working at 60. The critical yield, or growth rate required to match Mr H's benefits at age 60 in BSPS2 was 4.79% if he took a full pension and 2.33% if he took tax-free cash and a reduced pension. The equivalent critical yields to match the benefits available if the BSPS moved to the PPF were 4.43% and 3.97% respectively.

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 3.5% per year for 8 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 H's 'moderate' attitude to risk and also the term to retirement. In my view there would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, assuming Mr H took a full pension in BSPS2, with a critical yield of 4.79% I think Mr H was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF.

If Mr H elected to take his tax-free cash at 60 and a reduced pension in BSPS2, a critical yield of 2.33% might suggest it was financially beneficial to transfer and so was suitable (although this wouldn't be the case if the scheme moved to the PPF.) But it still required Mr H to take investment risk. And given the relatively small difference between the discount rate and the critical yield here, I don't think there was much potential for Mr H to exceed the pension benefits available from the DB scheme. Indeed I note the advisor recorded on the suitability letter that they didn't think this sustained level of growth was achievable.

Furthermore, and crucially in my view, Mr H's income need in retirement could already have been met by his DB scheme pension supplemented by his other pension provision and existing means, as I will discuss in more detail below. Mr H's DB scheme was the primary source of his retirement income provision – the foundation of his income need – which was guaranteed and would escalate. So it strikes me that there was no real need for Mr H to risk his DB scheme benefits and forego these guarantees by transferring to a personal arrangement where his pension benefits would depend on investment performance.

I can see that Futures Assured's income modelling forecasts and its arguments have focused more on the tax efficiency aspect of Mr H transferring his pension rather than providing greater benefits overall – something I'll also discuss below.

For these reasons and based on financial viability alone, I don't think it was in Mr H's best interests to transfer out of the DB scheme. Of course financial viability isn't the only consideration when giving transfer advice – something Futures Assured has argued in this case. There might be other considerations, which mean a transfer is nevertheless suitable. I've considered below whether such other reasons applied here.

*Flexibility and income needs*

The suitability report said that a key objective of Mr H's was flexibility in when and how he took his pension benefits. It said Mr H wanted to be able to take his benefits (tax-free cash and an income) at age 60, but also wanted the facility to adjust this if needed – for example Mr H might continue to work or reduce his workload. It went on to say that Mr H wanted an income to maintain his standard of living with the option of being able to increase or reduce it too.

Mr H already had the option to take his pension benefits at 60 by remaining in the scheme – it allowed him to take early retirement. But Mr H didn't need to take them at 60 – the scheme's normal retirement age was 65. So if Mr H chose to continue to work beyond 60 he could delay taking his benefits at anytime up to 65 – he wasn't tied to a fixed date. So Mr H didn't need to transfer to achieve this kind of 'flexibility.'

If Mr H wanted to reduce his workload and say work part-time after age 60, Mr H had other means at his disposal to provide any top up income he might have needed. For example Mr H had a substantial sum of money in savings/investments worth around £185,000 he could've used. Mr H was also continuing to save in excess of £1,000 a month at the time of the advice, so the total amount at his disposal at 60 was likely to be greater. Mr H also had a personal pension plan he was contributing to as well as his employer's defined contribution ('DC') pension scheme, which both he and his employer were contributing to. Combined, Futures Assured estimated these could have a value of around £100,000.

So it seems to me that Mr H already had a degree of flexibility in how and when he took some of his future retirement benefits. Mr H didn't need to transfer out of his DB scheme to achieve flexibility if that's what he required.

That said, I can't see evidence that Mr H had a strong need for variable income throughout retirement and I don't think Mr H's need for flexibility as documented was a real objective – I think it was simply a consequence of transferring out to a different arrangement. I can see that Futures Assured has said that the flexibility provided by the personal pension arrangement - the ability to flex income up and down and how benefits were taken - made for a more tax efficient method of producing Mr H's overall retirement income.

But I'm not persuaded this was a good enough reason for Mr H to put his pension benefits at risk and give up a guaranteed and escalating pension – particularly as I'm satisfied Mr H could've met his income needs in retirement through the scheme at 60 supported by his other means, whether through BSPS2 or if the scheme moved to the PPF.

Mr H needed £1,500 a month in retirement according to the information gathered by Futures Assured. And this doesn't appear unrealistic. If Mr H took benefits from BSPS2 at 60, he would be entitled to an annual income of just over £21,600. And if the scheme entered the PPF that figure was around £21,100. So in both scenarios Mr H's income need would've been. If Mr H elected to take a tax-free cash sum, the reduced pension of around £14,800 via BSPS2 and around £17,100 via the PPF wouldn't alone have met his income need. But Mr H didn't have any specific requirement for the tax-free cash sum, so he could've used this to supplement his income. And as I said above, Mr H had two other pensions as well as his savings, which were capable of supplementing his DB scheme income to reach his income goal. And this is all before Mr H's state pension (as well as that of his wife) which would become payable from age 67.

The fact Mr H might have had more income than he needed at 67 and would pay income tax on any 'excess' is not, in my view, a compelling reason to transfer Mr H's pension benefits to a personal pension arrangement.

Overall I still think Mr H could've easily met his retirement income needs by remaining in the DB scheme. And I think this was the case whether Mr H opted into BSPS2 or the scheme moved to the PPF.

The suitability letter also said that Mr H wanted access to the maximum pension commencement lump sum, or tax-free cash, at age 60. And while I accept it's likely Mr H would opt to take a lump sum when he took his benefits, there's no evidence that the sum offered by his DB scheme – Futures Assured indicated Mr H would be entitled to a little less than £100,000 assuming he moved to BSPS2 – wasn't sufficient for him. For example Mr H didn't have any debts he needed to repay which required a particular amount or that he had other specific plans for it. So I'm not persuaded that the potential for a greater tax-free cash sum was a compelling reason for Mr H to transfer either.

*Death benefits*

The suitability report said this was a major factor for Mr H. In particular I note it said that Mr H didn't want the accumulated value of his pension fund to remain with his employer and he would rather it passed to his family. He also wanted better death benefits for his wife.

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 H.

But whilst I appreciate death benefits are important to consumers, and Mr H 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 H about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement. So I don't think the potential for greater death benefits should have been prioritised over this and Mr H's security in retirement. And I say potential, because the sum left on Mr H's death was dependent on investment returns and if he lived a long life, there may not have been a large sum to pass on. Indeed, the drawdown analysis in the suitability report stated that Mr H's fund would be depleted at age 93 if he took income with tax-free cash at age 60 and drew similar benefits to those offered by the BSPS2.

I also think the existing death benefits with the BSPS were underplayed. Mr H's wife would've received a guaranteed, escalating spouse's pension for life, which would have been valuable if Mr H predeceased her. And while the suitability report said that there would still be an income shortfall to meet Mr H's wife's needs, I think Futures Assured ought reasonably to have known that Mr H had death-in-service cover through his employer if he died before retirement. And it also knew that Mr H was paying into the current DC scheme and he would've been able to nominate his wife as beneficiary of this plan.

The recommendation letter also notes that by staying in the BSPS, the pension ceases in the event of both Mr H and his wife's deaths with no provision to pass on any benefits to another nominated beneficiary. And I note Mr H had a daughter.

But if Mr H genuinely wanted to leave a legacy for his spouse or his daughter, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Futures Assured should've instead explored life insurance. I appreciate that the suitability report mentioned a life policy, but this was discounted by Mr H because of the cost (approximately £500 per month). Given the cost quoted here, I think it's likely this was based on a whole of life policy with a sum assured equal to or around the pension transfer value.

But I don't think that this was a balanced way of presenting this option to Mr H. Basing the quote on the transfer value of Mr H's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr H wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr H how much he would ideally like to leave to his family, and how much he could afford – I note Mr H had significant disposable income at the time. I think this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide and would've met his objective without risking his retirement income.

In addition to this I note that Futures Assured believed Mr H would be in receipt of too much income if he took benefits from either the PPF or the BSPS2 once his state pension became payable. But if that were the case Mr H could've invested any excess income in a tax-efficient manner (for example, through a trust) for the benefit of his wife or daughter. This also would've allowed him to build further funds to leave in the event of his death without having an impact on his own retirement plans.

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

*Concerns about financial stability of BSPS*

While I have dealt with this point last, one of the key reasons why Futures Assured recommended Mr H transfer to a personal pension arrangement was to allay his fears about his pension – Futures Assured said in its suitability letter that *"...this is the only option which will ensure your worry and concerns are totally eradicated."*

I have no doubt that Mr H was concerned about his pension. He said that many of his colleagues were transferring and there was lots of negative sentiment about the PPF. So it's possible that Mr H was also considering transferring because of these concerns about his employer and what might happen.

But it was Futures Assured's duty to give Mr H an objective picture and recommend what was in his best interests. At the time of the advice, I accept that it wasn't guaranteed BSPS2 would go ahead. But the information from the scheme trustees available indicated that it would likely go ahead - so I think this is what Future Assured should've told Mr H to help alleviate his concerns.

And in terms of Mr H's concerns about the scheme moving to the PPF, based on what I've seen and discussed earlier on, Mr H's income needs would've still been broadly met through the PPF despite the 10% reduction in starting benefits. While the increases in payment in the PPF were lower, the income was still guaranteed. So I think Futures Assured ought to have reassured Mr H that, even if there was a chance the BSPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or was led to believe. I think Futures Assured placed considerable weight on transferring solely to alleviate Mr H's concerns – but I don't think these concerns should've led to Futures Assured recommending that Mr H transfer out of the DB scheme altogether.

*Summary*

I accept that Mr H 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 death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Futures Assured wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income, which along with his other retirement provision met his retirement income need. By transferring, Mr H was likely to be no better off in retirement, and there remained the possibility that he'd be worse. And in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think Futures Assured should've advised Mr H to opt into BSPS2. While Mr H intended to retire early at 60, his plans weren't in my view concrete. 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 early retirement.

Also Mr H 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 H 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 whether Mr H would've gone ahead anyway, against Futures Assured advice.

I've considered this carefully, but I'm not persuaded that Mr H would've insisted on transferring out of the BSPS against Futures Assured's advice. I say this because, while

Mr H was motivated to transfer when he approached Futures Assured, on balance, I still think Mr H would've listened to and followed Futures Assured's advice if things had happened as they should have and it recommended he stay in the scheme. Mr H had invested money before, but I don't think he could reasonably be described as an experienced investor or someone who possessed the necessary knowledge, skill or confidence to go against the advice they were given. Mr H's pension accounted for the majority of his retirement provision. So, if Futures Assured 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 H'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 Futures Assured had explained that Mr H 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 H would have insisted on transferring out of his scheme.

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

Future Assured has said that any redress calculation in this case should be carried out on the basis Mr H moved to the PPF and not the BSPS2. It says this is because at the time of the advice BSPS2 was only a proposal - it wasn't guaranteed to go ahead. But as I explained above, I think there was sufficient information at the time from the scheme trustees for Future Assured to have reasonably assumed that the scheme would go ahead, and in any event, if Mr H wanted to opt into the BSPS2, he needed to do so by 22 December 2017. So with this knowledge, and in taking into account Mr H's circumstances at the time, I think if things had happened as they should have and Futures Assured had provided suitable advice and acted in Mr H's best interests, it should've recommended that Mr H opt into the BSPS2 before the deadline to do so expired. So I think it's fair in all the circumstances for Futures Assured to base the redress calculation on Mr H opting into the BSPS2.

**Putting things right**

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) 17/19 (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 H whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance/rules to be published.

Mr H would like to wait for the outcome of the consultation before his complaint is settled. So I consider it's fair that Futures Assured waits for the outcome of the consultation to settle this complaint.

I can see that Futures Assured has argued that it wouldn't be fair to ask it to settle the matter using the existing guidance in FG17/9 when the FCA is in the process of updating the redress methodology. But Mr H says he wants to wait for any new/guidance rules to be published – so Futures Assured's argument falls away here.

A fair and reasonable outcome would be for the business to put Mr H as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would have most likely opted into the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, Futures Assured should use the benefits offered by BSPS2 for comparison purposes.

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and its proposed updates to the DB transfer redress methodology, I'm satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Mr H.

I therefore don't consider it necessary for me to wait for any new guidance/rules to come into effect to determine this complaint.

Futures Assured Ltd must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

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

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr H'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 H 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 compensation amount must where possible be paid to Mr H within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Futures Assured Ltd has received notification of Mr H's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Futures Assured to pay Mr H.

Income tax may be payable on any interest paid. If Futures Assured deducts income tax from the interest, it should tell Mr H how much has been taken off. Futures Assured Ltd should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

**My final decision**

Determination and money award: I uphold this complaint and require Futures Assured Ltd to pay Mr H 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 Futures Assured Ltd to pay Mr H any interest on that amount in full, as set out above.

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

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Futures Assured Ltd pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts this decision, the money award becomes binding on Futures Assured Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 24 November 2022.
Paul Featherstone
**Ombudsman**