DRN-3618079

The complaint

Mr M complains about advice he was given to transfer two pensions he had, to a Self-Invested Personal Pension (SIPP). Mr M says the advice to transfer these two pensions was unsuitable and believes he's been caused financial losses as a result.

The first pension relates to a personal pension plan Mr M held with a large financial provider. This was a defined contribution (DC) scheme - a type of plan which invests in funds over time to save for retirement. In a DC scheme, the plan-holder bears the investment risk and the cost of administration which can affect how much is left for retirement. Mr M transferred out of this plan to a SIPP provider in late 2014.

The second pension was a defined-benefit (DB) occupational pension scheme (OPS) – usually a type of scheme run by trustees. Typically this type of scheme offers certain guarantees, benefits and index-linking for life. Mr M also transferred this pension to his SIPP provider, but in 2016.

Money Advice & Planning Limited is responsible for answering this complaint. To keep things simple I'll therefore refer to "MAP". I'll also refer to the two pensions respectively as "the DC scheme" and "the DB scheme".

What happened

Mr M approached MAP to discuss his pension and retirement needs. MAP completed an initial fact-find in September 2014 to gather information about Mr M's circumstances and objectives. A summary was broadly as follows:

- Mr M was almost 50 years old, employed and earning £30,000 per year. He was said to have a disposable income of around £600 per month.

- He was divorced with no others financially dependent on him. Mr M was living in a council house which he was hoping to buy in the near future. He was in good health.

- Mr M's only significant financial assets at the time appeared to be his pensions. The value of the DC scheme at the time was £10,446. The DB scheme had a cash equivalent transfer value (CETV) of £59,282 at the time, with a normal retirement age of 62.

In October 2014, MAP went on to recommend in its suitability report that Mr M should transfer out of his DC scheme to another provider – the SIPP - and invest in funds commensurate with his attitude to risk (ATR) which it said was moderate-to-adventurous. It seems that although there were also discussions about the DB scheme at this time, the advice MAP gave to Mr M was *not* to transfer out of this.

In the second half of 2015, it seems MAP met with Mr M again and by this time his DB CETV had increased to £95,369. In September 2015, after again pointing out its previous advice to

Mr M was not to transfer out of his DB scheme, MAP says that Mr M indicated he wanted to transfer out anyway, against this advice. MAP says this meant he was treated as an 'insistent client', a term used in the industry to describe when a client goes against professional financial advice in this way.

Mr M is now represented by a company acting on his behalf which says the advice by MAP was unsuitable and has caused him losses. Quite a few points were made on Mr M's behalf, but the central complaint here is really that both these transfers were unsuitable.

The complaint was referred to our Service. One of our investigators comprehensively looked into it and said we should part-uphold it. They thought the DC scheme transfer advice was suitable, but the DB scheme transfer was *not* suitable.

MAP didn't agree with our investigator and I have considered everything that it has said with care. As the complaint couldn't be resolved informally, it's come to me for a decision.

I then issued a provisional decision in this case, in June 2022, saying I was minded to uphold the complaint in full. I invited any further information or comments and said that I'd consider these before issuing a final decision. I've received a reply from Mr M's representatives agreeing with my provisional decision, but no other comments from MAP. I can now proceed to 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.

Having done so, I am upholding the complaint in full – I think the advice to transfer both the DC and DB schemes was unsuitable.

<u>The DC scheme</u>

This element of Mr M's pensions was the subject of advice from MAP in 2014. After an initial fact-find in September and a suitability report in October, the funds were transferred from the DC scheme to the new SIPP at the end of 2014.

I've therefore thought about the reasons for Mr M apparently seeking to transfer from this scheme to a SIPP in the first place. These were described mainly as him wanting to obtain more control and flexibility over the pension and seeking greater returns from the invested funds. However, I think these reasons are more likely to have been put forward by the adviser, rather than Mr M himself. Mr M didn't have an extensive investment history to call upon and many of the features of the new scheme were already present in his existing one. So I don't think from the outset that it was clear enough why switching to a SIPP was warranted.

For this type of transfer to be suitable for Mr M, I would expect to see some evidence that there was a reasonable prospect for Mr M to be better off in some way as a result of switching. MAP ought to have explained this by clearly showing comparisons between his current scheme and the new one. Any performance comparison should have been made on a like-for-like basis.

I've noted that, before the advice, Mr M's existing DC pension was invested in a with-profits fund. Like our investigator, I think that some of the comments made by MAP about his existing fund and the provider's fund range were somewhat misleading. For instance, when advising him to choose another provider and fund for the DC scheme, MAP said his existing fund choice was very limited and that there was little scope to cater for his particular ATR.

However, I don't think either of these things were fair as they were no more than generic observations. I think it would have been possible to transfer to a variety of other funds within his existing scheme, even if I accept the choice was probably more limited than the new SIPP. Ultimately, MAP didn't compare or properly explain any performance data between Mr M's existing provider and the new SIPP it was recommending. And while the recommended funds may well have outperformed the with-profits fund, there was no like-for-like comparison. I think it would have been equally possible to select a range of funds from his existing supplier that could have performed better. This doesn't appear to have been explored.

I think there were some further failings by MAP in the course of the advice; it said that the new plan would have to achieve additional growth of 2.7% per year just to cover the cost of higher charges, but it failed to explain how the transferred funds might achieve this.

I've also noted that Mr M's DC pension was quite small, so I think the level of charges here were likely to be a very relevant consideration. The overall charges of the SIPP appeared to be significantly higher than Mr M's existing scheme, meaning his small pension could be vulnerable to erosion from higher charges.

So I don't think MAP did a very good job with its recommendation. MAP left out a lot of important detail Mr M ought to have been given. There were most likely other, cheaper, options such as a stakeholder pension or another cheaper personal pension plan that should have been considered and explained. I can't see this was done.

I have considered whether Mr M may well have gone ahead and transferred anyway for other reasons he felt were more compelling. This may have included the current projected growth rates of the SIPP funds appearing more attractive. He may also have been content to pay higher charges related to the provision of ongoing financial advice. But these things don't seem to have been discussed and in my view, they would have likely come from his adviser rather than Mr M himself. Looking at what Mr M eventually invested in, I don't agree there was a clear case showing Mr M could reasonably expect that the recommended funds in the new SIPP could outperform his existing funds by more than the required margin mentioned in the suitability report.

So, taking everything into account, there needed to be sound reasons for Mr M to be advised to transfer out of his current DC scheme. Instead, the comparisons fell short, the charges were higher and no alternatives appear to have been discussed. For these reasons I'm not persuaded that the advice to transfer his DC scheme pension was in his best interests. I think the advice was unsuitable and I uphold this part of the complaint.

The DB scheme

I've noted the DB scheme formed a much larger part of Mr M's pension savings.

There's no dispute that the initial advice in 2014 recommended the transfer of this element of his pension savings shouldn't take place. However, this initial advice always seems to have been to keep this element 'under review'. Accordingly, the issue of transferring out of the DB scheme was resurrected in the autumn of 2015. It eventually took place in mid-2016, around 18 months after Mr M had established his new SIPP, having transferred his DC scheme into it.

MAP says Mr M ultimately went against its advice that he ought to stay inside the DB scheme. It says this meant he became an 'insistent client'. However, I'm afraid I disagree with this and I found MAP's recommendation and advice about the transfer to be very unclear. I'll explain why.

It seems that when the CETV of the DB scheme was requested again in 2015 it was found to have increased to £95,369. Being a substantial increase on the previous CETV, I think it's fair to say this probably generated some interest in re-evaluating what could be done. As Mr M had expressed a previous interest in transferring out, I think he did so again when the figure was higher. The evidence shows he was interested in accessing his benefits at 55, rather than having to wait until his normal retirement age.

On 22 September 2015, I can see a 'pre-advice letter' was sent from MAP to Mr M. On first look, this appears to be cautioning once again against transferring out of his DB scheme. Nevertheless, in my view, despite MAP saying its advice was always against transferring out of the DB scheme, there was a clear underlying bias in that letter in favour of actually transferring out anyway. Unevidenced concerns about the overall funding / security of the scheme were raised in the letter, as were death benefit concerns, in as much as they may not suit Mr M's needs. There was also a reference to the DB pension not being 'guaranteed' which, without explanation, I think could have been misunderstood by Mr M.

So, overall, I think this letter was very unclear on what it was actually saying. Despite what MAP says, I think the letter was merely setting the scene for Mr M to transfer out anyway.

Similarly, on 26 September 2015, a suitability report was issued by MAP which said it *"was inclined"* to recommend he shouldn't transfer out. The only real reason highlighted was the growth levels that Mr M would need to achieve to match his existing scheme. But again, the report cited a number of reasons Mr M had apparently himself given for transferring out including the financial security of the scheme, death benefits being unsuitable, the high CETV, flexibility / control of his pension, and accessing tax-free cash more quickly.

Once again, I've thought about whether the origin of these reasons to transfer out came from Mr M, set out as they were in MAP's own correspondence. And I have compared them with a short, bullet-pointed response from Mr M saying he still wanted to go ahead and transfer out. I also note the substantial evidence in the complaint file which does tend to strongly show Mr M was not an experienced investor. I therefore think it's much more plausible that the reasons to transfer out were actually reasons originating from MAP itself, rather than Mr M.

On 16 October 2015, another suitability report was issued to Mr M by MAP in respect of the DB scheme. Again, this mentioned a general reluctance to recommend transfers from these types of DB schemes. However, this time the report noted that whilst the advice had been against transferring out of this scheme, Mr M had decided he wanted to go ahead anyway. It said' "*You have instructed me to proceed anyway on the basis of the letter you gave me which stated your reasons"*. However, the report went on to recommend the transfer *should* take place, having said elsewhere it shouldn't. This was another factor I think would have been confusing for Mr M.

In my view, all these things demonstrate the advice and recommendation(s) from MAP were confusing to a significant degree.

<u>*What was MAP required to do?*</u>

There was limited guidance available specifically about 'insistent clients' at the time of this advice, but nonetheless, the regulator placed important general obligations on firms like MAP. These included the overarching principles such as: Principle 1 – Integrity; Principle 2 -

skill, care and diligence; Principle 6 - customers interests; Principle 9 - reasonable care. Our investigator also set out some older guidance.

As well as this, there are other requirements when advising a client about the suitability of transferring out of a defined benefit scheme (these are set out in more detail in COBS 19.1.6G). The regulator says that when advising clients about transferring out of a defined benefit scheme, the firm should start from the position of assuming it won't be suitable unless it can clearly demonstrate whether it's in their best interests overall.

I have also taken account that the regulator has previously expressed concerns and expectations about how businesses should execute 'insistent client' business in connection with defined benefit transfers – it did this in July 2014 when it published *'TR14/12 Enhanced transfer value pension transfers'*

However, I should also point out that there is no rule to prevent advisers transacting business against their advice, if the client insists. So, I need to think here about whether enough was done by MAP to try and find alternative ways of meeting Mr M's objectives. I have also considered whether the 'insistent client' process in this case was merely, in the words of the regulator, a 'papering exercise'.

Was Mr M an insistent client?

Everything I've said above demonstrates that firms, like MAP, had a number of important responsibilities when providing advice. Despite what Mr M thought he wanted, I think his expectation in paying for regulated financial advice was that he would be clearly guided on the basis of his circumstances and means. The information ought to have been clear, fair and not misleading. In particular, it should be clear that the business has not recommended the transaction and the risks proposed by the client ought to have been pointed out.

I don't think MAP adequately did this.

In my view, MAP's actions and inactions fitted the regulator's definition of a 'papering exercise'. Its advice as regards transferring out was indecisive. This was demonstrated in the 'pre-advice letter' of 22 September 2015 and the suitability reports that followed on 26 September and 16 October 2015 – both 'sat on the fence' as regards his transferring out options and so lacked the clarity I would expect to see. I also note what Mr M said about his intentions to transfer out (and the manner in which he said it). I think it demonstrated a lack of understanding of the process. Importantly, I think the points used by Mr M to substantiate his desire to transfer out were, in effect, fed to him in the 'pre-advice letter' from MAP itself and its wider communications.

So, considered as a whole, I believe the evidence here indicates that MAP effectively recommended the transfer out, rather than it stemming from Mr M. I don't believe the evidence is plausible that Mr M even was an 'insistent client'. I think that many of the reasons put forward as being Mr M's own motivations were, in reality, reasons fed to him in MAP's own approach to this case. The advice simply wasn't clear enough and when Mr M said he'd like to go ahead anyway MAP didn't re-iterate why this wasn't in accordance with its advice. I think the longer-term risks about transferring out of the scheme were underplayed.

Given that I don't think Mr M met the definition of an 'insistent client' I went on to consider whether I thought this made a difference to the outcome of the complaint. In particular, I've given a great deal of thought to whether transferring out could be said to be suitable.

Financial comparisons

There's no real dispute that Mr M could be losing out in the longer term by transferring out of his DB scheme. After all, MAP itself says its initial recommendation implied he shouldn't transfer out. So this is a persuasive argument that MAP didn't consider it suitable.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use 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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

MAP explained the high growth rates Mr M's funds would need to achieve outside his current scheme, in order to match the financial benefits he could have by remaining inside. It said the critical yield required to match the DB pension benefits available at 65, was 5.61% per year. It said the hurdle rate – the estimated annual investment return needed to buy an annuity with similar benefits assuming no spouse's pension, no increases in payment and no guarantee – was also 5.61%. MAP also said the funds needed to buy an annuity with similar benefits assuming no spouse's pension, no increases in payment and no guarantee at retirement, was £144,963. I also note MAP said that if transferred out, the funds in the SIPP could run out in Mr M's mid-70s.

Our investigator made some valuable observations about the accuracy of some of these figures and I agree they look flawed; I find it unlikely that the critical yield and hurdle rates were the same. Also, Mr M's scheme normal retirement age was 62, rather than the 65 used in the above scenario by MAP.

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 October 2017 and was 4.3% per year for 12 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.

Of course I've noted that Mr M may have aspired to retiring earlier than 62. However, looking at all these figures, I think they clearly demonstrate that Mr M was very likely to receive benefits of a lower overall value than those provided by his DB scheme at retirement. So, on this basis, I think there's good evidence that the transfer out wasn't in Mr M's long-term financial interests.

Flexibility and income needs

Again, I saw conflicting statements from MAP about Mr M's retirement plans and needs. Although MAP said Mr M could benefit from an option to drawdown benefits early and to have flexibility and control over his funds, I think it poorly defined what these terms really meant in Mr M's circumstances. I can certainly see how the prospect of a lump sum from his pension at the age of 55, and a subsequent income or drawdown, might have seemed useful to him. However, based on the evidence I've seen I don't think it's clear that Mr M had a genuine need to transfer out of his DB scheme to his SIPP and to draw funds earlier than would have otherwise been the case. He was employed and enjoyed some disposable income. Whilst obviously an attractive prospect for Mr M in some respects, this all needed to be considered very carefully in his circumstances and balanced against other aspects of his overall situation and longer-term retirement security. MAP failed to adequately do this.

Mr M was only around 50 at the time of the (later) advice, and based on both on what I've seen and been told by MAP, he didn't have concrete retirement plans. I think this just added to the fact that it was simply too soon to make any kind of decision about transferring out of the DB scheme.

Accordingly, I don't think it was suitable for Mr M to give up all the guaranteed benefits the DB scheme came with when he didn't really yet know what his needs in later life would be. I can't see evidence that he had a strong need for cash and/or a variable income at this point, when considering what he'd also have to forgo to get these.

In my view, the information gathered by MAP about his current and future income needs was generally poor and these failures represented a significant shortcoming in the advice. Mr M could have remained a member of the DB scheme until the retirement age of 62 and accessed a pension through that scheme. I'm satisfied he could have continued to meet his income needs in the short-to-medium term.

Death benefits

This issue was cited by MAP as of importance to Mr M who was divorced. However, the advice didn't focus on the details of what Mr M's actual objectives were around the death benefits. It could have been that the lump sum death benefits on offer through a SIPP were an attractive feature to Mr M. I've noted he had two children but these aren't mentioned in the context of these benefits. So, whilst I appreciate Mr M might have thought it was a good idea to transfer his DB scheme to a SIPP 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.

Also, whether the death benefits here were improved following a transfer depended on how much remained in the pension fund at the point of Mr M's passing. Given average life expectancy, and the size of his fund, I think it was always likely that this fund would be entirely depleted prior to Mr M's death, thus providing no death benefits at all. I don't think that MAP made this clear.

Control or concerns over financial stability of the DB scheme

I think Mr M's desire for control over his pension benefits needed to be considered with everything else that was known. I reiterate again; there's no evidence he was an experienced investor and I cannot see that he had either an interest in or the knowledge to be able to effectively manage his pension funds. I therefore don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring him away from the DB scheme which was managed for him already.

I've also mentioned a suggestion from MAP, that the funding of Mr M's DB scheme was in a position such that Mr M should have been concerned about the security of his pension. However, this seems to hang completely on the scheme being in deficit – as many DB schemes are. I saw no analysis of what this really meant and to what extent a risk really did exist other than a legal article which I think needed explanation for Mr M. Different deficit figures were quoted to him at different times and although large, they were not put into context against the overall size of the fund. No investigation seems to have taken place into whether there were ongoing steps to mitigate the deficit. Furthermore, if the scheme did end up moving to the pension Protection Fund (PPF), I think MAP should have explained that this was not as concerning as Mr M thought and a further explanation about the PPF ought to have taken place.

Summary

So, I’ve set out above that in relation to the first pension, the DC scheme, I do not think the advice was suitable. The charges were considerably higher than Mr M’s existing scheme and I set out MAP’s many failures in providing the advice. No evidence of a reasonable prospect for higher returns was demonstrated. I’m upholding this part of the complaint.

As regards the DB scheme, because MAP says Mr M went against its advice, I first considered the ‘insistent client’ issue. However, to be clear, I think the circumstances around this were very vague. I do not consider Mr M to have fitted this definition. This is because the advice and recommendations from MAP were unclear from the outset, in what they were really saying. A series of ‘reasons’ for going ahead with the transfer were cited by MAP as coming from Mr M’s, but in my view, they are much more likely to have originated from MAP during the course of its discussions with him. I pointed out a number of examples where this was evident.

As regards suitability, given MAP itself has said it advised against a transfer, it would be hard for it to argue that the DB transfer was in fact suitable. And I agree that it was not. The financial comparisons showed he’d be worse off transferring and there was no coherent assessment of Mr M’s retirement needs. I provided more examples where this was evident.

Mr M’s existing DB scheme contained a number of valuable guarantees and benefits which made transferring out something that needed a great deal of consideration. I think the advice was unsuitable. So, I am upholding the DB scheme part of the complaint.

Finally, I went on to think about whether, if Mr M had been given clear and persuasive reasons why transferring wasn’t in his best interests, he would have followed advice to remain inside the DB scheme. My view is that I think he would. With his circumstances and lack of investment experience, Mr M went to MAP seeking advice. I think it’s more likely that he would have followed that advice had it been delivered with the skill, care and diligence required and shown to be in his interests.

Putting things right – DC scheme

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr M would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr M's circumstances and objectives when he invested.

<u>What must MAP do?</u>

To compensate Mr M fairly, MAP must:

- Compare the performance of Mr M's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- MAP should add interest as set out below.

- If there is a loss, MAP should pay into Mr M's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If MAP is unable to pay the compensation into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- If either MAP or Mr M dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr M's investment had it remained with the previous provider until the end date. MAP should request that the previous provider calculate this value.

Any additional sum paid into the SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if MAP totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, MAP will need to determine a fair value for Mr M's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr M wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.

Putting things right – DB scheme

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

MAP 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.

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 M's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M’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 M 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 M within 90 days of the date MAP receives notification of an 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 MAP to pay Mr M.

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.

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 uphold both the DC and DB part of this complaint and require Money Advice & Planning Limited to pay Mr M 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 Money Advice & Planning Limited to pay Mr M any interest on that amount in full, as set out above.

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

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

If Mr M accepts this decision, the money award becomes binding on Money Advice & Planning Limited. My recommendation would not be binding if he doesn’t accept. Further, it’s unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 25 August 2022.

Michael Campbell
Ombudsman