

## **The complaint**

Mr T complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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 T'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 May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

On 18 September 2017, the BSPS provided Mr T with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £50,055.36.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. A decision about joining the BSPS2 needed to be made by 11 December 2017. This was later extended to 22 December 2017.

Mr T approached NTM in January 2018 for advice about his BSPS pension. NTM's notes of its initial contact with Mr T, on 2 January 2018, said he had elected not to join the BSPS2. And he was now looking for advice about what was best to do, and he was considering transferring to avoid his benefits entering the PPF.

NTM completed a fact-find to gather information about Mr T's circumstances and objectives. Mr T was 25, single, in good health, with no dependents. He lived with family and was employed full time. His income exceeded his outgoings, he had savings of approximately £4,000 and debts of roughly £2,200. In addition to the benefits held in the BSPS, Mr T was also a member of his employer's new defined contribution ('DC') pension scheme.

NTM says Mr T hoped to retire at age 57 as he considered his work environment to be potentially hazardous to his health and he wanted to minimise his exposure to this. Although he did expect to remain with his employer. It recorded that Mr T expected to need an income of approximately £1,800 per month in retirement. It said he wanted to maximise his pension, particularly the income in the early part of his retirement and have the flexibility to vary his pension for this purpose. NTM said Mr T had a financial adviser, but they didn't provide advice on DB transfers. It said Mr T had been arranging a transfer with another business.

But that business had ceased work on DB pension transfers, which had prompted Mr T to contact NTM – after being introduced to it by his adviser. It said Mr T wanted to avoid his pension falling into the PPF and had chosen not to join the BSPS2 as there was a scepticism over whether it would happen or be sustainable and he'd lost faith in his employer.

NTM said Mr T believed his DB pension would likely form less than 20% of his retirement provisions and so it was not critical to his retirement plans and he felt the associated guarantees were not as important as they would've been if the potential pension were higher. It completed a questionnaire with Mr T about his attitude towards a transfer. This included ranking his priorities. And NTM recorded that increasing his pension was Mr T's first priority, with its security second. NTM says Mr T indicated he was willing to take a significant level of risk to achieve his long-term goals. NTM also carried out an assessment of Mr T's attitude to risk, which it deemed to be 'very high'.

On 15 January 2018, NTM advised Mr T to transfer his pension benefits into a personal pension. The suitability report said the reasons for this recommendation were that a transfer gave Mr T the flexibility he wanted in terms of how he could take his pension benefits and the potential to access more tax-free cash ('TFC'). It allowed for the pension to be left to his extended family, which NTM said was important to Mr T. And it said Mr T wanted to break all ties with his employer, and a transfer gave him control over his pension and his "*own destiny in retirement*", ensuring the decision could be made for his interests, whereas the scheme would make decisions for all members.

The suitability report said it understood Mr T may need time to consider its contents, so NTM would contact him after a week. But the information I've seen indicates that it in fact held a meeting with him the same day. And all of the application forms to enable the transfer to take place were signed at that time.

Mr T complained in 2021 about the suitability of the transfer advice. NTM didn't uphold Mr T's complaint. It said the only options Mr T had at the time of the advice were to move to the PPF or to transfer. And it felt a transfer was suitable as it was the most appropriate way to meet Mr T's stated objectives.

Mr T referred his complaint to our service. He said that he had no investment experience at the time of speaking to NTM and that it had told him, because of his age at the time, he could afford to take a higher level of risk. And so, he should indicate a willingness to do so.

I issued a provisional decision in August 2023, explaining that I intended to uphold Mr T's complaint. Below are extracts from my provisional findings, explaining why.

*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 Businesses ('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 NTM'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. This includes COBS 19.1.6G which says that the starting assumption for a transfer from a DB scheme is that it is unsuitable, and should only be considered if it can be clearly demonstrated that the transfer was in the consumers best interests.*

*The documentation from the point of sale and NTM's response to the complaint place a lot of focus on what NTM says Mr T thought he wanted to do going into the advice process. But the advice here shouldn't have been based on wish fulfilment. NTM's role wasn't to put in place what Mr T might've thought he wanted. It was to give him clear, objective advice about what was in his best interests, particularly bearing in mind that the primary purpose of a pension is to provide the holders needs in retirement.*

*At the point Mr T spoke to NTM in January 2018, the deadline to opt into the BSPS2, 22 December 2017, had passed. So, this was no longer an option for Mr T. And the BSPS was not going to continue as it was. The only options available to him were to move to the PPF with the BSPS or to transfer out. Nevertheless, having considered all of the relevant information, I don't think a transfer was in Mr T's best interests.*

#### *Financial viability*

*NTM said that Mr T had a very high attitude to risk and identified with this during the advice process. And I can see that, during the fact-finding process, several questions were put to Mr T from which he was asked to select from a prepared list of answers. And he answered one of these to say he was happy to accept a higher degree of risk.*

*Mr T however says he was told by NTM that he could afford to take higher risk because he was relatively young at the time of the advice – so was prompted to indicate he was willing to do so, to support the advice.*

*Having looked at the information from the time, I'm not convinced that Mr T did have a 'very high' attitude to risk.*

*Mr T was young at the time, so had a long time before he could draw his pension benefits. This also meant he had longer to build up other pension provisions and that the guaranteed benefits of his BSPS pension were unlikely to represent the majority of his provisions at retirement. So, he had some capacity for loss. But that doesn't necessarily mean that he was a 'very high' risk investor. And his age also meant that he didn't have as much financial experience as some other customers. Indeed, in the fact find, Mr T ticked a statement that said "I have no knowledge of Investments whatsoever, and this would be my first investment". I think this lack of experience means it was unlikely that Mr T had sufficient knowledge to truly understand what being a 'high' risk investor necessarily meant or to say that it was appropriate to categorise him as one.*

*This is further supported by the fact that, when asked to rank his priorities, he recorded that the security of his pension fund was second, out of seven. It is true that he said increasing his pension was of a greater priority. But security was still clearly important to him. And according to NTM's notes and the information from the time, part of his motivation for*

*transferring was because of the problems the BSPS had encountered. And Mr T was concerned and even sceptical about what this meant for the security of his pension in the longer term. And this was why he apparently declined to enter the BSPS2 – because he didn't think it would offer a sustainable alternative.*

*Also, when asked which from a list of statements reflected his attitude to risk, I can see he initially ticked 'average' risk. This appears to have then been crossed through and amended too 'high' – likely after further discussion with NTM. But for the reasons I've explained, I'm not convinced this did genuinely reflect his view. And I think indicates his thoughts on risk were not as set in stone as NTM suggests. And it is also interesting that 'very high' was an option in that form, and that option was not selected.*

*The time he had until retirement, and the ability this gave him to both invest longer term and to accrue other pension benefits means I think his attitude to risk may've been slightly higher than average. But on balance, I don't think Mr T was a 'very high' risk investor as NTM has said. And this is relevant to the financial viability of the transfer – by which I mean how likely it was that Mr T would be better off in terms of the retirement income he would receive, by transferring.*

*NTM carried out a transfer value analysis ('TVAS') report (as required by the regulator). This included a calculation of how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as he was entitled to under the BSPS (the critical yield). Again though, remaining in the BSPS, as it was, wasn't an option for Mr T. So, in his specific circumstances, the relevant comparison was to the benefits he could've achieved through the PPF.*

*The TVAS did include estimates of what Mr T would be entitled to under the PPF and the critical yields required to replicate these benefits. It estimated that at age 65, Mr T could receive an annual pension starting at £5,040.01 or TFC of £26,902.87 and a reduced starting pension of £4,035.43. The critical yields required to match these benefits were 4.93% and 4.76% respectively.*

*NTM also analysed what Mr T would potentially be entitled to take at age 60. It said in its suitability report that, although Mr T was interested in retiring at age 57, it hadn't been provided information by the scheme trustees to enable it to calculate the benefits that could be drawn at 57. So, it had instead looked at what could be drawn at age 60. I'm not sure that this was necessarily a relevant alternative if Mr T had truly intended to retire at 57. And I don't see that NTM would've been prevented from looking at what the PPF would offer from age 57, even if the BSPS trustees hadn't provided information. But nevertheless, I've considered the information. The TVAS report said at age 60 the PPF was estimated to provide a pension of £4,081.02 per year or TFC of £22,562.81 and a reduced pension of £3,384.42. And the critical yields to match those benefits were 5.34% and 5.18% respectively.*

*The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.*

*The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.7% per year for both 39 and 34 years to retirement – Mr T retiring at age 65 or 60. I've*

*kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.*

*I've taken this into account, along with the composition of assets in the discount rate, what I've said about Mr T's attitude to risk and also the term to retirement. There would be little point in Mr T giving up the guarantees available to him, in this case offered by the PPF, only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was still marginally above 4.7% it appears for retiring at age 65, this was the best Mr T could expect – to only match the guarantees he was giving up. And, for retiring early, if this was genuinely an objective, I think Mr T was likely to receive benefits of a lower overall value than the PPF would've provided at retirement, as a result of transferring.*

*The business referred in its suitability report to cash flow models and other measures that it said indicated that, if Mr T achieved consistent growth of 5%, he could draw equivalent benefits to those he was giving up on a flexible basis, and the fund would last beyond his life expectancy. And it said the past performance of the fund it was recommending indicated this could be achieved.*

*But those models relied on 5% being achieved year on year. This was not guaranteed and, if there were a downturn or Mr T didn't draw benefits equivalent to those he was giving up – which NTM argued was his intention, the fund would've been likely to run out much sooner. Also, as NTM will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.*

*Taking all of this into account from a financial viability perspective, I don't think a transfer out of the DB scheme was in Mr T's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.*

#### *Flexibility and income needs*

*NTM has said that Mr T wanted to retire at age 57 and expected to need £1,800 per month in retirement (although I note the suitability report appears to have quoted a figure of £1,000 per month, even though this is inconsistent with the rest of the documentation provided). And it also said he was interested in maximising the TFC available, so he could travel in the early years of his retirement and in being able to vary his income. But again, it wasn't NTM's role just to put in place what Mr T might've believed he wanted. It was to provide him objective advice about what was in his best interests – even if that went against what he thought he wanted.*

*At the time of taking advice, Mr T was 25. It was over 32 years until his apparent intended retirement or when he'd be able to begin drawing benefits. I don't doubt that Mr T may've aspired to retire early. I think, when asked, most people would say they would like to retire early. And he may've looked at what colleagues around him, who were at the age they could draw pension benefits, were doing and that this might've appealed to him. But, for the majority, early retirement means a significant drop in income. Which would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, the majority choose not to retire. And with so much of his working life still to go – in which time his circumstances would almost certainly have changed significantly, and his aims and objectives were also likely to alter – I don't think he could've realistically made any kind of firm decision about this.*

*Mr T would also have been entitled to take benefits early under the PPF. So, if he had reached retirement age, some 30 plus years later, and still wanted to retire early, he'd have been able to draw benefits from this pension. It is true that under the PPF these benefits would be quite rigid in how they were provided. But it's entirely possible, as his circumstances changed over the years, that when Mr T came to retire, he may've wanted certainty around at least some of his retirement income.*

*The benefits under the PPF would not have provided Mr T with the income of £1,800 per month that he was looking for. But as I've explained, I don't think he was likely to improve on these benefits by transferring. So, he'd have always likely had to rely on other provisions he built up to achieve this level of income.*

*The PPF benefits would've provided a guaranteed, escalating pension that could've been used to form a base for meeting his income needs. This could've been supplemented by the other pension benefits Mr T built up over the 32 years between the advice and retiring, if he in fact did retire early. And these other provisions could've been used flexibly to meet his objectives of taking a varied income and TFC in the unlikely event they remained entirely the same, while he also had the guaranteed underlying benefit of the PPF.*

*Overall, I don't think it was in Mr T's best interests to make an irreversible decision to transfer his pension at the point he did and give up the guaranteed escalating benefits he'd have been entitled to, just to have flexibility that he didn't necessarily need. Particularly as, given the time until he was intending to retire, I don't think any plans he might have had about retirement were reliable or set in stone.*

#### *Death benefits*

*NTM said, as Mr T didn't have a spouse, he was interested in the alternative death benefits available by transferring, so he could leave any pension fund to his extended family. 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 might've been an attractive feature to Mr T. But whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.*

*And again, Mr T was only 25 at the time he took advice. His circumstances were likely to change. He could've gotten married, significantly before he came to retire, and gone on to have children. This would've resulted in the spouse's and dependent's pension which I understand the PPF would've provided, being useful to Mr T's family if he predeceased them. The spouse's pension in particular was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And so, given Mr T's age and that he was in good health, I don't think discounting the potential value of these benefits was appropriate. In any event, NTM should not have encouraged Mr T to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.*

*NTM said it had considered whole of life insurance as an alternative way of meeting Mr T's apparent objective of leaving a legacy to his extended family. But it had discounted this based on the premiums of approximately £28 per month being too expensive. Based on Mr T's income and expenditure figures though, which indicated he had over £1,000 per month in disposable income, I don't think discounting this was appropriate. And I certainly don't think this meant that transferring to achieve alternative death benefits was in Mr T's best interests.*

### *Control or concerns over financial stability of the DB scheme*

*NTM said Mr T wanted control over how his pension was invested and his “own destiny in retirement”. But it was recorded that Mr T had no prior investment experience at all. So, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And I think his desire for this has been overstated and may not have been a genuine objective.*

*Rather, I think this objective was more linked to the uncertainty about the BSPS. It’s clear that Mr T, like many employees of his company, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. And, in Mr T’s case, this seems to have been so pronounced as to have already resulted in him opting not to join the BSPS2.*

*I also don’t doubt Mr T had heard negative things about the PPF. And the immediate reduction in benefits that he’d have incurred in moving to the PPF may likely have played a part in why he said he preferred to have control over his pension fund. However, it was NTM’s obligation to give Mr T an objective picture and recommend what was in his best interests.*

*NTM has said that Mr T wanted a clean break from his employer and had lost faith in its management of the pension. But I note he still worked for them and indicated he had no intention of changing jobs. And he also was a member of its new pension scheme. So, he wasn’t obtaining a clean break. In any event the PPF was entirely separate to the BSPS. And I think that NTM should’ve reassured Mr T that moving to the PPF wasn’t as concerning as he thought. I don’t think he had firm retirement plans, but under the PPF could’ve still taken benefits early. Although the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk and, as I’ve explained, I don’t think he was likely to be substantially better off by transferring, such that taking this risk was in his interests. So, I don’t think that these concerns should’ve led to NTM recommending Mr T transfer out of the DB scheme altogether.*

### *Suitability of investments*

*NTM recommended that Mr T invest in a specific managed fund with the recommended pension provider. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr T, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr T should have been advised to remain in the DB scheme and so the investments wouldn’t have arisen if suitable advice had been given.*

### *Summary*

*I don’t doubt that the flexibility, control and potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr T. But again, NTM wasn’t there to just transact what Mr T might have thought he wanted. The adviser’s role was to really understand Mr T’s circumstances, separate his concerns stemming from the consultation and his unconfirmed plans for retirement from his genuine needs and recommend what was in his best interests.*

*Ultimately, I don’t think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T was unlikely, in my view, to improve his retirement benefits and had no other particular reason to transfer which would justify giving up these guarantees. So, I don’t think it was in Mr T’s best interests for him to*

*transfer to a personal pension. And I think NTM should've recommended that he not transfer and instead move to the PPF.*

*Of course, I have to think about whether Mr T would've gone ahead anyway, against NTM's advice. I've considered this carefully.*

*By the time Mr T contacted NTM he had already decided not to opt into joining the BSPS2. And NTM says he'd already taken advice from another business about transferring out of the BSPS and had only not done so because that other business had ceased advising on DB transfers during the advice process. I haven't seen what that other business said to Mr T but based on what NTM has suggested it appears to have been along the lines that a transfer was appropriate. I accept that Mr T is an adult and plainly capable of making his own decisions. But I can't rule out the possibility that the other advice influenced Mr T's decision to not join the BSPS2 and might've impacted his thoughts on the PPF and his apparent preference to transfer. And ultimately here NTM recommended that Mr T transfer, and I think he relied on that advice.*

*I'm not persuaded that Mr T would've insisted on transferring, against NTM's advice. I say this because Mr T was an inexperienced investor. At the time, this pension accounted for the majority of his private retirement provisions and, Mr T indicated, while he'd like to increase his pension benefits if possible, the security of these benefits was important to him. So, if NTM 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 he would've insisted on the transfer knowing that a professional adviser, whose expertise he had been recommended and was paying for, didn't think it was suitable for him or in his best interests. So, I don't think Mr T would have insisted on transferring.*

*In light of the above, I think NTM should compensate Mr T for the unsuitable advice.*

*Our Investigator also recommended that NTM pay Mr T £300 for the distress caused by the unsuitable advice. I've thought about whether this is fair. Although the advice was given several years ago, I don't think Mr T has been caused ongoing distress by it until he brought his complaint. As until that time, he seems to have thought that the advice was in his interests. At the same time thought I don't doubt that Mr T has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.*

## **Responses to my provisional decision**

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

NTM did not respond to my provisional decision.

Mr T said he had no further information to provide or add.

## **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, as neither party have provided anything further for me to consider, I see no reason to depart from my provisional findings. So, for the reasons summarised above, based



on the available information and evidence, I don't think a transfer was in Mr T's best interests and I think NTM should've recommended that he not transfer and instead join the PPF. And I think Mr T would've accepted that advice.

As a result, I think NTM should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And in addition, it should pay him £300 for the distress caused.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would most likely have remained in the occupational pension scheme and moved with it to the PPF, as the option to join the BSPS2 was no longer available to him, if suitable advice had been given.

NTM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

NTM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr T and our Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, NTM should:

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum will be treated as income for tax purposes. So, in

line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr T's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, NTM should pay Mr T £300 for the distress caused by the disruption to his retirement planning.

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

### **My final decision**

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that NTM Financial Services Ltd pays Mr T the balance.

If Mr T accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 October 2023.

Ben Stoker  
**Ombudsman**