DRN-3743896

The complaint

Mr M complains about the advice given by GM2 Ltd ('GM2') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr M'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 Pension Protection Fund ('PPF') made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In October 2017, members of 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 BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr M approached GM2 in October 2017 to discuss his pension and retirement needs. Mr M said that he wanted to plan for his early retirement, and he was concerned about the situation with his employer and the BSPS.

GM2 completed a fact-find to gather information about Mr M's circumstances and objectives. This showed that Mr M:

- Was aged 33 years old, married and had two young children
- He and Mrs M owned their own home, it was not subject to a mortgage.
- They had no savings or investments.
- Was employed at Tata Steel with an annual income of around £40,000.

In respect of his pension arrangements, he had deferred benefits in the BSPS. He'd been a member for just over 11 years. The annual pension at the date of leaving was £5,319.08 and the transfer value was £124,591.72.

He was also a member of the new employers defined contribution ('DC') scheme. Mr M and his employer contributed a combined total of 16% of his salary into this. Mr M also had a DC scheme with a current value of around £2,000.

GM2 asked Mr M about his attitude to risk, and he indicated on the fact find (by marking this option) that it was 'speculative'. This was described as being *'I am willing to accept a high* *level of risk in return for the potential for increased long term capital growth. I understand that I may have a high level of investment in stockmarket linked funds, and the value of my investment may fall and rise significantly'*. Mr M also said that he had very limited financial knowledge and little or no experience of investments.

On 22 November 2017, GM2 advised Mr M to transfer his pension benefits into a SIPP and invest the proceeds in a range of funds that it said met his attitude to risk. The suitability report said the reasons for this recommendation were that Mr M wanted to:

- Provide for his family in the event of his death.
- Plan for his retirement, he wanted to retire at age 60.
- Produce a good return on his savings.
- Provide for school and / or further education fees.

Mr M complained in 2021 to GM2 about the suitability of the transfer advice. He said he was unaware that he could have left his pension arrangements as they were and transferred later on, closer to his intended retirement age of 60.

GM2 didn't uphold Mr M's complaint. It said that it thought the advice it had given him was suitable for his circumstances. This was because:

- Mr M had a high attitude to risk. He had other means to fund his early retirement (his wife had a significant DB scheme) so he could afford to risk his BSPS benefits.
- The required growth rates needed to match the BSPS scheme were reasonable and the SIPP has performed well so far. Mr M is unlikely to suffer a reduction in future income due to the transfer.
- His other circumstances also supported that he could take a risk with his BSPS pension.
- Mr M was concerned about the situation with the BSPS and he wanted to remove these concerns

Mr M referred his complaint to our service. An Investigator upheld the complaint and recommended that GM2 pay compensation. He said it wasn't in Mr M's best interests to transfer as he would likely receive lower pension benefits. And he wasn't persuaded that Mr M had a speculative attitude to risk. Overall, our Investigator thought that Mr M's retirement objectives weren't well defined and weren't a firm basis for a DB transfer. He didn't think the advice was suitable for Mr M.

GM2 disagreed, saying:

- The FCA was neutral towards DB transfers.
- Full information was given about his options, including the PPF.
- The advice was correct based on what Mr M told it at the time, it was not guaranteed that he would be able to transfer at a later date.
- It wasn't right to simply rely on critical yields, GM2 provided a range of calculations including a cashflow analysis.
- Mr M classified himself as a speculative investor and it was reasonable for GM2 to rely on this.

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

What I've decided – and why

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

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 GM2'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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GM2 should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. I don't think it's right to say that the FCA is neutral about DB transfers, COBS 19.1.6G is clear that they should be considered unsuitable as a starting point.

Having looked at all the evidence available, I'm not satisfied the transfer was in Mr M's best interests.

Financial viability

GM2 produced two transfer value analysis reports (TVAS), it was required to produce a TVAS by the regulator. These showed how much Mr M's pension fund would need to grow by each year to provide the same benefits as his DB scheme (the critical yield), amongst other things.

One TVAS was based on his existing scheme benefits, the BSPS (and the PPF). Mr M didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF. The second TVAS looked at the situation if he moved into the BSPS2. I've concentrated on the BSPS2 calculations here as the BSPS one's aren't relevant.

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 M was 33 at the time of the advice and wanted to retire at 60 ideally. The critical yield required to match Mr M's benefits at age 60 from the BSPS2 was 4.92% if he took a full pension. The same calculation for his age 65 was 4.58%.

The critical yield to match the benefits available through the PPF at age 60 was quoted as 4.73% per year if Mr M took a full pension and 4.55% per year if he took tax-free cash and a reduced pension. The same amounts at Mr M's age 65 were 4.25% and 4.07% respectively.

The report also showed the income Mr M was projected to receive at age 65 from the BSPS2 was £9,734 per annum. He was estimated to receive £7,494 at his age 60.

The relevant discount rates 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 31 years to retirement, which was Mr M's age 65. And 4.6% for 26 years to retirement. 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, Mr M's 'speculative' attitude to risk and also the term to retirement.

Mr M's attitude to risk was assessed as being relatively high. I can accept he indicated that he was prepared to take some investment risk. But he also doesn't seem to have had any risk bearing investments, so it's hard to agree that he would be familiar with the volatility that investing at higher risks usually brings. And the attitude to risk was based on investment risk rather than the inherent risks with a DB transfer. Even if Mr M was prepared to ordinarily consider higher risk investments it doesn't necessarily follow that he understood, and agreed with, risking his guaranteed retirement benefits.

So, I'm not convinced this assessment was robust and that Mr M's tolerance to risk for the DB transfer was as high as speculative. That said he did have a reasonably long time until his retirement and he did seem to have other assets. So, he could take some risk, but I'm not persuaded that 'speculative' is right. And I don't think it was right to indicate that he could, or should, risk his DB scheme benefits in the way that happened here.

There would be little point in Mr M 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, given the lowest critical yield from the BSPS2 was 4.58%, I think Mr M was unlikely to improve on the benefits the DB scheme would have provided at retirement, as a result of investing in line with his likely attitude to risk. This would be the case even if the scheme moved to the PPF.

GM2 has provided cashflow models which it says shows Mr M would've been able to meet his needs despite the high critical yields. I've considered these, but GM2's models show that, assuming a medium rate of return, and Mr M taking the same benefits from the BSPS scheme, that his fund would run out at his age 97. So, if there was a period of poor returns or Mr M lived a long life, his fund was at risk of running out before he died.

And GM2 also provided an estimate of the fund values he would need to replicate the benefits he was giving up in the DC scheme. At age 65 this was £225,823.55 and at age 60 it was £197,551.34. These are relatively high, and they give a revealing insight into the value of the benefits Mr M gave up when he transferred out to a personal pension plan.

GM2 says that the critical yields are of limited relevance as Mr M didn't want to use his funds on the same basis as the benefits provided by the DB scheme. Essentially GM2 is saying Mr M didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required GM2 to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as Mr M's retirement plans weren't fully formed as he wasn't expecting to retire for at least another 26 years. His only other pensions were money purchase arrangements, so that was already subject to investment risk. So, I think it's entirely possible that Mr M would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Also, as GM2 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.

For this reason alone a transfer out of the DB scheme wasn't in Mr M's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as GM2 has said in this case. There might be other considerations which mean a transfer is suitable, despite providing lower benefits. I've considered this below.

Flexibility and income needs

It seems that one of the main reasons that Mr M wanted to transfer was for the flexibility and control it offered him. Mr M wanted to retire at age 60. But having considered the evidence, I don't think Mr M needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

It's evident that Mr M could not take his DB scheme benefits flexibly. Although he could choose to take tax-free cash and a reduced annual pension, Mr M had to take those benefits at the same time. So, there was increased flexibility with the personal pension.

The point of sale documentation said that Mr M wanted £2,000 per month before tax, this is £24,000 per year. Although it's fair to say this was very much an estimate of what he might need in the future. Given how far away his actual retirement was.

At age 60, if Mr M opted into the BSPS2, he could take a pension of around £7,500 per year. There wasn't any known need for the tax-free cash (Mr M's mortgage was repaid). And at age 68 he would get his state pension of around £8,300. So clearly Mr M's BSPS2 benefits and the state pension alone may not have met his income needs at age 60, or maybe even at his age 65.

But Mr and Mrs M did have significant other provision. The fact-find says that Mr M and his employer would be contributing a total of 16% of his salary into the new DC scheme. Mr M had around 26 years until he wanted to retire. GM2 has estimated that if there was no growth in his salary (which is unlikely) then contributions to the scheme over that period would total over £160,000. It added growth at the rate of 4.7% then it said the total DC scheme benefits at age 60 would be approximately £320,000.

Added to this Mrs M was approximately three years older than Mr M. She also had significant DB scheme benefits. I understand she would be able to access her state and DB scheme benefits earlier than Mr M.

So even though Mr M's retirement needs weren't fully defined I think it's likely that any shortfall could've been met by Mr M's wife's pensions and/or by Mr M accessing income or tax-free cash from his DC scheme. Mr M would have likely had a significant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr M would have had to sacrifice flexibility in retirement if he opted into the BSPS2.

In fact the advice was given on the basis that Mr M didn't really need this DB scheme as his needs would be met with the other provision he had. This is acknowledged in the suitability letter in which it says that Mr M was likely to receive the bulk of the income he needed elsewhere. But I can't agree that Mr M's main private pension that he had accrued so far should have been considered in this way.

Even if Mr and Mrs M could have got by without the income from Mr M's DB scheme once their state pensions became payable this isn't a good reason to transfer in itself. This income could have been an important foundation for their retirement, providing a guaranteed amount meaning that any income received above this could've allowed them to enjoy their retirement fully.

GM2 may think that once Mr and Mrs M's state and other provisions became payable they would have too much income. But they could've, for example reinvested any surplus income for the benefit of their children in a tax-efficient manner such as within a trust.

I don't think it's been demonstrated that it was in Mr M's best interests to transfer to a personal pension. As I've set out above, Mr M was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So, I still think Mr M had a better chance of achieving his target retirement income opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension.

Furthermore, Mr M was only 33 at the time of the advice and based on what I've seen he didn't have concrete retirement plans. As Mr M had at least 26 years before he was thinking about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr M to give up his guaranteed benefits now when he didn't know what his needs in retirement would be. If Mr M later had reason to transfer out of their DB scheme they could have done so closer to retirement under the BSPS2.

Overall, I'm satisfied Mr M could have met his income needs in retirement through the BSPS2 or the PPF at age 60 or 65. So, I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility that he didn't need.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr M. But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think GM2 explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and had children and so the spouse's and dependent's pension provided by the DB scheme would've been useful to his wife and children if Mr M predeceased them. I don't think GM2 made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left if Mr M lived a long life. In any event, GM2 should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr M genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think GM2 should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr M. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

It's clear that Mr M, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme, and he would have been worried his pension would end up in the PPF. He indicated he preferred to have control over his pension fund.

So, it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was GM2's obligation to give Mr M an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, this should've alleviated Mr M's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that GM2 should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would've still provided a reasonable portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. And if Mr M took tax-free cash, it would've actually produced a better outcome for him. So, I don't think that these concerns should've led to GM2 recommending Mr M transfer out of the DB scheme altogether.

I think Mr M's desire for control over his pension benefits was overstated. Mr M was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from his DB scheme.

It seems to me that Mr M's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.

But it ought to have been explained that Mr M’s employer and the trustees of the BSPS2 were not the same. And in any event, Mr M was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn’t achieve a ‘break’ from his employer. Mr M says that he has now moved his pension back to the Tata DC scheme. So had GM2 explained that Mr M’s belief regarding the control Mr M’s employer had over his pension was misplaced, I think he would have been reassured by this.

Would Mr M have joined the BSPS2 going forward

My decision is that Mr M should have been advised to stay in the DB scheme. I appreciate that the BSPS2 wasn’t in place when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. As I’ve outlined above, Mr M would need to choose whether to move to the PPF, or go to the BSPS2, in the near future.

I don't think that it would've been in Mr M’s interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Even though Mr M did want to retire early, I’m not persuaded that he would have needed to take the benefits from his DB scheme if he did this. And by opting into the BSPS2, Mr M would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, Mr M 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 M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

So, I think if GM2 had advised Mr M to stay in the BSPS scheme he would have opted in the future to join the BSPS2. And so, this is what compensation should be based on.

Suitability of investments

GM2 recommended that Mr M invest in a range of funds. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr M, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the investments in these funds wouldn’t have arisen if suitable advice had been given.

Summary

I don’t doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But GM2 wasn’t there to just transact what Mr M might have thought he wanted. The adviser’s role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don’t think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr M shouldn’t have been advised to transfer out of the scheme due to the changes within the scheme, and the potential for more flexibility or higher death benefits wasn’t worth giving up the guarantees associated with his DB scheme.

I think GM2 should've advised Mr M to opt into the BSPS2. And Mr M now says that this what he would have done.

Of course, I have to consider whether Mr M would've gone ahead anyway, against GM2's advice.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against GM2's advice. I say this because Mr M was an inexperienced investor and this pension accounted for the majority of Mr M's retirement provision. So, if GM2 had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M'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, didn't think it was suitable for him or in his best interests. If GM2 had explained that Mr M 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 M would have insisted on transferring out of the DB scheme.

In light of the above, I think GM2 should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that GM2 also pay Mr M £300 for the distress caused by the unsuitable advice. I don't doubt that Mr M has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

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

GM2 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.

GM2 should use the FCA's BSPS-specific redress calculator to calculate the redress. If GM2 does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr M and our Service upon completion of the calculation.

For clarity, Mr M 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 of 65, 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 PS22/13 and 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 M's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, GM2 should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts GM2's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

Redress paid to Mr M as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, GM2 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 M'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.

GM2 should pay Mr M £300 for the distress the poor advice caused him.

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

<u>Determination and money award</u>: I uphold this complaint and require GM2 Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that GM2 Ltd pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on GM2 Ltd.

My recommendation would not be binding. 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 1 September 2023.

Andy Burlinson
Ombudsman