

## **The complaint**

Mr B complains about advice he received from an appointed representative of WPS Financial Group Limited ('WPS'). WPS is responsible for answering the complaint, so I'll just refer to it throughout my decision. The advice was regarding the transfer of benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr B is being represented by a professional third party but again for ease of reading this decision I'll largely refer to representations as being made by Mr B.

## **What happened**

Mr B held benefits in the BSPS. In March 2016, Mr B's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent.

In May 2017, the 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 B's employer would be set up – the BSPS2.

Mr B approached WPS in July 2017 to discuss his BSPS pension. WPS completed a fact-find to gather information about Mr B's circumstances and objectives. Mr B was 52, in good health, divorced with one dependent child. He was employed, earning approximately £48,000 per year. WPS recorded that Mr B owned his own home, he had approximately £170,000 in savings and investments and it didn't record any debts being owed by Mr B. It said his income exceeded his outgoings and he was putting approximately £1,000 per month into savings. In addition to the benefits held in the BSPS, Mr B was also said to be a member of his employer's new defined contribution ('DC') workplace pension scheme.

WPS noted that Mr B had no specific plans for retirement in its meeting notes. But it recorded in other fact-finding documents that he might like to retire at age 57 or 58 and that early retirement was his main priority. It said when he did retire, he expected to need an income of approximately £20,000 per year. WPS said Mr B was concerned about the issues that had affected the BSPS and the potential penalties that would apply for early retirement. And he was concerned about the fund being lost in the event of his death and wanted to provide a legacy for his daughter.

WPS also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'high medium' or six on a scale of one to ten, with one being lowest risk and ten highest.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out

shortly after. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr B's pension being £548,121.86. And in October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

On 11 October 2017, WPS provided its suitability report to Mr B. It said Mr B wanted to move his BSPS pension to ensure its security, and he wanted to break ties with his employer in respect of this pension. WPS said Mr B wanted a more flexible arrangement that would better suit his needs and objectives and he wanted to draw benefits before the normal scheme retirement age and to vary his income. WPS also said he wanted alternative death benefits so he could provide for his family in the event of his death. WPS noted that while his attitude to risk was 'high medium' because the BSPS pension made up a large part of his retirement provisions, his capacity for loss was low. So, it said WPS and Mr B had agreed that a 'lowest medium' attitude to risk (four on a scale of one to ten) was appropriate.

WPS said its recommendation was not to transfer away from the BSPS. It said if Mr B ignored this recommendation, he'd be treated as an insistent client. The report went on to say that this was due to the loss of valuable guaranteed benefits, the growth rates required to replicate these benefits following a transfer ('critical yields') being unrealistic and there being the potential for the new BSPS2 pension. But the report also went on to talk about a potential pension provider and investment strategy, in the event the transfer went ahead.

The suitability report included several declarations that WPS asked Mr B to sign. These were to acknowledge he would be giving up guaranteed benefits, the critical yields being high and that WPS had recommended he retain his BSPS benefits.

Mr B also signed a 'transfer facilitation confirmation' on 12 October 2017. This included a pre-prepared declaration saying that he declined WPS' recommendation and still wanted to transfer to a more flexible arrangement and he didn't want his funds to remain in scheme. The declaration form said WPS had agreed to facilitate a transfer, to the pension provider that had been referenced in the suitability report. And I understand his benefits were subsequently transferred to the pension provider that WPS had referenced, with Mr B also paying for ongoing servicing from WPS.

Mr B complained in 2022 to WPS about the advice he'd received. WPS didn't uphold his complaint. It said Mr B had approached it with the intention of transferring and had already spoken to other advisers about potentially doing so. It said Mr B's main priorities were providing for his daughter in the event of his death and flexibility. WPS said it had advised against a transfer, but Mr B had insisted on proceeding and it had no reason to believe he hadn't made an informed decision to do so. WPS also said the regulator, the Financial Conduct Authority ('FCA'), had reviewed other examples of its advice to insistent clients and found no issues.

Mr B referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into it and thought it should be upheld. He said he didn't think WPS had done enough to address Mr B's concerns about the status of the BSPS or to show him that he could potentially meet his retirement objectives without transferring. So, he didn't think Mr B was in an informed position and shouldn't have been treated as an insistent client. And if Mr B had been given clearer information, the Investigator thought he wouldn't have transferred. As a result, he recommended that WPS compensate Mr B for any losses to his pension incurred due to the transfer and pay him £250 for the distress he'd incurred.

WPS disagreed. It said it had advised Mr B not to transfer and he'd made an informed

decision to go against that advice. It repeated that the FCA had not found fault with its advice process. And it also thought Mr B was unlikely to have suffered a loss.

Mr B's representatives largely accepted the Investigator's findings and said it didn't think Mr B was in a sufficiently informed position to be considered an insistent client. But they said they didn't think making an overall 15% notional deduction from the compensation amount to account for income tax was fair as this didn't account for ongoing charges that Mr B may incur.

WPS went on to say that, while it did not agree with the Investigator's opinion, it had run a calculation that indicated he had not incurred a loss. And it would be willing to now run an updated calculation, using the FCA's BSPS specific redress calculator, but required information from Mr B and his representative to do so. But this had not been forthcoming. It also confirmed it was willing to pay the amount for distress and inconvenience the Investigator had recommended, in order to resolve the matter.

Mr B's representative said that he wanted a decision by an Ombudsman and added that this issue had caused him significant distress. Mr B said it was difficult to put into words the impact this had on him but that it had caused him day to day worry. And added to this, colleagues, who had made complaints previously, had received compensation but he was now seeing people being told that they'd not incurred a loss and no compensation was due which he believed was an injustice.

In light of Mr B's request for a decision and as it has not been possible to reach an agreement in this case, 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 WPS'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, including COBS 19.1.6G, in which the FCA states that the

starting assumption for a transfer from a DB scheme is that it is unsuitable. So, a business should have only considered a transfer if it could clearly demonstrate that the transfer was in the customers best interests.

#### *Was a transfer in Mr B's best interests?*

The transfer value analysis ('TVAS') report, that WPS was required to carry out by the regulator, said that the critical yield - how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 8.21% to match the full pension he'd have been entitled to under the BSPS at age 65. WPS said Mr B was interested in retiring at age 57 or 58. It didn't calculate the critical yield to match the benefits payable at that age. But instead calculated the critical yield to match the full pension the BSPS could've paid him from age 60, which was 11.19%. I think it ought to have calculated the yields specific to the age at which it says Mr B wanted to retire. But in any event, the calculation that was carried out, serves to indicate that critical yields tend to increase for earlier retirement.

The TVAS also calculated the critical yields required to match the benefits Mr B would've been entitled to under the PPF at ages 65 and 60. For retiring at age 65, the critical yield was 4.52% to match the full pension Mr B could've taken, or 4.01% to match the maximum tax-free cash and reduced starting pension the PPF would've offered instead. For retiring at age 60, the equivalent critical yields were 6.53% and 5.77% respectively.

Although it was confirmed while the advice was ongoing that continuing in the BSPS in its existing form wasn't an option for Mr B, WPS didn't run a TVAS analysing the benefits Mr B would have been due under the BSPS2. As, the updated transfer valuation Mr B received was guaranteed until December 2017 and details of the BSPS2 revaluation rates became available, I think WPS should've done this. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from were likely to be between those of the BSPS and the PPF.

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, 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. The relevant discount rates at the time were 4.0% for 12 years to retirement – relevant if Mr B retired at age 65 – and 3.4% for 7 years to retirement – relevant if he retired at 60.

There would be little point in Mr B 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 given Mr B's agreed 'lowest medium' attitude to risk, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low, medium and high rate returns respectively, I think he was always unlikely to improve on the benefits he'd have received under the BSPS2 or the PPF at the normal retirement age, by transferring. And if he had retired early, I think Mr B was likely to receive benefits of lower value than he'd have been entitled to under the BSPS2 or the PPF. And indeed, WPS acknowledged that the critical yields were "extremely high" and that the prospect of achieving that level of returns was "extremely low".

WPS recorded that Mr B wanted to potentially retire early and expected to need an income of £20,000 per year, so was interested in flexible access to his benefits. But the fact find suggested these plans were not entirely finalised – which is emphasised by the expected

retirement age being somewhat vague. And he could've taken pension benefits early under either the BSPS2 or the PPF. The annual pension he was estimated to be entitled to under the PPF from age 60 was £21,116.05. The pension he'd have been entitled to from age 57 or 58 would've been lower – due to increased actuarial reductions to reflect the fact that benefits would've been payable for longer. But Mr B also held significant savings – which he was increasing by about £1,000 per month. And he'd also have had benefits he'd built up in his employers new DC scheme pension – which notes WPS has provided indicated he was making contributions of around 20% of his salary to, and which he says, and further notes support, have since increased to 30%. So, it's highly likely he could've retired early and met his income needs by remaining in the DB scheme. And he'd have still had further savings and flexible pension benefits through his DC scheme, that he could've drawn on, if he had actually needed flexibility. So, I don't think transferring for flexibility he didn't need was in his best interests.

WPS also said that Mr B was concerned about providing a legacy for his daughter and interested in the lump sum death benefits of a personal pension to allow it to be passed on to her in the event of his death. But the purpose of a pension is to provide for the holder's retirement, not to leave a legacy to his estate. And it's also worth noting that the value on Mr B's death was always likely to be different to the CETV, due to investment performance and any withdrawals he made. And taking out life insurance to provide a legacy to his daughter was an appropriate alternative solution. It appears WPS obtained a quote for a whole of life policy replicating the CETV of his BSPS pension. Basing the quote on the transfer value of Mr B's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. But nevertheless, the premiums, the lowest being around £233 per month, were affordable for Mr B. And so, I don't think the access to alternative death benefits meant a transfer was in Mr B's best interests either.

WPS said Mr B was concerned about the security of his pension and what had happened to that point, so wanted to break ties with his employer. But transferring meant that the entire of his pension fund was subject to investment risk, borne by Mr B. Whereas remaining in the scheme and either joining the BSPS2 or the PPF meant that his pension was still guaranteed. So, if security was his objective, I don't think a transfer met this.

I don't doubt that Mr B was likely to have been worried by what had happened to that point regarding the DB scheme. The consultation was likely to have been unsettling and he may well have had negative feelings about his employer's handling of the matter. And he might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But Mr B's employer and pension scheme were not one and the same. And Mr B still worked for his employer and was contributing to the new pension scheme it offered, suggesting the relationship may not have been as irretrievably broken down as suggested.

A number of key announcements had been made that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr B the option to transfer closer to retirement. And even if the BSPS2 hadn't been established, the PPF still provided Mr B with a guaranteed income and the option of accessing his benefits early. And this would've allowed him to meet his objectives and he was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any fears he held about this meant that transferring was in his best interests.

Taking all of that into account I don't think a transfer was in Mr B's best interests.

*The advice WPS provided and whether this was clear and suitable*

WPS says it advised against transferring and the recommendation explained the reasons for this were that the DB scheme provided valuable guaranteed benefits which would continue to revalue, there was an extremely low likelihood of achieving the growth rate required to replicate these and details of the replacement scheme due to be introduced weren't yet known. But like our Investigator, I think there was a lot more information that ought to have been included in the recommendation.

WPS gave its final advice on 11 October 2017. And documents were signed to enable the transfer the day after. By that time, Mr B had been provided an updated transfer quotation, which was guaranteed until 11 December 2017. As I've noted the advice said that details of the BSPS2 were not known but this was one of the reasons for not transferring. However, I can't see that issuing its final suitability report, before those details were available, and just including this rather vague reason was in Mr B's best interests or meant he was given clear information in order to make an informed decision. WPS has said that Mr B was not interested in remaining in the scheme. But its role wasn't to put in place what Mr B might've thought he wanted. It was to give him clear, objective advice about what was in his best interests.

Mr B had another two months before his transfer quotation expired. And details of the BSPS2 were being released, and indeed were explained in time to choose letters that were issued in October 2017. So, I think WPS ought to have waited for this information to become available. Once that information was provided, not least escalation and revaluation rates, a TVAS could've been carried out, giving Mr B a detailed analysis of the benefits the new scheme would provide.

This information about the benefits that Mr B could expect to receive under the BSPS2 could've then been used to give him a clear explanation why he didn't need to transfer to meet his early retirement and income objectives. As, I've noted, the TVAS report said that the PPF would provide a pension in excess of Mr B's target income from age 60. And it's likely the BSPS2 benefits would've been of a similar level. The annual pension was likely to have been lower from age 57 or 58. But both the BSPS2 and PPF benefits were guaranteed, and they would've continued to escalate. And combined with Mr B's other retirement provisions – his savings and DC pension benefits – appear likely to have been enough to comfortably meet his needs. I think that was crucial information, which ought to have been explained to Mr B with monetary examples. As was the fact that he was unlikely to be able to replicate the benefits the BSPS2 or the PPF guaranteed to provide him. But the suitability report did not explain this clearly to Mr B.

The recommendation also said that the trustees of the BSPS confirmed they seldom granted consent for retirement between ages 55 and 60. That statement indicated that Mr B would not have been able to retire at age 57 or 58 under the BSPS2 or the PPF – so couldn't have met his objectives. But we haven't been provided any information to support this. And I think this was potentially misleading. The suitability report also referred to the "limitations of the PPF" which it said Mr B was familiar with. But again, in my view in order to be objective, there ought to have been much more detailed and clearly set out analysis of the benefits the PPF did offer – as they appear likely to have allowed Mr B to meet his objectives without exposing his pension to investment risk. Particularly as there was generally a negative perception of the PPF at the time, which I think, to meet its requirement to provide clear and objective advice, WPS should've done more to address.

On the subject of providing a legacy for his daughter, as I've already touched on, insurance appears to have been a viable alternative. And this was another reason, in my view, that a transfer was not in Mr B's best interests. But the suitability report made no mention of this option or the purpose of the pension not being to provide for Mr B's estate. The whole of life quotations weren't referred to, nor the option of taking potentially cheaper term assurance

instead, or why it was likely in Mr B's best interests to consider this. And I think that ought to have been explained. And a clear way to do that would've been to provide monetary examples for Mr B to consider. Because, without doing so, Mr B again wasn't made aware of all of the reasons that a transfer wasn't in his interests. WPS has said that Mr B discounted insurance. But, even if that was the case, I think this still ought to have been discussed in the recommendation. Because again WPS' role was to give clear and objective advice.

Taking all of that into account, I don't think Mr B was given all of the information he should've been, in order for him to make an informed decision.

WPS has referred to Mr B signing several declarations saying he understood the advice. But these declarations, which were pre-prepared by WPS, were based on the incomplete reasoning and analysis that had been provided to him. So, I don't think this demonstrates that he was in an informed position to decide whether to proceed against the advice.

The suitability report also referred to Mr B being able to ignore the recommendation and proceed as an insistent client, before giving the reasons for that recommendation. And it went on to discuss a pension provider and investment strategy that WPS said reflected Mr B's attitude to risk. I don't think introducing the option to disregard the advice and how the pension would be invested if Mr B did so, at the same time as providing that advice, was appropriate. In my view, a more appropriate process would've been to advise Mr B why a transfer wasn't in his interests, clearly explaining all of the reasons why, and then allow him to consider this.

WPS has said that Mr B was sent two suitability reports. The first was on 15 August 2017. And the second, on 11 October 2017, was only issued after Mr B had said he still wanted to go ahead with a transfer. So, it says he did have time to consider the advice. WPS has provided a copy of the suitability report it says was issued on 15 August 2017. Despite it containing several declarations I note none of them were signed and dated to confirm that this had shared with Mr B. But, in any event, the content of the report is almost identical to the one issued in October 2017. So, it still had the same flaws – the reasons a transfer was not in Mr B's best interests were not explained in full, no explanation in clear monetary terms that Mr B could meet his objectives by joining the PPF and taking life insurance was given, and disregarding the advice and a suggested pension provider were already introduced. So, even if this was shared with Mr B, I don't think it changes the fact that he wasn't, in my view, given all of the information and clear, objective advice he ought to have been in order to make a decision about whether to proceed on an insistent client basis.

WPS has said that the FCA has reviewed advice it gave at the same time to insistent clients and didn't highlight any concerns. But the Financial Ombudsman Service and the FCA have different roles and remits. Unlike the FCA our role is not a regulatory one. We are tasked with looking beyond simply whether a firm has complied with its regulatory requirements. Instead, we consider the individual circumstances of a complaint, information from both parties and decide, while having regard for relevant law and regulations, what we consider to be fair and reasonable in the circumstances of the complaint.

*Would Mr B have acted differently?*

Of course, I have to consider what would've happened if WPS had provided all of the information I think it should have and given Mr B appropriate time to consider this.

WPS has said that Mr B had already decided he didn't want to remain in the DB scheme as he had lost trust in his employer, and he considered a flexible pension better met his priorities. It also said that Mr B, like many of his colleagues, was well aware of his options and the implications of these, as the BPS was well publicised and a topic of constant

discussion. And WPS says Mr B had spoken to two other businesses before contacting it, but he was unhappy with the fees those other businesses proposed to charge.

I've considered this carefully. I'm aware there was a significant amount of concern amongst members of the BPS about what the consultation meant. And that there was a lot of coverage of what may happen. But, while I think it was a perfectly reasonable emotional response for Mr B to have taken a potentially negative view of his existing scheme, that was why it was even more important for WPS to provide him with clear, objective advice.

While Mr B may have spoken to other businesses about their charging structure before engaging WPS, I haven't seen any evidence that those other businesses provided Mr B with advice. Or that he'd already chosen to disregard this.

Mr B might've entered the advice process with WPS with transferring in mind or thinking that was what he'd like to do. But while Mr B had indicated he had some previous investment experience, he also indicated this was limited. And that, while he understood the basics, he still required advice and explanation. I can't see that he had a great deal of relevant decision-making experience relating to the management of a pension of this size and importance. And so, I think he would've relied on the advice he was given.

With that in mind, if WPS had provided Mr B with a more thorough explanation of why transferring was not in his best interests and afforded him more time to consider this without having introduced the option of disregarding that advice immediately, I think Mr B would've considered this, given it was coming from a professional adviser. And if it had been clear he was very unlikely to improve on the benefits he was due under the scheme, including those the PPF would offer, monetary examples had been discussed and explained to show his objectives were still achievable and alternative forms of providing a legacy to his family had been properly detailed, with any objections he might've had objectively challenged, I think he would've accepted that advice. And I don't think Mr B would've transferred his pension.

In light of the above, I think WPS should compensate Mr B for any losses the transfer has resulted in. While Mr B indicated a preference for early retirement, his circumstances could've changed, and I don't think his plans were finalised. By opting into the BPS2, Mr B would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BPS2 than from the PPF. So, had he received suitable advice not to transfer, I think Mr B would've opted into the BPS2. And I think WPS should compensate him on this basis.

Mr B has said he feels it is potentially an injustice if he is not due any compensation from the relevant redress calculation. And he has referred to colleagues previously being compensated. But our role is not to fine or punish WPS. It is to try to put Mr B back in the position he would have been in, but for an error. He can't be returned to the BPS. So, he can't be put in that position. As that isn't an option, I think it is appropriate to use the redress methodology set by the regulator. That methodology may indicate Mr B is not worse off – that the value of his current pension exceeds that required to purchase equivalent benefits to those he gave up at retirement. But that should be a reassurance to Mr B. And if the calculation does show no loss, I don't think that means it'd be fair to depart from using this methodology.

The Investigator also recommended that WPS pay Mr B £250 for the distress and inconvenience caused. Mr B's representatives have said that this has caused him significant upset. And Mr B has said it was difficult to put into words the day to day worry he has experienced.



Mr B received advice from WPS in October 2017. Its notes indicate he remained a client, and it provided ongoing servicing and reviews of his pension until 2021. Mr B appears to have first complained about the advice he'd received in early 2022. And I haven't seen anything to suggest he indicated any concern about the advice he'd received prior to discussing the matter with his representative and logging a complaint. So, it doesn't appear that the advice caused him ongoing distress or inconvenience during that period. I also can't see that Mr B has been caused inconvenience since complaining, beyond having to complain (which I note his representative did on his behalf), which we wouldn't normally make an award for.

I accept that Mr B has likely been worried to find, when he first discussed matters with his representative, that the advice he received might not have been suitable. The advice related to Mr B's pension, which will play a significant part in his longer-term financial planning. And given the circumstances and uncertainty under which he first asked for this advice, I don't doubt he has been concerned. But, while I think the worry and distress he has experienced, which wouldn't have occurred but for the advice that is the subject of this complaint, was likely to be more than the level of frustration and annoyance he would usually experience on a day-to-day basis, I think the award of £250 recommended by our Investigator is fair and reasonable in the circumstances.

### **Putting things right**

A fair and reasonable outcome would be for WPS to put Mr B, as far as possible, into the position he would now be in had he received clearer and fair advice. I consider Mr B would have most likely remained in the occupational pension scheme and joined the BSPS2 if WPS had done everything it should've.

WPS 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>.

WPS 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 B and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what WPS based the inputs into the calculator on.

For clarity, I understand Mr B has not yet retired, and 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 B'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, WPS should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
  - the 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 the redress prudently is to use it to augment

his DC pension

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

Redress paid to Mr B 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, WPS 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 B'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.

I've thought about Mr B's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr B would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr B back into the scheme as if the transfer out hadn't happened. And again, this notional deduction is something that the FCA references when outlining fair compensation. So, overall, I remain of the view that the redress proposed fairly compensates Mr B for the impact of the unsuitable advice he received.

In addition, WPS should pay Mr B £250 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require WPS Financial Group Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that WPS Financial Group Limited pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on WPS Financial Group Limited.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 29 December 2023.

Ben Stoker  
**Ombudsman**