

The complaint

Mr W 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. Mr W says the advice he received, to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme, to a self-invested personal pension ('SIPP') was unsuitable for him and might've caused him a financial loss.

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

What happened

Mr W held benefits in the BSPS. In March 2016, Mr W'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, 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, it was announced that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed between the BSPS trustees, PPF and the pensions regulator. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's employer would be set up – the BSPS2.

Mr W first contacted WPS to discuss his pension in July 2017. WPS completed a fact-find to gather information about Mr W's circumstances and objectives. Amongst other things it noted that Mr W was 46, married with three children and employed full time. In addition to his BSPS benefits, WPS said he held some pension benefits in another DB scheme from a period of previous employment. Mr W was also recorded as holding a personal pension, that was split into two parts. Although not recorded in the fact-find, the subsequent recommendation WPS issued said Mr W was also a member of his employer's new defined contribution ('DC') pension scheme and was making contributions to this.

The fact find said Mr W had no experience of investing. And in another document Mr W said he was not at all experienced in respect of investments and was not comfortable investing. However, WPS said Mr W wanted to retire early, potentially at age 60 and needed flexibility. It said he wanted to increase the size of his pension fund to support retiring early and his family to benefit from the lump sum death benefits a personal pension would provide. And because of his concerns about what had happened with the BSPS, it said he wanted to transfer.

WPS also carried out an assessment of Mr W's attitude to risk which it deemed to be 'low medium' or five 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 BPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr W's pension being £163,759.05. And in October 2017 members of the BPS were sent a "time to choose" letter which gave them the options to either stay in the BPS and move with it to the PPF, move to the BPS2 or transfer their BPS benefits elsewhere.

On 21 November 2017 WPS issued its suitability report in which it advised Mr W to transfer his BPS pension benefits into a SIPP. The suitability report said Mr W wanted to take control of his pension and move it away from his employer, as he had concerns about its management of the pension and financial position. It also said he wanted to risk his benefits in hope of good returns and the prospect of retiring early and have flexibility to take benefits as and when he chose. WPS said the rate of return required to match the benefits that Mr W was giving up (the critical yield) was fairly high and was not guaranteed to be achievable. And one of Mr W's priorities was the security of his pension. But WPS still said it recommended a transfer based on Mr W's other objectives.

Mr W's BPS pension benefits were transferred in line with this recommendation.

Mr W took further advice from WPS in 2018. This was in relation to his personal pension, which again was held in two parts. This advice was the subject of a separate complaint but in short WPS recommended that Mr W transfer the larger part of his personal pension to the SIPP that was set up when he transferred his BPS benefits. And it recommended that he retain the smaller part of his personal pension, with the existing provider.

Mr W complained to WPS in July 2021 about the suitability of the BPS transfer advice. WPS didn't uphold Mr W's complaint. It said it still considered the transfer was suitable based on Mr W's circumstances and objectives. WPS said it believed Mr W had been given clear, detailed information on which he based his decision to go ahead. And it said it felt Mr W would always have sought to transfer, even if it had advised him against doing so.

Mr W referred his complaint to the Financial Ombudsman Service. One of our Investigators considered it. He didn't think WPS's advice was in Mr W's best interests, that he needed to transfer or that WPS had done enough to consider the alternative options Mr W had to meet his objectives. So, the Investigator recommended WPS establish if Mr W had suffered a financial loss as a result of its advice. Our Investigator also recommended WPS make a payment of £300 to address the distress the unsuitable advice had caused Mr W.

WPS didn't agree with our Investigator's assessment of the complaint. It said it was required to take reasonable steps to ensure the advice was suitable for Mr W, which it thought it had done, not guarantee that it would be. It said the Investigator had used a significant degree of hindsight, which it thought was unreasonable, and had placed too much emphasis on an analysis of the critical yield. WPS said it still considered the transfer was suitable and it said Mr W had made a fully informed decision to proceed with the transfer. It also said again, if it had advised against a transfer, it thought he would've still looked to proceed. Lastly WPS said that the BPS2 was not a confirmed option at the time of the advice.

Mr W's representatives initially indicated he largely accepted the Investigator's findings and raised no objection at that time in respect of the recommended payment for the distress he'd been caused. 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 W may incur.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred for

an Ombudsman's decision.

While the complaint was awaiting an Ombudsman's decision, WPS said it had run a redress calculation that indicated Mr W had not incurred a loss. To bring matters to a close though, it said it was willing to make the payment of £300 the Investigator had recommended.

As a response to that offer was not initially received, the complaint continued to await a review by an Ombudsman.

The regulator, the Financial Conduct Authority ('FCA'), has since developed a BSPS-specific redress calculator. The calculator was developed for the BSPS consumer redress scheme. But it can still be used to carry out calculations in non-scheme cases, like Mr W's complaint with the Financial Ombudsman Service. Our Investigator informed both Mr W and WPS, that if the Ombudsman considering the case decided to uphold it, they may require WPS to calculate any redress due using the FCA BSPS-specific calculator.

In response, Mr W's representative said that any redress calculation should be done by an expert actuary, because Mr W's transferred BSPS benefits had been combined with other pension provisions (his personal pension).

More recently, we asked WPS if it would be willing to run a further loss calculation, using the FCA's BSPS-specific redress calculator. It said it would carry out the calculation, so we asked Mr W, via his representative, for some further information to enable this.

In response Mr W's representative said he wanted to wait for an Ombudsman's decision regarding the level of redress payable for the distress he'd incurred. This was because he now didn't feel the award previously recommended was sufficient or fair. Mr W explained he believed the advice had put his and his family's financial future in jeopardy. And this had caused him significant distress since he raised his complaint. Testimony from a third party to support this was provided which said Mr W had been concerned for some time and around June 2022 had explained that the 'pension scandal' at work, this constantly being in the news and his claim being unresolved had taken a significant toll on him.

Mr W also said he had seen friends and former colleagues who had left the BSPS receive substantial compensation. And he didn't think it was fair that he was now being told he may not receive compensation.

Mr W's representative did provide information though to enable a further calculation to be completed. And information was also obtained from Mr W's pension provider to enable this.

WPS said it had completed a further redress calculation which indicated again that Mr W had not incurred a loss. Due to some information not being available, this calculation was done including assumptions about dates and transfer amounts for when the pension was combined with other provisions. WPS said it was still willing to pay the £300 recommended. But Mr W's representative said he was still unwilling to accept this figure and required an Ombudsman's decision.

As agreement could not be reached, the complaint was passed to me to decide.

Mr W's representative has also said that, in the course of recent correspondence about a new calculation, WPS had committed a data breach. And they said they wanted me to consider the impact of this on Mr W when making my decision. I explained however that this was a new issue and WPS would need to be given the opportunity to consider a complaint about this. Therefore, I won't be considering it here.

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.

Although WPS initially didn't agree with the Investigator's opinion, it says it has carried out loss calculations and that it is willing to pay Mr W the £300 the Investigator recommended for the distress caused, to resolve matters. So, it has indicated that it agrees to take the steps the Investigator recommended to put things right.

With this in mind, what is effectively left for me to decide is if the Investigator's recommendation for resolving matters is fair and reasonable.

For the avoidance of doubt though, I have thought about the advice given. And 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 - including the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And, having done so, I agree with our Investigator's view that the advice was unsuitable, for broadly the same reasons.

WPS says that it was only required to take reasonable steps to ensure the advice was suitable for Mr W. I agree that under COBS, WPS was required to take reasonable steps to ensure that its personal recommendation to Mr W was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. Additional regulations and guidance also apply to advising on transferring out of DB schemes (COBS 19). These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that WPS should only have considered recommending a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr W's best interests (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll briefly explain why.

- WPS was required by the regulator to instruct a transfer value analysis ('TVAS'). This included the calculation of critical yields. WPS has suggested the Investigator placed too much weight on an analysis of the critical yields. But again, the regulator required WPS to calculate these and consider the cost of the guarantees being given up. So, I do think an analysis of the critical yields is a relevant consideration here.
- The relevant TVAS report said the critical yield required to enable Mr W to purchase benefits equivalent to the full starting pension the BPS2 would pay him from age 65 was 5.92%. And to purchase benefits equivalent to the full starting pension the PPF would provide from age 65 was 5.36%. WPS said Mr W was interested in retiring at age 60. So, it also calculated the critical yields required to match the pension benefits he could draw under both the BPS2 and PPF from age 60. These yields were 7.19% and 6.47% respectively. And these critical yields were only to match the benefits being given up – so Mr W would have needed to consistently achieve growth exceeding these levels to improve his pension benefits.
- 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. WPS has said it was not required to refer to the discount rate. But the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates

would have been considered reasonably achievable for a typical investor. And so, while WPS was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. The discount rate at the time was 4.4% for 18 years to retirement – relevant for retiring at age 65. And it was 4.1% for 13 years to retirement – relevant if Mr W retired at age 60.

- The regulator also published lower, middle and upper standard projection rates – which at the time of the advice were 2%, 5% and 8% respectively.
- WPS said Mr W had a 'low medium' attitude to risk but I'm not sure the answers he gave when WPS assessed this support that rating. There seem to be inconsistencies between some of the answers and indeed some of the objectives recorded. For instance, WPS said one of Mr W's main priorities was the security of his pension fund. But at the same time said he wanted to risk his pension in the hope of achieving good returns. And I think the information indicates he was in fact more risk averse than WPS recorded.
- But in any event, even if Mr W's attitude to risk was 'low medium' taking into account the critical yields, discount rates and the regulator's standard projections I think Mr W was likely to receive benefits of a lower overall value by transferring and investing in line with his attitude to risk. So, I don't think this supports that a transfer was in his best interests. And indeed, WPS acknowledged in its suitability report that the critical yields were high.
- WPS said Mr W hoped to retire from age 60 and thought he was likely to need an income of £1,500 per month from that point and wanted flexibility to access benefits when he chose.
- Mr W could've accessed pension benefits under the BPS2 and the PPF from age 60. So, he didn't need to transfer in order to take his benefits from that age.
- The TVAS calculated that under the PPF from age 60, Mr W could take a starting pension of £7,577.51 per year. And under the BPS2 he could've taken a starting pension of £8,340 per year. Mr W's personalised "time to choose" booklet however said that the starting pension the BPS2 would provide from age 60 was actually £8,871.52. Each of these figures would've continued to escalate when in payment. But all of them fell short, on their own, of Mr W's estimated income requirement.
- But Mr W didn't just have his BPS pension benefits. WPS recorded that he held another DB scheme from a period of previous employment – although it doesn't appear to have gathered any information about the income this would've offered Mr W. He also held a personal pension, in two parts, with another provider – which we know by mid-2018 was valued at approximately £37,500 in total.
- And Mr W was a member of his employer's new DC scheme. I think it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles, until he retired. Again, the information that WPS recorded at the time about this was limited. But Mr W has said that he and his employer were making combined contributions equivalent to 20% of his salary to this new scheme. So, with this in mind, and before even accounting for increases in salary, Mr W increasing his contributions or investment growth, Mr W was likely to have a pension pot through this scheme of roughly £107,000 by age 60, which he could've accessed flexibly.
- It appears that a combination of these pension benefits could've been used to enable

Mr W to meet his objectives, without exposing his BPS benefits to unnecessary market risk. And then when he reached state pension age, and began receiving that, would've been enough, in conjunction with his state pension, to continue to meet his estimated income needs. So, I don't think Mr W needed flexibility or to transfer, to achieve his apparent objectives.

- I'm also conscious though that Mr W was only 46 at the time of the advice and was a significant number of years away from when he thought he might retire. His circumstances, objectives or aims could've changed over the years that followed. And I don't think his plans for retirement were set in stone.
- So overall, I think it was too soon for an irreversible decision to transfer out of his DB scheme for flexibility in his pension arrangements to be considered in his best interests. Particularly when the BPS2 would've still provided the option to transfer out at a later date if his circumstances required it.
- WPS said the lump sum death benefits a personal pension offered appealed to Mr W. But the priority here was to advise Mr W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement not to leave a legacy after death.
- Mr W's DB scheme provided a spouse's pension. 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 the sum remaining in a personal pension, was always likely to be different to the CETV. So, while this no doubt was appealing as a potential lump sum, the pension was unlikely to provide this level of legacy – given it would be depleted by any benefits Mr W drew in his lifetime. And as there was no suggestion he suffered from ill health, it's reasonable to assume he was likely to rely on the pension to meet his needs in retirement, so his withdrawals may've substantially eroded the pension fund by the time it came to be passed on.
- If Mr W genuinely wanted to leave a legacy for his family, WPS could've instead explored life insurance. But I can't see that this was considered.
- Overall, I don't think different death benefits available through a transfer meant it was in Mr W's best interests. And ultimately WPS should not have encouraged Mr W to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- WPS said Mr W wished to take control of his pension. But I think Mr W's desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own – indeed it was recorded he had no previous investment experience. And the recommendation seems to have been on the basis he was going to take ongoing advice about how his pension was invested, at a cost. So, I don't think that this was a genuine objective for Mr W – it was simply a consequence of transferring away from his DB scheme.
- I don't doubt that Mr W was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer, concerns about what could still happen and 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 WPS's role was to give impartial, objective advice. Mr W's employer and pension scheme were not one and the same – which I think ought to have been emphasised if Mr W, as WPS suggested, was concerned about the stability of his employer. I also haven't seen anything to suggest Mr W didn't intend to

continue in his job. And he was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.

- Mr W may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been several key announcements 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 W the option to transfer closer to retirement. WPS has said that the BSPS2 was not confirmed at the time of the advice so was not a genuine option for Mr W. But I think it is overstating the chance of this not being established. The restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice. Actions had been agreed with The Pensions Regulator and carried out as scheduled – not least a significant lump sum payment into the BSPS which enabled the provision of improved transfer value quotations. Members had been sent “time to choose” letters, with opting into the BSPS2 one of the options offered to them. And indeed, WPS analysed the benefits that the BSPS2 would offer, when providing advice. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead.
- But even if this hadn’t happened, the PPF still provided Mr W with a guaranteed income and the option of accessing his benefits early. Mr W 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 concerns he held about this meant that transferring was in his best interests.

Overall, I can’t see persuasive reasons why it was clearly in Mr W’s best interest to give up his DB benefits.

WPS says Mr W was clear that he wanted to transfer his benefits and, in its view, would always have sought to do so, even if it had advised him against transferring. It also says he made an informed decision to transfer. So, I’ve thought carefully about whether Mr W would always have looked to proceed.

I can see that Mr W was in touch with WPS after the advice, enquiring whether the transfer had gone ahead. I can also see that he signed several declarations to say that he understood and was satisfied with the advice. But this was all after WPS had recommended that he transfer. I don’t think this indicates he’d have always gone ahead. But rather after he’d been given advice, which he had every reason to think was suitable, that he accepted that advice.

Mr W was an inexperienced investor – which was clearly recorded in the information gathered at the time. Ultimately, WPS advised Mr W to transfer. For the reasons I’ve explained, I don’t think that advice was suitable. I think Mr W relied on that advice. And if WPS, a professional adviser whose expertise he had sought out, had explained why it wasn’t in his best interests to transfer I think he’d have accepted that advice.

While I think Mr W did likely discuss retiring early with WPS, his circumstances could’ve changed, and I don’t think his plans were finalised. By opting into the BSPS2, Mr W 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 BSPS2. So, I think, had he received suitable advice not to transfer, Mr W would’ve opted into the BSPS2.

Our Investigator recommended that WPS carry out a redress calculation to determine if Mr W had been caused a loss by the unsuitable advice he received. And that WPS make a

payment to him for the distress caused. As I've explained whether this is fair is now what largely remains in dispute and what I need to decide.

Mr W has said he is aware of colleagues receiving compensation payments and says he believes it is unfair that he might not do so if the relevant calculation shows he hasn't incurred a loss.

I can understand that consumers like Mr W might have an expectation that, because they received unsuitable advice, they must be entitled to a form of redress to put that right. And that redress would be as well as any payment to compensate for distress. However, our role is not to fine or punish WPS nor is it to put him into a better position than he would have been had he not transferred.

Where we think an error has been made the aim of any recommendation we make is to put the impacted party, as far as possible, in the position they would've been in but for the error. As I've explained, I think, if he had been given suitable advice, Mr W would likely have remained in his DB scheme and joined the BPS2. But Mr W's pension benefits can't be returned to the BPS2. So, the aim of any award we make would be to put him back in the financial position he would have been in at retirement had he remained in the scheme.

The FCA developed and has set out a methodology for calculating redress where unsuitable advice has been given to transfer from a DB scheme (like the BPS). And it has developed a BPS-specific redress calculator, for this purpose. The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine. And while I appreciate Mr W may not agree, I think this is the fair and appropriate way for redress to be calculated here.

WPS has said it has already recently undertaken a redress calculation, using the FCA's BPS-specific calculator. And that this indicates Mr W has not suffered a loss and the current value of his SIPP, relating to the original BPS benefits, exceeds the cost of replacing the benefits he gave up. I haven't seen a copy of those calculations. But WPS has shared some information about some of the assumptions behind those calculations.

As I mentioned, after Mr W transferred his BPS benefits to a SIPP, he took further advice from WPS several months later, and also moved money from his existing personal pension to that SIPP. That advice was subject to a separate complaint so I'm not going to go into it in detail here. But in summary WPS recommended that Mr W transfer the larger part of his personal pension to the SIPP, but retain the smaller part, where it was.

The smaller part of Mr W's pension was later transferred away from the pension provider. WPS has said that this was against its advice. But for the purposes of calculating redress in relation to the BPS, I can see that it assumed this was also transferred to the SIPP and that this transfer took place around the same time as the larger part of the personal pension was moved, on its advice. However, I've seen evidence which suggests that assumption is

incorrect. In the documents we were sent in respect of the separate complaint there is a letter from Mr W's former personal pension provider which indicates the smaller part of his personal pension was not moved until December 2019 and that it was in fact transferred to a different provider than the one operating his SIPP.

I've shared that document with WPS but in short, what this indicates is that the assumption WPS used in the calculation it says it has recently completed is incorrect. Therefore, I think it is appropriate here that a further redress calculation be carried out.

Finally, Mr W and his representatives now dispute that the award for distress the Investigator recommended, £300, is fair.

I'd start by saying that any award for distress is not intended to punish a business. Nor is it intended to make up for any loss of expectation that a redress calculation may result in.

Mr W received advice from WPS in 2017. He first complained about that advice in 2021, after speaking to his professional representative. I haven't seen anything that suggests he indicated to WPS during that time, that he was concerned about the advice. And the first indication he potentially had any concerns about the advice seems to have been when he first discussed matters with his representative.

In the information I've been provided, it has been indicated that, when speaking in June 2022 about the impact of this on him, he'd been worried for some time. But this also noted that the 'pension scandal' at work and this regularly being publicised and covered in the news, was also behind these concerns. I think the coverage of the issues with the BPS was likely to have caused most members of the scheme anxiety - even those BPS members who didn't take advice and remained in the scheme. But again, I haven't seen any indication through any correspondence with WPS that Mr W was worried about the advice he received before he spoke to his professional representative. And indeed, he took further advice from WPS after that he received in respect of his BPS benefits. So, I don't think I can reasonably say the advice he received was the cause of any worry he had between it being given and the complaint being raised.

I note that, when speaking in June 2022, it was said that Mr W indicated his complaint not being resolved was causing him distress. But WPS was entitled to a different opinion about the advice and to take a different position. So, while having to make a complaint may've been frustrating, this isn't something I think it is fair and reasonable to recommend compensation for.

Mr W has said that he was worried the advice had put his financial future in jeopardy. But the BPS benefits were not his only pension provision - as I've covered above. These hadn't been lost entirely - the SIPP is still in place and the value of this doesn't appear to have fallen. And the calculation I'm instructing WPS to undertake will determine whether he has lost out financially.

I do accept Mr W was likely worried, after talking to his representative, that the advice might not have been suitable for him. Particularly given the ongoing coverage in relation to the BPS and the circumstances under which he first asked for this advice - when there was a lot of uncertainty regarding the pension scheme. I think most people, when they bring a complaint feel strongly about them, if they think something has gone wrong. I don't doubt after speaking to his representative, Mr W felt strongly about this complaint. And his concerns were likely, in my view, to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But again, our role is not to fine or punish WPS. And, in the circumstances, although I appreciate this will come as a disappointment to Mr W, I think the award of £300 recommended by the Investigator, which

WPS has indicated it is willing to pay, is fair in the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

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. I've already explained why I think a further calculation should be carried out – because I've seen evidence an assumption in relation to an additional contribution to the SIPP appears to be incorrect. But I don't think the BSPS benefits now being combined with other funds is a reason not to use the calculator at all – which I assume Mr W's representatives was suggesting when saying they believed an actuary should be instructed. I understand the calculator does allow WPS to account for the addition of other funds following a transfer. So, I think it is still appropriate to use the calculator. And WPS can enlist the assistance of an appropriate provider, should it need to.

A copy of the BSPS calculator output should be sent to Mr W 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, Mr W 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 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 W'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 W redress as a cash lump sum payment,
- explain to Mr W 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 W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts WPS' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

Redress paid to Mr W 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 W'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 W's representative's point regarding the 15% deduction. 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 W 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 W for the impact of the unsuitable advice he received.

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

My final decision

I uphold this complaint and require WPS Financial Group Limited to carry out the steps outlined in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 February 2024.

Ben Stoker
Ombudsman