DRN-3819289

The complaint

Mr M complains about the advice given by Michael James, trading as West Country Financial ('WCF') to transfer the 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.

What happened

Mr M held benefits in the BSPS. 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 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 M's employer would be set up – the BSPS2.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. 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 M's pension being £363,413.16. And in October 2017, Mr M, like other members of the BSPS, was sent a "time to choose" letter which gave him the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer his BSPS benefits elsewhere.

Mr M approached WCF in November 2017 to discuss his BSPS pension. WCF completed a fact-find to gather information about Mr M's circumstances and objectives. He was 43, in good health, married with two children. He was employed, earning approximately £43,000 per year. Mrs M was also employed and was said to be earning over £50,000 per year. Their income exceeding their outgoings and provided a monthly surplus of just under £3,750. They held savings of around £15,500. Mr and Mrs M owned their own home, with a mortgage due to be repaid in approximately 9 years. And they also owned a second property. This was rented out and providing additional income, after also covering mortgage costs – with the mortgage on that property due to be repaid in 14 years' time.

In addition to the benefits held in the BSPS, Mr M was also a member of his employer's new defined contribution ('DC') workplace pension scheme, to which he and his employer were making combined contributions equivalent to 16% of his salary. It was also noted that Mrs M had some pensions.

WCF noted in the fact find that Mr M said he enjoyed his job, considered he was well paid and planned to stay with his employer until retirement. But he was interested in retiring early at age 60. It said he would potentially begin phasing towards retirement from age 58 but was flexible about this. It said Mr M wanted to aim for an income of £12,000 per year in retirement. WCF said Mr M also wanted the flexibility to retire early without being penalised, access to alternative death benefits so his pension could pass in full to his family and control over his pension investments as it said he'd lost trust in his employer.

WCF also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'balanced'.

WCF has provided a copy of a suitability report, dated 5 December 2017, in which it advised Mr M to transfer his pension benefits into a personal pension with a named provider and invest in one of the provider's managed funds. The report said the reasons for this recommendation were that Mr M wanted flexibility to take benefits at 60 without reduction, although it noted a different target income figure of £15,000. It also said he wanted the opportunity to maximise the tax-free cash he could take and the option to leave his pension funds to his family as a lump sum in the event of his death. And WCF said Mr M had lost trust with his employer's handling of the pension. So, WCF thought a transfer was suitable. WCF also recommended that Mr M opt to receive ongoing support in respect of his pension, at a further cost.

I understand the transfer went ahead in line with WCF's recommendation.

Mr M complained in 2022 to WCF about the suitability of the transfer advice. Mr M didn't initially receive a response, so referred the complaint to our service. WCF subsequently said that it didn't think an error had been made and wouldn't be upholding Mr M's complaint. It said the advice was suitable based on Mr M's objectives, it had given a full explanation of the reasons for this, and Mr M had proceeded having understood the reasons for the advice.

One of our Investigators looked into the complaint and said it should be upheld. She didn't think Mr M's retirement needs were likely to be known, given how far from retirement he was. But in any event, she didn't think he needed flexibility or to transfer in order to achieve the aim of retiring at age 60. She also didn't think any of the other reasons given for transferring meant it was in Mr M's best interests to do so, particularly given she believed he was unlikely to improve on the benefits he'd be giving up. So, she recommended that WCF compensate Mr M for any losses caused by the unsuitable advice and pay him £300 for the distress he'd incurred.

WCF disagreed, saying the investigator had assessed the case on the wrong basis. It said it wasn't required to guarantee that the transfer would be in Mr M's best interests. Instead, the adviser was simply required to take reasonable steps to ensure the advice was suitable for him. And it said the Investigator had used a significant degree of hindsight, which it thought was unreasonable.

WCF said the Investigator had placed too much weight on an assessment of the critical yields and discount rate – the latter of which it was not required to consider. It also said the advice was suitable for Mr M's circumstances, and that he only required funds from this pension until state pension age, when his and Mrs M's retirement income needs would be met by that.

In addition, WCF said Mr M had made a fully informed decision to proceed with the transfer. It didn't agree that Mr M would've acted differently. And it said the BSPS2 was not a confirmed option at the time of the advice.

The investigator wasn't persuaded to change their opinion. She noted that WCF's argument that Mr M would not have needed to take benefits from this pension after state retirement age relied on his thoughts about what his needs might be in retirement being accurate, when his circumstances could've changed.

As agreement could not be reached 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 WCF'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.

WCF says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr M. I agree that under COBS, WCF was required to take reasonable steps to ensure that its personal recommendation to Mr M 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. And, as I've mentioned above, additional regulations and guidance apply to advising on transferring out of DB schemes. These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered recommending a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr M'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 explain why.

- WCF was required by the regulator to instruct a transfer value analysis ('TVAS') report. One of the pieces of analysis this included was the calculation of critical yields – how much Mr M's pension fund would need to grow by each year in order to allow him to obtain equivalent benefits at retirement to those provided by his DB scheme. WCF has argued these are of limited relevance and the Investigator's assessment placed too much emphasis on them. But again, the regulator required WCF to calculate the critical yields and to consider the cost of the guarantees being given up. So, I do think an analysis of the critical yield is a relevant consideration.

- The TVAS WCF instructed didn't analyse the benefits that Mr M could've received under the BSPS2. And critical yields were not calculated in reference to this. This is despite information about revaluation and escalation rates being known at the time. I also note an independent, pre-sale review of the advice, that WCF has provided, questioned this not being analysed. WCF has argued that the BSPS2 may not have gone ahead. But I think it is overstating the chance of this. The restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice and instructed the TVAS. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations. 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. And I think WCF should've analysed the BSPS2 benefits and instructed a TVAS exploring this.

- The TVAS WCF did instruct said the critical yield was 6.47% to match the full pension Mr M would have been entitled to under the BSPS at age 65. Or, to match the full starting pension the PPF would've paid from 65 the critical yield was 3.96%. No critical yield figures were calculated in respect of Mr M opting to take tax-free cash and a reduced pension – which again I'd question, given WCF suggested taking tax-free cash was something Mr M was interested in.

- The report also looked at the critical yields required to match the benefits Mr M would've been entitled to from age 60. To match the full pension the report estimated the BSPS would provide from that time the critical yield was said to be 7.25%. And to match the full starting pension under the PPF from age 60 it was 4.28%.

- Given what we know about the BSPS2, I think the critical yields to match the benefits it would've provided were likely to be between those of the BSPS and the PPF. And it is worth bearing in mind that the critical yields were the estimated returns required just to replicate the benefits being given up, not improve on them.

- 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.

- WCF has said it was not required to consider these discount rates. 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. The discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So, while WCF was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And WCF was free to consider it.

- The relevant discount rates at the time were 4.5% for 21 years to retirement – relevant if Mr M retired at age 65 – and 4.3% for 16 years to retirement – relevant if he retired at 60. And although WCF has referred to past performance of the recommended fund, as it is aware, this is no guarantee for future performance. So, I consider the discount rates, along with the regulator's standard projections, to be more realistic in the long term rather than projecting historic returns forward, particularly over such a long period of time.

- There would be little point in Mr M giving up the guarantees available to him through his DB scheme and taking on the associated risks only to achieve, at best, the same level of benefits outside the scheme. And by transferring Mr M would have to pay annual fees and charges for the personal pension, which would reduce any gains the funds made. And those are not charges he would have had to pay if he didn't transfer.

- Here given Mr M's recorded 'balanced' 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 if he retired at age 60, by transferring.

- In respect of the benefits he could potentially receive at the normal scheme retirement age, there does seem to have been more scope for him to replicate those benefits under the PPF. Again, WCF failed to analyse or calculate critical yields in respect of the BSPS2 benefits. So, we don't know what these were. Based on the estimated pension values in the "time to choose" documents, it seems likely those yields were likely to be closer to those of the BSPS at age 65. But, even if they were more towards those of the PPF, the scope to improve Mr M's benefits at age 65 was still limited. And, if his fund had an extended period of poor performance or suffered losses then he would likely find himself worse off in retirement. So, this isn't enough, in my view, to justify the transfer as Mr M would be taking on the risk of the personal pension providing lower benefits which he didn't need to do.

- And the critical yields aren't the only thing that, in my view, indicates Mr M may be worse off in retirement by transferring. The TVAS estimated that the cost, or pension fund value that would be required, to purchase equivalent benefits at age 60 to those the BSPS would provide was £910,636. Or to purchase benefits equivalent to those the PPF would pay was £570,847. A personalised illustration from the recommended pension provider though said that if the mid-rate of growth was achieved until age 60, after accounting for fees and charges, the projected value of the personal pension was only £382,000. And similar figures for retirement at age 65 put the cost of replicating BSPS benefits at £1,027,774, replicating PPF benefits at £614,556 but the projected value assuming mid growth, at only £390,000. In both scenarios those sums are significantly below what would be needed to replicate the guaranteed benefits that Mr M was giving up.

- WCF has said there were other reasons that meant the transfer was suitable for Mr M. It said he wanted to retire before the normal scheme retirement age and have flexibility to take benefits early, and to not be penalised for this. It also said he was interested in alternative death benefits and wanted to take control of his pension away from his employer. But WCF's role was not one of wish fulfilment or to put in place what Mr M might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests.

- Under the BSPS2 and the PPF, Mr M could've taken pension benefits at age 60. And he could've taken tax-free cash. It is true that his pension benefits would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age. And I don't think WCF did enough to objectively explain this.

- The TVAS said that, at age 60, Mr M could've taken a pension starting at £15,775 under the PPF. And Mr M's "time to choose" letter indicated that he was estimated to be able to take a starting pension of £19,382.71 under the BSPS2. Both of which would've been sufficient to meet Mr M's income needs and would be guaranteed for the rest of his life. And his new workplace pension, which it was reasonable to assume he'd have continued to contribute to until retirement, would've provided him funds that he could use flexibly, had he needed to.

- WCF said Mr M was interested in taking tax-free cash when he retired. Based on the information recorded at the time of the advice, both of his outstanding mortgages and the other liabilities noted would've been repaid in full by the time he retired. And there wasn't any expenditure noted that tax-free cash was earmarked for. WCF said Mr M was potentially interested in tax-free cash to supplement his income, pay for holidays or potentially put towards purchasing another rental property. But I don't think any of these objectives were set in stone. In any event though, the "time to choose" letter said that Mr M could potentially draw £92,790.79 in tax-free cash at age 60 and receive a reduced annual pension starting at £13,918.62. So, he could've still had a significant tax-free cash sum available for these purposes. And Mr M again would've built benefits in his new workplace pension, that he could've also taken from age 60 had he needed access to further funds.

- WCF has said that Mr M would only have needed to draw benefits from his pension, following a transfer, until he reached state retirement age. And has suggested the income would then have become unnecessary. But I think it's rarely the case that people complain of having too much money. And by remaining in the DB scheme Mr M would've been guaranteed a pension that would've met his recorded income needs from age 60. With these needs met, Mr M could've chosen to leave his new workplace pension, which was already subject to investment risk, untouched and allowed it to continue to grow in retirement. And Mrs M could've done the same with her pensions.

- So, I don't think Mr M had a genuine need for flexibility or a variable income from this pension in retirement. Nor do I think he needed to transfer to achieve his objectives of early retirement and a specific income. And by transferring he was exposing his pension fund to the volatilities of the investment markets and putting his otherwise safeguarded DB scheme pension income at unnecessary risk – when his other retirement provisions were already subject to that risk. And I don't think that was in his best interests.

- And, in any event, Mr M was only 43 at the time of the advice, over 16 years from when he thought he might retire. I think his plans were unconfirmed at the time of the advice and his circumstances, objectives or aims could've changed over the years that followed. So, I think it was too soon for Mr M to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2, which as I've said would've allowed him to meet his expected needs. Also, by joining it he would retain the option to transfer out at a later date if his circumstances required it.

- WCF has said that Mr M was concerned about his pension fund dying with him and wanted to transfer so that he could pass on his pension as a lump sum. The priority here though was to advise Mr M about what was best for his retirement. A pension is primarily designed to provide income in retirement not a legacy for family on death.

- The existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to Mrs M in the event of his death. And although the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. It would've been dependent on investment performance and would've been reduced by any income Mr M drew in his lifetime. So, the pension may not have provided the legacy that Mr M may have thought it would.

- Mr M's new workplace pension – which again it is reasonable to think he'd have continued to contribute to until retirement – already gave him a fund with lump sum death benefits. And, with his DB scheme pension apparently sufficient to meet his income needs in full, this could've been left invested, to provide a lump sum on his death, without putting his guaranteed pension at risk.

- Mr M also had the option of taking out insurance to provide a legacy to his family. WCF said this was considered. It has provided evidence of quotes for the potential cost of a whole of life and term assurance policy for a sum equal to the CETV. I'd start by saying that basing the quote for life cover on the transfer value of Mr M's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Rather the starting point ought to have been to ask Mr M how much he would ideally like to leave to his family, which also would've served to illustrate that this wasn't in fact just a generic objective.

- In any event though, the cover quoted appears to have been affordable for Mr M. WCF said in the suitability report that Mr M didn't want to pay for life cover – which it quoted as being £273.05 per month for a whole of life policy or £69.15 per month for term assurance to age 89. Notwithstanding that the figures used in the suitability report don't appear to represent the cheapest options on the comparisons it has provided, given the level of disposable income Mr M had each month, these policies were affordable. And, while he might've thought he wanted to make sure his pension lived on, WCF's role was to advise Mr M about what was in his best interests. Again, the purpose of that pension was to provide for his needs in retirement. And any legacy it did provide was likely to be substantially different to the CETV. So, I don't think it was in his best interests to give up his security in retirement to achieve this.

- WCF says Mr M had lost trust in his employer's handling of his pension and, as he was paying into a new pension scheme with his employer, he didn't want to have all his "eggs in one basket". The DB scheme and his new workplace pension were entirely separate though. And were very much not "one basket". The new workplace defined contribution pension, although being contributed to through his employer, was held and operated by a large, well known pension provider. It was already subject to investment risk – which was borne by Mr M. And Mr M had the option of requesting changes to how this was invested. Mr M's DB scheme pension was entirely different, run by trustees, who were not one and the same as his employer. The pension scheme assumed all of the risk and guaranteed to provide a pension of a certain amount to Mr M. If anything by transferring to a personal pension, although it would've been invested in different funds through a different provider, Mr M would've been bringing his pensions closer together in terms of characteristics. And so, if Mr M did in fact state he didn't want all of his "eggs in one basket" I can't see that WCF did nearly enough to challenge or objectively address that statement.

- I don't doubt that Mr M 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 again, WCF's role was to give impartial, objective advice. Mr M's employer and pension scheme were not one and the same. And Mr M intended to continue in his job with his employer until he retired. So, the relationship may not have been as irretrievably broken down as suggested.

- As I've already said, there had been a number of 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 M the option to transfer closer to retirement. WCF has said Mr M was worried that this scheme could've also failed in the future. But there wasn't any information that indicated this was a reason for concern, which I'd have expected WCF to address.

- And even if the BSPS2 hadn't been established, the PPF still provided Mr M with a guaranteed income and the option of accessing his benefits early. And, as I've explained, would've provided him with guaranteed benefits that would've met the objectives he'd discussed at the time. 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.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a personal pension.

WCF says that Mr M made an informed decision to transfer and that the Investigator did not have enough regard for this. I can see that WCF did give information about some of the risks involved in a transfer, when it made its recommendation. And I can see that Mr M set out in writing that it was important for him to transfer and why, when confirming he'd read the recommendation. But this statement was made after WCF gave its advice and had said transferring was in his interests. And the reasons why were largely repetition of why the suitability report had said a transfer was in Mr M's interests.

Ultimately, WCF advised Mr M to transfer. And, while he might've entered the discussions thinking about transferring, Mr M was an inexperienced investor and I think he relied on that advice. So, if WCF, a professional adviser whose expertise he had sought, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr M received from WCF was unsuitable.

Mr M had over 16 years before he reached the age at which he'd indicated he might like to retire. And I think any thoughts he had about retiring were unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. The estimates in the "time to choose" document and the TVAS suggested that at age 60 he was likely to be better off in the BSPS2. 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, under the BSPS2 the spouse'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 (even if one was ultimately taken). And 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 M would've opted into the BSPS2. And I think WCF should compensate him on this basis.

WCF has suggested it wasn't the business that provided ongoing advice, so it isn't responsible for what has happened since the transfer. But if WCF hadn't advised Mr M to transfer, none of the subsequent investments would've happened. WCF's role was pivotal, since the eventual investments were fully reliant on the funds being transferred first. So, in my view, the entirety of any loss Mr M might've incurred stems from WCF's unsuitable advice. So, I think holding WCF responsible for the whole of any loss represents fair compensation in this case.

Our Investigator recommended that WCF make a payment for the distress caused to Mr M. I accept that Mr M has likely been worried to find that the advice might not have been suitable for him. And given the circumstances and uncertainty under which he first asked for this advice, I don't doubt he has been concerned. This wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £300 is fair and reasonable.

Putting things right

A fair and reasonable outcome would be for WCF 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 and opted to join the BSPS2 if suitable advice had been given.

WCF 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.

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

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, 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 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, WCF should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts WCF'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, WCF 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.

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

Where I uphold a complaint, I can award fair compensation of up to £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

<u>Determination and money award</u>: I uphold this complaint and require Michael James, trading as West Country Financial to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that Michael James, trading as West Country Financial pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Michael James, trading as West Country Financial.

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 20 December 2023.

Ben Stoker
Ombudsman