DRN-3887801

Financial Ombudsman Service

The complaint

Mr R complains about the advice given by Kathryn Brown to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension plan. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr R approached Kathryn Brown in April 2017 as he and his wife were considering buying a new home and were wondering if there was any way he could release money from his pension to do so. Mr and Mrs R lost the property they were interested in buying a short while after but Kathryn Brown suggested it meet with Mr R anyway to discuss his pension options.

Kathryn Brown completed a fact-find to gather information about Mr R's circumstances and objectives. It noted the following:

- Mr R was aged 43 and married with three dependent children.
- He was employed as a manager earning £62,717 per year.
- Mr and Mrs R had joint total monthly commitments of approximately £1,600 including their mortgage payment of £639. Their disposable income was noted as being £2,700.
- Mr and Mrs R's home was valued at £320,000 with an outstanding mortgage of £185,000.
- Mr and Mrs R owned two plots of land worth about £100,000 and £25,000 respectively. They had no other savings or investments.
- Mr R was a member of his current employer's DB pension scheme which had a cash equivalent transfer value ('CETV') of £967,101.04. Aside from his state pension this was the only pension that he had at the time.
- Mr R wanted to be able to start taking his pension benefits at age 55 and to take more money to enjoy himself in the early years of retirement and then less as he got older.
- He may reduce his working week or step down to a lesser role and wanted to avoid impacting his pensionable salary.

Kathryn Brown also carried out an assessment of Mr R's attitude to risk, which it deemed to be 'balanced'.

On 15 May 2017, Kathryn Brown issued Mr R with its suitability report and advised him to transfer the scheme benefits from DB scheme to a personal pension, with a provider I'll call 'Z', and invest the proceeds in a moderately cautious managed investment fund. The suitability report said the reasons for this recommendation were, in summary:-

- The ability for Mr R to pass on the full value of his pension to his dependents in the event of his death.
- Protection of his transfer value should he reduce his working hours in the future.
- The potential to take benefits at age 55 and to vary his income in order to drawdown a larger income in the early years of retirement.

Mr R accepted the recommendation and the transfer took effect shortly after; a total of £967,101.04 was received into the personal pension with Z. Kathryn Brown's fee for arranging the transfer was £9,671.01 and it charged an ongoing annual adviser fee of 0.5% of the fund value. Z also made an annual product charge of 0.35% on the first £100,000 of the fund value, 0.3% on the next £150,000, 0.27% on the next £750,000 and 0.22% on the fund value over £1million. In addition Z made a further £75 charge each year and there was an annual fund manager charge of 0.83%.

In January 2022 Mr R complained to Kathryn Brown about the suitability of the advice it had given him to transfer his DB scheme benefits. More specifically Mr R said:-

- His main objective had been to take his pension benefits at 55 but he was concerned that the pension age was being raised to 57. Mr R said he'd not been informed about this at the time of the advice and that if he'd known about it he would have remained in his DB scheme and retired at age 55 from that instead.
- That the potential risks associated with the transfer hadn't been explained to him.
- That he'd received no projections and that the only illustration he'd received at the time of the advice was based on him retiring at age 65. He said he could have taken a full pension from his DB scheme at age 60.
- That the benefits he was giving up weren't explained to him and that he received no information about his DB scheme at the time of the advice.
- He felt the personal pension had been mis-sold and he wanted redress.

Kathryn Brown looked into Mr R's complaint but found no evidence to suggest the advice it gave him was unsuitable or that the personal pension had been mis-sold. It said it didn't accept that he hadn't been provided with information or that the risks hadn't been fully explained to him; it referred to the documents he'd signed at the time to say he understood the advice he was being given. It said his main priority had been to pass the full value of his fund on to his family upon his death and it said he had wanted to protect the CETV of the scheme in the event he reduced his hours or took a more junior, less well paid, position. Kathryn Brown said it was happy that the advice it gave Mr R was suitable and allowed him to achieve these objectives.

Unhappy with the outcome of Kathryn Brown's investigation Mr R referred his complaint to our service. Our Investigator looked into his complaint and recommended that it was upheld. He thought that Mr R should have been advised by Kathryn Brown to remain in his DB scheme as there was little evidence he needed the freedoms that a personal pension offered. Our investigator recommended that Mr R be compensated in line with the regulator's (the Financial Conduct Authority – 'FCA') guidance.

Kathryn Brown disagreed with our Investigator's findings. It repeated that Mr R wanted to ensure upon his death that his family could inherit the full residual value of his pension fund rather than just his wife (and children, depending on their age at the time) receiving a percentage of his DB scheme pension. It also said Mr R wanted to be able to access his pension pot flexibly rather than have a fixed income. Kathryn Brown went on to say that Mr R's retirement wasn't entirely reliant on his pension because he had other assets and at least 12 years of employment left during which he could make contributions to his employer's defined contribution ('DC') pension scheme (which Mr R had joined after the transfer) thereby giving him further assets at his desired retirement age. Finally, Kathryn Brown said our Investigator had not considered whether or not any unsuitable advice it had given was causative of any loss to Mr R. So it said it didn't understand how our Investigator could decide it was liable without doing so.

Kathryn Brown said that, subject to receipt of any further comments from our Investigator, it would consider what he said and then decide if an oral hearing might be required in this complaint.

Our Investigator replied to say that whilst Mr R's intentions hadn't been without reason they weren't sufficiently compelling, on balance, to outweigh the loss of the guaranteed benefits offered by the DB scheme. He said this was particularly the case given his reliance on the scheme for his retirement income. Our Investigator said that Kathryn Brown's priority was to make a recommendation for Mr R based on what was best for his retirement. And he added that he didn't agree that the different way in which death benefits were available in a personal pension justified giving up his guaranteed benefits under the DB scheme. Finally our Investigator said there'd been no analysis by Kathryn Brown of Mr R's retirement income needs and he said he'd seen no evidence that Mr R would have transferred his benefits without Kathryn Brown's recommendation. So he thought Kathryn Brown's advice had been causative.

No further response was received from Kathryn Brown so the complaint was referred to me for 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 Business ('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 Kathryn Brown's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Kathryn

Brown should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. 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.

Mr R was aged 43 at the time of the advice and wanted to retire early at age 55. Kathryn Brown carried out a transfer value analysis report (as required by the regulator) showing how much investment growth (known as the critical yield) Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.

The critical yield required to match Mr R's benefits at the scheme's normal retirement date ('NRD') of age 65 was 5.91% if he took a full pension. No analysis was included for Mr R taking tax free cash ('TFC') and a reduced pension. Nor was there any analysis or critical yield produced for Mr R taking early retirement at age 55. I think that Kathryn Brown should've provided Mr R with the relevant critical yields for retiring at age 55 so that he was able to make an informed decision given that he had expressed a desire to retire at that age. But I do know that when the advice was given the relevant discount rate was 4.5% per year for 21 years to retirement at age 65. And the discount rate for retiring at age 55 was 3.9%. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr R's balanced attitude to risk and also the term to retirement. There would be little point in Mr R giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield to his NRD was 5.91%, I think Mr R was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. And the critical yield was likely to be higher at age 55 (and age 60) given the fund will have had less time to grow.

I've thought too about Mr R's capacity for loss. I can see that the suitability report said that Mr R's financial position was such that any loss of capital would not impact his standard of living or affect his objectives. Mr R's DB scheme was his only pension in which he had 25 years of service. And given his only assets aside from his mortgaged home were the two plots of land and that he had no other anticipated sources of income (except for his state pension entitlement and any fund he went on to build up in his employer's DC scheme that he later joined) I don't think he had any capacity to absorb a loss on the pension transfer. If it was acting in his best interests, I think Kathryn Brown should have made that clear to Mr R when it was advising him.

Also Mr R had no investments or savings and his DB scheme represented the entirety of his retirement savings. Despite having no investment experience, Kathryn Brown advised him to transfer his secure guaranteed benefits into a risk-based investment scheme. I can't agree, from the evidence I've seen, and to which I have referred, that Mr R had sufficient capacity for loss for this because, at the time of the advice, he was totally reliant on his DB scheme for his retirement income (aside from any state pension retirement – but not until age 67) and had no other savings or investments which he could fall back on.

It’s also worth mentioning that Kathryn Brown was obliged by the regulator to have due regard to Mr R’s information needs and was required to act honestly and professionally in accordance with the best interests of its client. By not providing Mr R with complete information to allow him to make an informed decision about the critical yield for retiring at age 55, and even at age 60 (the age at which he could take benefits from his DB scheme without reduction), I don’t think Kathryn Brown can be said to have properly discharged its regulatory obligations in this respect.

For financial viability reasons alone a transfer out of the DB scheme wasn’t in Mr R’s best interests. Of course financial viability isn’t the only consideration when giving transfer advice, as Kathryn Brown has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I’ve considered these below.

Flexibility and income needs

It seems one of the reasons that Kathryn Brown recommended Mr R transfer his DB scheme was for the flexibility and control it offered him. Having considered the evidence, I don’t think Mr R needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement. I can see from the CETV that Mr R was forecast to receive an estimated annual pension from the DB scheme of £60,632 at NRD. And I can also see from CETV that scheme members could choose to retire from the scheme at age 60 with non-reduced benefits. The scheme information states that early retirement factors were only applied to members taking retirement under the age of 60. So Mr R could have taken retirement at age 60 from the DB scheme without penalty. But I can’t see that Kathryn Brown carried out a full assessment of Mr R’s scheme benefits, or assessed what income he needed in retirement, to see if he could achieve his goal of early retirement by remaining in the scheme.

Mr R was only age 43 at the time of the advice, and based on what I’ve seen he didn’t have concrete retirement plans. Mr R told Kathryn Brown that his role at work was stressful and that one of the reasons he was looking to transfer his pension was that it would allow him to reduce his workload by demoting himself to an inferior role. Kathryn Brown noted that Mr R was aware that by doing this he would be reducing his pension benefits (presumably as a result of the way in which they were calculated) but felt he would be happier and less stressed as a result.

It isn’t clear whether this was a definite plan of Mr R’s and, if it was, what the timetable was for its implementation. Nor is it clear if this was something his employers would permit and, if they would, exactly what the financial impact on his DB scheme benefits would be. So, not only was it too soon to make any kind of decision about transferring out of the DB scheme to facilitate retirement at age 55 given that Mr R had 12 years before he could even think about accessing his pension, it was also too soon to make any kind of decision about transferring out for this reason.

I don’t think it was suitable to advise Mr R to transfer on the basis he may seek to downgrade his role at work without fully exploring the timetable for doing so, ascertaining whether it was at all possible and also finding out precisely the effect any downgrade in role would have on his scheme benefits. Without this information, Kathryn Brown wasn’t having regard to Mr R’s information needs in order that he could make an informed decision about whether the transfer was in his best interests. And Mr R’s objective of downgrading his role at work didn’t displace the need for Kathryn Brown to provide suitable advice even if, in so doing, it challenged any pre-conceived intentions Mr R may have had – Mr R had no prior experience of making decisions of this nature so he couldn’t know for sure whether these intended actions were in his best interests.

So, I don’t think it was a suitable recommendation for Mr R to give up his guaranteed benefits now when he didn’t know what his needs in retirement would be or whether he would, or could, downgrade his role at work. If Mr R later had reason to transfer out of his DB scheme then he could have done so closer to retirement.

It's evident that Mr R could not take his DB scheme benefits flexibly. Although he could choose to take TFC and a reduced annual pension, Mr R had to take those benefits at the same time. But I’m not persuaded that Mr R had any concrete need to take TFC and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a ‘nice to have’ rather than a genuine objective. An adviser’s job isn’t to simply facilitate a customer’s wants. Any objectives should be thoroughly interrogated to determine if they are realistic or not or achievable through other means. And ultimately the adviser had to determine whether giving up the secure, guaranteed benefits available through the DB scheme was in Mr R’s best interests.

But I’ve seen no evidence that Kathryn Brown meaningfully explored Mr R’s retirement objectives with him. Most people, if asked, say that they would want to retire as early as possible. But if Kathryn Brown had had full regard to Mr R’s information and communication needs I think it should have explored his actual retirement plans and what was important to him.

I can’t see that Kathryn Brown determined what income Mr R would require in retirement, or whether he could put the monthly disposable income of £2,700 identified on the fact-find towards building a savings pot which could provide him with flexibility in retirement. I can’t see either when Mr R’s mortgage was due to be paid off which, when it is, would mean his disposable income would increase thereby allowing him to further add to a flexibly accessible savings pot in order to top up his retirement income. This could all have been achieved without transferring and giving up his scheme benefits however, none of this seems to have been explored by Kathryn Brown.

Mr R’s monthly outgoings at the time of the advice were approximately £1,600 and this figure includes his mortgage repayment of almost £700. So it is entirely feasible that even by taking his DB scheme benefits at age 55, where I can see there was a forecast for an annual income of £30,469, that this would have been sufficient income to meet his needs. But, as I’ve said, I’ve seen no evidence that this option was explored by Kathryn Brown. So without any realistic insight into what Mr R’s retirement lump sum and income needs and aspirations were it is difficult to understand how Kathryn Brown was able to conclude that the transfer was in his best interests.

Finally, Mr R says that if Kathryn Brown had informed him at the time of the advice that the normal minimum pension age (the age at which pensions can be accessed) was set to increase from age 55 to age 57 then he would have left his DB scheme benefits where they were so he could have accessed them at 55. Whilst I acknowledge the point that Mr R has made here, as I think that the transfer or Mr R’s DB scheme was unsuitable for other reasons, I don’t propose to provide any comment on this specific point.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr R. But I can’t see that Kathryn Brown explained to Mr R that if he lived a long life, or drew down his benefits until his plan was exhausted, that there would be nothing to leave to his beneficiaries.

So whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his *retirement* provisions. A pension is primarily designed to provide income in retirement. And I don't think Kathryn Brown explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr R was married with three dependent children and so the spouse's and dependent's pension provided by the DB scheme would've been useful to his spouse and children if Mr R predeceased them. I don't think Kathryn Brown made the value of this benefit clear enough to Mr R. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Kathryn Brown noted Mr R's main objective as being to protect the full value of his pension in the event of his death, and to pass on the full value of the plan to his wife and children. And, as I've said above, if Mr R lived a long life then his fund may have been significantly depleted and there would be little left to pass on. In any event, Kathryn Brown should not have encouraged Mr R to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr R genuinely wanted to leave a legacy for his spouse and/or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Kathryn Brown should've instead explored the option of life insurance. I appreciate that Kathryn Brown obtained some quotes for Mr R for a whole of life policy with a sum assured of £1,158,183 - this was discounted by Mr R because of the cost (the cheapest policy having a premium of £1,028 per month). But I don't think that this was a balanced way of presenting this option to Mr R.

Basing the quote on a sum assured that was larger than the transfer value of Mr R's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr R wanted to leave whatever remained of his pension to his spouse and children, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr R how much he would ideally like to leave to his wife and children, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

I note that Kathryn Brown has referred to the assets Mr R has (the two plots of land) and which he could use in retirement. But I think that to be able to rely on these assets to justify the transfer Kathryn Brown needed to analyse how they could have provided Mr R with a retirement income and, if they could, whether they would provide enough of an income to meet his retirement income needs; but Kathryn Brown didn't undertake such analysis.

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

Suitability of investments

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

Summary

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

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr R was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So, I think Kathryn Brown should've advised Mr R to remain in his DB scheme.

Of course, I have to consider whether Mr R would've gone ahead anyway, against Kathryn Brown's advice. Kathryn Brown argues that it needs to be established that any unsuitable advice it gave was causative of Mr R's loss. It says this requires consideration of what would have happened had it advised Mr R to remain in his DB scheme.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against Kathryn Brown's advice. I say this because Mr R was an inexperienced investor with a balanced attitude to risk and this pension accounted for the vast majority of his retirement provision. So, if Kathryn Brown had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice. It is also worth stating that I've seen no evidence that Mr R would've insisted on going against such advice had it been given. I'm not persuaded that Mr R's objectives were such a priority for him that he would have insisted on the transfer knowing that a professional adviser, whose expertise he'd sought out, didn't think it was suitable for him or in his best interests.

And if Kathryn Brown had explained to Mr R that he was always unlikely to exceed the guaranteed benefits available to him by transferring, that he shouldn't be prioritising death benefits over retirement benefits, that the flexibility he sought could be met by other means, that the uncertainty over his requirements meant transferring at that time was not in his interests and that the other things he'd expressed worry about were not things he needed to be as concerned about as he was, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of the DB scheme. It follows that I think that the unsuitable advice Kathryn Brown gave Mr R was causative of his loss.

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

Finally I should state that I note Kathryn Brown's comment in response to our Investigator's view that, subject to receipt of his further comments it would consider whether an oral hearing may be required in this case. I note that Kathryn Brown has had over six weeks to consider our Investigator's further comments (and that our Investigator chased it in the interim) but that no further comments have been forthcoming either in relation to the merits of this complaint or in respect of any hearing request. As no hearing request has been made there is nothing for me to consider in this respect and, in any event, I'm satisfied that I have sufficient evidence on which to reach a fair and reasonable conclusion without holding a hearing.

Putting things right

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

Kathryn Brown 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.

For clarity, Mr R 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 R'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, Kathryn Brown should:

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

Redress paid to Mr R as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Kathryn Brown 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 R'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.

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

My final decision

Determination and money award: I uphold this complaint and require Kathryn Brown to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Kathryn Brown pays Mr R the balance.

If Mr R accepts this decision, the money award becomes binding on Kathryn Brown.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 1 June 2023.

Claire Woollerson
Ombudsman