DRN-4290912

The complaint

Mr D says the advice given by Berkley Jacobs Financial Services Limited (BJF) to transfer his deferred defined benefit (DB) pension to alternative arrangements in 2001 was unsuitable.

It is of note that certain business of BJF was later acquired by Ascot Lloyd Financial Services, a trading name of Capital Professional Limited (CPL). The agreement reached included provision for it to deal with any complaints arising within a given financial cap and up until 2024. Mr D's case falls within that contract for consideration by CPL.

Mr D is represented by Spencer Churchill Law Ltd (SCL).

What happened

Mr D started to work for an employer in 1981 and became a member of its DB scheme in 1986. He was employed as a foreman. He left the business in 1996 having accrued nearly ten years of reckonable service. His annual salary at that time had been about £12,400. And the value of his deferred annual pension at the date of his departure was around £2,570.

Mr D says he was approached by BJF about retirement planning. And from the limited contemporaneous evidence available it's clear it did provide him with advice about his DB pension scheme. For example, in June 2001 he completed a letter of authority to enable it to obtain information from third parties. At the top of the form it confirmed it would be providing him with advice about his pension.

In July 2001 the firm wrote to his DB scheme administrator on Mr D's authority. It was seeking information about his deferred benefits and it enclosed a Pension Transfer Questionnaire for it to complete. In August 2001 BJF wrote to the administrator again, this time seeking information to enable it to conduct a Pension Analysis.

By September 2001 BJF confirmed to Mr D's DB administrator that he wanted to transfer his pension value. It sent details of his new personal pension provider, applications for his new pension plans which it needed to complete and the DB scheme discharge form.

The administrator of Mr D's former DB scheme confirmed the total transfer value of his deferred benefits was about £35,383. It noted that of this around £9,432 attracted Guaranteed Minimum Pension (GMP) rights - this was to be placed in a Section 32 plan. The remainder of the payment was to be placed in a personal pension plan.

Mr D took the retirement benefits from his personal pension plan almost immediately following the transfer. He bought a level single life annuity effective from October 2001 which provided an annual income of £765. And he took tax-free cash (TFC) of around £11,313. Mr D completed a mandate which showed BJF was to receive a fee of £1,131 to be taken from his TFC in respect of the advice it gave him.

A number of key documents from the original transaction are missing. So, for example, we don't have an adequate contemporaneous record of Mr D's circumstances at the time, his objectives or his attitude to risk. But he has told this Service he accessed tax-free cash from the transfer of his pension and that he used this to help repay debt he had at the time.

SCL, on behalf of Mr D, raised a complaint with CPL in May 2022. It said:

"Mr D was advised that by transferring his pension, he would be able to access his pension at an earlier age. However, this was without the understanding of what he was giving up as a result. Mr D was not informed of any benefits he would be losing by transferring out of the final salary pension, had this been discussed with him at the time, he would not have proceeded with the advice."

SCL went on to set-out several concerns about what had happened to him in 2001. For example, it said he lost valuable guarantees as a result of the transfer of his DB pension and he wasn't properly informed about this. It said his risk appetite and capacity for loss wasn't assessed. It said BJF hadn't followed the regulations in place at the time it gave advice.

CPL responded on 6 January 2023 rejecting Mr D's complaint in the following terms:

"Ascot Lloyd Financial Services Limited acquired the assets of business of Berkeley Jacobs Financial Services Limited in 2014 and agreed to handle certain complaints that might be received. Berkeley Jacobs Financial Services Limited was deauthorised by the FCA in 2016, and subsequently wound up and dissolved as a company. We therefore no longer have access to their client records. We cannot therefore establish what advice you received from Berkeley Jacobs Financial Services Limited and whether you had cause for complaint about it more than 3 years before you complained. Given the advice was provided more than 6 years ago, if you ought to have been aware of cause to complain more than 3 years ago, your complaint would likely be time-barred in any event."

"Based on the above, I am unable to uphold your complaint as I am unable to investigate the complaint points you have raised. Whilst I note that you have provided some documentation in relation to the transfer, this is in the form of an application form and confirmation of transfer only. There is no further documentation available to allow us to assess the advice that was given."

Mr D rejected CPL's response and brought his complaint to this Service. An Investigator reviewed his case and while he concluded it was within our jurisdiction he didn't uphold it. He issued two views and summarised his position in the following terms:

"There is insufficient evidence to uphold a complaint. Given what is known, it would be reasonable to transfer in order to access a tax free cash lump sum and annuity immediately with the majority of the funds and take more of a risk with the smaller pension fund in exchange for added flexibility."

SCL, on behalf of Mr D, rejected the Investigator's view. Amongst other matters, it said he didn't have a financial background or experience of pensions and investments. It said the firm responsible should've helped him understand the alternatives available to him for meeting any debt. It reiterated the points it had raised in the original complaint and summarised his position in the following terms:

"Had the initial advice in 2001 been suitable, Mr D would not have accessed his pension. Mr D only took this initial action due to the advice provided by Berkeley Jacobs; they began the 'chain of causation'. But for Berkeley Jacobs's advice, Mr D would not have transferred his final salary pension scheme and would not have been able to access his pension. Berkeley Jacobs ought to have verified the findings and confirmed the reasons why Mr D required the funds. This did not take place and further evidence's Berkeley Jacobs' negligence."

As both parties couldn't agree with the Investigator's findings and conclusions, Mr D's complaint was passed to me to review afresh. I issued my provisional decision in July, saying I expected to uphold his case but inviting further submissions. Neither party has provided any new evidence or arguments, so I see no reason to depart from my initial findings and conclusions.

However, I note CPL has provided a copy of the legal agreement it had to buy part of the book of business from another firm, including Mr D's account. I note that originating business is no longer operating, although there appears to be some debate about whether its liabilities have since been assumed by another firm. I'll address these matters later in this final decision.

Our jurisdiction to consider Mr D's complaint

Our service was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). It's important to make clear that as a public body we don't have a general, 'at large', power to investigate any complaint. We can only investigate what FSMA and the rules made under it say we can – this sets the boundaries of our scheme. And we have no legal power to investigate complaints that are beyond our jurisdiction.

FSMA gives the FCA the power to say what complaints we can and can't consider. The FCA has set these out in the Dispute Resolution chapter of the FCA Handbook (also known as 'DISP' or 'the DISP rules').

If a business doesn't consent, this Service can't consider a complaint which isn't made within specified time limits. Dispute Resolution rule 2.8.2R says:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

More than:

2. a. six years after the event complained of; or (if later)

b. three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;…unless:

3. In the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances.

Mr D is worried he's lost out because of the advice he received to transfer his deferred DB pension in 2001. He doesn't think the advice was suitable.

Taking the six-year rule first, a complaint is out of time if it's referred to our Service more than six years after the event complained about. That's unless the complaint was referred to the respondent business within that period and the complainant has a written acknowledgement or other record of the complaint having been received.

Mr D's complaint was raised with CPL in May 2022. It issued a final response to him in January 2023. As the advice complained about happened in 2001, his case is out of time on the six-year limb of the test.

In respect of the three-year test. I need to decide when Mr D became aware, or ought reasonably to have become aware, that he had a cause to complain. And having established that date, determine whether he brought his complaint within three years of it.

In making its case to time bar Mr D's complaint, CPL hasn't advanced an argument beyond that because the advice the predecessor firm gave him was in 2001 he should've been aware of cause for complaint more than three years ago. This isn't a strong argument, there are many reasons why people aren't aware, and reasonably so, of cause for complaint for many years after the event. This is particularly the case when considering the long-term nature of matters involving pensions. It hasn't provided any evidence to support its case.

The Investigator noted:

"It would be unreasonable to conclude that Mr D had cause for complaint when he transferred. After all, if he had cause for complaint at that point, he just wouldn't have proceeded. As would be expected, a retail investor would trust the professional in such matters. So there needs to be a reason why Mr D ought to have been aware of cause for complaint after the event."

I agree with the Investigator on this point. And since Mr D took over 70% of his pension benefits in the form of an annuity and TFC around the time he received advice from BJF, he wouldn't have received any information subsequently which led him to compare his position with what he might've received through his DB scheme. While it appears Mr D took the residual benefits originating from his DB scheme from his Section 32 plan in 2011, again there's no evidence as to why at this point he ought to have been aware of cause for concern.

In the absence of evidence to the contrary, I think Mr D became aware of cause for complaint in November 2021 when he saw an online advert that notified him his previous DB pension held various benefits and guarantees which he hadn't been advised of.

SCL, on behalf of Mr D, raised a complaint with CPL in May 2022. And as that was within three years of his awareness something may've gone wrong in 2001, his complaint is duly made and this Service can consider it.

I'll now move on to consider the merits of Mr D's complaint.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr D's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr D's case?

The first thing I've considered is the regulation around transactions like those performed by BJF for Mr D. Of course, I must be mindful that law, regulation and industry best practice have evolved over the past twenty years. What's required of firms now, wasn't necessarily the case when Mr D received advice.

Nevertheless, a good starting point for my consideration is the FCA Handbook. This contains the Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7 – which requires a firm to 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.

While the Principles were formalised in 2001 – a few months after Mr D received advice - they were nevertheless built upon existing regulations and accepted practice. And I don't think any firm would argue that it wouldn't have tried to adhere to such standards prior to their consolidation. As such, they provide a useful framework for thinking about Mr D's complaint.

I can see from the limited paperwork available that at the time BJF provided the advice for Mr D - which business CPL subsequently bought and took responsibility for - its practice was to adhere to the Personal Investment Authority (PIA) rulebook.

The PIA rulebook set out important requirements of firms regarding pension transfers. These were established prior to 2001 and firms needed to apply these when advising individuals about transferring benefits from DB schemes into personal pension arrangements.

It was established that in advising customers who were existing or prospective members of DB schemes, the starting point for firms would be that it wasn't suitable to recommend opting out into a personal pension. In relation to deferred members, like Mr D, the rules said

"The position is more finely balanced when a prospective investor currently has deferred benefits from an [DB pension] and is considering transferring those benefits to a personal pension scheme."

"Advice on whether to transfer deferred benefits should be preceded by a detailed consideration of the ceding scheme compared with the personal pension scheme, and the personal circumstances and objectives of the investor. A fact find designed with pension transfers in mind will be needed. A properly established process is necessary to ensure the suitability of the advice provided."

The rulebook went on to detail the procedures to be followed, this included the following extracts:

"*To assess the prospective investor's attitude to risk and security, this is relevant not merely to the choice of contract or fund, but also (and more fundamentally) to the choice between an [DB pension] and a personal pension scheme in the first place."*

"…enabling the prospective investor to receive sufficient, clear information to make an informed investment decision based on a firm understanding of the risks involved and knowledge of what protection, rights, expectations and options they may be giving up…"

"…a Transfer Value Analysis must be undertaken or obtained. The analysis should be based on a proper consideration of all the relevant factors. It should be documented and recorded

before firm investment advice is offered to the prospective investor. The results of this analysis should be discussed with the latter in simple clear language."

"Relevant items of information for the prospective investor include: the different character of the risks associated with personal pension scheme and [DB pension] provision; the impact of fluctuations in annuity rates on the size of the eventual pension;…changes to tax-free cash;…the transfer value analysis including an indication of the rate of growth needed to ensure the investor is no worse off."

The section of the PIA rulebook about the transfer of deferred benefits to personal pension arrangements concluded:

"Members may find it difficult to demonstrate compliance with the relevant rules if the process outlined above has not been completed and fully documented, including the collection of the relevant information from the ceding scheme and the prospective investor, and a clear provision of the necessary information to the latter. The records should be kept indefinitely. The process will by no means point to all customers being confirmed as prospects for the sale of personal pensions or section 32 contracts. It will confirm that many customers would be better advised to remain in their [DB pension]…"

<u>Did BJF adhere to the regulatory requirements placed on it?</u>

On balance, CPL (which effectively took responsibility for the transaction and BJF's failings) hasn't done enough to satisfy me that the regulatory requirements placed on firms at the time advice was given to Mr D were met. I'll explain why.

While different parties have been able to provide some of the contemporaneous paperwork from the transaction in 2001, it's very unfortunate key documents such as the fact-find, transfer analysis and what might be described as a 'reasons why letter' are missing.

I appreciate CPL bought the book of business from BJF. But that's a matter between the firms concerned and the due diligence they did before agreeing the contract. CPL was taking on responsibility and it should've satisfied itself it was being left in a position to carry out its duties effectively.

The lack of this documentation is a failing measured against the regulations of the time. And it puts CPL on the back foot in respect of Mr D's complaint.

At the time of the advice Mr D was 50 years old. He was living with a long-term partner who subsequently became his wife. There's no information available about any investments or savings he had. But in his testimony he says he used the TFC generated from the transfer of his pension to pay off debts. He says he wasn't experienced in investments or pensions and I've seen no information to suggest otherwise.

SCL said:

"Mr D was not looking to take any risk with his pension, he transferred his pension based on the advice that he was given. Although Mr D was employed at the time, he confirmed that he had a cautious attitude to risk, a low capacity for loss and no previous investment experience. He could not afford to replace any of the pension should he risk losing this. Mr D was not informed of any benefits that he would lose by transferring away from his final salary pension. Berkeley Jacobs was at all material times responsible for correctly assessing the advantages and disadvantages of the transfer, including the costs and charges associated with it."

SCL also noted

"…Mr D was in a long term relationship at the time and [his partner's] circumstances ought to have been considered by Berkeley Jacobs when they provided their advice. These benefits may have been made available to her if they were to marry. The significance of this should have been discussed with the adviser…Mr D confirmed he would have liked for the benefit to be safeguarded for his partner should anything happen to him. Additionally, whilst the spousal benefits ought to have been emphasised, this was not the only benefit available to Mr D if he remained a member of the final salary scheme."

"His Diageo pension scheme held the ill-health benefits that would have been available to him should his ability to work be impeded. In 2009, Mr D had suffered a heart attack and had a quadruple bypass which impeded his ability to work as a builder. This is another benefit that was not explained to him by Berkeley Jacobs, Mr D may have been entitled to early access of his final salary scheme utilising this benefit."

My observation here would be for the need to avoid hindsight in relation to benefits that were available from Mr D's DB scheme and which may or may not have been of value to him in later years. It's also problematic to rely solely on testimony from 2022 about events from 2001. While I've no reason to doubt that the assertions Mr D makes now about his circumstances, objectives and risk appetite in 2001 are genuinely made, memories can and do fade.

So, there are significant evidential weaknesses to the position of both parties in this case. And my conclusions are necessarily made on the balance of probabilities and on a 'more likely than not' basis.

Ultimately I've concluded the biggest hurdle was for CPL to overcome in defending its position, which presumably is it thinks the advice provided to Mr D was appropriate. I suggested it tried again to access the missing key documents it should've ensured it was in possession of when it bought the business which included the transaction in 2001 with Mr D which is now in dispute. It hasn't been able to obtain such evidence.

I've arrived at this position for several reasons. Not least amongst these are the regulatory requirements that were placed on firms like BJF at the time of the advice given to Mr D. I'm mindful Mr D was approached by the firm to initiate the provision of advice. In addition, looking at the information we do have, Mr D ended up taking over 70% of his pension benefits early at the age of 50. Part of the value he used to take a single life level annuity. This meant:

- His evidenced long-term partner (subsequently wife) wouldn't have been entitled to any benefits from the policy in the event of his pre-deceasing her. Had he remained in his DB scheme she'd have been entitled to some benefits in the event of his passing.
- The value of this retirement income would atrophy over time. He was only 50 when he took out the annuity contract and could've expected to live for over 30 more years. Had he remained in his DB scheme his benefits would've enjoyed uprating before and after his retirement.

The other element of the benefits Mr D took in 2001 was TFC. He's explained this was to clear debt. This appears to have been the main motivation for the transfer of his DB pension. But the purpose of a pension is to provide for an income in retirement. There have to be strong reasons for accessing benefits early, especially if that involved a transfer away from a DB scheme with its guarantees and protections.

Although I don't have information about the level of Mr D's outstanding debt in 2001, we know he used his TFC of around £10,000 to clear it. I don't know whether the debt was secured or unsecured, or whether he was managing to service his commitments at the time. But what seems reasonable to conclude is the circumstances in which it would be appropriate to advise someone to draw on their valuable pension benefits to clear what appears to have been a modest level of debt would be unusual. There would've been a number of alternatives to dipping into Mr D's pension provision, including coming to an arrangement with his credit providers for more time to pay, rescheduling or consolidation.

We have no contemporaneous information about Mr D's risk appetite. He's told this Service he had no experience of pensions or investments. He's said he had a cautious attitude to risk, and that would've been particularly the case with his pension. We do however have some indications of Mr D's capacity for loss at the time. Given he had some debt and wanted to access TFC in 2001, this suggests he didn't have other available assets to call on at the time. We know that his employment provided for a modest income.

Further, Mr D has informed us about his pension income now. He has a state pension, the annuities purchased with the benefits from personal pension plans established with the proceeds of his DB scheme transfer and a small pension from a local council. I think that in 2001 BJF would've known that Mr D's capacity for loss was limited.

BJF was in a good position to have analysed, tested, challenged and advised Mr D about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. And certainly, when the transfer of deferred benefits was being considered, there needed to be strong reasons to do so. On balance, I think it's more likely than not this wasn't the case here.

It was the firm's role to discern what Mr D's wants and needs were and why. Its role wasn't simply to facilitate what he wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in his best interests. I don't think it demonstrably met the obligations on it.

I think that if Mr D had been given appropriate and fully formed advice, BJF wouldn't have recommended that he transfer his DB pension. In that case I don't think he'd have gone ahead. I say this because it's unusual for a lay person to seek professional advice and then go against the recommendations received.

To conclude I don't think the transfer of Mr D's DB pension into personal pension plans, with the majority of benefits being taken immediately, was fair to him. As such I think the firm giving advice failed to meet the regulatory requirements placed on it.

So, taking all the circumstances of the case into account, it's reasonable for me to uphold this complaint against CPL and for it to put things right.

In responding to my provisional decision CPL said:

"I would like to reiterate at this stage, that Ascot Lloyd have sought legal counsel in respect of this agreement and our stance that has been reiterated throughout the progress of this complaint has been based on the legal guidance received. I once again therefore wish to clarify that Ascot Lloyd do not have ultimate responsibility for these claims, or the advice provided, only the complaint handling element. Therefore, the section in the Provisional Decision which states; 'The lack of this documentation is a failing on CPL's part measured against the regulations of the time. And it puts it on the back foot in respect of Mr D's complaint.' This is a failure of James Hay and not the responsibility of Ascot Lloyd, given our responsibility only extends to the complaint handling of these complaints, which has been made difficult by the lack of forthcoming evidence to review suitability. We would therefore

like to see this part of the Provisional Decision amended accordingly in the Ombudsman's final version."

I set out at the beginning of my provisional decision that it had not been CPL which had been responsible for the original advice to Mr D. I have made further clarifications to this effect in this final decision.

CPL went on to say:

"It is important to note that the payment obligation in clause 3.3 of Schedule 12 is owed to the Seller, not to the Claimants. The liabilities to Clients remain with the Sellers, even though the Buyer has agreed to have conduct of the claims and to pay the first £200,000 of any liability. Therefore, any payment to be made following a calculation being produced is to be made by James Hay and Ascot Lloyd will only be liable for any costs up to the capped liability stipulated within the agreement, with any payments thereafter being owed by James Hay and not reimbursable by Ascot Lloyd."

This Service has also received representations from Nucleus Financial a third party firm about its contractual position with CPL and the book of business in dispute between the firms. For example, its Head of Legal told this Service:

"…I understand that the Berkeley Jacobs business was sold to Ascot Lloyd by IFG Group (along with a number of other businesses) in 2014. Under the terms of the business purchase agreement, Ascot Lloyd has sole conduct of client claims. Consequently, the information you have been provided with by Ascot Lloyd is incorrect and they are the successor firm (and not any of the James Hay regulated entities)."

"IFG Group Limited is a parent company of James Hay (and does not trade). It is not a regulated entity and has no responsibility for the businesses which were bought by Ascot Lloyd."

In another submission it said:

"The relationship between James Hay and Ascot Lloyd in this context is set out in the aforementioned BPA – that is a Business Purchase Agreement entered into in 2014 under which James Hay (and predecessor) companies sold certain businesses and assets to Ascot Lloyd. Under the terms of the BPA, Ascot Lloyd retains responsibility – for a specified period (which is continuing), and up to a maximum monetary amount (which has not been reached) – for handling client complaints relating to those sold businesses. Berkeley Jacobs Financial Services is one of the businesses sold by James Hay / purchased by Ascot Lloyd, and Ascot Lloyd therefore retains responsibility for client complaints relating to Berkeley Jacobs arising since the effective date of the BPA and for the duration of the specified period."

"James Hay has had an ongoing disagreement with Ascot Lloyd as to the scope of its obligations pursuant to the BPA – Ascot Lloyd has resisted dealing with complaints. It is not clear to us what Ascot Lloyd is trying to say when it says that James Hay "is primarily responsible for these complaints, though Ascot Lloyd will continue to have conduct". As both the time limit and the financial limit referred to above are subsisting, it makes no sense to try to differentiate between a party who is "primarily responsible" for the complaints and the party who "has conduct" and is obliged to make redress if the complaint is upheld. As far as James Hay is concerned, the responsibility for appropriately conducting all complaints brought in respect of the businesses covered by the BPA – which includes Berkeley Jacobs – remains with Ascot Lloyd until either the specified period expires or the maximum financial limit of their obligation is reached. As neither of those has yet happened, the "responsibility" for dealing with relevant complaints is, in fact, with Ascot Lloyd, not James Hay.

I accept that legal agreements between firms can be highly technical, and that with the passage of time, changes to company structures and ownership, these matters become even more complex. But frankly, this is of no concern to Mr D.

I'm grateful to CPL for sight of certain legal documents related to the agreement it struck in 2014. Nothing I've seen in these makes me think it doesn't have lead responsibility for dealing with Mr D's complaint and making sure he receives any compensation he is due.

CPL can of course pursue other parties, where appropriate, to meet some or all of these costs according to the contract it struck. Considering the submissions made by James Hay/Nucleus Financial to this Service, and the documentation I've seen, there does appear to be scope, indeed provision for, proper discussions between these parties about these matters. But this isn't something it's appropriate for me to give a view on or provide advice about.

Putting things right

I'm upholding Mr D's case. so, a fair and reasonable outcome is for Capital Professional Limited to put him, as far as is reasonably possible, into the position he'd be in now but for the unsuitable advice he received.

I consider Mr D would've remained in his DB scheme had he received fuller information, better guidance and effective advice. Based on the pattern of decisions he took about his pension, I think he'd have taken benefits from the scheme as soon as he was able to before the scheme retirement date (SRD), and at that time taking the maximum TFC available to him. Had this been possible, this is likely to have led to an actuarial adjustment.

Mr D has had the benefits of TFC and a stream of income from his annuities. These facts will also need to be taken into account in calculating any redress due.

Capital Professional Limited should 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.

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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr D's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Capital Professional Limited should:

- Calculate and offer Mr D redress as a cash lump sum payment.
- Explain to Mr D before starting the redress calculation that:
    - 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 current pension provision.
- Offer to calculate how much of any redress Mr D receives could be used to augment the pension rather than receiving it all as a cash lump sum.
- If Mr D accepts Capital Professional Limited's offer to calculate how much of the redress could be augmented, request the necessary information and not charge him

for the calculation, even if he ultimately decides not to have any of the redress augmented.

- Take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr D’s ’s end of year tax position.

Redress paid directly to Mr D 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, Capital Professional Limited may make a notional deduction to allow for income tax that would otherwise have been paid.

In this regard, the assumption made is that Mr D’s likely income tax rate in retirement is 20%. However, if Mr D would’ve been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

The compensation amount must where possible be paid to Mr D within 90 days of the date Capital Professional Limited receives notification of his acceptance of my final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes CPL to pay Mr D.

My final decision

For the reasons I’ve already set out, I’m upholding Mr D’s complaint. I now require Capital Professional Limited to put matters right in the way I’ve directed.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 2 October 2023.
Kevin Williamson
Ombudsman