The complaint

Mr H complains that he was given unsuitable advice by Wilmot Lynne & Co to transfer the benefits from a defined-benefit (DB) occupational pension scheme with a former employer to a buyout bond – also referred to as a Section 32 policy – and a personal pension (PP).

What happened

In or around June 2005, Mr H approached Wilmot Lynne & Co to explore accessing his pension. The call notes from the time say that Mr H wanted to free up as much cash as possible to enjoy now and use as he saw fit, and that he had three other pensions which would provide the majority of his retirement income, alongside his wife's significant pension.

On 5 June 2005, a questionnaire was completed to gather information about Mr H's circumstances and objectives, including an assessment of his attitude to risk. It was noted that Mr H was aged 50, employed and married, with one dependent child. And that Mr H aimed to stop working around age 63. It said Mr H owned his property, worth around £90,000 with an outstanding mortgage of around £20,000, that he had savings around £3,000 and a disposable income left at the end of each month of around £300. It also said Mr H was making contributions to another pension, which he'd been doing for four years.

Mr H said on the questionnaire that he was cautious and typically not willing to take any unnecessary risks with these pension savings. Under reasons for needing to access his pension now and raise funds, Mr H said he had three other pensions and his family were well covered in the event of his death. And when asked how much cash and income was needed he respectively said 'not known' and 'n/a'. He later went on to say, for example, that he was aware and concerned his retirement income would be reduced, but felt he had no other realistic choice and that he had significant other sources of income for this, so this pension wasn't important to him.

Later that month, Wilmot Lynne & Co provided Mr H with advice in respect of his DB scheme, which was projected to pay a yearly pension of £3,438.62 from his normal retirement age (NRA) of 65 and had a transfer value of £15,236.90. It advised Mr H to transfer his DB pension benefits to a buyout bond to take a lump sum of £7,947 and an annuity that would pay him £70 per year, with £3,282.99 of Mr H's protected rights also being transferred to a PP. The suitability report said it recommended the buyout bond as this gave Mr H the most cash, alongside a guaranteed yearly income so he didn't have to worry about investment risk. Mr H accepted Wilmot Lynne & Co's advice and, shortly after he took a lump sum and an income from the buyout bond.

After Mr H complained to Wilmot Lynne & Co about its transfer advice at the end of May 2022, it sent him its final response letter. It said, in summary, that the transfer allowed Mr H to access a lump sum when it couldn't confirm if he was entitled to an early retirement lump sum from his DB scheme. And that it told Mr H this would mean a 90% income reduction than he'd otherwise receive from this pension at age 65, amounting to around £126 per month after tax, along with reduced spousal benefits. So it said Mr H was aware of the consequences of transferring when he was given the advice, which he confirmed he understood in writing. And that this meant Mr H had made his complaint too late.

In November 2022, Mr H brought his complaint to our Service. And Wilmot Lynne & Co maintained it had been made too late, referring to the Limitation Act 1980 (LA 1980). It said Mr H complained more than six years after the advice and that he ought reasonably to have been aware he had cause to complain at the time, as the suitability letter detailed the reduction in benefits the transfer would result in, which Mr H acknowledged he understood.

Mr H added, in summary, that Wilmot Lynne & Co ought to have started from the position that the transfer was unsuitable, but there was little attempt to dissuade him. He said it explained away its negative comments, telling him to transfer anyway, on the basis their other policies would provide an income large enough to cover the losses from this. But it did so without looking into details of these to verify this, reassuring him based on assumptions. Mr H said this led him to believe he would still have enough to live comfortably in retirement. Mr H also said he didn't require a lump sum and, even if he had, Wilmot Lynne & Co didn't consider alternatives such as a loan or taking benefits from his PP.

Mr H said he became concerned that Wilmot Lynne & Co's assertion that he'd be alright with his other pensions was inaccurate when he reached state pension age in 2021, particularly when talking to colleagues who'd received more or had been incorrectly encouraged to transfer. Mr H said he approached his representative in April 2021 before raising his complaint with Wilmot Lynne & Co on 30 May 2022.

One of our Investigators explained the rules our Service is bound by and why we can consider Mr H's complaint. She also said the transfer wasn't financially viable. And that Wilmot Lynne & Co hadn't shown it fully explored Mr H's circumstances and needs, or that it considered alternatives. She said that if Wilmot Lynne & Co had advised Mr H against the transfer it's likely he'd have listened to its expert advice and remained in his DB scheme.

Wilmot Lynne & Co didn't agree. It said Mr H's complaint was prompted by colleagues rather than because he had a legitimate reason to complain and that there wasn't any new information in 2021 to make him aware he had cause to do so. It said Mr H's complaint is based on the fact its warning that his pension would be reduced in retirement turned out to be correct and that it's likely to be speculative, frivolous and vexatious. Wilmot Lynne & Co also said an Ombudsman previously decided that a complaint with similar circumstances was out of time. And it referred to the time limits in Section 14A of the LA 1980, which it said Dispute Resolution Rule 2.8.2R is almost identical to. As well as a case that the courts said was time barred based on the LA 1980, that it thinks had similar facts to Mr H's. Wilmot Lynne & Co also said Mr H didn't communicate his complaint to it, but came directly to our Service in January 2023.

Wilmot Lynne & Co added, in summary, that as Mr H asked it to recommend the best way to gain access to his DB scheme to obtain a lump sum, but declined to participate in a general review, the scope of its advice was limited – which caselaw and the Financial Conduct Authority allow for – to advising him on how to achieve that and nothing else. And it gave suitable advice in light of this mandate. Wilmot Lynne & Co said that had it been asked to give a recommendation that would improve Mr H's retirement income, which he didn't want, it would have advised him to do nothing. And that our Service can't say it failed to do something with reasonable care that Mr H didn't want it to do.

Wilmot Lynne & Co said the FCA doesn't prevent consumers from choosing what type of advice to receive, probably because of the general principle in Section 1C(2)(d) of Chapter 1 of the Financial Services and Markets Act 2000 that consumers should take responsibility for their decisions. Wilmot Lynne & Co said it was for Mr H to assess what was in his best interests, having been fully informed and made aware of the consequences of transferring.

And that it wasn't for it to decide if transferring was in his best interests, given the relatively small values being considered.

Wilmot Lynne & Co said Mr H had years to make other provision to fund the pension shortfall after satisfying his need for cash through the transfer. It said Mr H had £300 per month disposable income to re-build reserves if needed. And that while no specific need for a lump sum was indicated, it assumed that if Mr H didn't transfer to access this then he would borrow it, costing more. Wilmot Lynne & Co said that as Mr H had other bigger pensions – which it said was a significant consideration for it in proceeding with the transfer – the implication was this DB scheme was surplus to requirements. And that it is factually correct that the smallest pension – which it understood this DB scheme to be – must have the smallest impact on Mr H's retirement provision. Wilmot Lynne & Co also said that any redress should take into account the likely reduction in Mr H's mortgage from the lump sum, as well as his enjoyment of the income he received over the years.

So the complaint's been passed to me for a 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.

Jurisdiction

The rules our Service is bound by, known as the Dispute Resolution (DISP) Rules – found in the Financial Conduct Authority's handbook – say in DISP 2.8.2R that, unless the business consents (Wilmot Lynne & Co hasn't), we can't consider a complaint if it's referred to us:

- More than six years after the event complained of; or (if later)
- more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) they had cause for complaint.

That is, unless the complainant referred the complaint to the business or our Service within that period and has a written acknowledgement or some other record of this having been received.

Wilmot Lynne & Co has referred to the LA 1980 and S*hore v Sedgwick Financial Services Limited*. But the rules under which this Service operates and which determine what complaints I can and can't consider are the DISP rules. And this means that I have to consider DISP 2.8.2R in deciding if a complaint has been made in time.

The event complained of – the advice Mr H was given to transfer his DB scheme to a PP, which he says resulted in a loss – took place in 2005. And, as he didn't raise this with Wilmot Lynne & Co and then our Service until 2022, it has been referred to us more than six years after the event occurred. This means I have to decide if Mr H was aware, or ought reasonably to have been aware, he had cause for complaint more than three years before he complained to Wilmot Lynne & Co.

Wilmot Lynne & Co said Mr H ought to have been aware he had cause for complaint from 2005, as he was fully aware of the consequences of transferring at the time, which he confirmed in writing. And that our Service previously decided that another complaint with similar circumstances to Mr H's was out of time.

While I've taken this into account, I'm considering the circumstances individual to Mr H's particular complaint. And I wouldn't reasonably expect Mr H to have had cause for concern that something might have gone wrong at the time of the advice. He had no reason to think there was a problem with this, considering he'd just been given it by a professional adviser and was relying in it.

I appreciate Mr H was told that, for example, the transfer would result in a fall in income at retirement. But I think the crux of Mr H's complaint is that Lynne Wilmot & Co encouraged and justified the transfer still on the basis his other pension provision would leave him with enough, as he was told his retirement wouldn't be significantly impacted as he still had significant provision for this. And I don't think Mr H would have had reason to question this until closer to his retirement when he looked at his overall provision – which included five pensions – against what he now reasonably anticipated he'd need to live on, and then considered this against the position he would have otherwise been in.

Mr H's DB scheme benefits was transferred to two new pensions. And, as well as taking a lump sum – which Mr H's DB statement didn't allow for – from the buyout bond, Mr H also took an annuity from this almost immediately at age 50. But his DB scheme benefits were projected to the NRA of 65 on his statement. And Mr H didn't take benefits from the PP he transferred to until age 64. So, while I appreciate Mr H received PP statements with illustrations, as time went on I don't think it was easy for him to compare the statement of DB scheme benefits he'd given up at retirement to the position he was in, to know whether something might have gone wrong with the advice, particularly as he doesn't have expert knowledge.

I can see that in September 2019 Mr H started to enquire about taking the benefits from the PP he transferred to, which he went on to do in small pots in mid-October 2019 just before turning 65. It appears the NRA for Mr H's remaining DB scheme was 65, which was in early 2020. And that his state pension age was in early 2021. So I think Mr H would have known what his overall retirement provision would have been by early 2021 to be able to compare this to the position he would have been in if he hadn't transferred from his DB scheme. As this was less than he'd have been entitled to, I think it's only at that point that he ought reasonably to have been aware something might have gone wrong with Wilmot Lynne & Co's advice. This coincides with when Mr H said he became aware he had cause for complaint – he's said this was when he was looking into retiring and his state pension. And Mr H referred his complaint to Wilmot Lynne & Co and then our Service within three years of early 2021.

Even if I were to say Mr H ought reasonably to have become aware he had cause for complaint from when he first started to look at his retirement provision in September 2019, it seems Mr H referred his complaint to Wilmot Lynne & Co within three years of that, at the end of May 2022. I note Wilmot Lynne & Co recently said Mr H came directly to our Service on 12 January 2023 rather than communicating his complaint to it. But Mr H brought his complaint to our Service in mid-November 2022 and he enclosed a copy of the final response letter he'd received from Wilmot Lynne & Co, showing it did receive his complaint.

In summary, for the reasons given, I think we can consider Mr H's complaint because he made it within three years of when he ought reasonably to have become aware he had cause for complaint.

The advice

When considering what is fair and reasonable in the individual circumstances of Mr H's particular complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. This includes the regulator's Conduct of Business (COB) rules.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

Under COB 5.3.29A(4), the regulator expected a *"…prospective investor to receive sufficient, clear information to make an informed investment decision based on a firm understanding of the risks involved and a knowledge of what protection, rights, expectations and options they may be giving up."*

It also expected at least one illustration for the PP/Section-32 plan to be given on a similar basis to the DB scheme, e.g. what spouse's pension and increases in payment were shown.

Also, a 'reason why' letter or equivalent had to be issued as soon as practicable after the recommendation, which should:

"…explain why that advice is suitable. That explanation should take explicit account of the alternative of remaining within the occupational scheme…"

"…demonstrate a real link between the circumstances, objectives and risk profile of the investor, and the recommendation made to him or her by the firm."

Furthermore, COB 5.3.29G (renumbered to COBS 19.1.6G in the current FCA rulebook) specified the information Wilmot Lynne & Co should gather from the consumer and the DB scheme in order to assess suitability. Importantly it also said that:

"When advising a customer who is, or is eligible to be, an active member of a defined benefits occupational pension scheme whether he should opt out or transfer, a firm should:

(a) start by assuming it will not be suitable, and

(b) only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interests."

Wilmot Lynne & Co doesn't appear to have suggested the transfer was likely to result in higher retirement benefits for Mr H, rather it said it was suitable for him to meet his other objectives. And the suitability report said the critical yield at 11% was unlikely to be achieved. So I think this meant Mr H was unlikely to be able to replicate or exceed the DB benefits available to him by transferring, and that he would he worse off in retirement as a result. Looking at whether it was right for Wilmot Lynne & Co to recommend the transfer in spite of this for other reasons, it appears to have done so on the basis Mr H wanted access to the benefits to enjoy and use as he saw fit. And because, while there was no real financial need, it thought that transferring the benefits for this reason wouldn't significantly impact on Mr H's retirement provision in light of his other pensions.

Turning firstly to Mr H's other retirement provision, the notes Wilmot Lynne & Co made on its compliance check document at the time said it considered doing the transfer on an insistent client basis. However, it decided against this as there was significant evidence, in the fact find and phone call it had with Mr H, that other bigger pensions existed and this DB scheme pension was small. And it said it needed to make an appropriate comment about this in the suitability report. Wilmot Lynne & Co then said in the suitability report that it appeared from conversations with Mr H that this was the smallest of his three pensions, so taking benefits early wouldn't significantly impact his retirement planning. And that while comparing the results of the transfer to what would otherwise happen was more difficult because of Mr H's other pensions, which he'd asked it not to look at, these would significantly reduce the negative effect of the loss of income from the transfer.

The fact find and phone call notes only reflect that Mr H told Wilmot Lynne & Co he had other significant provision though, without any details of the types and respective sizes of his pensions. I appreciate this might have briefly been discussed given it's mentioned in the suitability report that this should amount to around £2,000 per month, but that took into account Mr H's state pension which wasn't performance dependent. So I don't think Wilmot Lynne & Co could reasonably say it had *significant* evidence Mr H had bigger pensions that would *significantly* reduce the impact of the transfer on his retirement provision in the way it did. Mr H was also 15 years from retirement, he was still working and there's nothing to suggest he had concrete retirement plans. So I think it would have been hard to know what he might want and need at that time for Wilmot Lynne & Co to reasonably reach this conclusion about his retirement.

I recognise it's noted that Mr H asked Wilmot Lynne & Co not to consider his other pensions for it to be able to accurately plot his retirement income streams. And Wilmot Lynne & Co referred to the court case *Denning v Greenhalgh Financial Services* which it said considered the scope of duty of advisers. This concerned the extent of an adviser's responsibility to review historical advice given by another firm though. And Wilmot Lynne & Co's regulatory obligation was to interrogate Mr H's needs and circumstances and consider his alternatives.

I don't think Wilmot Lynne & Co could provide Mr H with suitable advice on this DB scheme in the circumstances without understanding more about his other pension provision. And had it explained it couldn't clearly demonstrate the transfer was in Mr H's best interests without this information in the way I think it should have, then I think he's likely to have provided it given he'd sought advice from this professional adviser. There's nothing to suggest Mr H couldn't afford the further fees that might have been involved in this. Mr H told us he had another DB scheme which only provided slightly higher benefits, as well as a PP worth far less. So, comparatively, the benefits Mr H had in this DB scheme were significant for his retirement provision. Had Wilmot Lynne & Co sought the information it needed then I'm satisfied it would likely have found this out. And, even if Mr H's other schemes were sufficient, Mr H would still be worse off in retirement due to loss of valuable guaranteed benefits, when he had no real need to transfer for reasons I'll come on to.

Looking at the suitability report, I think Wilmot Lynne & Co placed emphasis on the option of Mr H transferring to access a lump sum rather than starting from the position that this wasn't suitable. For example, it detailed the amount of cash he might get in bold text at the top of page one and then said Mr H should choose the option that most suits his needs. I recognise that later on that page it said in a box that Mr H appeared to have no need to release his pension now and it gave the estimated figure his income from this pension would reduce by as a result. But I think it's unlikely Mr H appreciated the reality of this given Wilmot Lynne & Co said at the same time that this reduction ignored his other pensions, which it had already said were larger and meant his provision wouldn't be significantly impacted by transferring from this DB scheme.

Wilmot Lynne & Co also highlighted on page two of the suitability report in capital letters when explaining the advantages and disadvantages of transferring that this meant Mr H would receive '*a lump sum and income from this pension BEFORE his scheme*' NRA, when he otherwise wouldn't be able to do this. And at the start of the financial implications of transferring section, it said it was up to Mr H to consider how the transfer would impact his circumstances. However, it again emphasised the transfer option with capital letters when it said Mr H '*would receive income from this pension DURING the period up until the original retirement date…giving you a FURTHER cash lump sum*' during that time than he'd otherwise be able to access. So I think the report was phrased in such a way that it largely left it to Mr H to decide which option was most suitable based on his needs and that it led him towards transferring to access a lump sum. But as Wilmot Lynne & Co was giving Mr H advice here, I don't think that it treated Mr H fairly or acted in his best interests by setting things out in this way.

As explained, Wilmot Lynne & Co's job was to interrogate Mr H's needs and circumstances and look at his alternative options to decide if the transfer was in his best interests, rather than facilitating what he thought he wanted. And to only recommend this if it could clearly demonstrate that it was in his best interests based on the available evidence. On the questionnaire under '*reasons for needing to access his pension and raise funds*' Mr H just said that he has three other pensions. And the suitability report noted that Mr H wanted to free up as much cash as possible to enjoy and use as he saw fit and that he didn't require a specific sum. So Mr H doesn't appear to have had any urgent and genuine need to justify transferring to take the lump sum that this would allow for – he didn't even have an idea in mind of how much he wanted – but rather a desire to do so.

While Wilmot Lynne & Co recognised Mr H didn't have a financial need it said, at the end of chapter 4 of the suitability report under '*What we've done with this information to construct a solution for you*', that it had built up a pot to maximise the lump sum and income available to him as a result of transferring. And when it provided Mr H with his available options under the heading '*releasing your pension'* it said it had chosen the one that gives him most access to a lump sum now – being a buyout bond – as this is the most important objective to him. So I think it's clear that Wilmot Lynne & Co were facilitating what Mr H thought he wanted, rather than providing a recommendation that was in his best interests in the way it should have. This is supported by Wilmot Lynne & Co's recent comments that it thinks it wasn't for it to decide if transferring was in Mr H's best interests, when in fact the regulations made clear that it was expected to do so.

I don't think that Wilmot Lynne & Co suitability considered Mr H's alternatives. It only set out two alternative options to transferring, including a transfer to a PP or waiting to hear back from his DB scheme as to whether early retirement from it was a possibility, which it said he should do before going ahead. And I can't see that it discussed with Mr H that, for example, he had a disposable income of around £300 per month which he could 'use as he saw fit' or ways to maximise this further. There's nothing to suggest it sought a breakdown of Mr H's current income and expenditure to consider that. It didn't explore the option of Mr H taking benefits from his PP either, when he said on the fact find that he'd been paying into this for four years. And Wilmot Lynne & Co didn't set out Mr H leaving his benefits where they were as an option or that this was in his best interests.

Wilmot Lynne & Co recently said Mr H had years to make other arrangements to fund the pension shortfall after satisfying his immediate need for cash by transferring, it said it assessed that he had time to do that but no time to satisfy his immediate need. And that Mr H had £300 per month disposable income to re-build his pension reserves if needed. I can't see from the information that Wilmot Lynne & Co discussed with Mr H that he could use his disposable income to re-build his pension though. And, in any case, Mr H could have used his existing disposable income for enjoyment, rather than transferring his pension to access a lump sum and then reinvesting his disposable income.

I recognise that the declaration Mr H signed said, for example, that he agreed that where Wilmot Lynne & Co *may* have *indicated* the transfer isn't in his best interest to proceed, he still wished to do so and accepted that it isn't responsible for his actions. But asking Mr H to sign to say he understood the risks doesn't make unsuitable advice suitable. And Wilmot Lynne & Co needed to do more than just indicate whether or not the transfer may have been in Mr H's best interests. It needed to clearly demonstrate this to Mr H, who was coming to it for its professional opinion. While Wilmot Lynne & Co set out the reduced benefits Mr H would receive in numerical terms, at no stage did it clearly say this wasn't in his best interests when I think it should have for the above reasons. Particularly when considering the transfer wasn't financial viable, there wasn't a financial need for Mr H to do this, he had reasonable alternatives and there was a lack of information about his full circumstances for Wilmot Lynne & Co to consider if he'd still be ok in retirement in light of his other provision.

So there doesn't seem to have been any genuine need for Mr H to transfer to a PP. And I don't think Mr H wanted to take a large amount of risk or that he had the capacity to do so. Not least because he said in the risk questionnaire that he was cautious and typically not willing to take any unnecessary risks with these pension savings. And Mr H didn't have investment experience or much in savings outside of his pension. So I think it's unlikely Mr H would've given up the guaranteed benefits his DB scheme offered if Wilmot Lynne & Co had advised him to remain in it.

Overall, I don't think it was suitable advice for Wilmot Lynne & Co to recommend Mr H transfer his DB benefits to a PP. For the above reasons, I think the alternative options I've detailed above would have allowed Mr H to free up further income to use and enjoy as he saw fit and been in his best interests. So, on balance, I think Wilmot Lynne & Co should've advised Mr H to remain in his DB scheme.

Summary

I don't doubt that transferring to access a lump sum would have sounded attractive to Mr H. But Wilmot Lynne & Co wasn't there to just transact what Mr H might have thought he wanted. Its role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was likely to obtain lower retirement benefits and I don't think it was in his best interests. As I've said above, I think suitable advice in Mr H's circumstances would've been to remain in his DB scheme.

I'm not persuaded Mr H would've insisted on transferring out of the DB scheme anyway, against Wilmot Lynne & Co's advice. Whilst Mr H approached Wilmot Lynne & Co, he was an inexperienced investor with a cautious risk profile and this pension accounted for a significant proportion of his retirement provision at the time. So, if Wilmot Lynne & Co had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and how he could instead look to free up further income for daily enjoyment, I think he would've accepted that advice.

While Wilmot Lynne & Co said redress should take into account the likely reduction in Mr H's mortgage from the lump sum, as well as his enjoyment of the income he received over the years. I recognise Mr H may have benefitted from flexibility, but that has only arisen because of the unsuitable advice. And in any event, the redress calculation I'm requiring Wilmot Lynne & Co to undertake takes account of the amount Mr H received as a result of transferring. So Wilmot Lynne & Co should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

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

Wilmot Lynne & Co 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, while Mr H took a lump sum and an annuity from the buyout bond in 2005, the income was small and he continued to work. So I don't think Mr H was reliant on his funds for a retirement income at that point. Mr H started to retire from his other schemes from around October 2019, just before he turned 65. So I think that redress should be based on his DB scheme's NRA of 65.

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 H'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, Wilmot Lynne & Co should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - their 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 their DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Wilmot Lynne & Co's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he 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 H's end of year tax position.

Redress paid to Mr H 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, Wilmot Lynne & Co may make a notional deduction to cash lump sum payments to take account of tax that Mr H would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H'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 £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Wilmot Lynne & Co to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Wilmot Lynne & Co pays Mr H the balance.

If Mr H accepts this decision, the money award becomes binding on Wilmot Lynne & Co.

My recommendation would not be binding. Further, it’s unlikely Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 2 October 2023.

Holly Jackson
Ombudsman