DRN-4490642

The complaint

Mr H complained that he was given unsuitable advice to transfer his defined benefit (DB) occupational pension scheme, to a type of personal pension plan.

Pi Financial Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Pi Financial".

What happened

The pension in question here related to a previous DB scheme which at the time of the advice was in deferment. Mr H had accrued a number of years' service with this scheme and in 2018 he was given a cash equivalent transfer value (CETV) of £531,676. The normal retirement age (NRA) of the scheme was 65.

Mr H was referred to Pi Financial for regulated pension advice and information gathered about his circumstances and objectives at the time were broadly as follows:

- Mr H was 51 years old, unmarried but with a partner and two dependent children.
- At the time of the advice, Mr H earned around £47,000 per year and his partner had a modest income. Mr H owned a home valued at approximately £370,000 which had an outstanding mortgage. Mr H had around £16,000 in savings. He had no stock market investments or other investments of his own, outside pensions. He wasn't an experienced investor.
- As well as having the DB scheme with a CETV of £531,676 Mr H had a defined contribution (DC) pension which had funds of around £74,000. It appears his DC scheme total was rising at the time. Employer and employee contributions were being made and the notes from the time indicate this would grow by at least another £40,000 by the time he reached 56 years old.
- Pi Financial said Mr H wanted to retire early if possible, at the age of around 56 to 58.

Pi Financial set out its advice in a suitability report on 4 September 2018. It advised him to transfer out of the BSPS and invest the funds in a type of personal pension plan. Pi Financial said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred to a personal pension. In 2023 Mr H complained to Pi Financial about its advice, saying he shouldn't have been advised to transfer out to a personal pension. In response, Pi Financial said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

Mr H referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld but Pi Financial still didn't agree.

As the complaint couldn't be resolved informally, it's come 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 also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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 Pi Financial'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pi Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

I've used all the information we have to consider whether transferring away from the DB scheme to a personal pension was in Mr H's best interests.

I don't think it was, so I'm upholding his complaint.

Financial viability

Pi Financial referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable. The critical yield required to match his existing benefits at the age of 65 was 6.12%. Pi Financial also calculated that the critical yield for retiring early at the age of 56 was 11.46%.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.1% per year for 13 years to retirement (age 65), which is below the critical yield figure I've referred to above. For the age of 56, the discount rate was only 3% for over 4 years to retirement. These rates infer that reaching the yields above would be unlikely.

I've also kept in mind that the regulator's upper projection rate at the time of the advice was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. I've noted too, the attitude to risk (ATR) categorisation which Pi Financial applied to Mr H was only "cautious" and we were in a sustained years' long period of low interest rates and bond yields.

As a further comparison, Pi Financial calculated a transfer value comparator (TVC) of £880,584. This was required by the regulator on transfers after October 2018 - and is a measure of the funds that would need to be invested at the time of transfer on a so-called 'risk-free' basis to provide the same income as the DB scheme at normal retirement age. The "transfer analysis report" (TVAS) provided another comparison saying, *"in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme at retirement the estimated fund required, also known as the capital value is as follows: £974,176."*

Pi Financial said in its suitability report that these critical yield and capital value figures could largely be discounted since Mr H didn't really want to replicate the pension he was in. However, in my view, these were important comparisons, and indeed, they were requirements from the financial regulator at the time. They provide a useful insight into the real value of the pension Mr H was being recommended to irreversibly give up. And I think all this data was showing – that when viewed through the lens of 2018 - there was a very real risk that Mr H could be left with lower retirement benefits as a result of transferring away.

I've considered the analysis PI Financial carried out for Mr H which it says showed he'd be able to still retire and draw a reasonable income late into his life, if he transferred to a personal pension arrangement. But I think Pi Financial's analysis relied on past performance and growth assumptions that were far from certain. In reality, Mr H was a cautious investor and what he was also being shown were comparisons with a different type of pension which lacked the benefits and guarantees of his DB scheme which he'd otherwise have for the rest of his life.

However, Pi Financial's recommendation that he should transfer out to a personal pension was not predicated on the financial comparisons with his current scheme alone. Rather, Pi Financial said Mr H had different reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer *was* suitable for him, despite providing the overall lower benefits mentioned above over the longer term.

I've considered these below.

<u>Other reasons to transfer</u>

Pi Financial listed a number of themes as supporting the recommendation to transfer away. I've summarised these as follows:

- Pi Financial said Mr H wanted to retire early, at around the age of 56 to 58.

- It said he could take tax-free cash if he transferred and use it pay off his mortgage.

- There would be more flexible access to a higher income in early retirement and the capacity to reduce this as his state pension kicked in at the age of 67.

- The death benefits were more suitable for Mr H in a personal pension arrangement.

So, it seems the supporting reasons that Pi Financial recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr H. I have therefore considered all these issues in turn.

- *Retiring early*

Pi Financial mentioned on several occasions in documents from the time of the advice that Mr H had said his preferred retirement age was lower than the NRA of 65. I don't doubt that Mr H might have genuinely hoped to retire early, but I've noted that the age of 56 was mentioned as well as an age range of between 56 and 58.

So, like our investigator explained in his view letter, I've seen nothing that shows early retirement at a specific age was anything more than aspirational thoughts, as opposed to being part of a formulated plan. I say this because as well as the adviser referring to age *ranges*, Mr H was only 51 years old at the time and he didn't yet need to make a decision about irreversibly transferring from the DB scheme. He could have waited until his thoughts about retiring were more defined before taking such an important step.

Using the evidence I've seen from this complaint I think the more dominant thinking from the adviser was likely to have been around the recently increased CETV. Mr H had previously been provided with a much lower figure CETV in the fairly recent past. So, when in 2018 the amount offered in the CETV had risen to over £531,000 I think the adviser was using this as the prominent basis for him transferring away. But however higher the CETV had risen to, in my view there was no certainty – looked at using the contemporary evidence from the time – that the increased CETV would necessarily change to Mr H's detriment. In short, there was no indication that he needed to act with urgency and transfer away from the DB scheme. And as I'll explain later, even if an earlier retirement was really important to Mr H, then using his existing DB scheme's resources together with his other (DC) pension scheme (and his other financial resources) should have been considered first. This is particularly true given the clear stance from the FCA which was that the starting assumption for a transfer from a DB scheme is that it is unsuitable. I don't think the adviser followed this assumption.

I think it's fair to say that at the age of just 51 these outline retirement aspirations could have very easily changed in the years ahead and caused Mr H to delay drawing his pension benefits. By retirement standards, 51 years old is still a relatively young age to be making a decision about his DB pension that couldn't be changed. He was currently still working and intending on doing so for some years yet. He also had other responsibilities such as financially dependent children and an outstanding mortgage. So, the point I'm making here is that there were still significant future events that could occur and which could easily affect the achievability of Mr H's early retirement hopes however genuine they were at the time.

Even if I were to consider the unlikely scenario that Mr H's retirement hopes were more fixed than the mere aspirations set out by Pi Financial - and he really did plan to retire early - I think Pi Financial should have assessed the possibility of achieving this goal whilst being a member of the existing DB scheme. Early retirement under this scheme would still have been an option for Mr H. But Pi Financial referred to this in a way which I don't think was fair or balanced. For example, the suitability report Mr H was given focussed much more heavily on him transferring away, rather than on him keeping the DB pension where it was and then accessing its early retirement benefits at any given point in time. Also, when highlighting the 'for and against' issues relating to his existing DB scheme, these were listed by the adviser in a somewhat limited and simplistic way. They included, for instance, the DB scheme's potential to drop into insolvency, its lack of financial flexibility and the differences in investment risk between it and a DC scheme. The first two of these were portrayed very much in the negative dimension.

However, as far as I can see, there was no threatened prospect of an insolvency of his DB scheme at the time. And even if there was, I would have expected the adviser to have comprehensively gone through the pension protection fund (PPF) options and also detailed the retirement income relating to this. The adviser could have then demonstrated whether falling into the PPF was really as bad as it may have sounded. The point of the PPF is to protect pensioners.

I've also seen no compelling evidence that Mr H really needed income flexibility. Retiring early from the DB scheme wasn't comprehensively considered by using all the other resources he had. Taking the benefits early from the DB scheme would simply have meant Mr H's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer. And I think the evidence shows that whilst Mr H probably wanted to retire earlier than the NRA, he'd have certainly been open to modestly delaying retirement if it was in his best financial interests.

We know if Mr H retired at the NRA, the annual pension was estimated as £22,688. The adviser then used a retirement income requirement – the amount Mr H needed to live on - of £28,000 per year to justify a recommendation to transfer away. This is because the adviser's portrayal was showing Mr H would clearly fall short of what he needed to live on, if retiring at 56 years old. The adviser said by transferring to a more flexible personal pension, he could take a higher income first and then reduce this, as his state pension became due at 67.

But I think what Mr H was said to need in retirement income was no more than a rough estimate. There appeared no real analysis behind requiring £28,000 per year; the suitability report said he needed £18,000 in income based on his likely expenditure and it also said he'd need £10,000 in discretionary non-essential spending. In my view, these were no more than rudimentary gross amounts which lacked proper costing; and they demonstrate both the difficulty - and the likely inaccuracy - of predicting a required retirement income whilst this was still clearly several years in the future.

However, even if assuming the retirement income estimate of £28,000 was broadly realistic, I don't think the adviser fully assessed whether achieving this was feasible by remaining in his DB scheme.

We know Mr H already had another (DC) pension and he also had some savings. These were not insignificant resources. If using the adviser's assumption of him drawing his pension benefits at 56, this would have still been relatively young and Mr H was described as being in good health. But in spite of this, I don't think the adviser fully explored whether part-time working was an option for Mr H to supplement his income in later life. I also don't think Mrs H's circumstances were properly assessed. Pi Financial's own 'fact-find' refers to an on-line business generating £500-£600 per month for Mrs H and makes no other references to her wider financial situation. However I've noted that if Mr H did retire at the age of 56, Mrs H would still only be in her late forties so I don't think her earning nothing was likely as she too appeared to be in good health. Clearly all these things would have complemented any pension income or benefits Mr H was drawing, if indeed he did start to draw his pension benefits at the age of 56. I think he could have reached his desired income by remaining in the DB scheme and supporting the apparent shortfall using all these other means.

However, as our investigator pointed out, remaining employed for just a little longer than age 56 could have meant retiring from the DB scheme and generating a pension of over £17,200 per year, at the age of 60. Other age options between 56 and 65 were, of course, available.

We know Mr H had his DC scheme which was being significantly added to each year. The 'fact-find' said this already contained £74,000 at the time of the advice and so this would grow by another £40,000 by the age of 56. Obviously if retirement had been delayed even by only a moderate amount, this pension could have grown much further. In this scenario, the years needed to live on a pension income only until he reached the state pension age, would have reduced. This could mean his required pension 'pot' wouldn't need to be so large. There may also have been the option to increase his contributions to the DC scheme in the interim period. I repeat – he was still only 51.

So, by remaining employed for just a few more years beyond the age used by Pi Financial (56 years), the amount in his DC scheme could have represented a meaningful complement to what he could draw from the existing DB scheme. It could have been well into six figures. In my view, there was no strong financial case for transferring away.

Instead, I think the adviser simply took an aspirational retirement age of 56 and then wholly based their subsequent advice to Mr H on making the transfer to a personal pension plan 'work'. The far more suitable approach was to really understand his circumstances and make recommendations which were in his best interests. In my view, this might have included recommending that Mr H should work a little longer and yet still retire before the NRA, in which case he'd be able to retain the full benefits of his DB scheme.

- *Paying of the mortgage*

I accept that paying down a mortgage is a generally good thing to do. But there was no need for Mr H to transfer away from his DB scheme specifically for this purpose. I've also considered that at the time we were in a sustained period of ultra-low borrowing costs, by historical standards. There was no indication at the time that this would change anytime soon and there was no indication that his mortgage was problematic for him.

Whilst the 'fact-find' records that Mr H had a mortgage, the evidence shows this was a repayment mortgage thus implying that by continuing to pay it down as normal the debt would reduce. In my view, the suitability report is unclear about the amount actually required for the mortgage to be eliminated and in any event, there was no indication that paying down a mortgage on a very low fixed rate of interest wouldn't have been a more suitable option in the circumstances rather than using a pension to do it. The report also contains mixed messages about Mr H downsizing his house or using a potential redundancy payment to pay down the mortgage instead.

All these uncertainties add weight to the argument that transferring away wasn't required for this purpose. In fact, I think the paying down of the mortgage was no more than a stock objective used to help justify the overall transfer-away advice. There was no plan to do this and the report didn't set out when the mortgage was due to end.

I don't think it's necessary for me to go into this in great detail, but what it shows me is that the adviser's work on this lacked attention to detail. To sum up, Mr H had also indicated he might not even live in the property by the time his mid-fifties came about. He also told the adviser other financial assets might become available to reduce any outstanding debt.

- *Flexibility*

As I've said above, I can't see that Mr H required flexibility in retirement in the way Pi Financial suggested. And I haven't seen anything to persuade me that Mr H wouldn't have been able to meet his likely retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan. This is because, as well as retirement still being a few years away, we know Mr H had already joined a new DC scheme and could have been making contributions to it for anything between 5 to 13 years more, until he retired. Mr H's contributions to this 'second' pension were being substantially added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme.

I think therefore, that by retirement, Mr H could have been in an agreeable position if he'd remained with his DB scheme. On one hand he'd have had a long-standing and secure DB pension, one with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a reasonable DC pension over many years, which, if he later found he did require flexibility, this pension could have provided it. He'd also talked about downsizing his home and a redundancy potential.

I have therefore considered what Pi Financial said about retiring early and the potential flexibility brought about by transferring to a personal plan: it said this would include how funds were invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element.

However, I don't think recommending a transfer-out based on these reasons was suitable because not enough was yet known about what his retirement would look like. It was still relatively far away. Pi Financial also implied that Mr H would be able to have complete control over the pension if he transferred out. But I've seen nothing which shows Mr H had either the desire or capacity to exercise personal control over his pension. Mr H had no previous exposure to investing and he had no such investments at the time, despite having some savings. It's true he had a DC scheme with investments – but there's nothing to show this was comprised of anything other than an 'off the shelf' investment strategy requiring no direct input from Mr H. So, I think Mr H's circumstances were much more aligned to him remaining in his existing scheme and retiring from that when he felt he was ready to do so, and then drawing the DB pension. Because he also had a 'second', DC pension, this supported that strategy, in my view.

I therefore think the much more suitable option was for Mr H to use and access his DB pension in the way it was originally intended.

- *Death benefits*

Pi Financial says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr H died. But I'm afraid I don't agree this represented a reason for him to transfer in this particular case.

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 probably made to look like an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

Mr H was only 51 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr H lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still relatively young (in pension terms), there's no real doubt that retiring at 56 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 56 would likely have many years ahead in which he would be drawing down his pension funds thus leaving less to pass on to someone.

I can't be sure the extent to which life insurance was discussed in this case. But at 51 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr H really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that Pi Financial took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his (DC) scheme. So, to this end, Mr H already had some options ensuring part of his pension wouldn't just 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H

- *Other issues*

After our investigator issued their view, Pi Financial then sent me in some perspectives as to what Mr H went on to do in the months after he transferred. It implies this all shows he wanted to retire early. I'm not going to list these perspectives but I have considered them carefully; they relate mainly to him going on to sell his home and also reduce his working hours in the years after 2018.

But of course, these opinions and views have the benefit of hindsight. More so, the fact that Mr H may have gone on to use his transferred funds flexibly, or in a certain way, has only been made possible by Pi Financial's unsuitable advice. In essence, the unsuitable transfer released large amounts of cash which required dealing with. The fact that Mr H went on to use those funds in a certain way was a result of them being released in the first place, unsuitably.

Pi Financial also recommended that Mr H invest his funds in a personal pension plan. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

<u>*Summary*</u>

I don't doubt that the flexibility, control and potential for different death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Pi Financial wasn't there to just transact what Mr H might have thought he wanted. The adviser's 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 within the existing DB scheme. By transferring to a personal pension, the evidence shows Mr H was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Pi Financial ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

On this basis, I think Pi Financial should have advised Mr H to remain in his DB scheme.

I have considered, given the circumstances of the time, whether Mr H would have transferred to a personal pension in any event. I accept that Pi Financial disclosed some of the risks of transferring to Mr H, and provided him with a certain amount of information. But ultimately it advised Mr H to transfer out, and I think Mr H relied on that advice.

I'm not persuaded that Mr H would have insisted on transferring out of the DB scheme, against Pi Financial's advice. I say this because Mr H was an inexperienced investor and this pension accounted for the majority of his retirement provision at the time. So, if Pi Financial 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 have accepted that advice.

In light of the above, I think Pi Financial 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 occupational pension scheme if suitable advice had been given.

Pi Financial 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.

Compensation should be based on the scheme's normal retirement age of 65, 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 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, Pi Financial should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment 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 Pi Financial's offer to calculate how much of the 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, Pi Financial 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 H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 30% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, I may recommend that the business pays the balance. *I should say this is a maximum amount any may be much higher than the redress actually due.*

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Pi Financial Ltd to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £190,000.

<u>Recommendation:</u> If the compensation amount exceeds £190,000, I also recommend that Pi Financial Ltd pays Mr H the balance.

If Mr H accepts this decision, the money award becomes binding on Pi Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that 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 3 March 2024.

Michael Campbell
Ombudsman