

## The complaint

Mr F complains he was given unsuitable advice to transfer two defined benefit ('DB') pensions he held and believes West Park Investment Partnership Limited ('WP') has a responsibility for that advice. He also says WP didn't invest and manage his transferred DB monies as it should have or give him the level of customer service it should have. And that it also gave him unsuitable advice in relation to accessing his 'small pot' pensions. Mr F says WP's errors have caused him a financial loss, distress and inconvenience.

Mr F's wife has made a very similar complaint against WP in which she has been represented by Mr F. But that complaint is being dealt with separately by our Service. So for clarity, this decision is only in relation to Mr F. But I'm sure Mr F, Mrs F and WP will understand that the similarities mean the decisions I'm giving on these will be similar.

## What happened

The background to this complaint is detailed and well known to both parties. But here, I'll only set out what I consider to be the background relevant in making a decision on this particular complaint.

WP was Mr F's existing financial adviser, and they had both signed WP's 'Retail Client Services Fee Agreement' ('their Agreement') which set out what Mr F could expect from WP. Over the years, WP provided Mr F with advice regarding his various pensions and investments and provided him with a review of his pension and investment portfolios every six months.

Neither party disputes that in 2015, WP gave Mr F its initial advice to invest some of the monies in an existing defined contribution ('DC') pension he held into the 'Woodford Fund' investment and so this investment of £25,558 was placed on 27 November 2015.

In around 2016, Mr F and WP began discussing transferring two DB pensions he held (plus a DB pension Mrs F held) into DC pensions. But WP didn't have the relevant authorisation to advise on DB pensions, so it introduced them to financial adviser 'Firm J' for such advice. Firm J met with Mr F and Mrs F to gather information about their circumstances and objectives; WP was present for at least one such meeting.

The evidence is that by late 2016 Firm J had informally recommended to Mr F that he transfer his two DB pensions, because WP emailed Firm J on 3 January 2017 to ask, *"Just wondered what the situation was with [Mr F and Mrs F] please? I still have not seen the notes and wondered if you had formalised your recommendation?"*

In February 2017 WP emailed Mr F rough estimates of what his DB pensions could be worth if they were transferred, *"Based on a net return of 5% after charges"*. On this, WP went on to say *"Whilst returns cannot be guaranteed and could be higher or lower than the 5% (net of charges of approximately 1.50%- 1.60%), recent annual returns for a risk level 6 investor (high/medium) have averaged 7.80% gross per annum since June 2005"*.

In March 2017 WP told Mr F, amongst other things, that Firm J would be responding directly to Mr F, and explained a little about how transfer values worked. WP's email went on to say,

*"The [providers] CETV's could be higher or lower, they will not provide an indication. Whilst I am not authorised to do final salary pension, based on the fact you would like the option of retirement at age 55 you should proceed with the transfers. There is no penalty to taking pension benefits at age 55 if you transfer your but if you stay in the schemes the penalty is normally 4/5% for each year before the normal retirement age (a penalty of at least 20%). Therefore if the CETV's have dropped slightly I would still proceed.*

*As you are aware the main risk of the transfer is investment risk due to giving up guaranteed income (if the pension fund goes bust like BHS you would not be guaranteed to get the full pensions as you would be reliant on the Pension Protection Fund).*

*Final salary pension transfer values are still in a sweet spot but might have decreased slightly due to gilt yields increasing slightly. As stated previously [Firm J] would have no control over this. If you had said that you definitely wanted to proceed then he could have carried out the transfers before they expired and this is the only way to guarantee their values. I appreciate there was a delay between [Firm J's] first meeting and [its] second meeting."*

In May 2017, Firm J gave Mr F its suitability report which recommended that he transfer the benefits from his two DB pensions totalling about £318,500 to his existing DC pension. It said WP would recommend the investment strategy for the transferred pension monies, in line with what WP assessed as his attitude to risk ('ATR'). Mr F's DB transfers took place around July 2017

In its six-monthly review report of June 2017, WP recommended that the transferred pension monies were held in his DC pension's cash fund and 'dripped' into a range of funds aligned with what WP assessed as his 'high medium' (or, 6 out of 10) ATR and his capacity for loss at the start of each month for the next twelve months – this included a total of £22,053 into the Woodford Fund. And so these pension monies of Mr F's were phased into the Woodford Fund between August 2017 and June 2018.

In June 2019, the Woodford Fund was suspended from trading so that investors were prevented from buying and selling any of their holdings. In October 2019, it was decided to wind up the Woodford Fund, which involved keeping it in a suspended state and in time selling off all the assets contained within it and returning what remained of investors' money back to them.

On 31 October 2019, Mr F emailed WP regarding his Woodford Fund investment. He said it was an "alarming picture" and that he'd made a 21% loss on it and thought he might lose a further 20%. He asked WP to calculate what his investment would have been worth if it had been invested like his other monies and went on to say,

*"In summary*

*I could have had £70k vs £38k.*

*I should have left my final salary, AVCs and shares in their previous form.*

*Easy to saying [sic] in hindsight I know.*

*As I have said in my other mails, we need a fundamental rethink on my financial Planning...especially as I am close to retirement.*

*Many thousands are in the same boat...hope Woodford sleeps ok with his £8m in fees that he took out when everyone else's pots of money were dwindling.*

*Finally, on a positive note, can you let me know what extra value has been created in other funds to cover this?"*

Mr F and WP had further communication about the Woodford Fund. WP's email to Mr F on 27 November 2020 included that "As it stands you will have received a total of approximately £42,444 out of £60,167 if the Woodford fund pays out the £4,427 that is still held in the fund.", and went on to say that WP intended to register with a claims management company ('CMC') that was taking action against the Authorised Corporate Director of the Woodford Fund.

In 2023, Mr F asked WP about the performance of his pensions and investments, as he would be retiring soon. Ultimately, Mr F thought WP hadn't properly addressed his questions. Around this time, WP chose to end its relationship with Mr F and so Mr F appointed another financial adviser.

On 23 August 2023 Mr F wrote to WP to say he planned to make a complaint and asked it to provide him with the further information he then listed in order to inform his complaint.

From September 2024 onwards, Mr F made a series of complaints to WP regarding his pensions. Broadly, his complaints were that:

- Firm J gave the 2017 DB transfer advice on WP's behalf, as WP wasn't authorised for that work. So both WP and Firm J were responsible for the unsuitable advice.
- The investment returns on the transferred DB pension amounts were less than WP had led him to expect, and he'd have been better off staying in his DB schemes.
- WP didn't carry out adequate due diligence checks on the Woodford Fund before advising him to invest his pension monies in it.
- Over the last eighteen months or so, WP hadn't satisfactorily responded to his queries about the performance of his transferred DB monies.
- WP managed his pension but hadn't chosen and explained investments as it should've.
- WP may have paid or received fees or commission to or from other firms in relation to the DB transfers.
- WP's July 2023 advice for him to cash in three 'small pot' pensions was unsuitable, as it meant he'd paid more tax than he'd needed to.

In the series of final response letters it issued, WP in summary said:

- WP hadn't provided the 2017 DB advice so wasn't responsible for it. It was provided by Firm J.
- WP hadn't received or been paid any fees or commissions by another firm in relation to the DB transfers.
- WP's advice to invest his pension monies in the Woodford Fund was suitable as there were no warning signs at that time and only a small portion of his pension monies were invested in it. But in any case, Mr F had complained about this advice too late under the relevant time limit rules because he'd done so more than six years

after the advice was given and more than three years after he ought reasonably to have been aware he had cause for concern after he was told in 2019 that the Woodford Fund had been suspended.

- WP's June 2017 advice about how to invest the rest of his transferred DB monies had been suitable, as they were invested in line with his ATR and capacity for loss. And these pension investments had generally performed well, though there had been dips in more recent years due to global and political events. And WP had kept Mr F updated about this performance as part of the six-monthly reviews and ad hoc summaries it had provided him with.
- WP's advice to cash in his small pot pensions had been suitable as it allowed Mr F to meet his objectives at that time, and WP had explained the consequences to him.

While his complaint communication with WP was ongoing, Mr F came to the Financial Ombudsman Service as he thought WP wasn't addressing his concerns. In summary, his submissions to us included:

- WP's misguided advice supported/reinforced Firm J's DB transfer advice and played a significant part in persuading him to transfer his two DB pensions.
- Mr F provided his comments about the merits of his complaint point about WP's advice to invest his pension monies into the Woodford Fund. He also said he'd raised concerns about the Woodford Fund with WP in April 2019, but WP ignored this and defended the Woodford Fund. And until the Woodford Fund proceedings had concluded and compensation figures were known, no one could be sure when to complain about it.
- Our Service should review WP's entire management of his portfolio and account because it hadn't acted in his best interest.
- WP's customer service had been poor. The examples Mr F gave included it coming to meetings with files rather than a laptop, not having access to providers' online portals, printing a spreadsheet rather than reviewing it onscreen, not comparing performance across what Mr F saw to be appropriate time periods and net of fees and other factors, not providing minutes of their meetings, sending templated reports weeks late and not responding to or not fully addressing all of his emails. He also said it hadn't been transparent about his pension's performance.

An Investigator at our Service looked into Mr F's complaint and, in summary, concluded that:

- Mr F's complaint point about WP's advice to invest his pension monies in the Woodford Fund had been made too late under the time limit rules for our Service to be able to consider its merits.
- Mr F's complaint point about WP's July 2017 advice on how to invest his transferred DB pension monies (excluding the Woodford Fund) had been brought in time but shouldn't be upheld, as WP had correctly assessed his ATR and recommended investments that were in line with it.
- WP hadn't treated Mr F unfairly regarding the ongoing performance of his transferred DB pension monies. WP didn't choose and place these investments for Mr F at its own discretion but rather made recommendations that Mr F could accept or not. And WP had explained to Mr F that performance wasn't guaranteed and that global and political events had widely affected investment returns from around 2022.
- WP hadn't consistently given Mr F the level of customer service their Agreement would've led him to expect, so it should apologise to him for this.
- He'd not seen that WP had directly paid/received any fees or commissions to/from other firms in relation to advice Mr F had received.
- WP's advice to cash in Mr F's three small pot pensions hadn't been unsuitable.

In the meantime, Firm J had failed in 2021 and Mr F had made a claim to the Financial Services Compensation Scheme ('FSCS') about Firm J's 2017 DB transfer advice. In May 2025, the FSCS told Mr F it thought Firm J's advice had been unsuitable but it wouldn't pay him any compensation for this as the FSCS calculated he'd not suffered any financial loss but rather had made a £91,365 gain.

WP accepted our Investigator's view of Mr F's complaint but highlighted the volume of emails it used to receive from Mr F; WP said it always tried to respond within 24 hours, but Mr F would at times send five or six emails a day and forty to fifty over the next month. WP said it may have missed small points occasionally, though not performance requests Mr F made.

Mr F didn't agree with our Investigator and provided further comments. These included in summary that:

- The Investigator hadn't considered his complaint properly or addressed all his grievances, and had favoured WP. Mr F said he was the complainant here, and made references to WP not acting as he thought it should under the Consumer Duty.
- WP had been selective and misleading in the information it provided to us, to cast itself in a favourable light. It hadn't provided everything our Investigator had asked for, and our Investigator hadn't asked for everything he should have. So our Service shouldn't yet make any decision on this complaint.
- WP shouldn't be able to say it didn't consent to us considering his complaint if we thought it had been brought too late. And there were many times our Service had still looked at complaints brought too late.
- He'd raised concerns with WP about the Woodford Fund from June 2019 but didn't get a full or satisfactory resolution or a plan to mitigate his losses. WP should have advised him to complain at that time. And he'd complained in time anyway, because he'd done so within six years of still investing in the Woodford Fund, and within six years of being told about his Woodford Fund losses in June 2019. And he'd started a complaint with WP on 23 August 2023 when he told it he intended to complain about the many issues he'd flagged up, including the Woodford Fund.
- WP was also responsible for the unsuitable DB transfer advice he'd been given. Because Firm J and WP worked together, and WP had initiated his contact with Firm J. Because Firm J's unsuitable DB transfer advice cast doubt on WP's competence in recommending Firm J. And because he'd not planned to transfer his DB pensions until WP itself recommended he did so verbally and in writing; without the validation of WP's email telling him *"you should proceed with the transfers"*, he wouldn't have transferred his DB pensions just on Firm J's advice.
- WP had guaranteed the performance of the transferred DB monies, as it told him he'd achieve 5% above inflation on them.
- Our Service should further analyse the individual performance of his investment and pension portfolios, accounting for inflation and fees, as WP was trying to mask poor performance. Wider events did impact returns, but WP should have taken action to minimise his losses.
- WP hadn't provided the level of service promised in their Agreement, in particular *'maximising the investment returns in accordance with your objectives'*, *'ensuring that products remain suitable'*, *'Benchmarking'*, and *'Unlimited telephone and email access'*. WP's service had been unprofessional but we'd given it the benefit of the doubt. WP was the expert but failed him at his critical time of approaching retirement.
- We shouldn't take WP's word that it didn't receive, or pay, fees or commission to other firms regarding the Woodford Fund.
- WP's small pots advice report set out the wrong small pots net income, and what he'd actually received was £21,000. If he'd known this, he wouldn't have proceeded

so WP should reimburse him the difference of £4,110.

- Mr F pointed out that WP hadn't yet apologised to him as the Investigator had said it should, but this wasn't enough to put things right anyway. Mr F set out how he wanted WP to put things right instead, including compensating him for his financial loss, distress and lost potential earnings due to the time he'd spent on this complaint, and reimbursing the fees he'd paid it.

Ultimately, agreement couldn't be reached and so this complaint was passed to me for a decision.

After I reviewed all the comments and evidence provided by both parties, I contacted them to informally share my thoughts on one particular point, because I had reached a different conclusion on this to the Investigator who'd previously looked into it. I explained to both parties that I thought Mr F's complaint point about being advised to transfer out of his DB schemes had been brought too late under the relevant time limit rules for our Service to have the power to consider its merits. And that even if I thought it had been brought in time and so was something our Service *could* consider, I'd think we *shouldn't* consider it given that DISP 3.3 set out when we may find that a complaint should be dismissed without consideration of the merits of the complaint, and that the subject matter of Mr F's complaint point that he was given unsuitable advice to transfer his DB pensions had already been considered by a comparable dispute resolution scheme in the form of the FSCS.

Despite being provided with the opportunity, WP didn't provide any response.

Mr F said I'd only addressed one of his complaint points and highlighted the other six set out in the spreadsheet he'd previously provided to us. These were that:

- our Investigator hadn't properly investigated or addressed his complaint;
- WP gave him unsuitable DB transfer advice;
- WP's advice to invest in the Woodford Fund was unsuitable;
- WP may have given or received incentive payments from other firms for him to transfer his DB pensions and invest in the Woodford Fund;
- we should review WP's management of his portfolio and account between 2017 and 2023;
- WP's advice to cash in his small pots was unsuitable.

Regarding the particular thoughts I'd informally shared, Mr F's comments were in summary that he didn't agree his complaint about the DB transfer advice had been brought too late but he accepted my view that it was. He said I'd acknowledged the FSCS had ruled Firm J gave him unsuitable DB transfer advice, so that by default meant WP also gave him unsuitable DB transfer advice so I should at least write to WP to tell it this.

I'm now in a position to make my decision.

### **What I've decided – and why**

Firstly, I thank both parties for their patience whilst this complaint has been with our Service. I also want to acknowledge that both parties have provided our Service with a great deal of comments and evidence in relation to this complaint. I hope it is helpful for me to reassure them that I've carefully considered everything provided. However, my decision won't address every piece of evidence or point made. This is deliberate; I mean no discourtesy but my decision will only address what I see to be relevant in deciding this complaint.

I acknowledge that in Mr F's view, our Investigator didn't properly investigate or address his complaint. So I hope it's also helpful for me to clarify that my role here is to consider Mr F's

complaint impartially and entirely afresh. This means I have considered the complaint to reach my own conclusions about it. And it means I don't act for or represent either Mr F or WP, and so I won't be conducting the detailed review of WP's entire management of Mr F's portfolio and account between 2017 and 2023 that Mr F wants. And while I know Mr F believes that our Service does not have all the information necessary to investigating his complaint, I would like to explain that it is for me to decide what information I need in order to make my decision. And I'm satisfied I don't need any further information or evidence.

Jurisdiction – Mr F's complaint points about being advised to invest his pension monies in the Woodford Fund and being advised to transfer out of his two DB schemes

I do appreciate how strongly Mr F feels that our Service should consider the merits of all the complaint points he's raised, and he suggests we could do so if we wanted to. But the Financial Ombudsman Service isn't free to consider every complaint brought to us. Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the Regulator the Financial Conduct Authority's ('FCA') Handbook of Rules and Guidance. I am bound by these rules and cannot disregard them.

DISP 2.8.2R sets out the relevant time limit rules; it says that, unless the business consents:

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

*(2) more than:*

*(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 the complainant referred the complaint to the respondent or the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits...was as a result of exceptional circumstances;*

*...*

*(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R... have expired*

Mr F's complaint points include that WP's advice to invest his pension monies in the Woodford Fund was unsuitable. Neither party disputes that WP initially gave Mr F such advice in 2015. And the evidence provided to me shows that WP last advised Mr F to invest his pension monies in the Woodford Fund in its six-monthly review report of 23 June 2017, in which it recommended he 'drip' a total of about £22,000 of his transferred DB monies into the Woodford Fund over the next twelve months. So the advice to invest his pension monies in the Woodford Fund that Mr F complains of here – i.e. the events complained of – took place in 2015 and June 2017.

Next, I need to think about when Mr F complained to WP about its 2015 and 2017 advice to invest his pension monies in the Woodford Fund. Mr F says he raised concerns about the Woodford Fund to WP from June 2019 but didn't receive satisfactory answers, and he thinks WP should've advised him to complain at that time. It's clear from Mr F's 31 October 2019

email to WP that Mr F was aware that his pension had or may have suffered a loss by being invested in the Woodford Fund, as he says he'd made a 21% loss on it and thought he might lose a further 20%. It's also clear from this email that Mr F held the Woodford Fund's operator responsible for his loss. However, it doesn't include any expression of dissatisfaction directed towards WP, so I don't think Mr F's email of 31 October 2019 constituted a complaint to WP about an act or omission by WP regarding its 2015 and 2017 advice to invest his pension monies in the Woodford Fund.

Mr F also says he started a complaint with WP on 23 August 2023 because he told it he planned to make a complaint, including about the Woodford Fund. I've considered this email. Within it, Mr F says, *"I will be writing to you with a summary of my issues and concerns on how my portfolio has been managed in the last 5 years and of the account management in the last 18 months To that end, and in order to help manage the difficult position you have put us in, please could you provide the following by the end of August"*. Mr F then listed the information he wanted WP to provide. I think this email made clear that Mr F *intended* to complain to WP in future, but that he wasn't doing so at that time because, importantly, he wanted further information from WP in order to inform the content of his future complaint.

Based on the evidence provided to me, I'm satisfied that Mr F first complained to WP about its advice to invest his pension monies in the Woodford Fund on 4 October 2024. Since WP had provided this advice in 2015 and 2017, I'm satisfied that Mr F has brought this complaint point too late under the six-year part of the DISP time limit rules.

Therefore, I need to consider whether this complaint point has been brought in time under the three-year part of the rule. Under this, I must consider not only when Mr F did become aware he had cause for complaint about WP's advice to invest his pension monies in the Woodford Fund, but also when he *ought reasonably* to have become aware of that.

Mr F says he couldn't know to complain until the Woodford Fund proceedings had concluded and compensation figures were known. But the DISP time limit rules don't require Mr F to be aware of every last factual detail or formal ground for his complaint or to have a high degree of certainty about relevant points, in order to have awareness of cause for complaint. They simply require him to have knowledge (actual or constructive) that there's a problem which has caused, or may cause, him a loss and that WP may have a responsibility for it.

As I say, the documentary evidence shows that by October 2019 Mr F was aware that his pension had or may have been caused a loss by being invested in the Woodford Fund. He may at that time have thought the Woodford Fund's operator was responsible for this loss, and then later thought the Woodford Fund's Authorised Corporate Director was responsible for it given what WP told Mr F in its email of 27 November 2020 about WP intending to register with a CMC taking action against that Director. But I don't think this meant Mr F shouldn't have also thought about who else might also bear a responsibility for this loss. And in October 2019, Mr F would have known that it was WP that had advised him to invest his pension monies in the Woodford Fund. So I think Mr F ought reasonably to have been aware in October 2019 that WP may also have a responsibility for this loss.

Given all of this, I'm satisfied that by October 2019 Mr F ought reasonably to have been aware he had cause for complaint against WP about the advice it had given him to invest his pension monies in the Woodford Fund. So this complaint point is out of time under the three-year part of the DISP time limit rules too.

WP hasn't consented to our Service considering this complaint point. Mr F has questioned why WP is allowed to withhold such consent, but WP is entitled to do so if it chooses and our Service will in any case consider whether the complaint's been brought in time or not. And I think this complaint point has been brought too late under both the six-year and three-year

parts of the DISP rules. Since WP hasn't consented, I could only consider the merits of this complaint point if I thought there were exceptional circumstances that had prevented Mr F from bringing it within the DISP time limits. To illustrate, the example of exceptional circumstances given in the DISP rules is that of a consumer being 'incapacitated'.

Mr F hasn't pointed to anything he considers to be exceptional circumstances, but he does say WP should've told him he could complain about its advice. So I've thought about this but there's no general requirement for businesses to invite consumers to complain. And I think it's reasonable to conclude that a person would know they could complain about something they weren't happy with and take their own steps towards doing so, without waiting to be invited. So I don't think anything Mr F has told us about amounts to exceptional circumstances, therefore I'm satisfied they don't apply here.

Given all this, I'm satisfied Mr F's complaint point about the suitability of WP's advice to invest his pension monies in the Woodford Fund has been brought too late for our Service to be able to consider its merits.

For similar reasons, I think Mr F's complaint point about WP giving him unsuitable advice to transfer his two DB scheme benefits has also been brought too late for our Service to be able to consider its merits.

Mr F first complained to WP about its role in the DB transfer advice on 6 September 2024. This is more than six years after that advice was given in 2017. And it is more than three years since I think Mr F ought reasonably to have been aware he had cause to make this complaint against WP. I say that because his email of 31 October 2019 to WP not only makes clear that he was aware of a loss to his pension, but also says that **"I should have left my final salary, AVCs and shares in their previous form"** [bold is my emphasis]. So at that time, Mr F thought he shouldn't have transferred out of his DB schemes. And in bringing this complaint, he's argued that in 2017 he only went ahead with the DB transfers because WP had itself advised as well as validated Firm J's advice that he should transfer; that without WP's March 2017 email telling him *"you should proceed with the transfers"*, he wouldn't have done so only on the advice of Firm J. Given all this, I think Mr F ought reasonably to have been aware in October 2019 that he had cause for complaint against WP about it advising him to transfer his DB pensions.

As I've already explained above, WP hasn't consented to us considering Mr F's complaint, and I'm satisfied exceptional circumstances don't apply in this case. Therefore, I think Mr F's complaint point about WP also being responsible for the unsuitable DB transfer advice has also been brought too late for our Service to be able to consider its merits.

And even if I thought Mr F's complaint point about the unsuitable DB transfer advice had been brought in time and so was one our Service *could* consider, I'd think it's one our Service *shouldn't* consider. That's because DISP 3.3 sets out the process for and instances when we may find that a complaint should be dismissed without consideration of the merits of the complaint. The current grounds for dismissal are set out at DISP 3.3.4A:

*"The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:*

*...*

*(5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service."*

DISP 3.3.4B provides:

*“Examples of a type of complaint that would otherwise seriously impair the effective operation of the Financial Ombudsman Service may include:*

*...*

*(2) where the subject matter of the complaint has already been dealt with by a comparable dispute resolution scheme...”*

Mr F’s complaint point here is that the advice he was given in 2017 to transfer his DB pensions was unsuitable. The firm I’ve been asked to consider this complaint point against is WP. This is different to the respondent firm that the FSCS considered this same complaint point against, which was Firm J. Nonetheless, the subject matter of the complaint is the same – that Mr F was given unsuitable advice to transfer these DB pensions. And the FSCS has already considered this advice and concluded that it was unsuitable, but the FSCS said it wouldn’t compensate Mr F for it because he’d not made a financial loss but rather had made a gain. So I don’t think it would be appropriate for our Service to consider the merits of his complaint point about the suitability of the DB transfer advice he was given in 2017, because I think doing so in circumstances where that subject matter has already been considered by a comparable dispute resolution entity would otherwise seriously impair the effective operation of the Financial Ombudsman Service.

I know Mr F says I’ve acknowledged the FSCS ruled Firm J gave him unsuitable DB transfer advice, so by default this means WP also gave him unsuitable DB transfer advice and I should therefore at least write to WP to tell it this. Mr F also thinks WP may have been incentivised by other firms so that it had a vested interest in him transferring his DB pensions benefits and investing them in the Woodford Fund. But for the reasons I’ve explained, I don’t have the power to consider Mr F’s complaint point about the DB transfer advice and his pension monies being invested in the Woodford Fund.

However, I think Mr F’s other complaint points about WP’s management of his transferred DB pension monies, its customer service and its advice to cash in his small pot pensions have been brought within the DISP time limit rules and so can be considered by our Service. And I’ve seen nothing to make me think our Service should dismiss these complaint points without consideration of their merits. And so I’ve gone on to consider their merits, which I’ll now turn to.

#### The merits of Mr F’s other complaint points

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 Consumer Duty, the Principles for Businesses (‘PRIN’) and the Conduct of Business Sourcebook (‘COBS’).

#### WP’s management of his transferred DB pension monies

Mr F says WP hasn’t managed his pension investments in line with their Agreement, has tried to mask the poor performance of his transferred DB pension monies against the 5% above inflation returns he says it guaranteed, and that it should’ve taken proactive action to minimise his losses. Mr F has also referred to WP sending him templated reports weeks late.

In considering this complaint point, I’ve firstly thought about whether WP assessed Mr F’s ATR correctly. Amongst other evidence, I’ve been provided with copies of the six-monthly review reports WP prepared for Mr F from June 2017 to July 2023. From these I see that from June 2017 to May 2019 it assessed his ATR as 6 on a scale from 1 to 10, or ‘high

medium'. I don't think that assessment was unreasonable given Mr F's specific circumstances and his answers to WP's 'Risk Profiling Questionnaire'.

In December 2019 WP changed its assessment of his ATR to 5 on a scale of 1 to 10, or 'low medium', and this remained the case until WP's last six-monthly review report of July 2023. Again, I don't think that assessment was unreasonable at that time, given the review report recorded that, *"in our more recent meetings, you recompleted our RPQ and answered questions very differently to the one you completed previously. We discussed these at length, including your investment time horizon and acceptance of some volatility and came to the conclusion that you want to lower your risk profile to a level 5, or 'Low Medium'."*

Next, I've thought about whether the investments WP recommended that Mr F invest his transferred DB monies into were in line with his ATRs at those times. And I think they were. WP's June 2017 report said, *"Due to the size of the investment I recommend that the proceeds are held in the cash fund [of existing DC pension] and dripped into the following funds on the 1st of each month over the next 12 months. You are aware that this should help to reduce the volatility within your pension. You are also aware that if markets continue to rise steadily you would have been better investing all the transfers immediately. If markets fall, then dripping the money in should be to your benefit."* The report then listed 20 funds these monies should be dripped into – these included the Woodford Fund, but for the reasons I've already explained, I'm not considering the advice WP gave Mr F to invest his pension monies in the Woodford Fund. But I have considered the other funds listed here and when taken as an overall portfolio, I think they were in line with Mr F's ATR of 'high medium' at that time.

Based on the review reports provided to me, I'm satisfied that WP then kept Mr F's ATR and his pension investments under regular review, assessed whether the arrangements remained suitable for him, and provided six-monthly reports that fulfilled the expectations WP had set out to Mr F in their Agreement and contained detailed information, albeit this may not have been in exactly the format Mr F thought they should be. In particular, I can see that WP's review report of December 2019 made clear it was rebalancing his pension portfolio, especially in light of the change to his ATR. The report said, *"I am pleased to confirm that the majority of funds held within your portfolio continue to feature on our 'best of breed' funds list. However, I am recommending sales from the following funds to reduce your exposure to European equities as well as align your portfolios to the newly adopted risk profile. I have also recommended some funds are partially sold to reduce overweight positions in certain funds to add more diversification. I am also trying to keep fund weighting to a maximum of 7%"*

I accept that in February 2017, WP used a net return of 5% after charges to illustrate to Mr F what his transferred DB monies could be worth. But I've not seen that WP told Mr F he was guaranteed to get this return, instead it told him in the same email that returns cannot be guaranteed and could be higher or lower. Further, poor performance isn't in itself evidence that something has gone wrong. That a set of WP's pension investment recommendations has, in hindsight, not turned out as well as others might have, doesn't mean that WP acted incorrectly.

Mr F accepts that global and political events unfortunately negatively impacted some of his pension investments, but he thinks WP should have been more proactive in order to minimise his losses. I should be clear here that it wasn't WP's role to choose and place investments on Mr F's behalf at its own discretion, but rather to recommend pension investments to Mr F. And it's important to remember that investing for a pension is a medium- to long-term activity and that it's only possible in hindsight to know what the optimum investment strategy would have been. Whereas I must consider Mr F's complaint based on what WP did know and could have known at that time. I don't think it could have

foreseen the global and political events referred to, and the nature of investing is that performance and value can and does fluctuate, and for many reasons.

Taking everything into account, I'm not persuaded that WP's advice to invest, and its management of, Mr F's transferred DB pension monies (excluding the Woodford Fund) was unsuitable for Mr F. So I'm not upholding this complaint point.

#### WP's customer service

Mr F says WP's customer service was poor. His examples include it coming to meetings with files rather than a laptop, his adviser not having access to providers' online portals, printing a spreadsheet rather than reviewing it onscreen, not always providing minutes of their meetings in good time and not responding to or not fully addressing all of his emails. Regarding this, Mr F has particularly pointed to the last eighteen months or so of their relationship.

I wasn't present for the meetings and discussions between Mr F and WP, so I can't be sure how WP came to these. And I'm mindful that I've likely not been provided with documentary evidence of every single email or other contact between Mr F and WP. However, I have been provided with a good amount of such documentary evidence and I'm satisfied I don't need any more in order to reach a fair and reasonable conclusion regarding the customer service WP provided to Mr F.

I accept that the Agreement between Mr F and WP set out what Mr F could expect from WP, and that this *included "Unlimited telephone and email access to your adviser"*. But WP says its volume of contact from Mr F was very high. To illustrate, WP says he sent 111 emails in 2017 (the year of the DB transfer advice) and 135 in 2023 (the year WP ended their relationship). I know Mr F says many of these would have been reminders or corrections he needed to send WP. But I'm mindful that this is nonetheless a high volume of contact and the copies of emails I've seen suggest Mr F often emailed WP with a great deal of detail and asked it for detailed information, analysis and opinion in return.

I note WP itself says it sometimes missed small points, and some of what I've seen supports this. As an example, on 27 November 2020 WP apologised to Mr F as it accepted it hadn't updated a total column on a spreadsheet, which he'd brought to its attention. However, I've not seen evidence to persuade me that any such small lapses in WP's customer service, including bringing papers to meetings rather than a laptop or how it accessed provider data, caused Mr F any material detriment or that they warrant an award of compensation.

For clarity, I've carefully considered Mr F's submissions about how he'd like WP to put things right for him, including compensating him for his distress and his lost potential earnings for the time he's spent on this complaint. But Mr F hasn't provided any evidence of lost earnings and he has in any case brought this complaint in his personal capacity, not his professional capacity. And while WP may not have met Mr F's own expectations, I think WP overall made reasonable efforts to respond to his contact and queries, and gave him a reasonable level of customer service. That said, I uphold this complaint in part due to the small lapses in customer service that WP accepts it made, which I've seen evidence to support. But, like our Investigator, I think WP giving Mr F an apology for any such minor lapses of customer service is enough to put right any distress and inconvenience this would have caused Mr F. Therefore WP should write in brief to Mr F with such an apology.

#### WP's advice to cash in his small pot pensions

Mr F says WP recommended he cash in his small pot pensions but only 25% of these were tax free with the rest taxed at his marginal rate of 40%, so WP should have advised him to

not draw these small pots until his tax rate was lower after his intended retirement in August 2023. He's also told us that WP should have told him to take money from his ISAs instead as that would have been tax-free. And he's told us that WP's advice here set out the wrong amount of post-tax small pots income which he'd relied on when accepting the advice, so it should pay him the difference.

WP gave Mr F its small pots advice in its July 2023 review report. It recorded his circumstances at that time were that his final day of work would be 1 September 2023, though he might look for part-time work at this point, and that he required an annual retirement income of £54,000. It recommended for 2023/24 that this come from the last of his employment income plus his investment income and his small pots, totalling £56,035 net of tax.

The review report highlighted that while 25% of Mr F's small pots withdrawal would be tax free, he was currently a higher rate taxpayer so would be subject to the additional tax liability though his self-assessment tax return in the tax year he received the small pots payment. It explained WP had considered other ways of raising the retirement income Mr F required in 2023/24 but Mr F hadn't wanted to borrow monies due to the cost, and hadn't wanted to encash investments as they were to provide his future retirement income. The report set out that WP had also considered other alternatives, including:

- Drawing a pension commencement lump sum from Mr F's uncrystallised pensions.
- Purchasing an annuity with a different provider on the Open Market.
- Move to a Flexi-Access Drawdown plan, or similar.
- Use the Uncrystallised Fund Pension Lump Sum rules.
- Moving to phased retirement.
- Moving to a combination of the above.

But the report recorded that Mr F using the small pots facility within his existing pension was the most suitable option for him, because:

- *"The value of your total pension benefits exceeds the Lifetime Allowance (LTA), however 'small pots' are not tested against the LTA. Therefore, the maximum £268,275 tax-free cash could still be withdrawn should your pension savings exceed the LTA when you crystallise your remaining benefits.*
- *You do not currently require a regular income from your pensions.*
- *The Money Purchase Annual Allowance (MPAA) is not triggered, unlike other income options such as withdrawing taxable income via Flexi-Access Drawdown."*
- *"You can access the amount of money you require with only 75% of the withdrawal being subject to your marginal rate of income tax.*
- *You can access a portion of your pension without having to withdraw the full amount so it can continue to remain invested. This gives you the option to draw further benefits in future.*
- *[Pension provider] do not make any initial or ongoing charge for facilitating payment of 'small pots'."*

Taking everything into account, I'm satisfied that WP's small pots advice took account of Mr F's particular objectives, circumstances and potential tax liabilities. And that it explored his options with Mr F and explained the reasons for the recommendation it made regarding small pots. I'm not persuaded that recommendation was unsuitable for Mr F in his particular circumstances at that time, or that Mr F accepted the recommendation only because of incorrect information. Therefore, I'm not upholding this complaint point.

## Summary

I do appreciate that Mr F wants our Service to uphold all of his complaint points, so I realise that this decision is unfortunately likely to come as a disappointment to him. But for the reasons I've explained, our Service does not have the power to consider his complaint points against WP regarding the 2017 DB transfer advice, or the 2015 and 2017 advice to invest his pension monies in the Woodford Fund.

Our Service does have the power to consider the other complaints points about WP's management of his transferred DB pension monies, its customer service and its advice to cash in his small pot pensions. And I'm satisfied our Service should consider these. Having done so, I'm partly upholding his complaint point about WP's customer service, and I'm satisfied that a fair and reasonable way to put that right in the circumstances is for WP to send Mr F a brief written apology for any minor lapses of customer service.

### **My final decision**

For the reasons set out above, our Service does not have the power to consider Mr F's complaint points against West Park Investment Partnership Limited regarding the 2017 DB transfer advice and the 2015 and 2017 advice to invest his pension monies in the Woodford Fund.

However, it is my decision that our Service can and should consider Mr F's complaint points about West Park Investment Partnership Limited's management of his transferred DB pension monies, its customer service and its advice to cash in his small pot pensions. And having considered these, my decision is that I partly uphold his complaint point about customer service and that West Park Investment Partnership Limited should put this right by sending Mr F a brief written apology for any minor lapses in the customer service it provided him with.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 February 2026.

Ailsa Wiltshire  
**Ombudsman**