Financial Ombudsman Service

complaint

Mr J complains that Wealthmasters Financial Management Ltd (WFM) gave him unsuitable advice to transfer his personal pensions into an occupational pension scheme offered by ARK Business Consulting (Ark), making use of a Pension Reciprocation Plan (PRP). Mr J says as a result he now can't access his pension benefits, has a county court judgement (CCJ) recorded against him for unpaid debts and is facing tax demands from HMRC.

background

In 2010 Mr J approached WFM to see whether if could access his two personal pensions (worth around £48,000) as he was struggling with debt. He was in a difficult financial and personal situation and was keen to access any available funds to repay his debt and rebuild his credit rating so he could buy a property. Part of his debt was managed by a debt management company and he had already exhausted all other options.

WFM told him they couldn't help as he was 50 years old at the time and so below the minimum age of 55 at which pensions can generally be accessed. A few months later WFM contacted Mr J again to inform him that they had now been made aware of a *'unique product'* that may help solve Mr J's problems, so another meeting was arranged.

A fact find was completed and a suitability report was issued in November 2010 setting out WFM's recommendations. Mr J's objective was to release monies from his pension to repay the majority of his debt. His profile was recorded as 20% cautious, 60% realistic and 20% adventurous.

The report says WFM discussed Mr J's options and the only provider they were aware of that could provide the service of transferring the personal pensions to an occupational scheme and loaning Mr J part of his pension fund was Ark. It went on to explain that the benefit of the scheme was the facility to have access of up to 50% of the pension fund now for Mr J to use in repaying most of his debts. The loan would have to repaid before the end of the pension plan which was at age 77. WFM then recommended Mr J to invest into the EPF 90 fund which they said was in line with his attitude to investment risk. 90% of the fund would be invested in the Entrepreneurs Property Fund with the balance being held in cash or spread across manged funds. In the summary at the end of the report WFM said they would transfer Mr J's personal pensions to an occupational scheme. Ark would then arrange a Master Pension Scheme which would accept Mr J as a new member of an occupational scheme.

Mr J transferred his pensions and says he took a loan of £25,000 from the pension.

In 2011 the Pension Regulator appointed a new independent trustee to the Ark scheme amid concerns that the scheme was being used for pension liberation. Later that year, a court found the loans given to members were unauthorised payments. HMRC also considers these loans were unauthorised payments. As a result Mr J received tax demands from HMRC, but these were appealed and I understand demands are currently postponed until a tribunal decides on the correct basis of taxation.

The trustees of the scheme also ordered for the loans to be repaid which led to a CCJ recorded against Mr J for the non-repayment of £28,395 (which is the loan of £25,000 plus administration costs). I understand the scheme currently doesn't pay out any benefits to members as there is uncertainty about the value of the scheme's investments, the recovery of loans and the uncertain position to the tax situation.

Mr J complained to WFM in 2018 and subsequently to this service. WFM says they did their research and confirmed to Mr J that Ark was a registered scheme and then put him directly in contact with them. All further communications would have been between Ark and Mr J. WFM says they had no involvement in arranging loans or making any investments. They were only facilitating the pension transfer. WFM said Mr J should direct his complaint at Ark and that WFM did not recommend pension liberation. They also raised arguments that the complaint was raised too late.

Another ombudsman at this service issued a decision explaining that he considered Mr J had complained in time.

An investigator then looked at the merits of Mr J's complaint and upheld it. He said WFM gave Mr J advice to transfer his personal pension to an occupational scheme and they needed to make sure this was suitable in his circumstances. WFM needed to consider the overall proposition, so not only the actual switch between pensions but also the underlying investments Mr J was going to make. They couldn't wash their hands of any consequences by simply saying they hadn't arranged the loans.

At the time of the advice no concerns had been raised yet by the Pensions Regulator or HMRC. However, the scheme was not covered by the Financial Services Authority (FSA) and the scheme was untried and untested. There was also no explanation why the recommended fund was suitable. The suitability report didn't mention any substantial risks of the scheme, only that the performance was not guaranteed and Mr J might not be better off in retirement. There was little evidence that WFM had done any due diligence on the recommended scheme other than checking it was HMRC registered. If the risk of potential tax charges and HMRC investigations had been explained to Mr J, the investigator thought he wouldn't have gone ahead with the investment. So he thought WFM was responsible for the situation Mr J found himself in now.

He recommended WFM to compensate Mr J by :

- comparing the notional value of his previous pensions if he hadn't transferred with the value of his existing pension which would show the financial losses he suffered.
- He said WFM could deduct from these losses the loan Mr J received as well any debt interest he saved by paying off his debt with the loan as these were benefits he had.
- covering any tax liability Mr J had to pay to HMRC. Mr J was asked to show WFM the final demand.
- Pay Mr J £500 for the trouble and upset caused by the distress and upset this matter has caused him including the dealings with HMRC and the disruption to his pension planning.

WFM didn't respond to the investigator's assessment, even after a response was chased by email. Mr J agreed with the majority of the findings but pointed out that he doesn't have the funds to clear the CCJ debt. Without the transfer Mr J says he wouldn't be in this position. He was told his loan could be repaid when he eventually took his pension benefits, but due to the ongoing court proceedings and administration costs he is worried the pension will have no value to him. He wants to pay off the loan to be able to move on. The settlement of the loan should be considered in the compensation.

The investigator explained he couldn't request WFM to remove the CCJ as they didn't have the power to do this. The CCJ was applied for by the pension trustees.

As no settlement was agreed between the parties, the complaint was referred to me for a decision. WFM was asked for further comments they wanted the ombudsman to consider, but again we did not receive a response.

I issued a provisional decision upholding the complaint. Mr J agreed with the outcome. WFM disagreed and provided a copy of a letter they had sent to this service in October 2020 in response to my colleague's provisional decision on jurisdiction. They disagreed with his findings on time limits and provided comments on the merits of Mr J's complaint.

Unfortunately, we don't have a record that this letter was received at the time. WFM also made further submissions disagreeing with the outcome of the decision. I've considered everything they said in their letter in October 2020 as well as in their more recent correspondence.

After considering their comments I slightly changed the redress and shared this both parties. Mr J and WFM provided further comments which I'll also address in this decision.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I remain satisfied that this complaint should be upheld.

In my provisional decision I said:

Based on the evidence I have seen I'm satisfied WFM recommended Mr J to transfer his personal pensions to an occupational scheme with Ark. The reason for this was solely to take out a loan immediately to pay off Mr J's debts. WFM also recommended the fund Mr J should invest in. WFM didn't just facilitate a transfer here. They gave Mr J advice on what to do with his pensions and provided him with a recommendation of how to achieve immediate access to a cash lump sum.

WFM had to make sure this course of action was suitable for Mr J's circumstances and that it was in Mr J's best interest. There's no doubt Mr J was in a difficult situation and wanted to clear his debts and that accessing his pension for this purpose would have sounded attractive. However, he was in a debt management plan and looking at the fact find he still had disposable income every month after paying off his monthly debt instalments and other outgoings. So whilst I appreciate being in debt is stressful and Mr J would have liked to pay off his debts to move on with his life, it seems they were being managed.

In any event, pension funds are designed to provide income in retirement which is the reason why they generally can't be accessed early. I can't see that Mr J's retirement needs were properly discussed. Whilst Mr J's focus might have been on the clearance of his debt, WFM's obligation was to make sure any immediate needs for cash were weighed up against what was in his best interest in the long-term. Mr J said he was told by taking the loan his pension income in retirement might be lower. I appreciate that he might have been willing to accept this to alleviate his imminent financial position. But I can't see that WFM assessed whether he actually had the capacity to bear these losses. He noted on the fact find that he had a workplace pension, but no value was recorded. He had no savings or other *investments, so based on what WFM knew about Mr J's circumstances the pensions he was transferring would have been an important part of his retirement planning.*

WFM knew Mr J was below the minimum retirement age and that early access to a pension was generally not possible, so I think they should have reasonably been aware of the risk that this sort of scheme - which was non-standard and not regulated by the FSA - could be investigated by HMRC and the consequences this might have. WFM mentioned that occupational schemes could provide loans. It is correct that occupational schemes could provide commercial loans to their sponsoring employers. However, loans to members of an occupational scheme were not authorised member payments as set out in section 164 of Finance Act 2004. The trustees have also confirmed in their communications to members that, alongside the loans, all other funds in the scheme were invested in unusual and high-risk unregulated investments through overseas companies. Mr J's attitude to risk assessment points to an overall medium attitude to risk. The scheme recommended in my view clearly exceeded his attitude to risk.

In summary, WFM recommended a course of action here that wasn't suitable for Mr J or in his best interest.

<u>WFM's response to my provisional findings:</u>

jurisdiction

In their letter in October 2020, WFM said they disagreed with my colleague's findings on jurisdiction and remained of the view the complaint had been brought too late. However, they didn't provide any new information. And I think it's worth noting that shortly before, in September 2020, WFM confirmed to the investigator over the phone that after taking legal advice and consulting with their insurers, they wouldn't be challenging the jurisdiction decision.

In any event, I independently considered the matter of jurisdiction and based on the evidence available I agree with my colleague's conclusion and his reasons which he set out to both parties in detail. So I'm not going to repeat these findings here again.

In their most recent submissions WFM pointed to a letter Mr J wrote in January 2016. They said Mr J knew there was an issue in January 2016 and so he should have complained then and not nearly three years later. Mr J complained to WFM in November 2018. As explained by my colleague, the relevant test for the three-year time limit in DISP 2.8.2R is whether Mr J ought to have known he had cause for complaint against WFM before November 2015 and based on the evidence available he likely didn't. So whether he should or shouldn't have complained in 2016 rather than 2018 is irrelevant.

Having considered everything again, I'm satisfied the complaint was made in time.

merits

WFM say:

- Their recommendation was suitable.
- They undertook the due diligence required at the time and could not have foreseen that the loan from the Ark scheme would later be deemed pension liberation. They made the recommendation in good faith believing the Ark scheme was bona fide

(borne by its registered status with HMRC and the pension regulator). They shouldn't be held responsible for other parties' fraudulent behaviour or the negligence on the part of HMRC who permitted the scheme to be registered.

- When the Ark scheme came to their attention they saw it as a legitimate way to help Mr J meet his objectives. They carried out a compliant risk assessment and Mr J accepted and agreed to the fund choice. WFM say Mr J was extremely satisfied with the outcome at the time and grateful for WFM's help. He was given all the relevant information and had been given sufficient time to ask further questions or seek alternative advice if there was anything he felt unsure about.

- They say Mr J made an informed choice. WFM points to an Ark declaration which he signed saying:

  "I am solely responsible for the decision to proceed and acknowledge that Ark, the MPS trustees or the individual who introduced me to the concept do not give any advice in relation to whether I should join an MPS, the term of the MPVA and whether a Pensions Reciprocation Plan is appropriate in my circumstances." …

  "I understand that there is no entitlement under the MPS to Unauthorised Payments (as defined in the Finance Act 2004). I will not knowingly carry out any action which could lead to unauthorised payments." …

- WFM's advice was limited to the transfer of Mr J's personal pensions to the Ark scheme. The expectation was that once the transfer had completed, any future correspondence would be between Mr J and Ark directly. WFM says they didn't recommend the loan nor did they arrange it.

- Mr J was in a difficult financial position and desperate at the time. He was determined to find a way of accessing his pension funds *no matter what*. WFM says there's a strong possibility Mr J would have entered into the Ark scheme or something similar without WFM's recommendation.

I've considered WFM's submissions but my decision remains that they shouldn't have recommended the Ark scheme. WFM say they didn't recommend the loan to Mr J. However, as I see it, the whole purpose of recommending the Ark scheme to him was so that he could access money from his pension early to repay his debts, so the loan was part and parcel of the arrangement. If it wasn't for the early access to a lump sum, there was no reason to transfer his pension at all as far as I can see.

I've also not put particular weight on Mr J signing a declaration that he wasn't given advice and that he was solely responsible for his decision. It's not disputed WFM gave Mr J advice and recommended him to invest in the ARK scheme and the purpose was to release funds immediately. Mr J was following WFM's advice and would have likely followed all required steps to complete the necessary paperwork to receive the loan. This was a non-standard and complicated scheme which invested in high risk, unregulated funds. Mr J had no real investment experience and his attitude to risk was assessed as medium. So even taking the pension liberation aspect aside, I don't think the scheme was suitable for him.

WFM were the ones who proactively contacted Mr J to tell him about this scheme after they had previously been unable to help. Given Mr J's lack of investment experience, I find it unlikely that he would have discovered the Ark scheme or a similar investment himself and pursued such an avenue without WFM's involvement.

I don't think it was enough for WFM to rely on ARK's HMRC and pension regulator registration. They knew releasing funds early from a pension wasn't generally possible and so I think it should have reasonably foreseeable to them that there was a risk the scheme could be subject to an HMRC investigation in future. I also can't see that any enquiries were undertaken to establish what Mr J's remaining pension funds would be invested in. The scheme was not regulated by the FSA and was untested.

In addition, I can't see that Mr J's overall retirement objectives were explored at all. The whole advice seems to have focussed on the release of a cash lump sum for an immediate need without weighing up Mr J's long-term retirement needs. I remain of the view that WFM gave unsuitable advice.

With regards to redress WFM said:

- Mr J would have saved significant amounts on interest over many years by paying off debts with the loan he received from his pension. Assuming 8% simple interest over ten years this would be £20,000. If the debt was on credit cards, interest rates would have been even higher than 8%.

- If he went into a debt management plan now for the loan he has to repay to the trustees, he would be no worse off than in 2010 before he received the loan from his pension.

I considered WFM's points carefully. It is true that Mr J has benefitted from having a loan in 2010. However, I can't agree that if Mr J went into a debt management plan now he would be no worse off than before the transfer. If he hadn't transferred, his pension value would have included the £25,000 plus investment returns at least until age 55. And he would have been able to access his pension

In any event, it wouldn't be fair to deduct *the sum of the loan* from the compensation amount. This would have been appropriate if Mr J had received £25,000 from his pension to keep. But he only received the money as a loan which he has to repay, so this amount has to form part of the loss calculations and can't be left out entirely, otherwise Mr J would be undercompensated.

However, I agree Mr J has likely benefitted from saved interest on the debt he was able to pay off in 2010. When setting out the redress in my provisional decision I took the view that interest in his debt management plan would likely have been reasonably low or even zero. I thought the likely minimal interest saved, together with the stress relief the loan brought Mr J at the time, could be offset with the significant stress and upset caused by the current situation Mr J finds himself in. This included HMRC pursuing Mr J for payment, the recorded CCJ, him not being able to access his pension due to the scheme not paying out any benefits at the moment and the uncertainty of when this will happen and how much Mr J will receive. I normally would have made an award for distress and inconvenience here. But as Mr J did benefit from the loan at the time I thought one could be offset by the other.

I can see WFM's argument that the interest Mr J saved since 2010 could be more substantial and should be given more weight in the loss calculation. So I asked the investigator to go back to Mr J for further information about what debts he paid off with the loan.

Mr J said from memory he had about £3,000 in credit card debts and £2,500 in overdraft. He also had received a loan from his mother for a deposit on a car. He also paid monthly payments on finance on the car, however he continued to pay these instalments and didn't pay this off with the loan. He says he had an additional loan of around £1,800 from his employer which was paid off from his salary every month. He said he spent the rest of the loan on general living costs and taking care of his daughter including paying for holidays. Given that 11 years have passed since the advice was given, Mr J has acknowledged he doesn't remember exact details and he doesn't have evidence from the time which I think is understandable after so many years. So I won't be able to exactly work out what Mr J saved by receiving the loan which means I have to work on reasonable assumptions.

Based on the above, Mr J would have only paid interest on his overdraft and credit cards with a high street bank which he says was around £5,500 in total. I don't know what exact interest he would have paid, but I think an average rate of about 15% is a reasonable assumption.

I then considered how long Mr J would have paid this interest for and I don't think it would be for the whole eleven years until now. If he hadn't transferred to Ark, Mr J would have been able to access funds from his pension at age 55 and I think on balance he probably would have accessed money from his pension as soon as he could. The fact find in 2010 also suggests he was making payments towards his debts every month. So I think it's likely that five years later these interest-bearing debts would have been either paid off or if not, Mr J could have accessed his pension to use some money to clear debts.

Interest for five years at 15% calculates to around £2,200 which I think WFM can deduct from the compensation amount. I appreciate Mr J also benefitted of having some of the money to spend on himself and support his daughter. However, I consider these benefits can be offset with the distress WFM's actions caused him.

If he hadn't transferred, I think Mr J would have likely accessed his pension at age 55 when he was allowed to. Even if his interest-bearing debts had been paid off, he likely would have wanted to clear his other debts or spend more money on building up his life again after separating from his partner. I don't know how much of his benefits he would have taken. It might have been all of it or maybe just a few thousand pounds if he transferred into a drawdown plan, depending on what he needed at the time. So in the circumstances and for the purpose of my calculations, I think it's reasonable to assume he would have taken the same £25,000. This means Mr J wouldn't have accrued investment returns on this sum after 2015 which I made allowances for in the redress below.

comments on my changes to redress

I shared my intentions to change the redress from my provisional decision with both parties. Mr J says he was in a difficult financial and personal situation at the time of the advice and a lump sum payment, as available through the Ark scheme, seemed convenient at the time. However he found it hard to accept he would have taken some or all of his pension at age 55, particularly if it was subject to large tax reductions. He would like this to be calculated until his current age of 60.

He would like to be in a position where he can pay off the loan and clear the CCJ and have funds for retirement. He doesn't have trust or confidence in WFM, so is worried how the undertakings with regard to HMRC's tax payments would be dealt with.

I don't know for certain when Mr J would have taken benefits from his pension if he had not transferred into the Ark scheme in 2010. Of course it's possible that he would have been in a better position five years later and not seen the need to access his pension until now or even later. However, I can't ignore that Mr J wanted to access his pension, even before he knew about the loan option from Ark. On balance I think that without the loan in 2010, he might have still had some outstanding debts and accessing his pension would have allowed him to pay these off. And even if he had been able to pay off all his debts by 2015, he might have simply taken funds to support his daughter (like it seems he did with large parts of the loan). He also would have been able to take part of his pension as a tax-free cash lump sum which likely would have been attractive.

So overall, I still think it's reasonable to assume he would have taken pension benefits when he was able to-which was at age 55. As explained previously, I don't know how he might have taken this money and how much of it. But in the circumstances I think it's reasonable to allow for the same sum of £25,000 that he took in 2010.

The redress should allow Mr J to pay off his current debts with the pension trustees and start rebuilding his credit history. In the likely situation that his current pension is valued at zero, he'll essentially receive what his pensions would be worth now if he had not transferred but taken £25,000 at age 55 with the rest of his pension accruing further investment returns. He can then restart his retirement plans. Mr J needs to bear in mind, however, that he will possibly receive some funds in future from his current pension scheme once they have been able to recover loans and are able to confirm what each member will get back from their investments. And in my redress I allowed WFM to ask Mr J for an undertaking to repay these sums when he receives them.

I appreciate that Mr J is worried that he might encounter problems with WFM honouring an undertaking to pay his HMRC bills if they become due. However, WFM is in the same position as they rely on Mr J honouring an undertaking to pay them back sums received later on as well. Ideally, I would have preferred to settle the matter without undertakings. However, as it's unknown what Mr J will receive from his pension and also what HMRC will eventually charge Mr J, I consider this to be a reasonable way to address these uncertainties as much as possible.

WFM also provided further comments about the redress. They said:

- Mr J's debts must have been higher than £5,500. The fact find and suitability report referred to 'substantial debt' and he was paying £200 per month towards his credit cards and £750 per month on loan repayments. Mr J wouldn't have paid £950 per month on only £5,500 of debt. Also, when WFM asked the adviser who met with Mr J for his comments on the complaint in 2018, he said Mr J had £20,000 of debt from his divorce.

- The minimum interest on credit cards would have been 29% and not 15%.

- They queried why he borrowed £25,000 if he only needed £5,500. He wouldn't have needed to pay it on living costs as once his debts were paid off he would have had

£950 more income per month. And if he spent the money on holidays, gifts and luxuries WFM queried why they should pay for this.

- If debts were only £5,500, Mr J should have paid off his Ark loan earlier than he did. He could have repaid it at any point and didn't have to wait until retirement. He could have paid off the loan from his monthly £950 increased income and the sale of his marital home or if his mother passed away (as she was seriously ill) from the sale of her house. WFM should not be penalised for Mr J's decision not to repay the loan when he could and to borrow more than he needed.

- The CCJ could have been avoided if Mr J paid the loan off earlier. Also, it's likely he would have been written to many times before the CCJ was issued, so he should have known about it. The additional costs are due to him taking no action.

First of all I want to point out that £5,500 is the debt amount that attracted interest (credit cards and overdraft). As set out before, Mr J also said he had a loan from his employer of about £1,800 and he owed money to his mother for a deposit on a car. The information on the fact find on loan repayments might have also included the finance for his car which he mentioned. WFM didn't include any detailed information of Mr J's debt in the fact find at the time of the advice even though the form allowed for this. So there's no contemporaneous evidence I can rely on. I appreciate the adviser said in 2018 that Mr J had debts of £20,000, however this was eight years after the sale and I don't think a recollection from that long ago relating to a client is more reliable than Mr J's recollections of his personal circumstances.

I appreciate it's possible Mr J's debts were higher then he now claims. And he has said himself that everything happened a long time ago, so his submissions can only be estimates. However, having no substantial information which contradicts his testimony- and I don't think WFM's submissions do -I think it's reasonable to use this as a base for my redress calculations.

I don't know what exact interest Mr J paid on his credit cards and overdraft. WFM haven't provided any evidence as to why they think interest rates of 29% would apply here. The Financial Conduct Authority launched a credit card market study in 2014. In its interim report it stated that standard (credit card) products had rates between 12% and 23% and low rate products varied from 6.5% to 12%. I appreciate this reflects the market in 2014 and between 2010 to 2014 rates could have been different, but I think this gives a good indication. Looking only at the standard products a medium rate would be 17.5%. However, in my redress I calculated interest on Mr J's full interest-bearing debt for five years. I need to take into account that he was making repayments and so the balances would have likely decreased over time and he might have even been paid off these debts earlier than five years. So I think overall using an average rate of 15% is reasonable in the circumstances.

In the notes to the fact find the adviser said that Mr J understood he could get access to up to half of his pension value. And the information leaflet about the Ark scheme shows that for a pension worth £50k, Mr J was able to access a lump sum by entering a Maximising Pension Value Arrangement (MPVA). The lump sums available were £12.5k over ten years increasing to £25k over 25 years. The brochure said:

The MPVA is issued over a fixed period of time (usually over 10,15,20 or 25 years) and, prior to maturity, there is no requirement to make repayments.

It also said there no restrictions on how the money could be used by the member. Illustrations and examples showed the lump sum being paid back from the pension when the customer came to retire. So the proposition here was to get access to a lump sum which Mr J didn't have to pay back for many years to come (he didn't need to ay this back until age 77) and which would be paid back -in full- from his pension. So essentially he was given the impression he didn't have to worry about paying it back as this would be covered through his pension funds. Therefore, I don't see why Mr J would have seen an issue with borrowing as much as he could and use the money to pay off some debts and use the rest as he pleased. He couldn't have reasonably foreseen that he would be pursued for this sum a few years later.

WFM isn't paying for Mr J's expenses on potential holidays and gifts. Mr J was essentially using his own pension fund, just earlier than it was allowed. The redress puts Mr J as much as possible back in the position he would have been in if he hadn't been given unsuitable advice. I've already acknowledged that he benefitted from the lump sum he received through Ark which includes his enjoyment of the possible things he bought with it. However, I think having the use of the money earlier that he ordinarily would have had it (he could have accessed it at 55 and the redress assumes he would have done) is offset by the significant distress and inconvenience he suffered later on. Even taking the CCJ aside, he couldn't access his pension, he received payment notices from HMRC and faced uncertainties about his retirement funds.

I agree it's likely Mr J received correspondence before the CCJ was recorded. However, based on what he told us Mr J wouldn't have had the funds to repay such a large sum in any event and on balance I think administration costs and interest would have always applied. The key issue here is that Mr J wouldn't have been in a situation where he was unexpectedly pursued for the full repayment of a significant sum of money if WFM had not advised him to transfer into the Ark scheme. So I think it's fair they cover the additional administration costs.

Having considered everything again, including all comments provided by both parties, my decision remains that the complaint should be upheld. I also consider the proposed redress is fair to both parties.

putting things right

My aim is to put Mr J - as much as possible - back into the position he would be in without WFM's unsuitable advice. It was WFM who introduced Mr J to this investment. So I think if they hadn't recommended this to him, he would have likely kept his existing personal pensions.

WFM should:

A) Obtain the notional value of Mr J's personal pensions at the date of my final decision, if he had not transferred them to the occupational scheme. It should be assumed £25,000 would have been taken from the pension when Mr J turned 55 in November 2015, so no further investment returns would accrue on this sum after this date.

B) Obtain the value of Mr J's current pension value at the date of my final decision from the scheme trustees if possible.

   I understand the trustees haven't been able to place values on scheme members' benefits due to the uncertainties of the HMRC investigation and the unclarity of how much of the loans provided to individuals - which made up a significant part of the scheme's assets - can be recovered. It doesn't appear to be a straightforward case of Mr J's loan being lent to him by his scheme – the overall position of all the loans from or between all the schemes will need to be established first. If this is still the position, then the value of Mr J's pension should be assumed to be nil for the purpose of the calculation.

In this scenario, WFM can request Mr J to give them an undertaking to return to them any sum he receives back from the trustees once they are able to value his assets and wind up the scheme. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. WFM will need to meet any costs in drawing up the undertaking.

C) Calculate A-B. This is the amount of financial loss in the pension. If this provides a negative figure there is no financial loss.

Given the uncertainties of the scheme and the fact that benefits cannot be taken from it at the moment, I consider it fair that in the circumstances all compensation is paid either into another personal pension (to be set up by WFM at their cost) or directly to Mr J. The payment into a pension should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into a pension plan if it would conflict with any existing protection or allowance.

If WFM pays the compensation directly to Mr J, it should be paid to him as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

I consider that Mr J benefitted from a loan of £25,000 which without the recommendation of the scheme he would not have had. However, he is being actively pursued for this loan and has a CCJ recorded against him, so he needs to pay this money back. As explained earlier in this decision, I won't allow WFM to deduct this loan amount from the compensation. Mr J will be able to use part of his compensation to pay back the loan and start rebuilding his credit history.

D) The loan has attracted some additional administration costs of £3,385 which should be covered by WFM as without their advice Mr J wouldn't have to pay this now. Mr J knew he had to pay back the loan, but was assured this would be paid back from the pension when he retired. Instead he prematurely was pursued for the full amount of the loan plus administration costs.

E) WFM should cover any tax liability including applicable charges and interest demanded by HMRC. Mr J has received demands which he has appealed and as a result HMRC has postponed any demands until their investigations have concluded. So I understand he's not actively being pursued for these sums at the moment. WFM must give Mr J an undertaking that as soon as any demands become payable they will be settled by WFM immediately (either directly with HMRC (if possible) or through Mr J). WFM will need to meet any costs in drawing up the undertaking.

F) WFM can deduct £2,200 from the overall compensation to take into account assumed interest payments Mr J saved

G) The investigator recommended £500 for the distress and upset this matter has caused Mr J including the stress of having to deal with HMRC, being subject to a CCJ and the disruption to his pension planning. I agree that the matter has caused him quite a lot of distress and I would usually award additional compensation because of this. However, I also think Mr J did benefit from the loan at the time of the advice. Insofar that he was able to repay debts which caused him stress at the time and also he had use of the money to spend on other things in his life. So I think in the circumstances the benefits and stress relief the loan brought at the time compensates for the distress he suffered when he found out about the problems with his new pension. So I won't ask WFM to pay any additional compensation in this regard.

WFM must pay the compensation within 28 days of the date on which we tell it Mr J accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

my final decision

I uphold this complaint and require Wealthmasters Financial Management Ltd to pay Mr J compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 20 August 2021.

Nina Walter
ombudsman