DRN-4386028

The complaint

Mr T complains the recommendation made by Severn Financial Services Limited (Severn) to set up an EU Open Annuity in 2011 was unsuitable and has resulted in financial loss.

What happened

The investigator has issued a detailed view. The summary of the background I've included here is largely taken from that view.

Mr T, an existing client, met with Severn's adviser in early 2006 to discuss retirement income options. In February 2006 Severn recommended that Mr T purchase an Open Annuity using £400,000 from an existing drawdown plan with Norwich Union which had a balance of around £654,000.

In 2011 Severn advised Mr T to invest a further £270,000 in an EU Open Annuity. The initial fees were approximately £25,000 which included transferring to and out of a Qualifying Recognised Overseas Pension Scheme (QROPS), establishment of a trust, set up of the EU Open Annuity with London & Colonial (L&C) and Severn's fee.

In summary, Mr T's existing drawdown plans with James Hay and Zurich were transferred into a QROPS. The QROPS was then used to purchase the EU Open Annuity with L&C. Similar to the Open Annuity Mr T had earlier purchased, a preference share was purchased and held within an offshore trust with Marlborough Trustees Limited. The preference share was connected to an offshore Canada Life 'Premiere account' which held Mr T's underlying investments. Upon Mr T's death, the trust could return the remaining funds to the UK, but this would trigger a tax charge, or the trust could loan money to Mr T's beneficiaries at a rate of 4% pa. The trustees could then write off the loan on the death of the beneficiary.

After discussion, Severn confirmed Mr T's attitude to risk with regards to the EU Open Annuity was low to medium. The following investments were recommended:

10%	Cash
20%	Meteor Senior Life Settlements Fund
20%	Axiom Legal Financing Fund
50%	Williams de Broe (now Investec) (split 13% balanced, 13% cautious, 12% growth and 12% international growth)

Rebating commission and an enhanced allocation of units meant the initial fees were largely offset. But there were ongoing fees:

Canada Life: Quarterly administration fee which Severn says is currently £283.54 or about 1.08% pa
L&C: Annual fee of 0.75% subject to a minimum of £3,000
Severn: Annual adviser charge currently around 0.97% pa

Mr T retired at the end of June 2013. In 2014 he raised queries with Severn about what had happened to his investments, the returns and why the initial value of the EU Open Annuity was £14,000 less than he'd expected and when he thought all charges had been deducted. He was disappointed with the way his investments had been handled and expressed concern as to how long the money would last. In September 2014 Severn responded to the concerns Mr T had raised.

In early 2017 Mr T expressed dissatisfaction with the fees being deducted. He said for the EU Open Annuity his gross annual income was around £11,000 yet the annual renewal fee was about £5,100 with an Income Instalment Fee of £192 – so approximately 50% of his gross annual income. The position with the Open Annuity he'd bought in 2006 was *'more sensible'* as the annual gross income was around £17,000 with a renewal charge of £2,600, so roughly 15% of the gross annual income.

There was correspondence between Mr T and Severn about the charges and why Severn considered the advice given to have been in Mr T's best interests. On 25 March 2022 Mr T wrote to Severn raising a number of concerns about the advice he'd received in connection with the two Annuity contracts. He said the fees were high and he sought an explanation of all the charges. He also wanted to know why the pensions now fell within his estate for inheritance tax purposes and why he'd been sold what was considered a sophisticated investment product based offshore.

Severn issued a final response letter on 15 July 2022 saying the complaint had been raised outside the time limits because Mr T would've been aware from the annual statements of the fees that were charged and that the investments were held offshore.

Mr T referred his complaint to us. It was investigated by one of our investigators. He agreed that the complaint about the advice given in 2006 had been made too late. But he said we could consider the complaint about the 2011 recommendation to transfer Mr T's existing drawdown plans to the EU Open Annuity. The investigator said that was unsuitable. In summary the investigator's reasons for upholding the complaint were:

- Mr T's objectives and priorities as noted in Severn's Financial Planning Report of 17 February 2011 were that he was keen to protect his death benefits for his family and pass on any residual fund value with the least tax charged, whilst allowing flexible income during his lifetime. The EU Open Annuity broadly met these objectives. But the structure and implementation were complex as were the fees involved. Mr T didn't fully understand the sophisticated nature of the product and the charges.
- The full costs weren't explained clearly enough. The report mentions various costs at different points throughout the report, rather than giving a full summary of all the charges in a clear format. It would've been difficult for Mr T to have fully understood all the charges and their effect.
- But, even if the charges had been made clear, that didn't mean the advice was suitable. The primary purpose of a pension is to provide an income in retirement. The two drawdown plans which were moved into the EU Open Annuity already offered flexible income and investment choice.
- Mr T had already invested a large sum in the Open Annuity he'd taken out in 2006. Both Annuities came with high charges. The underlying investments had to perform better to overcome the effect of the higher charges. Recommending that Mr T switch the bulk of his remaining pension plans into the EU Open Annuity meant the vast majority of Mr T's pension provision was subject to higher than normal costs.
- The rationale that 55% tax would be saved was based on the assumption that the charges and income drawn were sustainable and wouldn't erode the fund value. But there was a strong possibility that any future benefit could diminish over time while still incurring fees. And, although the option to avoid the 55% tax charge on Mr T's death would've been attractive, Mr T and his wife already had two Whole of Life

insurance policies in place to help with IHT (inheritance tax).

- The report mentioned fluctuating fund values and drawing a high income. But it didn't go far enough in explaining the future potential consequences and that, the longer the policy remained in force, the longer the higher fees would be payable and the more unlikely that the investments would consistently outperform the higher fees and the income drawn. The fund value would reduce, so lessening the potential benefit of avoiding the 55% tax charge, which as only on lump sum death benefits – if Mr T predeceased his wife, she could draw any remaining funds as an income subject to income tax or purchase an annuity.
- The ability to avoid the 55% tax charge would've been attractive to Mr T. But he'd had in place a similar product since 2006 which was also subject to high charges. Exposing virtually all of his pension savings to such high cost products in order to try to mitigate a future tax charge on an unknown value wasn't in his best interests.
- From the report it seemed, on Mr T's death, the offshore trust could return the remaining capital to the UK, but this would trigger a tax charge. Or the trust could loan money back to the beneficiary at a rate of 4% pa to avoid the tax charge. So, even after Mr T's death, if the policy was used to avoid tax charges, and assuming the fund hadn't by hen been depleted, given that Mr T wanted to maximise his income from the plan, the costs would still continue for the beneficiary.
- There was no need to make any decision at the time. Mr T was 68. He was still in good health and, under the legislation at the time, wasn't required to purchase an annuity until age 77. Mr T had said he wasn't actively seeking more beneficial death benefits and it was Severn who'd approached him to discuss it. Details of the product launch had been emailed to Severn shortly before the recommendation in 2011 seemed to suggest that what Mr T had said might've been the case.

The investigator also considered the investment recommendations were unsuitable for Mr T. Severn classed him as having a low to medium attitude to risk for the EU Open Annuity. But Severn recommended he invest 20% in each of the Meteor Senior Life Settlements fund (Meteor) and the Axiom Legal Financing fund (Axiom). Both were unregulated collective investment schemes (UCIS) that didn't afford the same investor protections as regulated schemes. The regulator has rules in place concerning UCIS in that they can only be marketed to certain categories of investors such as certified high net worth (HNW) individuals, sophisticated investors and existing UCIS investors. Severn had said Mr T was a HNW individual although no evidence of that classification had been provided. But, in any event, that didn't automatically make the investments suitable for him.

The Meteor fund is a traded life settlements fund. It invested in the life assurance policies of US citizens with the aim of benefitting from insurance pay outs made on the deaths of the original policyholders. It wasn't a mainstream investment, it was specialist and speculative. Complex calculations were required to estimate how long the policyholders would likely live. If these calculations proved to be incorrect, the liquidity of the fund could suffer and significant losses could occur.

The Axiom fund was also a specialist fund that invested in a very specific field. It was set up to provide funding to law firms pursuing no-win no-fee claims. The fund was subject to various risks including liquidity, trading and credit risk. It wasn't regulated within the UK and not covered by the Financial Services Compensation Scheme (FSCS). Risk and reward are inextricably linked – the higher the risk, the higher the potential reward. The Axiom fund was marketed as offering expected returns of up to 11% pa which was considerably higher than would be expected from an investment recommended as suitable for a low to medium risk investor.

The then regulator's 2010 '*UCIS: Good and Poor Practice*' report cited, as an example of good practice, where a firm restricted UCIS to between 3% and 5% of a portfolio with ongoing monitoring. But Severn recommended 40% of the EU Open Annuity be invested into UCIS.

The investigator went on to set out what Severn needed to do to put things right for Mr T.

Severn didn't agree with the investigator's view. I've summarised Severn's main comments:

- Mr T was clearly a HNW client – he had total assets of £3.48 million. His holding in the Axiom fund was a very small percentage (3%) of his portfolio. It was held for less than 12 months and sold for a profit of 6.25%. The Meteor fund represented 2% of his portfolio. He could've had higher exposure to UCIS, taking into account his other assets. They didn't contain anything higher risk and offset the UCIS, bringing things back to low to medium risk. The other investments were held in mixed portfolios. The Investec holdings are managed by a relative of Mr T's.
- At meetings in 2006 and 2011 Mr T (and his fellow director) felt the tax charge on death of 35% rising to 55% by 2011 was a considerable sum to lose. The Annuities were implemented with no requirement to buy an annuity at age 75. It was pointed out that the charges would be higher than Mr T's existing drawdown schemes. As had been acknowledged, the charges were largely offset by the commission rebate and extra allocation. And the existing drawdown policies fees ceased on transfer. The EU Open Annuity was brought back to the UK but taxed at capital gains rate which was much less than 55%.
- Mr T wasn't in good health. He'd taken out life cover via Severn in 2002 with premiums rated by 30% for reasons not revealed by the insurer to Severn. Life assurance was always Severn's first consideration to provide for early death.
- About the fund value being depleted, in 2013 a meeting was held with Mr T and the relative who managed his Investec funds. Mr T asked, as he was retiring, where income should be taken from.
- Mr T was told, in 2019, that, due to changes to IHT allowances and other IHT plans taken out in 2012/201, he could cancel one of the two joint life policies. The surrender value would be as much as he'd paid in over the life of the plan and he'd save premiums of around £6,000 pa. Sadly Mrs T died in November 2020. As a result the surrender value increased by some £100,000. Mr T decided the policy was worth keeping for the £6,000 pa cost. So, although he was unhappy with the premiums, when given the chance to cancel one policy and get a £250,000 surrender payment, he declined to do so.
- Mrs T could've drawn the remaining fund from the drawdown schemes after tax as an income subject to income tax or to invest the capital to purchase an annuity, also taxed. Severn maintained neither of those options would've been preferred to a lump sum with little or no tax to pay.

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 mentioned the 2006 advice largely by way of background above because, in looking at the later advice in 2011, it's relevant to take into account that Mr T already had an Open Annuity. But in the jurisdiction decision I issued on 30 October 2023 I explained, for the reasons I set out, why we couldn't consider a complaint about the 2006 recommendation.

Mr T was understandably very disappointed that my view was that we were unable to consider the Open Annuity that he purchased on Severn's advice in 2006, which was the larger investment. He said Severn's reply, when he raised concerns about fund values and charges, was invariably that investments could go down as well as up and that he should hold tight. As a layman he'd put his trust in Severn. Between 2006 and 2011 he didn't know that his pension arrangements weren't *'run of the mill'*. He wouldn't have known that something was wrong with the advice just because the valuations he received showed a falling fund value. It was only when he appointed a new adviser that he became aware of the true costs of the contracts and that moving UK pension funds to a QROPS wasn't common practice.

We're required to keep jurisdiction under review throughout our consideration of a complaint, up to and until we issue a final decision. So I've reviewed the jurisdiction decision I issued on 30 October 2023 and against the background of Mr T's further comments.

I accept what Mr T says about not knowing his arrangements were unusual, complex and expensive until he changed advisers. But, as well as considering when he actually became aware he had cause for complaint, I also have to consider when he ought reasonably to have become aware. I still think the statements for the Open Annuity, which showed the fund value had fallen considerably, along with the income that he could take, were such that reasonably ought to have prompted him to think about if the advice to take out the Open Annuity in 2006 had been suitable for him. As I've said, a consumer doesn't need to know the full grounds of any complaint – just that something may have gone wrong. Fluctuations in fund values may be as a result of adverse investment conditions. But unexpected falls or losses may signal an issue with the investment itself and whether it's performed as the consumer had been led to expect. As would charges that are higher than the consumer had been led to believe would apply.

Having looked at things again, I still think a complaint about the 2006 advice has been made too late and for the reasons I set out in my jurisdiction decision. So I'm only considering if the EU Open Annuity which Severn recommended in 2011 was unsuitable for Mr T. I share the investigator's view that it wasn't suitable and for the reasons he gave which I've summarised above. I don't have much to add to what the investigator said.

Severn says the Axiom and Meteor funds represented very low percentages (3% and 2% respectively) of Mr T's overall portfolio/wealth. Severn suggested it would be appropriate for us to comment on that before any final decision was issued. But, as the investigator has explained to Severn, we wouldn't always respond to each and every point a business or a consumer may make during the course of our investigation or in response to an investigator's view. We'll consider all the arguments that have been raised but generally we'll focus on what we see as key.

Where, as here, an investigator has issued a view upholding the complaint which isn't accepted and so the matter is referred to an ombudsman to decide, the ombudsman will consider everything afresh, including what's been said in response to the investigator's view. But if the ombudsman isn't persuaded by those arguments and agrees with the investigator's view and the reasons given by the investigator as to why the complaint should be upheld, the ombudsman will generally issue a final decision.

That said, the investigator did indicate to Severn why he didn't think the point Severn had raised changed anything. Mr T had specified he wanted to take a low to medium attitude to risk with this particular investment – the EU Open Annuity. The two UCIS funds represented 40% of the underlying funds for the EU Open Annuity which the investigator considered was more risk than Mr T had indicated he was prepared to take with this particular investment. So, even if taking into account Mr T's overall wealth, the proportion of UCIS investment might be low, these funds represented more risk than Mr T was prepared to take in connection with his EU Open Annuity. I agree with that.

The fact that the Axiom fund returned a profit doesn't change that or make the investment suitable. It doesn't mean the complaint won't be upheld, just that the unsuitable advice hasn't resulted in any (or a reduced) financial loss. If the Axiom fund actually made a profit, I don't see it would be in Severn's interests to exclude it and when the return on the investment will be reflected in the redress calculation and so offset against any losses.

The investigator referred to rules which restrict the marketing or promotion of UCIS and which were in place in 2011, although they've since been tightened up. Essentially UCIS could only lawfully be promoted to certain types of investor and subject to certain conditions being met. HNW investors were a category of investor who were exempt from the restrictions on promotion. I don't disagree that Mr T appears to have qualified as a HNW investor. But I think the point the investigator was making is that we haven't seen anything to show that Mr T signed the HNW declarations that were required when promoting a UCIS. These were in prescribed form and set out, amongst other things, that the investor may lose significant rights, including not being able to complain to this service or seek compensation from FSCS in connection with such investments.

I haven't seen any such statements signed by Mr T. But my decision here doesn't turn on whether Severn complied with the formalities before promoting UCIS to Mr T. I've focused instead on whether the recommendation to invest in Axiom and Meteor were suitable. And, to be clear, we can consider a complaint about advice to invest in UCIS as, although the investment is unregulated, an adviser providing a recommendation to invest in UCIS will be carrying on the regulated activity of advising on investments.

I agree with the investigator that the underlying funds recommended for the EU Open Annuity were unsuitable. They didn't match the low to medium level of risk Mr T had said he wanted to take in connection with the EU Open Annuity. Although the exact degree of risk will vary from UCIS to UCIS, they are generally considered as a higher risk investment as they aren't subject to the requirements that apply to authorised investment schemes in terms of their investment and borrowing powers and how they are run. They are often speculative, specialist investments in unusual assets with limited or no track record. A holding of 40% in UCIS was in my view too high for a medium to low risk investor.

But, and leaving aside the unsuitability of the underlying funds, I think the product itself – the EU Open Annuity – was unsuitable anyway.

Mr T wanted flexible income during his lifetime. Death benefits were also important to Mr T. He, like many other investors, wanted to protect his pension so that any residual fund could be passed on after his death to his family with the least tax charged. The EU Open Annuity broadly met those objectives. I note here Severn's comment about it '*doing what it said on the tin'*. But that doesn't mean it must've been suitable for Mr T.

Severn's arguments that the EU Open Annuity was suitable for Mr T centre on the perceived improved death benefits and tax mitigation. The possibility of avoiding a 55% tax charge would've been attractive to Mr T. It's natural to want any family members to be taken care of and that any tax charges are avoided so as to maximise what can be passed on. But death benefits aren't the only consideration. The primary aim of a pension arrangement is to provide an income in retirement. It isn't a legacy planning tool as such. Although what will happen on death, including any tax liabilities, will be a consideration, in most cases, it shouldn't be the key driver.

I note here what Severn has said about Mr T's health being poor. And which might mean that death benefits were of particular importance to him. But the personal financial questionnaire (fact find) completed on 17 February 2011 records Mr T's state of health as good. The suitability letter also says Mr T is in good health. I don't know if there was any particular issue in 2002 when the life assurance policy was taken out. But I don't think Severn can point to health concerns to justify the recommendation when Severn's advice in 2011 was given on the basis that Mr T didn't have any health issues. In my view, the importance of minimising tax charges on death has been overstated as a reason for recommending the EU Open Annuity.

The recommended solution was complex and involved a QROPS, Offshore Trust, the EU Open Annuity and an Offshore Bond. The suitability report noted that the charges were considerably higher compared to Mr T's existing UK income withdrawal plans. Like the investigator I don't think the charges were particularly clearly set out and involved reading various separate documents. Although the initial charges were largely offset by the commission rebated and enhanced allocation, going forwards, Mr T's fund would be subject to higher charges than those that applied to his existing drawdown arrangements and which already provided a mechanism for Mr T to take income flexibly. The higher charges would impact on the growth that needed to be achieved to avoid depleting the fund. In that event the benefits of the lower tax charges on death would be diluted or even negated.

The position was compounded by the fact that Mr T already had a similar product in place although it seems that the charges for the Open Annuity were lower. Nevertheless the combined effect was that a significant portion of Mr T's retirement provision was exposed to higher charging arrangements. I'm not persuaded that the aim of mitigating further tax charges justified the higher charges that Mr T would incur year on year. Or that such a complex solution was really necessary and, over the longer term, sustainable.

Severn has referred to a meeting in 2013 with Mr T and the relative who managed his Investec funds. I think Severn's position is that it advised Mr T to take an income from his ISA but the fund manager, who isn't a financial adviser, said to take it from the pension. I'm not sure as to Severn's point here and if Severn is saying that any depletion in the pension fund was due to acting against Severn's advice. I don't agree and I don't think this impacts on the suitability or otherwise of the recommendation to take out the EU Open Annuity and on which Severn knew Mr T would be reliant for income. As to the fact that Mr T chose not to cancel the life policy, it may be that, by 2020, Mr T thought the policy now offered more value for money and so decided to retain it. Again I'm not sure this has much to do with the advice given in 2011.

I'm upholding the complaint. For the reasons I've indicated, the EU Open Annuity wasn't suitable for Mr T.

Putting things right

My aim in awarding compensation it to put Mr T, as far as possible, in the position he'd probably be in now if he'd been given suitable advice. I think Mr T should've retained his previous arrangements with his existing drawdown providers. I've adopted the redress suggested by the investigator and which is based on the actual value of Mr T's EU Open Annuity compared to what his funds would've been worth if he'd remained with his previous providers. If those providers can't provide notional fund values then the benchmark I've specified should be used as set out below.

To compensate Mr T fairly Severn Financial Services Limited must:

Compare the performance of Mr T's investment with the notional values if it had remained with the previous providers. If the actual value is greater than the notional values, no compensation is payable. If the notional values are greater than the actual values, there's a loss and compensation is payable.

Compensation should be calculated as at the date of my final decision.

I've made an award for interest at 8% simple pa from the date of my final decision to the date of payment if compensation isn't paid within the period (42 days) I've specified. We'd expect Severn Financial Services Limited to undertake the calculations promptly on receipt of notification of Mr T's acceptance of my final decision. But I recognise that Severn Financial Services Limited may be dependent on information from third parties – Mr T's previous pension providers. I've allowed extra time for that. And, where a notional value from a previous provider is the only outstanding item required to undertake the redress calculation, that period of time may be added to the 42 day period in respect of which interest won't apply.

If there's a loss, Severn Financial Services Limited must pay into Mr T's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If compensation can't be paid into Mr T's pension plan, it should be paid direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr T won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. The investigator said in his view that it was reasonable to assume Mr T was likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he'd have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%. Severn Financial Services Limited should confirm with Mr T whether in fact he had already taken the full tax free cash sum entitlement prior to the EU Open Annuity being put in place.

The investigator also said, if Severn Financial Services Limited or Mr T disputed the assumption about Mr T's taxpaying status, they should let us know as soon as possible so the matter could be clarified as it wouldn't be possible to amend it once a final decision had been issued. Neither party commented. But we've asked Mr T and he's confirmed he's a basic rate tax payer so any redress paid direct to Mr T should be on that basis.

Severn Financial Services Limited should also pay Mr T £300 for the distress and inconvenience this matter has caused him and regardless of whether or not any financial loss has arisen. Mr T has found the situation extremely worrying and is concerned his funds may run out during his lifetime, partly due to the high fees he's been subject to.

Details of the calculation should be provided to Mr T in a clear and simple format.

Investment/portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
L&C EU Open Annuity	Still exists – some	Notional values from	Date of transfers	Date of my final	8% pa simple

	liquid/some illiquid funds	previous providers		decision	interest if redress isn't paid within 42 days of notification of Mr T's acceptance of my final decision

actual value

This means the actual amount payable from the investment at the end date.

If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, Severn Financial Services Limited should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount paid should be included in the actual value before compensation is calculated.

If Severn Financial Services Limited is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Severn Financial Services Limited may wish to require that Mr T provides an undertaking to pay Severn Financial Services Limited any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Severn Financial Services Limited will need to meet any costs in drawing up the undertaking.

notional values

These are the values of Mr T's investments had they remained with the previous providers until the end date. Severn Financial Services Limited should request that the previous providers calculate these values.

Any withdrawal from the L&C EU Open Annuity should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there is a large number of regular payments, to keep the calculations simpler, I'll accept if all those payments are totalled and that figure deducted at the end to determine the notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, Severn Financial Services Limited will need to determine a fair value for Mr T's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index).

Mr T wanted income with some growth and was willing to accept some investment risk. If the previous providers are unable to calculate a notional value, I consider the Index I've specified is a fair measure. It's made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return. Although it's called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison, given Mr T's circumstances and risk attitude.

The adjustments I've set out above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The EU Open Annuity only exists because of possible illiquid assets and the fact it cannot be encashed or surrendered. The fees will continue until Mr T dies, so, given his age, and to provide certainty to all parties, if the EU Open Annuity can't be encashed or surrendered, I think it's fair that Severn Financial Services Limited pays Mr T an upfront lump sum equivalent to five years' worth of wrapper, administration and adviser fees, based on him continuing to draw the same percentage of income taken within the previous year to date.

I've made a formulaic award and I don't know what loss, if any, the calculation will show. Where, as here, I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £170,000 plus any interest and/or costs/ interest on costs I think are appropriate. If I think fair compensation is more than £170,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as I've set out above. My decision is that Severn Financial Services Limited should pay Mr T the amount produced by that calculation – up to a maximum of £170,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £170,000, I recommend that Severn Financial Services Limited pays Mr T the balance.

This recommendation is not part of my determination or award. Severn Financial Services Limited doesn't have to do what I recommend. It's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T may want to get independent legal advice before deciding whether to accept this decision.

My final decision

I uphold the complaint. Severn Financial Services Limited mut redress Mr T as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 January 2024.

Lesley Stead
Ombudsman