DRN-3844404

The complaint

Mr C complains about the advice Michael James, trading as West Country Financial ('Michael James') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017, the BSPS provided Mr C with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £364,026.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr C sought advice about his pension and retirement options and a financial adviser referred him to Michael James to give the appropriate pension specific advice.

Michael James carried out a fact-find with Mr C. Amongst other things it noted he was aged 52, married to Mrs C and they had a daughter under 15. Both of them were working. They owned their home which was worth £250,000 subject to an outstanding mortgage of £40,000, with 11 years remaining on the term. They had savings of £6,800. Mr C had a separate defined contribution ('DC') personal pension with a value of £102,000. He had also recently started paying into his employer's newly set up DC scheme. He and his employer together were contributing a sum equivalent to 16% of his salary towards that and Mr C was making an additional contribution of around £200 a month. Michael James assessed Mr C's attitude to risk as 'cautious balanced'.

After obtaining a transfer value analysis ('TVAS') Michael James produced a suitability report setting out its advice and recommendations. It recommended Mr C should transfer the benefits from his DB scheme into a named personal pension. In brief it said that doing so would allow him to:

- Retire at age 60 without incurring a 'penalty'.
- Control his pension investments and have greater flexibility over the timing and amounts of his pension withdrawals.
- Pass the full value of his pension pot to his family in the event of his death.
- Access tax free cash ('TFC') at age 60 to clear any remaining mortgage and to help with his daughter's university costs.

Mr C accepted Michael James' recommendations and transferred his DB scheme funds to the named personal pension.

Mr C complained to Michael James in 2022 that its advice might not have been suitable for him. Michael James didn't uphold his complaint. In brief it said it complied with all its regulatory requirements and made Mr C fully aware of the guarantees he would be giving up by transferring. It said its recommendation met Mr C's objectives.

Mr C asked the Financial Ombudsman Service to consider his complaint. One of our Investigators looked into it. He didn't think Michael James' advice was suitable for Mr C. Amongst the reasons our Investigator gave for upholding the complaint were that a personal pension was unlikely to meet the growth rates required (the critical yields) to match the benefits from the DB scheme. And he didn't think that flexibility or different death benefits were worth Mr C putting his funds at risk for.

To put things right the Investigator said Michael James should establish if Mr C had suffered a financial loss as a result of its unsuitable advice and if so pay him compensation. The Investigator added that it should also pay Mr C £300 to address the distress and inconvenience he experienced as a result of learning he had received unsuitable advice to transfer.

Michael James didn't agree with our Investigator's complaint assessment. It provided a comprehensive response, which included that:

- It wasn't evident that the Investigator determined whether Michael James had taken reasonable steps to ensure its advice was suitable for Mr C.
- The Investigator had placed too much weight on the critical yield analysis and comparison with the discount rate.
- The Investigator didn't have regard for Mr C's circumstances, in particular that he wouldn't need to rely on the DB scheme income in retirement.
- Mr C had begun taking the benefits from his personal pension at age 55.
- The Investigator relied on the flawed assumption that Mr C could have opted into the BSPS2, as at that time it hadn't come into existence.
- Mr C had made an informed decision to transfer.
- There was no evidence to suggest that if Mr C had remained in the scheme he would have opted to join the BSPS2 – assuming it had come into existence.

The Investigator wasn't persuaded to change his opinion. So, as the matter wasn't resolved informally it was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In responding to this complaint Michael James' has made a number of detailed points. I've considered all of those carefully. However, in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key matters at the heart of this complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Michael James' actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule*)*.

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator gave.

Michael James has argued that it wasn't required to guarantee or prove that its advice would be suitable, instead the regulator requires it to take reasonable steps to ensure it's advice was suitable for Mr C. I agree that under COBS, Michael James was required to take reasonable steps to ensure that its personal recommendation to Mr C was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. And, as I've mentioned above, additional regulations apply to advising on transferring out of DB schemes. These are set out in COBS 19.1.6G in which the regulator, the FCA, states that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Michael James should have only considered a transfer if it could clearly demonstrate that it was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

The regulator required Michael James to obtain a TVAS report, which said the critical yield to match Mr C's DB scheme benefits at age 65 was 8.05%. Michael James itself recognised that this was high and it was “unrealistic” to achieve that level of growth every year. In other words, Michael James recognised that transferring would not allow Mr C to match the benefits he'd be giving up by doing so, if he were to retire at age 65. In those circumstances I don’t intend to provide an in-depth analysis of the critical yields against the likely growth rates for age 65.

I will briefly note that Michael James said the critical yield is of limited relevance because it assumes Mr C would buy an annuity on the same basis as the benefits provided by the DB scheme. It said Mr C didn’t want an annuity; instead he wanted to take his benefits flexibly. It also took issue with our Investigator’s comparison between the critical yield and the discount rate.

I’ll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable. Prior to October 2017 the Financial Ombudsman Service published similar rates on our website. I acknowledge that Michael James was under no obligation to refer to discount rates when giving advice. But it was free to do so.

COBS 19.1.2 requires businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. A critical yield is a measure of the growth rate required to match the scheme benefits. And I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

So Michael James needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don’t think Mr C could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn’t expecting to retire for at least another eight years. So, it was entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Michael James said Mr C’s preference was to retire at age 60. Its TVAS shows that the critical yield to match the DB scheme was 11.08% if he took a full pension at age 60. Michael James didn’t produce figures if Mr C chose to take TFC and a reduced pension. But I would expect those figures to be slightly lower. However, given Michael James had already acknowledged that a critical yield of 8.05% at age 65 was unrealistic, I think it’s obvious that a higher critical yield at age 60 would also most likely be unachievable.

I note Michael James’ suitability report doesn't refer to the critical yield at age 60 at all. Instead it said that in order to match the DB scheme benefits at age 60 a growth rate of 4.17% was required. It said that figure was achievable. I don’t know how Michael James arrived at that growth rate as it doesn't appear anywhere in its TVAS. So I don't know what it’s factored in when making that calculation. But, putting any doubt about the validity of that rate to one side for the moment, if I accept it’s accurate the figure is “net of all charges”. But Mr C would incur product charges of 0.4% and adviser charges of 1.0% a year. So, the full adjusted growth rate would be 5.57%.

For comparison purposes the discount rate for Mr C retiring at age 60 was 3.4%, considerably below 5.57%. Also the regulator’s lower, middle and upper projection rates were 2%, 5% and 8% respectively. And given Mr C’s ‘cautious balanced’ attitude to risk it was unlikely that his personal pension would perform at a level above the regulator’s middle projection rate year on year. So it seems unlikely that transferring to a personal pension would produce the growth rates required to match the DB scheme benefits.

I'll add that the critical yield figures I've referred to above compare a personal pension against Mr C's benefits from the BSPS. But Mr C didn't have the option of staying in the BSPS, he either had to opt for the BSPS2 or allow his pension to move to the PPF. In response to the "time to choose" exercise Mr C opted for the BSPS2. So I think Michael James should have provided a direct comparison with the BSPS2 rather than the BSPS. But it didn't do so. However, from what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would have provided were likely to be between those of the BSPS and the PPF. The critical yield for the PPF was 5.44% at age 60. So the appropriate critical yield for the BSPS2 would have been somewhere between 5.44% and 11.08%. Again those are above the regulator's middle projection rates. So I think Mr C was always likely to receive pension benefit of a lower value than those he'd have been entitled to under the DB scheme by transferring and investing in line with that attitude to risk.

I can see that Michael James indicated in the suitability report that the five-year annualised rate of return for the recommended investment fund was 8.14% a year. But as Michael James will know, past performance is no guarantee for future performance. So I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

Further, even if a personal pension could have met the required growth rates that wouldn't make a transfer financially viable. That's because there would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. Also, in order for the potential to improve slightly on the DB scheme benefits, he would need to put those funds at risk. And, if there was an extended period of poor investment performance or his investments suffered losses that could result in him being worse off in retirement. And for that reason alone I don't think it was in his best interests to transfer.

Flexibility

One of the key reasons Michael James recommended the transfer was to meet Mr C's preference for early retirement at age 60 without suffering a reduction in income. It also said transferring gave him the flexibility to access benefits as he wished and to take greater amounts of TFC.

But I'm not persuaded Mr C knew with any certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, if that's what he ultimately required.

Mr C was 52 at the time of the advice. In answer to Michael James' question about when he could "realistically" retire Mr C answered "60 – but willing to work on if really necessary". So it's apparent that he would most likely reassess his options once nearer to his retirement age. And, I don't think he had anything that could reasonably be described as a set retirement plan.

Also Mr C already had the option of taking early retirement before the DB scheme's normal retirement age of 65. He didn't have to transfer out to achieve this. Both the BSPS2 and the PPF would have allowed early retirement. Although his pension entitlement would have been reduced by what's known as early retirement factors. But the reduction in pension entitlement is not a penalty. It is simply a recognition that, by taking a pension earlier, it's likely that it will have to last longer and so cost the scheme more.

So I think describing the early retirement factors which would reduce the DB scheme pension as a penalty wasn't providing Mr C with information that was clear, fair and not misleading. Similarly, while Mr C could access benefits from his personal pension without a penalty, any such deduction would reduce the remaining pension pot and there would be less available to benefit from any investment growth. So drawing down funds from an earlier date would in effect lessen one or all of the following:

- The amounts Mr C could take as income.
- The time frame he would have funds available for.
- The remaining funds available as a death benefit.

It follows that Mr C taking money from his personal pension early could have a more significant effect on his income in retirement than taking benefits from the DB scheme or the PPF early. That's because the benefits from the DB environment would continue to grow in line with the relevant indexation regardless of how early Mr C took it. In contrast any returns from the personal pension would be dependent on investment performance.

I think a better explanation of this might have allayed Mr C's concerns about being 'penalised' for retiring early from the DB scheme. And, as I've said above, he had no need to transfer in order to be able to take early retirement.

I'll add that in response to our Investigator's assessment of the complaint Michael James said that Mr C took TFC and pension benefits from age 55. We spoke to Mr C about this. He told us that he has not retired and still works for the same employer as at the time of the advice. He said he has no plans to retire as yet. He explained that after he turned 55 his wife had a health condition that was causing her some distress and affecting her mobility. She was on a list for NHS treatment but they were warned it could be years before she received it. So they decided to pay for Mrs C to have her treatment privately and buy a new car that was more suited to her needs. And, as they had the funds available in Mr C's pension pot, they used that to pay for it.

Mr C was unaware that he'd need access to funds for his wife's treatment when Michael James advised him. So it wasn't a factor in the decision making. But, in any event, if Mr C hadn't transferred then he could have accessed money from his DC pensions to pay for the treatment. Alternatively Mr C could have chosen to borrow or could have downsized his house. Another option would have been to access his BSPS2 benefits early had he joined that scheme, although I don't think he would have needed to do so as he could have obtained the funds from elsewhere. So I don't think the fact Mr C has accessed his pension funds earlier than expected means the transfer was justified.

But it's true to say that Mr C couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. If he'd wanted to take a TFC lump sum, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. It's also the case that a personal pension would allow Mr C to access 25% of the full fund as TFC, whereas the DB scheme has stricter rules about how much of a TFC lump sum can be taken.

But while I can see why accessing funds flexibly might have been an attractive prospect for Mr C, I'm not persuaded he had any concrete need to vary his income throughout retirement. But, if he believed he did there was no requirement for him to give up the safeguarded benefits from the BSPS scheme in order to have some flexible access to retirement funds.

Mr C's DB funds wouldn't be his only retirement provision. He had another DC pension worth around £102,000 in 2017. He had also recently joined his employer's DC pension scheme.

He and his employer together were contributing around £9,000 a year to that. And, without allowing for growth or any increase in contributions, Michael James recognised that by the time Mr C turned 60 that fund could be worth around £79,000.

The nature of DC pensions means these already provided Mr C with flexibility – he wasn't committed to take their benefits in a set way. He could have taken lump sums as and when required and adjusted the income he took from them according to his needs. So, I think if Mr C retained his DB pension, this combined with his DC pensions, would have likely given him the flexible access to funds if he decided he needed that flexibility.

I can understand why having extra flexibility was likely appealing to Mr C but it wasn't necessary at the time of the advice. And in any event, I don't think that was a decision he needed to make at this time. That's because if he'd joined the BSPS2, he retained the option to transfer out of the scheme closer to his retirement age if his circumstances required it. So he had no need to make such a decision, and put his DB funds at risk by doing so, when he still had eight years to his preferred retirement age and 13 years to the scheme's normal retirement age.

Michael James also said Mr C wanted TFC in order to pay off any remaining mortgage and help with his daughter's university costs. But I don't think Mr C needed to transfer in order to be able to do those things. If Mr C had remained in the DB scheme then he could have taken TFC from that. It's notable that Michael James didn't give any TFC figures if Mr C took early retirement. So, I don't think it provided him with all the information he needed to make an informed decision. But in any event, by the time he reached retirement, at whatever age that may be, his mortgage would have reduced by his repayments in the meantime, and could have been less than £11,000 by the time he reached 60 and would be paid off by the time he reached age 65. So it's likely that TFC from the DB scheme would have covered any remaining sums. And, Mr C would have received a guaranteed and increasing income from the DB scheme, alongside the flexible access to his DC funds, that could have helped his daughter with her university costs. So I don't think any desire for increased flexibility justified a transfer.

Uncertainty about the BSPS2

Michael James said that our Investigator relied on a flawed assumption that Mr C could opt into the BSPS2 as it hadn't yet come into existence.

It's notable that Michael James' suitability report doesn't question that the BSPS2 would happen at some point. So, from reading its report, it seems that at that time Michael James had accepted the BSPS2 would come into existence. It appears this is something it's only chosen to dispute after our Investigator issued his complaint assessment.

That said, the suitability report does refer to Mr C's concerns about the future of the BSPS2 and his fears that it might also go into the PPF.

The BSPS closed in March 2017 and at the time Mr C approached Michael James the situation had been evolving for some months. There was some widespread concern about what moving pensions to the PPF meant for BSPS members. It's also well-known that this was a period of uncertainty for people in Mr C's situation. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So in order to recommend that Mr C should transfer out of his DB scheme Michael James needed to be able to clearly demonstrate that doing so was in his best interests.

When Mr C approached Michael James there was still the possibility that his pension could move to the PPF. However, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr C's employer would set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017. And the confirmation that Mr C's employer had made the required payment for it to go ahead was announced on 11 September 2017. And by the time that Michael James made its final recommendation, the BSPS trustees had provided details of the BSPS2 to scheme members in its "time to choose" information. So it seems that, at that time, Michael James believed it was more likely than not the BSPS2 would go ahead.

So, while entry into the PPF was still a possibility, I think this was unlikely to be Mr C's only option. Further, even if Mr C remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think Michael James could have addressed that concern.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. And, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. Also, I think it's likely that Mr C could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF.

It follows that I'm not persuaded the uncertainty Mr C experienced when he entered into the advice process was sufficient reason for Michael James to recommend he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That's because to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have been a significant driver in Michael James recommending Mr C transfer out of the DB scheme altogether.

Michael James also said that there was no evidence that Mr C would have opted into the BSPS2 had it come into existence. On that point it is quite simply wrong. There is clear evidence on file that Mr C opted into the BSPS2 following the "time to choose" exercise which was during the period when Michael James was giving its advice

Death benefits

Michael James said that transferring would allow Mr C to leave the full value of his pension pot to his family in the event of his death. But the priority here was to advise Mr C about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could have been valuable to his family in the event of his death.

While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would have also been reduced by any income Mr C drew in his lifetime. And so it may not have provided the legacy that Mr C might have thought it would.

Further, I'm aware that Mr C had death in service cover from his employer. So that would have paid a lump sum in the event he died while still working for the same employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, then life insurance may have met his needs.

I’ve noted that Michael James looked into the cost of life insurance. Its suitability report said the premiums for Mr C would be between £113 a month for term assurance and £406 for a standard policy. So it didn’t think that was viable on grounds of cost. But I don’t think Michael James presented this option in a balanced way. It based the quotes on the full transfer value of Mr C’s DB scheme. In other words it essentially assumed he’d require a life policy to pay the same as his CETV (before drawing down any sums from it). But unless he died before he took retirement, that figure wouldn't be realistic.

Ultimately, Mr C wanted to leave whatever remained of his pension to his family, which could be a lot less than his CETV depending on how much he drew from it and the investment performance. So a fairer manner in which to provide Mr C with realistic life insurance options would have been for Michael James to ask him how much he would ideally like to leave as a legacy, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

It follows that I don’t think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr C. And ultimately Michael James should not have encouraged Mr C to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Control

Michael James also commented that transferring would give Mr C control over how his pension was invested. But I think Michael James overstated Mr C’s desire for control. I can’t see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And Michael James made its recommendation to transfer on the basis Mr C would receive, and pay for, ongoing support with his investments. So, I don’t think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme.

Overall, I can’t see persuasive reasons why it was clearly in Mr C’s best interest to give up his DB benefits and transfer them to a personal pension. And I also haven’t seen anything to persuade me that Mr C would’ve insisted on transferring, against advice to remain in the DB scheme. So, I’m upholding the complaint as I think the advice Michael James gave to Mr C was unsuitable for him.

Also as I think that learning that he'd put some of his pension funds at risk unnecessarily has been a source of distress and inconvenience for Mr C, I think Michael James should pay him £300 to address that.

Putting things right

A fair and reasonable outcome would be for Michael James to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would most likely have remained in the DB scheme and joined the BSPS2 if Michael James had given suitable advice.

Michael James must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator’s handbook in DISP App 4:
https://www.handbook.fca.org .uk/handbook/DISP/App/4/?view=chapter.

Michael James should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Michael James based the inputs into the calculator on.

For clarity, Mr C has not yet retired, he still works for the same employer and has no plans to retire yet. He has accessed some of his pension funds. But he's explained that he did so in order to cover the additional costs associated with his wife's health condition. And, if he hadn't transferred out of the scheme he could have found those sums from elsewhere. So, I'm not persuaded that he would have accessed his DB funds early if he hadn't already transferred. In those circumstances compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Michael James should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Michael James' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Michael James may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Also I think Michael James should pay Mr C £300 to address the distress and inconvenience arising from its unsuitable advice.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Michael James, trading as West Country Financial to pay Mr C the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 January 2024.

Joe Scott
Ombudsman