

## The complaint

Mr B complains about the advice given by Optima Financial Services Ltd ('Optima') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a group personal pension ('GPP'). He thinks the advice was unsuitable for him and caused a financial loss. Mr B is represented in this complaint, but for ease I'll refer only to Mr B.

## What happened

In 1992, Mr B joined his employer's DB occupational pension scheme. Mr B's employer decided to close this DB scheme in March 2006 (at which point Mr B became a deferred member), and opened a new GPP. The DB scheme was underfunded at that time, and Mr B's employer also decided to offer an 'enhancement' to members who chose to transfer their DB scheme benefits to a personal pension. Members of the DB scheme were also being offered regulated financial advice, the cost of which was met by Mr B's employer. Optima was contracted to provide that advice.

Optima gathered information about Mr B's circumstances and objectives. It was recorded that Mr B was age 44 and expected to retire at age 65. That he was married and this wasn't expected to change in the foreseeable future, and had three dependent children age 16, 14 and 12. His health was recorded as 'good', though he'd been treated for an angina attack in 2005. Mr B's attitude to risk was assessed as 'medium', and his priorities ranked as:

- “1. the security of my pension fund*
- 2. provision for a partner's and dependent pension*
- 3. the ability to retire early*
- 4. tax free cash lumps sums at retirement*
- 5. control and flexibility pension funds*
- 6. lump sum benefit upon my death before retirement*
- 7. to be able to increase my pension”*

In August 2006, Optima sent Mr B its 'recommendation' report which said *“Optima recommend that you transfer your existing deferred benefits from the [DB scheme] to the new [GPP]. The initial reason behind this recommendation has been a comparison of the Critical Yield<sup>1</sup> (CY) figures (TVAS Report pages 1 & 3) with your Attitude to Risk (ATR) and the number of years left until retirement.”* The report went on to say that better death benefits before retirement for his dependants and access to tax free cash ('TFC') on retirement also supported its recommendation to transfer.

Soon after, Mr B and Optima met to discuss the recommendation report. Optima's notes of this discussion record that Mr B didn't accept its recommendation as he *“want[ed] to take cash option as advised against”* – so he wanted to take the enhancement as cash rather than transfer it to his new GPP. Optima's notes said it had *“Explained cash v security – questioned why No1 priority – now not concerned as needs cash”* and that Mr B was *“more concerned with now”* and he'd *“prefer to take cash option + transfer”*. Optima's notes went on to say *“[Mr B] clearly only interested in accepting top-up. Did not get sense of why? Advised against taking through payroll, explained may be tax-free or may be taxed. [Mr B] understands it is his decision”*.

Mr B signed an 'execution-only' letter, which said *"I confirm that I wish to transfer the reduced value of my deferred benefits within the [DB scheme] to [the GPP] and receive the [employer enhancement] as a cash payment through my payroll. I was advised by [Optima] to transfer all the benefits, including the [employer enhancement] but I have decided not to take this advice. I am aware that this action will reduce my pension on retirement. As a result, I am instructing this transfer on an execution only basis and I fully accept responsibility for my own actions. I will have no future claim against Optima for this decision."*

Following this, in early 2007, £48,855.74 was transferred from Mr B's DB scheme to his new GPP, and the £14,000.22 employer enhancement was paid to Mr B through his employer's payroll.

Mr B says he separated from his wife in 2007 and has not remarried. And he says that in 2017 he was advised by a separate IFA (which I'll call 'Firm P') to switch his personal pension to another provider, and he took £20,000 of TFC. Soon after, Mr B also began drawing down his pension benefits. Mr B says he currently works part-time.

Mr B says that in 2022, he saw an advert from his representative about pension mis-selling. Through his representative, Mr B complained to Optima that its 2006 transfer advice might have been unsuitable and caused him a financial loss. Mr B said Optima hadn't told him about the guarantees he'd lose on transferring or explored alternative ways of funding his divorce other than taking the employer enhancement as cash. And it hadn't explained the term 'insistent client' and he didn't know the transfer was carried out on that basis.

Optima asked Mr B for some further information it thought it needed in order to investigate his complaint, and later gave him referral rights to the Financial Ombudsman Service. Mr B referred his complaint to us.

Optima thought Mr B's complaint had been brought too late for us to be able to consider it and wasn't a complaint that should be upheld in any case. Optima said it carried out a full advice process which met the compliance standards of the time and was overseen by the DB scheme trustees. That Mr B had acted against Optima's advice and transferred his DB scheme benefits on an 'execution-only' basis. And the transfer had afforded Mr B the flexibility he'd made use of from 2017 by accessing TFC and income from his pension.

Our Investigator thought Mr B's complaint had been brought within the relevant time limits because the 2022 advert Mr B saw was the earliest point at which he ought to have been aware he had cause for complaint about Optima's 2006 advice.

Optima had further communication with us and with Mr B. I've summarised what I see to be the main relevant points Optima made:

- It was over 15 years since the 2006 advice, and a civil court would say this complaint was made too late. Firm P would've identified the previous DB transfer as part of its 2017 advice process and told Mr B it might've caused him a financial loss he could complain about. Firm P would also have established the suitability of Mr B's existing pension arrangements, and if they were unsuitable or underperforming, it would've told Mr B to ask for a review of the DB transfer. So, Mr B should have been aware in 2017 that he had cause for complaint about Optima's 2006 advice. Further, the regular pension statements sent to Mr B would've shown if his pension wasn't performing as expected, and Mr B wouldn't simply have thought this was due to the global financial crisis in the years following his DB transfer, as he knew his DB pension hadn't been subject to such market fluctuations and Optima's 2006 advice made this risk clear.

- Optima's 2006 advice was clear and gave Mr B the information he needed to make an informed choice. Optima recommended he transfer both his DB scheme benefits and the employer enhancement into his employer's new GPP, explaining that it wasn't in his best interests to take the enhancement as cash. But Mr B didn't accept this recommendation as he wanted the enhancement as cash regardless. So Optima arranged the transfer on an execution-only basis and Mr B signed an agreement to indemnify Optima against future loss or complaint. Optima told us *"The execution-only/insistent client aspect of the case only concerns [Mr B's] decision to take the [employer enhancement] as an immediate payment through payroll. Mr [B] was advised against transfer on that basis."*
- Optima's advice met the regulations and guidance at that time. Then, there was no 'insistent client' regulatory guidance, and the regulator's 'starting presumption' that a transfer was unsuitable applied to active members of a DB scheme, and Mr B was a deferred member.
- Mr B's account contained inaccuracies. Optima had made clear when Mr B could access his benefits, what benefits and guarantees would be lost on transfer, and the advantages and disadvantages of transferring. And Mr B hadn't told Optima about a separation or divorce, or why he wanted the enhancement as cash. Mr B now claimed he took it as cash for his divorce but also claimed to fund his divorce from his 2017 TFC.
- The transfer met Mr B's objectives. Optima made clear the GPP's returns might not meet the critical yield, but having ownership of his pension benefits met Mr B's need for security of his pension. Death benefits hadn't been a priority for Mr B but were likely to be better under his new GPP anyway, and he now said he'd divorced soon after the advice. And ignoring Optima's recommendation and instead taking the enhancement as cash showed Mr B wasn't concerned with maximising his guaranteed retirement income. Also, the transfer met Mr B's immediate cash need, and he had 20 years to accrue further pension funds to replace the cash he'd taken, so he had capacity for loss.
- This complaint was speculative. But Optima had asked Mr B for further information so it could respond to his complaint and so we could properly investigate, but Mr B hadn't provided this or evidenced his financial loss. Optima thought we should obtain the 2017 advice documentation from Firm P.

Mr B provided us with further information, including information about charges, copies of various pension statements across 2017 to 2020, and evidence he'd sought further information from his current personal pension provider. Mr B said he didn't have any of the documentation from Firm P's advice process in 2017, and Firm P hadn't discussed Optima's 2006 advice with him at all. Mr B said he had no financial or pensions knowledge, so he'd relied on Optima's 2006 advice and didn't question it until seeing the 2022 advert.

Ultimately, agreement couldn't be reached so this complaint was passed to me. I issued a provisional decision on Mr B's complaint.

In summary, I thought Mr B's complaint about Optima's 2006 advice had been made within the relevant time limit rules. And after considering the merits of that complaint, I thought it was a complaint that should be upheld.

I said I appreciated that access to the enhancement offered by his employer, the flexibility to take TFC on retirement, and the potential for higher death benefits on offer through a personal pension would have sounded attractive to Mr B. But Optima wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and to make a suitable recommendation.

Ultimately, Optima recommended that Mr B transfer his deferred DB scheme benefits to a GPP – it did not in any way recommend that he should not transfer these benefits. And I

didn't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr B shouldn't have been advised to transfer out of the DB scheme just for flexibility he didn't need. And the potential for higher death benefits and the opportunity to access an enhancement from his employer, whether as cash or included in a DB transfer, wasn't worth giving up the guarantees associated with his DB scheme.

I said Optima should've advised Mr B to remain in his DB scheme, given his particular circumstances and lack of certain retirement plans. And had it done so, Mr B would have accepted that advice and his benefits would not have been exposed to any investment risk at all. I thought Optima should compensate Mr B for its unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr B through his DB scheme at age 55 for comparison purposes.

Mr B confirmed he had no further comments to make.

In its response to my provisional decision, Optima disagreed its advice was unsuitable and provided further comments. I've summarised what I see to be the new and relevant points Optima made:

- The Financial Ombudsman Service's process was neither fair nor impartial. Mr B involved us after only six weeks without providing any further detail to Optima. Optima had to provide all the evidence, yet Mr B ignored all Optima's information requests claiming it wasn't available only to provide some of the requested information to us.
- Regarding the relevant time limits, Optima said:
  - The "*switch regulations*" and "*benefit commence advice regulations*" meant Firm P's 2017 advice would've covered the source of funds. Firm P wouldn't have analysed Optima's 2006 advice but would have made high level comments to Mr B about the advice and his right to complain if he had concerns. So Mr B ought reasonably to have been aware in 2017 that he had cause for complaint about Optima's 2006 advice.
  - Firm P would also have given Mr B ongoing reviews of his personal pension which would've likely included ongoing assessment/confirmation of continuing suitability.
  - The provisional decision relied on Mr B's testimony to conclude that 2022 was the soonest he ought reasonably to have been aware he had cause for complaint, but Mr B's testimony was inaccurate and confirmed the unreliability of his claim. In particular, Mr B had:
    - Given an incorrect date for when he left his employer.
    - Said all advice was delivered by telephone, but there were in-person meetings.
    - Said the loss of guarantees in transfer wasn't made clear, but it was made clear in various correspondence sent to Mr B by his employer and by Optima, and was also covered during two advice meetings and a staff presentation, as supported by the documentation.
    - Said he didn't understand the documents he signed, but these were in plain English as supported by the documentation.
    - Deliberately omitted mention of the cash enhancement in his detailed complaint letter, but this enhancement is key to the outcome of his complaint.
    - Been inconsistent by saying he used both the enhancement in 2007 and the TFC in 2017 for his divorce.
    - Claimed to be unsuccessfully seeking information from his personal pension

provider, but Optima thought this unlikely.

- Regarding the applicable rules, regulations and requirements, Optima said:
  - The provisional decision quotes multiple Principles and rules without showing if these were breached.
  - The provisional decision was wrongly influenced by current regulations and guidance. In particular:
    - COB 5.3.13 G (4) applied to 'active' members, and Mr B was a deferred member.
    - The provisional decision hinges on a later change to COB 5.3.13 G and later changes to guidance and practice. Further, the scheme rules also changed later.
    - The provisional decision ignored COB 2.5.4 (R).
    - The provisional decision referred to income drawdown, which wasn't available in 2006/2007.
- Optima thought the provisional decision contained inaccuracies, didn't adequately reflect the actual details of the chronological sequence of events, and showed a lack of experience and technical understanding.
- Optima had given clear advice to Mr B and he'd acted against it. In particular:
  - Mr B's employer consulted Optima on whether the enhancement could be tax free if paid as cash rather than into their pension. Optima advised against offering employees this choice. Optima confirmed to employees taking the incentive as cash meant it would be subject to tax and National Insurance contributions ('NIC'). And that Optima wasn't willing to advise employees regarding acceptance of the enhancement and, should they do so and transfer the reduced amount to their pension, it would be on their instruction at their own risk. When Optima met Mr B, it made clear he shouldn't transfer if he wanted the enhancement as cash. Optima covered this position in its original letter, at the meeting and in its final letter.
  - Optima recommended Mr B transfer his full transfer value to the GPP. The yields required were acceptable and Mr B has benefitted. The critical yield required to match Mr B's benefits at age 65 was 7.8% if he took TFC and a reduced pension, and would have been under 6.5% at age 55 and given the later changes in the basis of calculation of scheme TFC which improved the scheme TFC available. Given this, Optima didn't see the significance of the discount rate.
  - The DB scheme could not solely meet Mr B's retirement income needs as he was only a member for about 13 years. Optima's advice never suggested a transfer could meet Mr B's retirement income needs, simply that he could secure his value, improve his future TFC, improve his death benefits and provide an option to re-shape his retirement income depending on his situation at the time.
  - The provisional decision focused on flexibility and death benefits, but these were suggested by us, not Optima. And Mr B wouldn't have wanted to pay for life assurance as he already had death benefit provisions and wanted as much cash as possible.
  - The employer had said it would fund the deficit in Mr B's DB scheme, but it could hardly have said anything else and has had great difficulty remaining in business and meeting its obligations.
  - Optima disagreed its recommendation to transfer was unclear, as it quoted the gross amount as the transfer. And Optima met with Mr B to review its recommendations, the implications of transfer, and scheme differences. Optima explained that accessing the enhancement as cash negated its advice and strongly advised against this as it would be subject to tax and NIC, and would seriously reduce his pension in retirement. But Mr B wanted the cash and wouldn't

- elaborate why.
  - Mr B understood and accepted the loss as evidenced by the clear and concise disclaimers he signed.
  - Optima treated Mr B as an execution-only client, or what's now termed an 'insistent' client - Optima has used the term 'execution only', but not in the regulatory sense as it had provided advice. Optima believed it was reasonable under COB 2.5.4 R to treat Mr B in this way. Optima believed Mr B could and likely would transfer under his own initiative anyway so it facilitated his wish without taking any responsibility for the loss to his pension.
  - Optima disagreed that it should have prepared a further TVAS and advice for Mr B, given Optima had confirmed Mr B should not transfer if he took the enhancement as cash and had written that it was not willing to give advice on that basis. And it's reasonable for anyone to understand that if you start with less you will end up with less.
- Mr B would have gone ahead with a transfer in any case. He wanted the cash enhancement and called Optima on 3 April 2006 to chase the outcome prior to even receiving any advice. In addition, the future scheme funding was a major concern, and although Mr B wasn't concerned with his employer's financial security, security was a major priority for him and transferring in full allowed him to secure his pension pot regardless of the future of his employer or the DB scheme. Optima did everything it could to dissuade Mr B, but it was his decision and risk. And at that time, Mr B didn't need an adviser to sign off a transfer and could have instructed the DB scheme to transfer to any personal pension and accessed the cash enhancement. Optima simply facilitated Mr B's request (against advice) and Mr B fully understood that.
  - Mr B signed three disclaimer letters, and indemnified Optima against his decision to transfer. It was wrong to say Mr B didn't know transferring would reduce his pension's ultimate value, as the wording of the disclaimer letters was clear, concise, and understandable. And this was fully discussed and understood by Mr B.
  - Optima calculates Mr B hasn't suffered a financial loss as a result of the transfer. The regulator's DB pension transfer redress methodology is designed for those whose retirement is at some future date (with numerous assumptions), not in the past where real numbers can be compared. Furthermore, it would seem that Mr B has little or nothing left in his personal pension as he extracted it all in very short order. And it wasn't reasonable for Optima to be responsible for any and all subsequent advice, charges and any future poor decisions, as the provisional decision suggested.

## **What I've decided – and why**

### Jurisdiction

I've reconsidered whether this is a complaint our Service can consider. Optima says this complaint would be considered out of time by the civil courts. But we are not the courts. Instead, we're an alternative dispute resolution service and the relevant time limits we must consider are set out in the Dispute Resolution (DISP) section of the Financial Conduct Authority's Handbook.

Our ability to consider complaints is set out in Chapter 2 (DISP 2) of the FCA's Handbook of Rules and Guidance. DISP 2.8.2R says that, unless a business consents, the Financial Ombudsman Service cannot consider a complaint if it's been referred to us,

*more than:*

*(a) six years after the event complained of; or (if later)*

*(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

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

*unless:*

*(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R was as a result of exceptional circumstances*

Mr B's complaint is that Optima gave him unsuitable advice in 2006. Mr B raised his complaint with Optima in 2022. This is clearly more than six years later, so his complaint is out of time under the six-year part of the rule. Therefore, I need to consider the three-year part of the rule.

Optima argues Firm P's 2017 advice process (about switching his personal pension and taking TFC) ought reasonably to have made Mr B aware he had cause for complaint about Optima's 2006 advice, and says Firm P's 2017 documentation will show this. But Mr B says he doesn't have any of this documentation. Firm P itself is now in liquidation, and the Official Receiver says it doesn't yet have access to Firm P's records and doesn't expect this to change soon. So unfortunately, the full documentation from Firm P's 2017 advice process isn't available.

Where the evidence is incomplete, inconclusive or contradictory, I must 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. And I think it's more likely than not that Optima's 2006 advice wasn't discussed, in any detail, by Mr B and Firm P in 2017.

Mr B says Firm P reached out to him, so I don't think Mr B had any concerns that caused him to initiate the 2017 advice. And while Optima says regulations meant Firm P would have covered the source of Mr B's funds, and that Firm P would have made high level comment to Mr B about Optima's 2006 advice, I'm mindful that Optima wasn't present at any discussions between Mr B and Firm P, and hasn't provided any documentary evidence to support its argument. Whereas Mr B was present at those discussions and says the 2006 advice was not discussed at all. I appreciate Optima thinks it's incorrect to rely on Mr B's testimony, as it says this is unreliable. But the examples of Optima has given of what it sees to be Mr B's unreliable testimony are, in my opinion, either not relevant to reaching a fair and reasonable conclusion to this complaint or things that Mr B and Optima take differing views on.

Further, I don't think it's likely that Firm P would revisit in detail, or otherwise assess, the suitability of Optima's 2006 advice, which had by then taken place more than ten years earlier. Instead, I think it's more likely than not that Firm P would simply have focused on considering Mr B's current pension arrangements at that time and whether another arrangement was more suitable for him.

Optima also argues Mr B could have seen any underperformance of his pension either through the regular pension statements sent to him or during Firm P's 2017 advice process, and it ought to have made him realise he had cause for complaint about Optima's 2006 advice. But I don't agree. Optima itself says the value of Mr B's GPP in 2017 was £140,334.59, so a very large increase on the £48,855.74 transferred in following Optima's 2006 advice, even setting aside any contributions Mr B made. And I've seen nothing to make me think Mr B was an experienced investor or had more than a general level of knowledge relating to pensions, so I don't think it's reasonable to conclude that he'd have thought his pension could or should have increased even more than that. And from 2017, Mr B withdrew significant amounts from his pension and I think this would have further blurred any perceptions Mr B may have had about its performance.

Optima further argues that Mr B taking his pension benefits ought reasonably to have made him aware he had cause for complaint about its 2006 advice. But I don't agree this is necessarily the case, particularly when Optima's 2006 recommendation report had suggested that flexibility to take pension benefits in various ways could be reasons for Mr B to transfer to a personal pension.

As I say, I don't think Mr B was an experienced or knowledgeable investor. And I've not been given any evidence that makes me think Mr B had any other information that ought reasonably to have made him aware he had cause for complaint about Optima's 2006 advice, prior to the pension mis-selling advert he says he saw in 2022. Mr B raised his complaint with Optima later in 2022, within three years of seeing this advert.

For these reasons, I'm satisfied Mr B's complaint about Optima's 2006 advice has been made within the relevant time limit rules. Therefore, I've gone on to consider its merits.

### The merits of Mr B's complaint

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

Mr B and Optima have provided detailed submissions to support their position and I'd like to reassure them both that I've considered all the comments and evidence they've provided. But while I mean no discourtesy, my decision will focus on what I consider to be the central issues in reaching a fair and reasonable outcome to this complaint. So my decision won't address every point or question both parties have raised, but will instead set out my findings and my reasons for reaching them.

I appreciate Optima says its 2006 advice was in line with the regulator's rules and guidance at that time, and that the scheme trustees subsequently vetted the transfer advice process and documents.

But 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 of Optima's 2006 advice. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COB'). And as I've said, 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*



Again, for clarity, I've taken account of the rules, regulations and requirements that applied at the time of Optima's 2006 advice. The below is not a comprehensive list of the rules and regulations which applied at that time, but provides useful context for my assessment of Optima's actions here.

PRIN 2: *A firm must conduct its business with due skill, care and diligence.*

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.*

PRIN 9: *A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.*

COB 2.5.3R: *A firm must not, in any written or oral communication in connection with designated investment business, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a customer (which for these purposes includes a retail customer) under the regulatory system.*

COB 2.5.4 R: *A firm must not, in any written or oral communication to a private customer in connection with designated investment business, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in COB 2.5.3 R unless it is reasonable for it to do so.*

The provisions in COB 5.3.5R which deal with the obligations when giving a personal recommendation and assessing suitability.

The provisions in COB 5.3.21R which states "*When advising a customer who is, or is eligible to be, an active member of a defined benefits occupational pension scheme whether he should opt out or transfer, a firm should:*

- (a) start by assuming it will not be suitable, and*
- (b) only then consider it to be suitable if it can clearly demonstrate on the evidence available at the time that it is in the customer's best interests."*

And the provisions in COB 5.3.25R which deal with the obligations when a customer, contrary to the advice of the firm, instructs the firm to arrange a pension transfer.

Optima has reiterated that the 'presumption of unsuitability' in COB 5.3.21R at that time only applied to active DB scheme members, and Mr B was a deferred member. But the underpinning Principles existed throughout, as did the obligation to act in accordance with the Principles. So in any case, Optima still had to conduct its business with Mr B with due skill, care and diligence; to pay due regard to Mr B's interests and treat him fairly; to communicate with Mr B in a way that was clear, fair and not misleading; and to take reasonable care to ensure the suitability of the advice it provided to him. And having considered all the available evidence, I don't think Optima did so.

Optima suggests Mr B's complaint is speculative, that Mr B brought his complaint to us before Optima had the required time to respond to it, and that Mr B didn't provide Optima with the information it asked him for to support his complaint. But Mr B is entitled to complain about Optima's 2006 advice, regardless of his reasons for doing so. Ultimately, Optima has had the opportunity to respond to Mr B's complaint. And I'm satisfied we have gathered all the information necessary to reach a fair and reasonable outcome to Mr B's complaint.

Optima says it recommended that Mr B transfer his benefits in full into his employer's new GPP i.e. transfer both his DB scheme benefits and the employer enhancement. But Mr B chose not to follow this recommendation as he wanted the enhancement as cash. So Optima arranged the transfer on an execution-only basis.

Optima was required to pay due regard to Mr B's interests and communicate with him in a way that was clear, fair and not misleading. This means its recommendation needed to be clear and Mr B would've needed to have understood the consequences of going against the recommendation.

Optima doesn't think its recommendation to transfer was unclear, as it quoted the gross amount as the transfer. And Optima says that when it met Mr B to review its recommendations, the implications of transfer, and scheme differences, Optima made clear he shouldn't transfer if he wanted the enhancement as cash – it explained that accessing the enhancement as cash negated its advice and strongly advised against this as it would be subject to tax and NIC, and would seriously reduce his pension in retirement. And Optima says it covered this position with Mr B in its original letter, at the meeting and in its final letter.

Optima's recommendation report said (with my emphasis):

*"Optima recommend that you **transfer your existing deferred benefits from the [DB scheme]** to the new [GPP]. The initial reason behind this recommendation has been a comparison of the Critical Yield<sup>1</sup> (CY) figures (TVAS Report pages 1 & 3) with your Attitude to Risk (ATR) and the number of years left until retirement."*

I acknowledge Optima's recommendation mentioned the critical yield set out on pages one and three of the transfer value analysis report ('TVAS'). And that page one of the TVAS report said the transfer value was £62,855.96 i.e. that it included the employer enhancement. But Optima's recommendation said Mr B should transfer his existing deferred DB scheme benefits. It did not make clear that this recommendation was dependent on the transfer amount including the employer enhancement, as Optima now suggests. Further, at no point did Optima recommend that Mr B should not transfer out of his DB scheme, whether or not the transfer amount included the enhancement. And I'm mindful that at the time, COB 5.3.25R stated, *"If, contrary to the advice of the firm, a private customer instructs the firm to arrange a pension opt-out or pension transfer, the firm must:*

- 1) make and retain a clear record of the firm's advice that the private customer should not proceed with the pension opt-out or pension transfer and the private customer's instructions to proceed with the transaction; and*
- 2) provide a further confirmation and explanation, in writing, to the private customer that the firm's advice is that the private customer should not proceed with the pension opt-out or pension transfer."*

Optima's notes record that when it met with Mr B following its recommendation report, Mr B didn't accept its recommendation as he *"want[ed] to take cash option as advised against"*. Optima's notes said it had *"Explained cash v security – questioned why No1 priority – now not concerned as needs cash"* and that Mr B was *"more concerned with now"* and he'd *"prefer to take cash option + transfer"*. Optima's notes went on to say *"[Mr B] clearly only interested in accepting top-up. Did not get sense of why? Advised against taking through payroll, explained may be tax-free or may be taxed. [Mr B] understands it is his decision"*. So at this point, Optima was aware Mr B wanted to take the enhancement as cash and not include it in any transfer.

Optima doesn't think it needed to carry out a further TVAS and set out its further advice for Mr B, given that in its view, it had confirmed Mr B should not transfer if he took the enhancement as cash and had written that it was not willing to give advice on that basis. And Optima says it's reasonable for anyone to understand that if you start with less you will end up with less.

But as I say, the documentary evidence from the time of Optima's 2006 advice shows that at no point did Optima recommend that Mr B should not transfer out of his DB scheme, whether or not the transfer amount included the enhancement. And I remain of the view that Optima's obligations meant it could and should have at this point prepared a new TVAS report and recommendation report for Mr B which addressed his preference to take the enhancement as cash and set out its financial implications, and provided Mr B with an updated recommendation.

Instead, Optima simply arranged for Mr B's DB scheme benefits to be transferred out on what it says was an execution-only basis – which I'll return to.

Given all this, I'm not persuaded that Optima gave Mr B any recommendation that he should not transfer his DB scheme benefits. Therefore, I'm not persuaded that Mr B transferred against Optima's advice. Instead, I think Optima's unclear recommendation left Mr B thinking he should transfer his DB scheme benefits regardless of whether the enhancement was included in the transfer amount or not.

Nevertheless, as Optima says that transferring out of the DB scheme was suitable advice – provided Mr B included the cash enhancement in the transfer – I've considered whether or not that advice was suitable.

#### *Financial viability*

Optima carried out a transfer value analysis report (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr B was age 44 at the time of the advice and he expected to retire at age 65. Optima recorded that if Mr B transferred the total of £62,855.96 into the GPP, the critical yield required to match Mr B's benefits at age 65 was 8% if he took a full pension and 7.8% if he took TFC and a reduced pension.

But Optima didn't record what the critical yield would be if Mr B took the enhancement immediately as cash at the time of transfer instead of including the enhancement in the transfer to his pension. Optima's records of its meeting with Mr B following its recommendation report show it knew Mr B was interested in taking the enhancement as cash. But Optima didn't carry out any analysis to show the financial impact of this in relation to the transfer it had recommended. And as I say, in line with its obligations, I think Optima could and should at this point have prepared a new TVAS report and recommendation report for Mr B which addressed the financial implications of taking the enhancement as cash and provided an updated recommendation.

Instead, Optima let the original TVAS and recommendation report stand, with the latter simply stating *"If you elect to take the enhancement via payroll the reduced Transfer value would require significantly higher Critical Yields than those shown below."*

Optima argues it recommended Mr B transfer his full transfer value to the GPP, and the yields required were acceptable as the critical yield required to match Mr B's benefits at age 65 was 7.8% if he took TFC and a reduced pension at age 65. And that the critical yield would have been under 6.5% at age 55 and given the later changes in the basis of calculation of scheme TFC which improved the scheme TFC available.

But I don't think Optima's 2006 advice could have known exactly what changes would later be made to the scheme TFC calculations. Or that Mr B would begin taking his pension benefits in 2017 at age 55, given that Mr B had told Optima he expected to retire at age 65.

Taking everything into account, I think it's likely that at the time of the 2006 advice, critical yields based on a lower transfer amount (i.e. excluding the employer enhancement) would be significantly higher than the 8% quoted if Mr B took a full pension at age 65 and the 7.8% quoted if he took TFC and a reduced pension at age 65.

In any case, the quoted critical yields compare with the discount rate of 6.4% per year for 20 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 5%, the middle projection rate 7%, and the lower projection rate 9%.

I've taken this into account, along with the composition of assets in the discount rate, Mr B's 'medium' attitude to risk and also the term to retirement. There would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 7.8%, I think Mr B was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

Optima has provided a TVAS report which includes financial models, and I've considered this along with everything else Optima has provided. But none of these seem to show the impact of Mr B transferring his DB scheme benefits (with or without the employer enhancement included in the transfer amount) and taking the same level of income he would've been entitled to under the scheme on the value of his remaining pension until his estimated death. So, it's difficult to see whether Mr B could've made his funds last until he died. And there may not have been a large sum left, if any at all, to pass on when Mr B died.

Optima says the DB scheme could not solely meet Mr B's retirement income needs as he was only a member for about 13 years, and its advice never suggested a transfer could meet Mr B's retirement income needs as a whole. However, I think it's reasonable to say Optima's advice regarding transferring his DB scheme pension should have considered what income Mr B would need in retirement and how he could meet this – including taking into account the preserved benefits in his DB scheme as well as his new GPP. But Optima hasn't provided any evidence of having recorded or considered this at the time of the advice. This is likely because it was too soon to say what Mr B's retirement income needs might be, since he had about 20 years until he expected to retire. So, in my view, the financial models don't offer any real insight into whether Mr B could've met his retirement needs by staying in his DB scheme.

And given Mr B's expected retirement was still about 20 years in the future, I don't think he needed to make a decision to transfer out of his DB scheme at that time. That's particularly the case, because Mr B had ranked *"the security of my pension fund"* as his first objective, albeit he was attracted by the possibility of accessing an employer enhancement as cash.

And also because Mr B didn't know what income he'd need in retirement, and he'd still have the option of transferring out of that scheme nearer to his desired retirement age if that suited his particular circumstances at that time. So, I don't think Mr B should've been encouraged to make an irreversible decision to leave his DB scheme when he was still decades away from his planned retirement age and he wasn't likely to be able to improve on the benefits available through his DB scheme.

For this reason alone a transfer out of the DB scheme wasn't in Mr B's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Optima has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

### *Flexibility and income needs*

In the information Optima gathered about Mr B's circumstances, Mr B ticked a box to say "*Flexibility does not appeal to me. I do not mind leaving my benefits under the control of [Mr B's employer].*" Optima's recommendation report said this supported leaving Mr B's DB scheme benefits within that scheme.

Mr B had also ticked a box which said "*I require the maximum possible cash lump sum upon retirement.*" Optima's recommendation report said this supported its transfer recommendation.

While transferring Mr B's DB scheme benefits to a GPP would provide him with flexibility to take TFC from age 55 and leave his funds invested, there's no evidence to support that, at the time of Optima's 2006 advice, Mr B required this, or any, flexibility in retirement. As I've said, Mr B's expected retirement was then about 20 years away so he didn't yet know whether he'd want or need any flexibility in the way he accessed his benefits. And there's no pressing need for flexibility in retirement recorded in any of the documents Optima has provided – indeed, Mr B was still more than 10 years away from even being able to access his TFC. I think if asked, most people would say flexibility and TFC are desirable, but that doesn't mean they were genuine objectives for Mr B at the point of Optima's 2006 advice.

Mr B suggests he told Optima he needed the enhancement as immediate cash to fund his divorce. But the documentary evidence doesn't support this. Instead it records that Mr B was married and didn't expect this to change in the foreseeable future, and that Optima did not get a sense of why he wanted the enhancement as cash.

Nonetheless, it's clear from Optima's notes that, at the time of advice, Mr B was attracted by the possibility of accessing the employer enhancement as cash. But Optima wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and make a suitable recommendation. I don't think Optima did enough to establish the reason Mr B wanted immediate cash, let alone explore alternatives to using the enhancement this way, not least because the amount he was being offered would be taxed. And as I say, Optima didn't make clear that its recommendation to transfer Mr B's deferred DB scheme benefits was dependent on Mr B including the enhancement in the transfer amount.

I also can't see evidence that Mr B had a strong need for variable income throughout his retirement. That's because there's no calculation of his retirement income needs because as I say, it was still very many years until Mr B could retire. And Mr B's new GPP, which Mr B's employer was offering him whether he transferred his DB scheme benefits into it or not, could provide Mr B with a degree of flexibility in how he accessed the fund he would build up in it over the next 20 years.

Ultimately, at the time of the advice, Mr B didn't have any concrete retirement plans, although he didn't expect to retire before age 65. This was about 20 years away and his income needs at that point were unknown. So I think it was too soon to make any kind of decision about transferring out of the DB scheme. At the point of taking advice, Mr B could have remained a deferred member of the DB scheme while also starting to contribute to his employer's new GPP. So, I don't think Mr B should have been encouraged to give up his guaranteed benefits when he didn't know what his income needs in retirement would be. If Mr B later had reason to transfer out of the DB scheme because he genuinely needed a greater degree of flexibility, he could have done so closer to retirement.

So, I don't think it was suitable for Optima to advise Mr B to transfer in order to have flexibility that he didn't really need.

### *Death benefits*

When Optima gathered information about Mr B's circumstances, Mr B ranked death benefits before retirement as 6 out of 7 in his list of priorities, and ticked boxes in the 'Death Benefits before Retirement' section that said:

- *"My dependants will receive significant sums upon my death from other sources and whilst a greater amount might be beneficial, it is not an absolute priority to me."*
- He'd ideally like such death benefits paid *"primarily as a lump sum"*.

In the section titled 'Partner and Dependant Pensions after Retirement', Mr B ticked a box to say *"The spouse's pension benefits under my [employer's DB] scheme are most important to me and I feel that these should continue."*, and ranked this as 2 out of 7 in his list of priorities.

Despite this, Optima's recommendation report said its recommendation to transfer was supported by Mr B's answers regarding death benefits before retirement, as his DB scheme didn't allow these to be paid as lump sums. The report also said Mr B *"should be aware that the spouse's benefits in the event of a transfer could potentially exceed those of the [DB scheme]"*.

Optima's response to my provisional decision says its advice suggested a transfer could improve Mr B's death benefits. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension might have been an attractive feature to Mr B. But, as I've set out above, Mr B considered death benefits to be a low priority. So, I'm satisfied that death benefits pre- and post-retirement were not a genuine objective for Mr B.

However, I've thought about whether the different death benefits available through a GPP made the recommendation suitable overall. But I'm not persuaded that's the case, because any benefit left to pass on depended on investment returns, and how much remained in the pot on Mr B's death. Whereas the spouses pension was guaranteed and it escalated. And it's evident that Mr B had other ways of ensuring he could pass on a legacy to his family if he later decided this was important to him, such as by taking out life assurance and/or making his wife and children beneficiaries of his employer's new GPP.

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

### *Control or concerns over financial stability of the DB scheme*

Optima now argues that having ownership of his pension benefits met Mr B's need for security of his pension.

But this isn't supported by the evidence from the time of the advice. In the information Optima gathered about Mr B's circumstances, Mr B ticked a box to say "*Flexibility does not appeal to me. I do not mind leaving my benefits under the control of [Mr B's employer].*" And Optima's recommendation report said this supported leaving Mr B's DB scheme benefits within that scheme. In addition, the information Optima gathered about Mr B's circumstances recorded that Mr B had ranked control of his pension funds as 5 out of 7 on his list of priorities. So I think it's fair to say that having control of his pension funds was not a high priority for Mr B. As I've said, Mr B was not an experienced investor, and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think control or ownership of his pension was a genuine objective for Mr B – it was simply a consequence of transferring away from his DB scheme.

I accept that Mr B's DB scheme had closed and was underfunded at that time. And while Optima now argues that Mr B's employer could hardly say anything else at time, it's still the case that the consultation materials Mr B's employer provided to its DB scheme members made clear that Mr B's employer would fund the deficit. And I've seen nothing to suggest that the funding of Mr B's employer's DB scheme was in a position such that Mr B should, at the time of Optima's advice, have genuinely been concerned about the security of his pension. Further, the information Optima gathered about Mr B's circumstances included a section titled 'Security of Pension Funds'. In this section Mr B ticked a box to say "*I have no reason to question the security and financial stability of [Mr B's employer] or the manner in which the pension fund is being administered.*" Optima's recommendation report said this didn't directly affect the recommendation it had made.

Optima says that although Mr B was not concerned with the financial security of his employer, security was a major priority for Mr B and transferring in full allowed him to secure his pension pot regardless of the future of his employer or the DB scheme. But based on the documents from the time of the advice, I don't think Mr B was concerned about the stability of the DB scheme or his employer, or that Optima's advice was predicated on any such concerns.

### Summary

I don't doubt that the access to the enhancement offered by his employer and the flexibility to take TFC on retirement would have sounded attractive to Mr B. But Optima wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, Optima recommended that Mr B transfer his deferred DB scheme benefits to a GPP – it did not in any way recommend that he should not transfer these benefits. And I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr B shouldn't have been advised to transfer out of the DB scheme just for flexibility he didn't need. And the potential for higher death benefits and the opportunity to access an enhancement from his employer, whether as cash or included in a DB transfer, wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Optima should've advised Mr B to remain in his DB scheme.

I note Optima says Mr B's execution-only letter indemnified Optima against his future loss or complaint, and Optima made this clear to Mr B. And that Optima believed it was reasonable to under COB 2.5.4 R to treat Mr B in this way. I should be clear here that I'm satisfied it was not fair and reasonable for Optima to have recommended that Mr B transfer out of his DB scheme in the first place. So in my opinion, the opportunity to proceed in reliance on an indemnity should not have arisen at all. And in the circumstances, I don't think the indemnity Optima refers to reflects the obligations it had to Mr B under PRIN and COB.

Of course, I have to consider whether Mr B would've gone ahead and transferred out of his DB scheme anyway, had Optima clearly advised him not to. And Optima argues this is the case. Optima says that Mr B wanted the cash enhancement and called Optima to chase the transfer prior to even receiving any advice. That the future of the scheme funding was a major concern, and although Mr B was not concerned with the financial security of his employer, security was a major priority for him and transferring in full allowed him to secure his pension pot regardless of the future of his employer or the DB scheme. That Optima did everything it could to dissuade Mr B, but it was his decision and risk. And at that time, Mr B didn't need an adviser to sign off a transfer and could have instructed the DB scheme to transfer to any personal pension and accessed the cash enhancement. Optima simply facilitated Mr B's request (against advice) and Mr B fully understood that.

I've considered this carefully, but I'm not persuaded Mr B would've gone ahead and insisted on transferring out of his DB scheme anyway, had Optima clearly advised him not to.

Mr B has used the term 'insistent client'. Optima says it treated Mr B as an 'execution-only' client, or what's now termed an insistent client – that Optima used the term execution-only, but not in the regulatory sense, as it had provided advice.

For clarity, the documents from the time of the advice refer to the transfer being carried out on an execution-only basis. At that time, the regulator defined an execution-only transaction as *"A transaction executed by a firm upon the specific instructions of a client where the firm does not give advice on investments relating to the merits of the transaction."* In this case, Optima had provided Mr B with advice regarding transferring his DB scheme benefits – it recommended he transfer them to a GPP, and its notes of its following discussion with Mr B say it *"advised against"* taking the enhancement as cash because Mr B might be taxed on it. So, I think it's fair and reasonable to conclude that Optima's relationship with Mr B was an advisory one.

As I've said, I don't doubt Mr B was attracted by the possibility of accessing an employer enhancement, particularly as immediate cash. Mr B did take the enhancement as cash but it's not clear what he used it for. Mr B now suggests he used it for his divorce, but the documentary evidence from the time of the advice doesn't support that – it doesn't record any reason why Mr B wanted to take the enhancement as cash. And Mr B has also told us he used the TFC he took in 2017 for his divorce, amongst other things. But I'm mindful that some of these events happened very many years ago and recollections can fade. All in all, I'm not persuaded Mr B had any genuine and pressing need to take the enhancement as cash at the time of the advice.

Further, Mr B was an inexperienced investor with a medium attitude to risk and this pension accounted for the majority of his retirement provision. So, if Optima had provided him with clear advice against transferring out of the DB scheme whether he invested the enhancement or took it as cash, explaining why it wasn't in his interests, I think he would've accepted that advice.

Optima says it believed Mr B could and likely would transfer under his own initiative anyway. But I'm not persuaded Mr B had any genuine objectives or concerns that were so great he



would've insisted on transferring out of his DB scheme knowing that a professional adviser didn't think that was suitable for him or in his interests. If Optima had explained that Mr B could meet all of his genuine objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would have transferred out of the DB scheme anyway.

I note Optima says Mr B hasn't evidenced his financial loss and that Optima's calculations show the transfer hasn't caused Mr B a financial loss. But that's a matter for the redress calculation, which I'd remind Optima must be undertaken 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. It's possible that because of the performance achieved this may not show a loss. But this doesn't mean Optima's 2006 advice was suitable or that Mr B's complaint about it shouldn't be upheld.

In light of the above, I think Optima should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Optima argues it shouldn't be held responsible for losses to Mr B's pension which happened since he switched his personal pension in 2017 on the advice of Firm P – Optima says it's not reasonable for Optima to be responsible for any and all advice, charges and any future poor decisions, subsequent to Optima's 2006 advice.

DISP APP 4.4.2 R uses the current value of the defined contribution ('DC') pension arrangement as the comparator (adjusted only for benefits already paid to the consumer and SERPS adjustments where applicable). And DC pension is defined in DISP APP 4.1.1 R as (with my emphasis):

*'DC pension arrangement' means any pension arrangement holding the value of the consumer's pension benefits which originated from the non-compliant pension transfer advice, **including where the arrangement has been subsequently changed to a new arrangement;***

So the rule does not limit the losses to the point where the pension is moved elsewhere. However, I've thought about whether it's fair to limit the loss up to the point Mr B moved his pension to the new arrangement. But I don't think it is. In this decision, I've only considered Optima's 2006 advice. If that advice had been suitable, Mr B would more likely than not have remained in his DB scheme and his benefits would not have been exposed to any investment risk at all. By moving to a personal pension arrangement it was reasonably foreseeable that Mr B might change advisers and/or investments in future - Optima couldn't reasonably expect that Mr B would remain invested in the funds it initially recommended until retirement or that he would never change advisers. Mr B's pension fund is only subject to investment risk and/or losses as a result of Optima's advice to transfer out of his DB scheme.

And I think this comes with the risk of further unsuitable advice which Optima exposed Mr B to when it recommended he transfer away from a secure DB scheme. If Mr B had remained in the DB scheme he would not have been exposed to any advice and product charges or investment losses. In any event, I'm deciding the complaint against Optima and I think without its unsuitable advice Mr B wouldn't be in the position he is in now. So, in the circumstances of this complaint I still consider it's fair and reasonable to hold Optima fully responsible for all of the losses Mr B might have incurred.

## Putting things right

A fair and reasonable outcome would be for Optima to put Mr B, as far as possible, into the position he would now be in but for its unsuitable advice. I consider Mr B would have most likely remained in the occupational pension scheme if suitable advice had been given.

Optima 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>.

For clarity, although Mr B says he now works part-time, he began taking his pension benefits in 2017 at age 55. And I think he most likely would've also done so had he remained in his DB scheme. So, compensation should be based on him taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the final decision.

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

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
  - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts Optima's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Optima 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 B'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

## **My final decision**

Determination and money award: I uphold this complaint and require Optima Financial Services Ltd to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Optima Financial Services Ltd pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on Optima Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 January 2024.

Ailsa Wiltshire  
**Ombudsman**