DRN-4448400

The complaint

Ms W complains about advice she received from John Cunningham (JC) to transfer her former employer's defined benefit ('DB') pension scheme into a Royal London personal pension. Ms W believes the advice to transfer wasn't in her best interests and has caused a financial loss. She is represented by a barrister's chambers in her complaint but for ease, I will refer to all submissions as having been made by Ms W unless it is necessary to distinguish.

What happened

Ms W's representative says that it was JC who called Ms W to offer her a pension review, but the complaint is generic and lacks detail. As JC has provided a phone note of Ms W calling it to ask about her deferred DB pension on 21 February 2018, I consider that is likely to be how she and JC came into contact.

Ms W met with an adviser from JC on 8 March and 9 May 2018 to discuss the DB pension. On the latter date JC completed a fact find and risk analysis to establish Ms W's circumstances and objectives. It noted the following:

- She was aged 53 and in good health
- She was engaged to her partner about two years older than her, and had four adult children
- Her partner was a smoker with type 2 (non-insulin dependent) diabetes
- She earned £20,400pa as a transport worker
- She rented her home
- Her income covered her expenditure however she had no savings or investments
- She had car finance to which she would be paying £234pm for the next 4½ years
- She had a "Balanced" (5/10) attitude to investment risk, defined as: "*A Balanced Investor is looking for a balance of risk and reward, and whilst seeking higher returns than might be obtained from a deposit account, recognises that this brings with it a higher level of risk and that the value of their investment may fluctuate in the short term. They would feel uncomfortable if the overall value of their investments were to fall significantly over a short period and would not be happy to see their capital eroded"*
- She was anticipating retiring at between 60 and 65 (*"prob 65"*)
- Her only other assets were about £500 in the bank
- She hadn't joined her current employer's pension scheme (which the adviser suggested she investigate), but had been with them since 2014

The adviser noted that Ms W wished to move her DB pension as she was *"uncomfortable and worried she'd lose out"* as the scheme was closed to new members and subject to a possible buy out which she'd *"heard through the grapevine".*

JC issued a suitability report dated 14 May 2018 which recommended she transfer to the Royal London personal pension and invest in its Governed Portfolio 5. The report was supported by a Transfer Value Analysis (TVAS), Key Features document and personalised illustration.

The transfer value was £73,867, including £3,251 of Additional Voluntary Contributions (AVCs). The transfer value expired on 10 July 2018. At the date of leaving the scheme in April 2007, Ms W had a scale pension of £2,809pa. The TVAS projected that pension would revalue to £4,527pa from age 65, or up to £22,547 tax-free cash could be taken by commutation reducing that pension to £3,382pa. The pension would increase in line with inflation and was payable until death. A spouse's/partner's pension of 50% was payable which would also increase annually.

JC noted in the report that Ms W wished to transfer her benefits for the following reasons:

> *"• Concern about the long-term future of the scheme. Whilst I am aware that the details of the scheme are due to change, I can see no immediate reason to be concerned about the long-term future of the scheme itself.*
> *• Flexibility of income. You are not keen on having a fixed, set income level, over which you have no control or flexibility once it has been set up.*
> *• Death benefits. You are concerned that the benefits accrued over the long number of years you worked with [employer] could be lost in the event of you dying prematurely."*

The critical yield (investment return required under the personal pension to provide the same benefits as the DB scheme) was calculated at 5.37% (or more realistically 5.05%, as Ms W would likely take a tax-free cash sum first). Alternatively the sum Ms W would need to invest risk free at the point of advice to provide an annuity equal to the DB pension plus tax-free cash was £106,804. This compared with the transfer value available (excluding AVCs) of about £70,600. But if Ms W transferred, then invested in line with the middle of the regulator's growth rates and made withdrawals of tax-free cash and regular income equivalent to the DB scheme, JC calculated that the income would last until age 93. JC added:

> "*If your sole requirement here was to maximise income, I would consider possible [sic] that a balanced risk investment portfolio would achieve an average annualised return of 5.4% over the medium to long term.*
> *I would consider more realistic rate of return would be nearer 5% p.a. so its not too far away. Performance could not be guaranteed.*
>
> *Whilst the fund indicated has achieved the above noted rate of return on a gross basis, it must be remembered that there will be charges levied which will reduce the net return seen via your policy. I would summarise these charges as follows…The net effect of all of the above charges is an estimated reduction in yield of some 1.3% p.a., which is a little lower than that levied by other, similar pension providers."*

I note the TVAS was based on an assumed reduction in yield of 1.5%pa which may have been more realistic. Those charges were calculated based on 3% of the transfer value for the initial advice and an ongoing advice servicing fee of 0.75%pa plus a 0.45% product charge. The report also noted that Ms W's DB scheme was 95% funded at the time.

Ms W accepted the recommendation and a total transfer of £74,000 (including the updated value of AVCs) was paid on 22 June 2018. Governed Portfolio 5 involved Ms W investing 58% in a global managed fund, 15% in property, 7% in commodities, 17% in various bond funds and 3% in cash.

Ms W brought her complaint to JC on 19 December 2022 via her representative. The complaint simply stated that Ms W had been told that the transfer would be beneficial, but the advice was negligent, and Ms W had suffered a loss. It didn't say why Ms W considered the advice was negligent or what loss had been suffered.

JC responded on 13 January 2023 that it didn't agree with Ms W's concerns. It suggested Ms W had asked for its assistance in withdrawing from the DB scheme, so it had provided an appropriate recommendation and there was no evidence she had suffered a loss.

Our investigator considered that the complaint should be upheld. Her reasons were:

- The DB pension offered a guaranteed income for life and was Ms W's only pension provision at that time other than from the State.
- Ms W had a low capacity for loss, which would've likely meant the security of the DB pension would have been very important to her.
- The fact find noted that in addition to her state pension Ms W would require around £300-£350 per month in retirement. Her revalued DB pension would deliver this.
- The critical yield appeared to be unachievable even based on a recorded balanced attitude to risk, given the impact of the product and advice charges on the growth Ms W's chosen funds were noted to be achieving.
- The suitability report even noted that Ms W would likely have to leave her fund invested beyond her desired retirement age of 65 (at the latest) in order to meet her income needs.
- JC was aware there was no concrete evidence of the service issues Ms W said she was having with the DB scheme's administrator. But it didn't challenge Ms W's preconceptions about the scheme not being trustworthy or explain just how much she stood to lose by transferring for this reason.
- Instead, JC proceeded to support Ms W transferring for this reason.
- Whilst flexibility (of income and death benefits) may have been attractive to Ms W, she didn't appear to have specific plans that required this flexibility. JC should have more strongly emphasized that Ms W could run out of funds at age 91 (or 93 if tax-free cash was taken), even if growth at the regulator's middle rate could be achieved.

JC didn't agree with the investigator. It said Ms W was looking for a mechanism to effect the immediate withdrawal of her interest in the DB scheme and access to cash at the earliest age permitted by legislation (55). And that instead of acknowledging this, she was only complaining in general terms, without explaining what prompted her to complain – and her stance was being supported without any evidence of loss.

As agreement couldn't be reached, the matter has been passed to me for a 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.

Validity of the complaint

Firstly, I'd like to confirm that despite the generic nature of Ms W's complaint, it meets the regulator's definition of a complaint, which is:

> *"…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service…which:*
> *(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and*
> *(b) relates to an activity of that respondent…which comes under the jurisdiction of the Financial Ombudsman Service."*

So whilst it is certainly of assistance in JC and this service reviewing the complaint (and I would expect Ms W's barrister in future to do so), it is not a requirement of this definition for the events prompting the complaint to be detailed or the loss to be quantified. I consider Ms W asserting that a loss has been suffered, but without evidence, is tantamount to her alleging that she *may suffer* loss - as per the definition above.

This complaint is in my view also being considered against the correct respondent. JC refers to the fact that it joined the True Potential network in December 2019. In relation to this, an onward transfer of £77,238 was made from Royal London to a True Potential personal pension in January 2020. JC says there were arrangements between it and True Potential to handle liabilities from past business. No copy of that agreement was provided to this service and we were referred to True Potential for further information. True Potential denied that it acquired JC's past liabilities (which would, in any event, be unusual).

Whatever the position, I'm being asked to address a complaint by Ms W against JC, who gave her the DB transfer advice. I have discretion under s234B of the Financial Services and Markets Act 2000 to consider this complaint against JC even if (should it be proven) JC can call on True Potential to meet the cost of redress. And I would have exercised that discretion in favour of considering the complaint against JC anyway in those circumstances, should they apply.

That's because I don't see that an agreement between JC and True Potential in respect of past liabilities, should it exist, would give Ms W any right to seek compensation from True Potential because she would not be a party to that agreement. So, in the event this complaint is upheld against JC, it would be a matter for JC to discuss with True Potential if it considers that firm should make a contribution towards any compensation.

Turning to the merits of this complaint, 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 JC's 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 largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, JC should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Ms W's best interests. And having looked at all the evidence available, I'm not satisfied it has done this.

It's worth noting that Ms W was financially inexperienced. At the time she first approached JC, its file notes suggest she may have fallen under a false impression of the long-term value of a stream of payments from a guaranteed index-linked pension - which is not uncommon for a layperson: "*[Ms W] states that she has a letter confirming she **only** has about £2000 of a pension.*" (my emphasis)

The cash equivalent value of over £70,000 can easily appear more enticing than an annual income of £2,000pa for the rest of her life (which was also likely to be a reference to the unrevalued pension, further suggesting a misunderstanding of how these benefits are uplifted for inflation within certain limits). So, it was essential for JC to calculate and fairly communicate what the long-term benefit was to Ms W of having that "£2,000" (actually £2,809) revalued and then escalated in payment for the rest of her life.

Financial viability

JC carried out transfer analysis (as required by the regulator). As part of this the software it used calculated how much Ms W's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield). This analysis was predicated on Ms W buying an annuity, but given that the pension under consideration was her sole pension provision at that time (other than the state pension), Ms W had a significant degree of reliance on this pension to give her a more comfortable standard of living in retirement.

Even if Ms W joined her then employer's pension scheme, this DB pension was likely to remain her most significant provision. So I think looking at how much growth Ms W would need in the receiving scheme to buy an equivalent annuity at retirement is the most realistic indication of the amount of risk she would need to take in this case. Or, to put it another way, it showed whether the transfer value offered 'good value' for the benefits being given up.

The Transfer Value Comparator (TVC) JC was specifically required to produce by the regulator illustrates this same concept in a different way. It essentially showed that Ms W would have needed about £36,000 more in her transfer value than she was actually being granted, in order to safely secure the same pension from retirement age (65). When expressed as an annual growth requirement instead, this critical yield was determined to be 5.05% - not materially different to the regulator's middle rate for pension projections (5%pa).

Ms W was recorded as having a balanced attitude to risk, which gave her some freedom to invest to a degree in the type of assets (shares) that would be expected in order to achieve growth at the 5% projection rate. However, as she got nearer age 65 it's likely that she would need to reduce her exposure to shares in order to protect the value of the pot, because I think would most suitably be used in her case to purchase an annuity – for reasons I'll explain in the rest of this decision.

Up until about six months before this advice, the Financial Ombudsman Service had been publishing 'discount rates' to be used in loss assessments as an assumption of what future growth would be considered reasonably achievable when looking to purchase an annuity. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The rate we published was 3.9%pa for 11 years to retirement, which I consider is more representative of the growth Ms W would reasonably be expected to achieve if targeting annuity purchase at retirement. Whilst the performance of the Governed Portfolio 5 might have just about achieved this return on average in recent history, after allowing for the product and advice charges, there was no guarantee it could continue to do so. And in any event it was likely to be suitable advice for Ms W to move more into bonds and cash as she neared her retirement age, leading to hopefully more stable (but lower) returns.

Whichever way this is looked at, the prospects for Ms W achieving growth significantly in excess of the critical yield were minimal. There would be little point in Ms W giving up the guarantees available to her through the DB scheme only to achieve, at best, the same level of benefits outside the scheme. So here, I think Ms W was likely to receive benefits of a materially lower overall value than the DB scheme at retirement, as a result of investing in line with her attitude to risk.

JC's analysis included a fairly simple cashflow model which suggests Ms W's funds could have run out at age 93 if she didn't buy an annuity. However this also assumed that Ms W obtained growth at the regulator's middle projection rate, year-on-year, which was optimistic given her attitude to risk and low capacity to accept loss on these benefits. There was no analysis of the impact a market downturn would have on being able to sustain that income: it would be harder to recover from such an event, as the fund would be overly depleted when unit prices were lower. That would bring the point at which Ms W's income ran out nearer, and potentially before her statistical life expectancy.

On the strength of the analysis JC carried out, I consider the low likelihood of the critical yield being achieved is the best indication that this transfer involved more risk than Ms W could afford to take. Financial viability isn't the only consideration when giving transfer advice. However, from what I can see of the other reasons JC gave for transferring, it allowed these to take greater prominence than they should reasonably have held in her case. I'll explain why.

Flexibility and income needs

JC explained in its suitability report that, with my emphasis:

> *"One of the main benefits of the pension freedoms legislation introduced in 2015 was the facility to structure how income was taken from a personal pension. Rather than being* ***forced to settle*** *for a fixed income, which cannot be changed once it has been set up, you are now able to adjust the level of income taken to suit your own needs. For example, you may wish to draw an income from the pension as a mixture of tax free cash and taxable income initially, however this can be adjusted to suit your needs as and when required. Income can be drawn at any level, subject to there being funds available to meet the demand and can be adjusted upwards or downwards to suit your needs. In addition, ad hoc one-off payments can be drawn at any time."*

JC did briefly remind Ms W in its report to consider the loss of guarantees involved in pursuit of more flexible options, noting, "*Whilst you have stated your preference for using personal pension route, it is essential that you are made aware of the level of guaranteed benefits that you would be giving up and understand the consequences of your decision."* However I think it should have gone further than this. In a meeting note it had recorded that she didn't have a known need to make use of this flexibility:

> *"I discussed the benefits or the Retirement Account with [Ms W] and [Ms W] likes the idea of being able to take ad hoc payments if necessary, the only way she would do this she*

said was 'if it was an emergency and I needed a lump sum of money. She doesn't want her income to be a fixed payment and likes the flexibility knowing that she can increase or decrease the monthly payments to suit her circumstances at the time.

…

[Ms W] has no plans to access her tax-free cash or income from 55 she wishes to invest until retirement as she has no other pension provision.

The meeting note is a more realistic summary of Ms W's actual needs. I don't think Ms W would realistically benefit from a flexible income in retirement, as the state pension is unlikely to have met all of her basic income needs. She also had no known need for a lump sum, and it would have made sense for her to draw the lump sum from the DB scheme and invest that for unplanned expenses, rather than putting all of her income provision at risk. In my view her best interests were likely to be served by drawing the benefits, which were guaranteed, directly from the DB scheme at age 65.

In JC's analysis it had actually acknowledged that transferring the DB pension could result in her retirement having to be delayed if the funds didn't perform to expectations. So these were reasons for advising Ms W to stay in the DB scheme, rather than presenting the benefits it offered as something she would be 'forced' to accept.

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 benefit (return of fund) was likely an attractive feature to Ms W under the personal pension, as this could be left to her adult children if her fiance predeceased her (which I appreciate was statistically more likely to happen).

However, the priority here was for JC to advise Ms W about what was in her best interests. Realistically, Ms W was most likely to die later in retirement when the value of a drawdown pot would already have been significantly depleted. A pension is primarily designed to provide income in the policyholder's own retirement. I don't think JC explored enough how Ms W could manage with a likely lower income later on in her own retirement just in order for her children to potentially benefit from a relatively small additional sum.

I don't think JC should have encouraged Ms W to prioritise the potential for higher death benefits through a personal pension over her security in retirement. And it did this at the same time as downplaying the spouse's benefits from the DB scheme if Ms W predeceased her husband (even if she might have felt that was a less likely scenario). I don't follow the comment, *"As you are separated, all benefits cease when you die, whether that is 5 years or 55 years after retirement"*. The scheme provided spouse's benefits - and the TVAS assumed the same benefits would go to Ms W's fiance whilst he was still her partner too.

I note Ms W already held an amount of term assurance cover. If she had genuinely wanted to leave a legacy for her fiance or children, which didn't depend on investment returns or how much of her pension fund remained on death, JC could instead have explored life insurance – but it did not do so. Overall, I don't think the different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Ms W.

Control or concerns over financial stability of the DB scheme

I think Ms W's desire for control over her pension benefits, simply because of a distrust in her employer's scheme administrator because of administrative errors, was overstated. The reference to the employer's plans to cease accrual of benefits in the DB scheme is also misplaced, given that Ms W's service had already ended. And if the scheme was bought out, the same level of pension would have been secured with an insurance company. Ms W wasn't an experienced investor and I can't see that she had an interest in or the knowledge to be comfortable accepting the risks of the transfer just on the basis of those concerns.

As the TVAS noted, the DB scheme had an insignificant level of underfunding (5%). JC noted that a potential buyout of the scheme was concerning Ms W, and stressed at times in its report that it didn't think this was cause for concern, which was the correct thing to do. However, I think it could have done more to reassure her that scheme assets were held separately from the employer (and couldn't be used by the third party that administered the scheme).

A significant part of Ms W's pension was also protected by the Pension Protection Fund in the event that the employer ran into difficulties in future, which JC did mention. But despite this objectively looking a very unlikely outcome in a scheme that was 95% funded, JC's summary of the benefits provided by the PPF were portrayed as a disadvantage when they were actually a useful safety net for Ms W remaining in the scheme:

> *"Should the scheme come to rely on the Pension Protection Fund prior to your taking the scheme benefits then you would lose the right to any tax-free cash allowance. In addition, the level of benefits payable would be capped at 90% of the original level due."*

Having considered the totality of Ms W's suitability report, it reached conclusions that accepted Ms W's concerns about the scheme, access to flexibility and death benefits, as reasons for transferring – rather than explaining that these weren't adequate grounds to support a transfer. JC gave this summary of its advice at the end of the report:

> *"Your primary goals here were*
> *(a) To have the pension transferred away from [employer]. They have repeatedly "lost" details of your pension and you want to be rid of the aggravation this continued incompetence has caused over the past few years.*
> *(b) You wished to have the flexibility to adjust the level of income taken to suit your own needs.*
> *(c) The potential death benefits offered by the personal pension route are more suited to your own needs."*

I think that would have been the impression Ms W took away from the report – after some caveats earlier in its explanations, JC was still overall encouraging her to transfer because this best met her needs. Indeed JC still considers that these were suitable reasons for transferring in its response to the complaint. My view is that the suitable advice to give Ms W was for her to leave her DB pension untouched.

The advice Ms W gave seemed to serve to facilitate Ms W's request simply because that was what she said she wanted. It isn't the adviser's role to carry out transactions to order. It would have been open to JC to treat Ms W as an 'insistent client' if she had firmly advised her against transferring for the reasons I've given – but she still wished to transfer. JC didn't do this – and in my view it would have been illogical for Ms W to still ask to transfer if JC had explained that the best thing for her to do was to remain in the scheme because of the valuable, increasing, pension benefits it offered. It's much more likely that Ms W would have followed advice from a qualified and regulated adviser. I'm not persuaded that Ms W had ideas about her pension that were set in stone regardless of the advice JC gave her.

The conclusions of JC's report actually include the statement, with my emphasis, that "*Transferring the benefits to a personal pension scheme **will** result in you receiving a lower level of income in retirement."* Yet its advice was still to do so, and a list of bullet points Ms W was asked to sign beneath refers to her accepting the investment risk and loss of guarantees but doesn't acknowledge this explicit statement – which is the most important reason why she should not have transferred.

Putting things right

I don't think the advice to transfer Ms W's DB scheme to a Royal London personal pension was suitable. JC has failed to demonstrate on contemporary evidence that there was a compelling need which meant transferring was in Ms W's best interests. I'm satisfied JC should have advised Ms W to retain her DB pension and she would have followed that advice. A fair and reasonable outcome would therefore be for JC to put Ms W, as far as possible, into that position.

John Cunningham 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.

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 Ms W's acceptance of the decision. For clarity, Ms W planned to retire at age 65 and compensation should be based on her taking the DB pension and tax-free cash at that age.

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

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

Redress paid to Ms W 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, John Cunningham may make a notional deduction to cash lump sum payments to take account of tax that she would otherwise have paid on the component treated as income. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Ms W's likely income tax rate in retirement – presumed to be 20%. Making a notional deduction of 15% overall from any compensation paid to Ms W in cash adequately reflects this.

I should note in PS22/13 the regulator clarifies that where a personal pension arrangement has been switched to a new provider, firms should use the value of the new arrangement at the valuation date. This is because the switch could only have taken place as a result the non-compliant transfer advice. JC may, if it wishes to do so, seek an assignment of Ms W's right to complain to True Potential if it considers the subsequent move to that firm has worsened Ms W's position.

I've further considered whether it's appropriate to make any additional award for distress or inconvenience caused to Ms W. She was advised to invest in mainstream assets and sought professional representation in her complaint which was brought a relatively short time after the transfer, when I consider it unlikely *significant* concerns had already arisen about the fund's potential to outperform her DB scheme. Nor do I think she could be confident she had suffered a loss: that remains to be calculated.

That doesn't mean Ms W had no right to be concerned or complain at all. She was entitled to do so, and I have upheld her complaint on the basis that the demonstrated reasons for transferring at the time weren't compelling enough to amount to suitable advice under the regulator's rules. But I agree with JC's observations that there's no indication in her complaint that she was prompted to seek out the representative's help by something that had distressed her. It's not uncommon for professional representatives to highlight to consumers that they *may* have suffered a loss, but I'm not persuaded that this alone is grounds for an additional award to be made for distress or inconvenience caused by the original advice.

My final decision

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.

<u>Determination and money award</u>: I uphold this complaint and require John Cunningham to pay Ms W the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that John Cunningham pays Ms W the balance.

If Ms W accepts this decision, the money award becomes binding on John Cunningham. My recommendation would not be binding. Further, it's unlikely that Ms W can accept my decision and go to court to ask for the balance. Ms W 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 Ms W to accept or reject my decision before 23 February 2024.

Gideon Moore
Ombudsman