Financial Ombudsman Service

The complaint

Mr C complains that he was given poor advice by Joslin Rhodes Lifestyle Financial Planning Limited ('JR') when he transferred his defined benefit (DB) scheme with British Steel ('BSPS') to a personal pension.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

Mr C first met with JR in mid May 2016 as he had concerns about his DB pension. At the time Mr C was 55, married and was earning around £40,000. He and his wife had savings of around £8,000, a repayment mortgage which was due to be repaid in 2030 and a car loan. They had no other pensions or investments and had limited experience in this area.

Over the next month, a fact find and risk profile were completed. The risk profile questionnaire recorded Mr C's attitude to risk as balanced, however in the recommendation report later on in the process JR said given his lack of investment experience, low capacity for loss and some anomalies in his answers, they thought a risk profile of moderately cautious was more appropriate for him. And this risk profile was used for comparison purposes in their analysis.

Mr C also completed a lifestyle planning questionnaire which asked Mr C for his ideal lifestyle in retirement, his expenditure requirement and his overall financial position. It showed Mr C and his wife had net income of around £3,000 per month and regular outgoings of around £2,100. They assumed costs for regular holidays as £4,400 per year. Mr C wrote down his expected retirement age as 62/63.

JR then issued a Lifestyle Financial Plan (LFP) which included a cash flow model showing that Mr C's could retire at 60 and live his desired lifestyle by remaining in BSPS.

In a second meeting in mid-June 2016, JR's meeting notes record that Mr C and the adviser discussed the LFP and through discussion some more info was added. The adviser encouraged Mr and Mrs C to think about more things they would like to do in retirement and think about 'milestones'. The adviser suggested to update the cash flow models taking into account the impact of BSPS possibly moving to the PPF as this was what Mr C was still concerned about. More information about the relevant figures was to be issued by the DB trustees a few weeks later so it was agreed to wait for this information.

The LFP was updated reflecting the discussions with the adviser (mainly £4,700 on holidays per year and £35 per month each on eating out and hobbies). A milestone trip overseas

which was planned for 2018 was also added which would cost £5,000. The BSPS cash models were updated accordingly.

In August 2016, JR issued a transfer analysis report (TVAS) which compared the benefits from the DB scheme -including if it moved into the PPF- with projected benefits in a personal pension. It showed that Mr C's new plan needed annual returns of 16.21% to match his DB benefits at age 65 and 28.57% at age 60. If BSPS moved to the PPF, critical yields were still 14.79% at age 65 and 25.56% at age 60.

JR recommended that Mr C should remain in the BSPS scheme. It said the disadvantages of a transfer outweighed the benefits.

Mr C met again with JR at the end of August to discuss the TVAS. JR's notes say Mr C remained undecided whether he wanted to transfer. JR explained the pros and cons and their recommendation not to transfer. The note says Mr C seemed disappointed and said he would like flexibility. JR explained he didn't need to take more risk as his lifestyle could be supported either way. They explained the insistent client process and another meeting was arranged for two weeks later.

In mid September Mr C, his wife and the adviser met again to discuss the recommendations after they had the chance to read the report. The meeting notes say Mr C had hoped someone would agree with his reasons why he wanted to transfer. He wanted to enjoy more of his money sooner and wanted the flexibility and lump sum death benefits a transfer would bring. The notes suggest the pension transfer specialist joined the meeting explaining his recommendation not to transfer and recapped the TVAS. JR explained the insistent client process again. Mr C said he wanted to access around £30,000 initially to allow him and his wife to do a few more breaks, increase their social life, pay for their overseas trip and pay off the car loan. The rest should remain untouched until retirement.

JR recommended a transfer to a drawdown plan with a balanced risk portfolio. The tax-free lump sum would be put into a joint General investment Account (GIA) and from there Mr C could decide how much he wanted to withdraw and transfer remaining funds to Mr C's ISA utilising any remaining ISA allowance. Mr C signed the transfer paperwork in that meeting, pending an insistent client letter. JR says this was because their insistent client process dictated Mr C had to be given another week before an insistent client letter could be considered during which he could think about whether he wanted to go ahead. JR says Mr C lived an hour away and didn't want to come back to sign the papers, so it was agreed everything would be signed but only sent off if an insistent client letter was received. JR received the insistent client letter from Mr C dated two days after the meeting and stamped as received by JR four days later.

JR issued another suitability report in October 2016 setting out the recommendations in regard to the personal pension and how his funds would be invested which was in a balanced portfolio using a discretionary fund management firm (DFM). Mr C's pension was transferred and invested as recommended in November 2016.

In 2020, Mr C complained through a representative that he was given unsuitable advice to transfer his BSPS benefits and he lost out financially as a result.

JR said their advice was to remain in BSPS and this advice was suitable. They say Mr C was informed about the risks of the transfer and what benefits he was giving up. He understood he was going against JR's recommendation and made an informed choice. JR says they followed a rigorous advice and insistent client process.

The complaint was referred to this service. Mr C's representative acknowledged that the advice from JR had been to remain in BSPS but complained about the advice process and that Mr C essentially wasn't treated fairly. Our investigator upheld the complaint. She recognised that JR's formal advice had been to remain in BSPS. However, she didn't think Mr C had been a truly insistent client and if JR had explored alternatives to meet Mr C's objectives and clearly explained the financial consequences of transferring, he wouldn't have decided to proceed. The investigator also didn't think the recommendation to use a DFM was suitable for Mr C.

If Mr C had remained with the BSPS, the investigator thought he likely would have chosen the new BSPS2 scheme when the options were presented to members of the DB scheme in 2017. So she asked JR to calculate compensation on this assumption.

JR disagreed and as no agreement could be reached, the complaint was referred to me for an ombudsman's 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.

When considering this complaint I took into account the relevant rules and regulations at the time of the advice including:

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

COBS 4.2.1R*: A firm must ensure that a communication or a financial promotion is fair, clear and not misleading.*

The provisions in COBS 9 and 19 which deal with the obligations when giving a personal recommendation in general and specifically in relation to a DB pension transfer.

I also considered the guidance and good practice guide the regulator published in 2016 around insistent clients which set out three key steps:

> *1.You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.*
>
> *2. You should be clear with the client about the risks of their chosen course of action. If the advice includes a pension transfer, conversion or opt-out, there may be additional requirements. These may include ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).*
>
> *3.It should be clear to the client that their actions are against your advice.*

The regulator made it clear that the normal advice rules needed to be followed which included obtaining '*the necessary information about the client and their investment*

objectives, financial situation, and knowledge and experience so as to enable you to make a suitable personal recommendation (see COBS 9.2).'

They raised concerns about insistent client cases where they had seen the following:

- *there was an inadequate assessment of the other options that would meet the client's objectives*
- *excessive numbers of insistent clients resulted from the adviser's advice not being sufficiently clear*
- *the risks of the client's preferred course of action were not clearly explained*
- *it was a 'papering exercise', for example the adviser had processed the case on an insistent client basis but this clearly did not reflect what had happened in practice*
- *the adviser advised the client not to transfer out of the DB scheme (although the client insisted) but then recommended a product that was not suitable (with reference to the outcome and assessment of the information gathered about the member)*

Both parties have provided detailed submissions and even though I've summarised and focused on what I consider most relevant, I can assure both JR and Mr C that I've reviewed and considered all their submissions. There is conflicting testimony between the parties what exactly was discussed during the meetings. Mr C says he was verbally advised and encouraged to transfer by JR which is adamantly disputed by them. They say they recommended against the transfer and Mr C made an informed choice to go against this recommendation.

I wasn't present at the meetings and I'm not able to know for certain what was discussed. So I considered the written evidence available from the time of the advice which includes the various reports, illustrations and meetings notes which I've relied on as contemporaneous evidence. Where the evidence is unclear or uncertain I've made my decision on what I think happened on the balance of probabilities based on the information I have.

I acknowledge that JR say the complaint has changed from one being about the advice being unsuitable to the processes being unfair and Mr C not being a true insistent client. However, as the investigator has already explained, the crux of the complaint essentially is that Mr C was not properly advised and whether an fair insistent client process was followed and whether Mr C was given sufficient and clear information to make an informed decision forms part of this. JR also had opportunity to comment on this aspect and has submitted detailed comments.

There is no dispute that JR's written recommendation to Mr C was to remain with BSPS. And given Mr C's circumstances I think everyone is in agreement that it was in his best interest to remain in the DB scheme. So there is no issue with the recommendation not to transfer itself.

Consumers can decide to go against an adviser's recommendation and JR was generally allowed to facilitate a transfer on an insistent client basis. However, I need to consider whether JR gave Mr C suitable advice overall which means whether his objectives and circumstances were properly considered and addressed and whether he was given clear and non-misleading information about his options and the risks of going against the recommendation, so that he could make an informed choice. I've considered whether Mr C was treated fairly by JR.

Even though Mr C and his wife say they can't remember writing the insistent client letter I have no reason to doubt that the handwritten letter I've seen was written by them. They say some of the terminology used is unfamiliar and contain phrases they wouldn't normally use. However, I think this is explained by the fact that they were given a leaflet by JR which set

out what issues needed to be addressed in an insistent client letter and which referred back to the transfer report and the terminology used there.

The insistent client letter is dated two days after the meeting and the evidence suggests it was sent to JR, so on balance I think the letter was drafted by Mr and Mrs C and signed at home. Mr C says he received the recommendation report but didn't read it. However, the letter drafted at the time says they read the Pension Transfer Value Analysis report and listened to the advice given by JR and wanted to take an alternative course of action. They said they had 'talked it over extensively' and were 'happy to go ahead with the transfer'. They referred to sections in the report (primary considerations of staying with BSPS and considerations in favour of transferring).

So I think on balance Mr C understood that JR's recommendation was not to transfer and that he was going against this recommendation. And I also think he likely read the report or at least parts of it. I think when he made his decision, he genuinely thought a transfer was a good idea.

However, I'm concerned about some of the advice process here and that Mr C wasn't fully informed about the risks and consequences of his intended actions. I'll explain why.

The notes from the first meeting indicate that Mr C main concern was about BSPS going to the PPF and he was worried about the safety of his pension. I can't see that Mr R was asked about retirement objectives at his stage. The section on the fact find on objectives is crossed out. And it looks like Mr C didn't have any preconceived retirement objectives when he initially met with JR. The notes suggest Mr C said he wanted to retire at 65 and only in conversation with the adviser changed this to 60. Mr C and his wife said they were content with their circumstances as they were, but would use retirement to spend more time with family and 'take up some hobbies rather than do more holidays'. It was recorded Mr C had just come for information but liked the idea of retiring earlier and exploring the best option for him.

I think the meeting note in June shows that the adviser further encouraged them to think about money they wanted to spend on holidays, milestones etc. I don't think it is generally wrong for an adviser to discuss potential early retirement and explore with their client what he might want and could afford. However, I think it's worth bearing in mind that these obviously weren't pressing objectives for Mr and Mrs C and I think they would have been open to discussions about retiring later or spending less on non-essentials if this was in their best interest in the long-term. Possible objectives of taking lump sums before retirement or required death benefits weren't discussed at all as far as I can see. The recommendation report also doesn't mention objectives.

Based on the meeting notes Mr C mentioned that he wanted flexibility for the first time in August when the recommendation report was discussed. He was concerned about the period of 'low water level' obviously referring to the cash flow models in the report which showed income as water streams and income was lower between 60 and 67 than later in retirement. JR told Mr C he still had enough income and emergency funds, but Mr C was worried about what would happen if he decided to do something that wasn't foreseeable or he needed or wanted to replace his car during this time.

The note says JR discussed the TVAS, pro and cons and their recommendation not to transfer again, but Mr C was disappointed by this as he wanted flexibility. Mr C was told he didn't need to decide straight away and was informed about the insistent client process.

I think it's concerning that JR gave Mr C their recommendation not to transfer and in the same meeting already explained how he could proceed against this. The notes suggest he

was undecided, so in my view there was no need at this stage to give him information and a guide on what he needed to do if he wanted to proceed with an action that wasn't in his best interest. I think this would have likely given the impression that whilst the recommendation was to remain in BSPS, transferring was simply another choice and in fact the insistent client sheet supports this by saying:

The key point is that just because we recommend a particular course of action for one of your pensions or investments -that doesn't automatically make all other routes 'wrong'. Ultimately, the decision as to what to do with your money is entirely up to you.

It's also worth noting at this point that the adviser put a task on this note to prepare the file with transfer paperwork for the next meeting. So it seems the adviser was already expecting Mr C wanting to go ahead and that the paperwork would be completed at the next meeting. This in my view somewhat contradicts JR's testimony that the paperwork was only completed in the September meeting because Mr C didn't want to come back again after the insistent client letter.

It seems Mr C still hadn't fully decided what to do when he met with the adviser two weeks later. The meeting note says Mr C wanted someone to agree with him that his reasons for transferring (flexibility to spend more money sooner in retirement and lump sum death benefits) were right. *'Through discussion'* Mrs C said she agreed with her husband's reasoning. Mr C asked more questions about the ongoing adviser service and he was concerned about overspending. After JR explained their service the notes say he was comforted by the fact they would review his pensions regularly. He and his wife then decided to transfer.

In the same meeting investment recommendations were given and paperwork was completed. This is the first time Mr C mentioned that he and Mrs C wanted to take a lump sum of around £30,000 immediately.

My biggest concern here is that I can't see JR properly discussed and challenged Mr C's wish for flexibility and accessing more cash in earlier years. None of this was identified as an objective or discussed before the recommendation report was issued, so it wasn't considered there. Given that this was seemingly the key reason why Mr C wanted to transfer and JR had previously said Mr C had sufficient income and emergency funds if he stayed in BSPS, they should have done more to address this once Mr C had decided to transfer against their recommendation.

I haven't seen evidence that Mr C was shown how his cash flow would be impacted by taking out a lump sum immediately or taking out higher income in earlier years. I also can't see that JR challenged whether Mr and Mrs C needed to pay off their car loan now or needed to access their pension immediately to pay for their planned holiday in two years' time. Mr and Mrs C had £800-900 disposable income per month and there was no urgent need to pay off their loan. They also had enough savings to pay for their holidays and leave them with emergency funds which they could have further bolstered with their disposable income until retirement. I haven't seen persuasive evidence that this was discussed with Mr C or what other unforeseen expenditure he was thinking of.

Mr C was making a decision to transfer which wasn't in his best interest and he had no need to take risks with his pension. Everything he wanted to afford he could achieve by staying in BSPS. And based on the evidence provided the reasons for making this decision were only really mentioned after the recommendation was given. So JR should have adapted their advice accordingly specifically addressing Mr C's intended action and ensuring he properly understood how he could meet all his objectives by staying in BSPS, that based on what he had told JR he had no need for further flexibility and give strong risk warnings about the

transfer and what this flexibility would cost him in benefits.

I appreciate the notes say the adviser gave a recap on the TVAS and explained why the recommendation was given not to transfer. As I said previously I don't know in how much detail this was done and what exactly was reiterated. JR said this meeting typically would have been between 45-60min. Given that in the same meeting the decision to transfer was made, ongoing services were explained, paperwork was completed and a full investment recommendation was given, in my view this could have likely only been fairly brief. In any event, based on the evidence in front of me, I'm not persuaded that enough was done to address Mr C's apparent perception BSPS couldn't provide him with sufficient income and funds he needed in earlier years of retirement after he decided to transfer for this reason.

JR also needed to ensure Mr C fully understood the risks and possible consequences of the intended transfer. And I'm not persuaded strong and clear enough risks warnings were given. This is not to say JR didn't mention the risks of a transfer. The recommendation report sets out the key risks of a transfer right at the start. It then prominently gives an overview of considerations in favour of transferring and against transferring.

Mr C also referred to some of these factors in his insistent client letter. From what I've seen Mr C was (at least) aware he was giving up a guaranteed income for life, that there would be no costs involved in the DB scheme and that a transfer would expose him to withdrawal and investment risk. He also specifically mentioned his worry of running out of money in the September meeting, so I think he was aware that this was a possibility.

However, whilst he might have understood there were some risks and that his future benefits wouldn't be guaranteed, I'm not convinced that Mr C was given clear enough information to fully understand what he was giving up by transferring. The recommendation report said with regards to the critical yield:

Based on the estimated annual return the critical yield figures are not expected to be met and therefore the critical yield figures above provide a strong indication that the CETV does not present an attractive option in actuarial terms.

Under 'primary personal considerations against transferring' it said:

The critical yield figure of 16.21% indicates that in pure actuarial/monetary terms (based on standardised reasonable assumptions), it would not be advantageous to transfer out of the British Steel pension scheme (see report for full details). If we were to look at these figures in isolation, we would strongly recommend remaining within the British Steel scheme.

I don't think this made it clear enough to a lay person and particularly to someone with no real investment experience like Mr C that it effectively guaranteed that he would be significantly worse off in retirement if he transferred.

When Mr C mentioned that he was undecided after the meeting in August and that he wanted flexibility, the adviser told him that he didn't need to decide straight away. He also said he didn't need to take risks as his 'lifetime' worked either way. I assume the adviser referred to the cash flow analysis which compared income streams and cash reserves if he took benefits at 60 from BSPS (and PPF) or if he transferred and which gave him "enough" money to do what he wanted. Looking at the report and the notes I feel the advice was presented as a pro and cons list. I think Mr C would have understood there were risks of transferring and benefits of staying in BSPS, but overall both scenarios would allow him to retire early and give him his required income. Mr C obviously saw the concept of flexibility as something worth taking an element of risk for. However, I don't think he would have fully understood from the information he was given that in order to try and ensure funds would

last over his lifetime and leave his wife with death benefits to provide her with income until her death (if he predeceased her), income withdrawals would have to be substantially lower than in BSPS. And lump sum withdrawals early on would impact this even more.

In short, JR should have told Mr C in clear and simple terms that he was choosing flexibility he didn't really need in return for significantly lower benefits in retirement in addition to the risks of running out of funds or not leaving behind enough death benefits for his wife. I don't think the significant disadvantages in monetary terms were sufficiently discussed based on the information I have seen.

I appreciate JR's report contained a lot of information. However, the reasons for their recommendation not to transfer were vague in my view. It just said the disadvantages outweighed the advantages. I feel after JR had told him he shouldn't transfer it was left to Mr C to weigh up the advantages and disadvantages for himself. And when he came to the conclusion he wanted flexibility, something that wasn't mentioned before, JR in my view failed to robustly challenge this and discuss alternatives. Instead they too quickly pointed towards the insistent client process which indicated acting against the recommendation was not a problem. They should have clearly explained to Mr C that a transfer wasn't in his best interest and why.

If they had done so, on balance I think Mr C wouldn't have transferred his pension. I appreciate that he was concerned about his DB pension and the possible move to the PPF. And lots of his colleagues at the time would have been transferring out of the scheme. So it's possible Mr C was leaning towards a transfer when he approached JR. This is supported by the meeting note in September when he said he thought transferring was the best option from the start.

However, it was JR's obligation to give him an objective picture and recommend what was in his best interest. This obligation didn't stop after the recommendation was given not to transfer. When it was clear Mr C was considering going ahead with the transfer anyway, JR needed to make sure he fully understood the risks of what he was doing and what he was giving up, not in the abstract but what this would mean personally for him. And as explained above I don't think they did enough here.

From what I've seen JR explained to Mr C in the report and in the meetings that going into the PPF shouldn't be a concern and if he retired early he might even be better off than in BSPS. And based on his insistent client letter and the meeting notes I don't think the fear of going into the PPF was Mr C's reason to transfer anymore.

I don't agree with JR that Mr C would have transferred regardless of the advice provided. The notes indicate he was looking for advice and he was clearly torn whether he should transfer.

He obviously was attracted to the idea of flexibility but appreciated there were certain risks. So even though he eventually decided to go against the recommendation I think he would have listened to stronger and clearer warnings and would have been open to discussions of alternatives. I remind JR of my earlier observations that early retirement and spending more on holidays, hobbies etc weren't Mr C's original plans but were ideas introduced by the adviser. And Mr C was concerned about running out of money. So I think if JR had clearly told him in no uncertain terms this wasn't in his best interest, he didn't have the required capacity for loss and he would be financially worse off as well as the unneeded flexibility he gained was not worth giving up higher benefits for, I think he would have listened.

JR pointed to a phone note in early August where Mr C called in to ask whether the transfer from BSPS was complete. They say this shows he was determined to transfer. As I said

above I think at this stage the recommendation had not been given and it's possible he was leaning towards a transfer. However, I think this note much more suggests that Mr C didn't understand the advice process or that JR had not explained clearly what would happen next.

Overall, I think a properly reasoned recommendation more likely than not would have persuaded him to follow their advice not to transfer.

There were disputes about whether the investment recommendation was suitable and in line with Mr C's attitude to risk as well as whether the charges were clear. However, given that I'm upholding for reasons set out above, there is no reason for me to comment on this further.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2.

In October 2017, members of BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017. If Mr C had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2.

Mr C's representatives said BSPS2 benefits should have been considered when giving the recommendation. However, at the time the advice was given in 2016 Mr C hadn't been given the option of BSPS2 yet. The advice for JR to give at the time was whether to stay in BSPS or transfer out and their advice was not to transfer in any event.

However, as set out above I think if JR had given properly reasoned advice and acted in Mr C's best interest, Mr C would have remained in BSPS. He might have contacted JR or another adviser again when the Time to Choose Exercise began. However, he also might not have done.

So I carefully considered what Mr C likely would have done about a year later had he been given the choice of either the PPF or BSPS2 and placed into an informed position regarding the features, risks and benefits of both options.

On balance I think Mr C would've likely opted for the PPF. I appreciate Mr C's representatives don't agree and I've considered their reasons carefully, but I still think on balance this is what he would have chosen.

I agree that early retirement wasn't something Mr C had maybe thought about or had planned to do when he sought advice from JR. However, it was discussed and after meeting with JR I think he had realised this was an option and he liked the idea of retiring at 60. So even if he had remained in BSPS, I think he would have seriously considered early retirement when he was given the choice between BSPS2 and PPF in 2017 and he was reasonably close to a possible retirement age of 60. Even if he continued to work for a couple more years, say to 62 or 63, the PPF benefits would have likely provided better higher income and TFC than BSPS2.

BSPS2 wouldn't have decreased Mr C's initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. However, early retirement factors in the PPF were lower and commutation factors for tax free cash entitlement were also more favourable under the PPF. So overall, it's likely Mr C's income and tax-free cash entitlement would have been higher in the PPF.

Under BSPS2, the spouse's pension would be set at 50% of Mr C's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So the spouse's pension would likely be lower in the PPF. However, I think on balance his own benefits and higher tax-free cash which he and his wife could benefit from earlier in retirement would have been more important to him.

Mr C's representatives say early retirement from the PPF might not have been affordable for him. They say JR didn't provide Mr C with projected retirement benefits from the PPF at age 60. However, this isn't true. The TVAS report included different cash flow scenarios and scenario 2 showed Mr and Mrs C's financial position if DB benefits were taken at age 60 from the PPF. Projected benefits were £14,716 per year plus a TFC sum of £98,108. Based on the models I'm satisfied the couple could have lived comfortably if benefits were taken that way.

So I think the PPF would have been the more attractive option to Mr C in 2017.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of BSPS and subsequently moved with it to the PPF. So calculations should be made on this assumption.

JR must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

If Mr C had remained in BSPS, I don't think he would have accessed his DB benefits in 2016 to withdraw lump sums like he did after the transfer. As explained above, I don't think Mr C really needed additional funds to pay off his car loan or pay for holidays.

Mr C took redundancy in early 2020 and started taking regular withdrawals to replace salary in November 2020 at age 60. His representatives say he only did so at the encouragement of the adviser and he could have found other work or explored the option to apply for welfare benefits to delay accessing his DB pension. However, I don't agree this is something that Mr C would have likely wanted to do. As I said before Mr C was interested in early retirement since this was discussed and explored with JR in 2016. And the pension review meeting notes in January 2019 state under 'Employment & Work Plans':

Although the cashflow models suggest that ceasing work at the end of this year should be feasible, you have asked us to assume that you both work until [Mr C] is 60 in November 2020.

So I think based on the evidence available in 2019 Mr C was still planning to retire at 60. He took redundancy in the same year he turned 60 and I think it's likely he made the decision to stop working then and not look for a new job.

So I think he would have accessed his PPF benefits at the same time. JR should therefore use the assumed retirement age of 60 for their calculations.

JR may wish to contact the Department for Work and Pensions (DWP) to obtain Mr C's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr C's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition JR should pay Mr C £300 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr C within 90 days of the date JR receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes JR to pay Mr C.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late summer 2022.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

Mr C has retired early and I think he would have had done the same if he had gone into the PPF. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr C. As such, I

think it’s more likely the case that there would be no deficit in the PPF benefits which could be made up by the “buy-out” process.

For this reason I require Joslin Rhodes Lifestyle Financial planning Limited to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr C accepts this decision, he’ll be doing so on the basis of my understanding as set out above. It’s important that Mr C is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance

My final decision

Determination and money award: I uphold this complaint and require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr C the compensation amount as set out in the steps above up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr C any interest on that amount in full as set out above.

Where the compensation amount already exceeds £160,000, I would only require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr C any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Joslin Rhodes Lifestyle Financial Planning Limited pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts this decision, the money award becomes binding on Joslin Rhodes Lifestyle Financial Planning Limited. My recommendation would not be binding. Further, it’s unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 5 July 2022.

Nina Walter
Ombudsman