DRN-2980087

The complaint

Mr M complains that he was given unsuitable advice by Bailey Richards Wealth Management Limited ('BRWM') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr M was concerned about what the announcement by his employer meant for the security of his DB scheme. So, he contacted BRWM and another firm (which I'll refer to as 'Firm A') for advice. Mr M met with BRWM and Firm A in December 2016. In January 2017 Firm A completed a fact-find and an assessment of Mr M's risk appetite. The fact-find noted Mr M wanted to discuss transferring his DB scheme to a personal pension. As Firm A didn't hold the relevant permission from the Financial Conduct Authority ('FCA') to advise on the transfer of his DB scheme, it told Mr M he would be referred to BRWM.

BRWM completed its own fact find in February 2017. This showed Mr M was 55, married with two non-dependent children and was earning around £32,000 per year. Mr M had a mortgage and a loan totalling £75,000 with final repayment due in January 2027. Mr M also had a car loan of £15,000 and minimal savings. Mr M was a member of his employer's new defined contribution scheme ('DCS'). His risk profile was recorded as being 'cautious to moderate'.

On 15 February 2017, BRWM advised Mr M to transfer his BSPS benefits into a flexi-access drawdown personal pension and invest the proceeds in a managed fund. The suitability report said the reasons for this recommendation were that Mr M wanted to access his pension and use the tax-free cash ('TFC') to repay his mortgage, which would free up additional income. It said the arrangement allowed Mr M to leave the remaining funds invested until he retired around age 60 and he could take flexible income as and when required. It also said it provided additional death benefits which were important to him. Mr M accepted the advice and the transfer of his BSPS benefits went ahead in April 2017. Mr M was referred back to Firm A for ongoing advice and servicing of his pension.

Mr M, through his representative, complained in 2020 to BRWM and Firm A about the suitability of the transfer advice. Mr M believed both businesses were responsible for the advice to transfer out of the BSPS. Mr M said he took his TFC as advised and repaid his mortgage, but he now believes this wasn't in his best interests.

BRWM didn't uphold Mr M's complaint. It said Mr M's objectives could only have been met by transferring out of the BSPS as he needed immediate access to his TFC but didn't require any pension income.

Firm A told Mr M it hadn't provided him with advice to transfer his pension – it said it had referred him to BRWM.

Mr M referred his complaints about both businesses to this service.

An investigator thought the advice BRWM gave Mr M was unsuitable – he wasn't persuaded that Mr M had a genuine need to repay his mortgage early, as his debts were manageable and he and his wife, Mrs M, had sufficient disposable income that could've been used to reduce their debts before retirement. The investigator also though the critical yield required to match Mr M's existing benefits was unachievable. He said BRWM should compensate Mr M for the losses he incurred by transferring his DB pension and that compensation should be based on Mr M having opted to join the BSPS2.

BRWM disagreed. It said it was unreasonable to uphold the complaint based on the critical yield being unachievable because it had never suggested Mr M could achieve a higher income if he transferred. Ultimately BRWM was satisfied that Mr M's objectives of reducing his debt could only be met by transferring out of the BSPS.

As no agreement could be reached, the complaint was passed to me for a final decision.

After reviewing the complaint I didn't think that Mr M should have been advised to join the BSPS2 or that it was fair to base compensation on this. I thought Mr M had concrete plans to retire early, at around age 60. And I noted that Mr M had in fact retired at age 58. So, I thought Mr M would've been better off by allowing his pension to enter the PPF instead. This is because the early retirement reductions were far more favourable under the PPF, and Mr M would've been entitled to a higher tax-free cash sum, which he needed to clear any remaining debt when he retired. So, I thought Mr M should've been advised to allow his pension to move with the scheme to the PPF and compensation should be based on the benefits available to Mr M at age 58. I informed both parties of the change to the redress calculation method, which included the impact of the BSPS trustees buying an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out.

Mr M's representative said the calculation should be based on Mr M retiring at 60, as this was when he expected to retire at the time of the advice. It also thought BRWM should be required to do a second calculation when the terms of the buy-out were known. It added that BRWM should also be asked to calculate the benefits available to Mr M through the BSPS2 and the PPF and compensation should be based on whatever calculation produced the highest amount.

BRWM maintained that Mr M wouldn't have been better off by allowing his pension to move to the PPF because he wanted to retire early and he wanted to leave whatever remained of his pension to his family. But if it was required to pay redress, it asked whether I accepted that Mr M would've taken his TFC at 55 through the PPF. If so, it said it should be allowed to deduct the pension income Mr M would have received from age 55 from whatever redress was payable.

As both parties have responded, I'm now providing my final decision.

What I've decided – and why

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

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, BRWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interest. (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interest. I'll explain why.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. 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 investment return required to match the DB pension at retirement at age 65 (critical yield) was 15.75% per year if benefits were taken in full or 12.74% if TFC was taken with a reduced pension. The equivalent critical yields to match the benefits available if the BSPS moved to the PPF were 10.46% and 9.83% at age 65.

I also note that Mr M was looking to retire at 60. So comparisons should have also been made at this age and not only to age 65. Critical yields at 60 might have been even higher than at age 65.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.1% per year for 5 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken all of this into account, along with the composition of assets in the discount rate, Mr M's 'cautious-moderate' attitude to risk and also the term to retirement. And I think Mr M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement (even if the BSPS moved to the PPF), as a result of investing in line with that attitude to risk.

BRWM says the critical yield is of limited relevance as Mr M was not planning to take an annuity with his pension funds. However, the critical yield does still give a good indication of the value of benefits Mr M was giving up and the regulator deems it an important part of the decision-making process. I also note that BRWM said themselves in the suitability report that the critical yield was very high and if Mr M hadn't wanted to access tax free cash immediately, they wouldn't have recommended the transfer.

I've also considered the cash flow analysis BRWM conducted for Mr M. It showed the impact of Mr M taking income of £12,000 from age 60 and reducing this to £2,640 from age 67 when his state pension became payable. BRWM says it showed the level of income Mr M required was sustainable and would potentially leave a lump sum of around £300,000 for his wife and children by his anticipated life expectancy of 86. However, the analysis assumed 5% net returns after charges which means Mr M needed to achieve returns of more than 7%

to make up for ongoing adviser and pension plan charges (around 2% a year) and the initial adviser charge of around £6,500.

Also, as BRWM will know, past performance is no guarantee of future performance. So, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. As explained above, it was unlikely these levels of return could be achieved given Mr M's attitude to risk, so I think his funds were at risk of running out a lot sooner.

In summary, even if the BSPS had moved to the PPF and Mr M's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr M would be financially worse off in retirement. So based on the above alone, a transfer wasn't in Mr M's best interest.

Of course financial viability isn't the only consideration when giving transfer advice, as BRWM has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered below whether such other reasons applied here.

Flexibility and income needs

One of BRWM's main arguments in support of its recommendation to transfer was that Mr M wanted to take TFC at 55 to reduce his debts. It says Mr M had taken a pay cut to keep his position at the BSPS and so paying down some of his debts would've given him more financial certainty. However, Mr M intended to continue working until age 60, so he didn't need to take any pension income until then. So, BRWM says he needed to be able to access his pension flexibly as he couldn't take TFC without also taking his pension income through the PPF. It also says this flexibility would allow Mr M to take a higher income from his pension at first before reducing it when his state benefits became payable.

Firm A and BRWM's fact-find says at the time of the advice Mr M had a mortgage of £55,000 ending in 2027 (when Mr M would be around 65 years old); a loan of £20,000 also ending in 2027 and another loan of £15,000 ending in 2021. It said Mr M wanted to repay the mortgage, which had a monthly repayment of £500 per month, so he could use the income he saved on this to pay down the remaining loans. It says he wanted to ensure that he had no debt by the time he retired at 60. But Mr M says his mortgage and loans were not unaffordable and he and his wife had plenty of disposable income that they could've instead used to make overpayments on either the mortgage or the loans before they retired. Mr M feels he still could've been debt free when he retired at 60 by using the TFC available to him then. He also disputes that he took a pay cut.

Mr M was already 55 at the time of the advice, so he was able to access his pension. And I think Mr M probably thought it was a good idea to use the TFC available to him to pay down as much of his debt as he could at the time. But an adviser's job isn't simply to facilitate a customer's objectives. Any objectives should be interrogated thoroughly to determine whether or not they are realistic, or achievable through other means. And ultimately, the adviser has to determine whether giving up the secure, guaranteed benefits available through the BSPS or the PPF was in Mr M's best interests.

Mr M's monthly mortgage and loan repayments amount to just over £1,000, but these were liabilities he shared with Mrs M, who earned more than him. The mortgage repayment was only £500 per month. Based on what I've seen, it was not unaffordable and was not having an impact on Mr and Mrs M's lifestyle. The only benefit of repaying this early, as opposed to clearing it with the TFC available to Mr M at 60, was to save on the interest repayments.

Firm A's fact-find shows that the interest rate was only 1%, so, in reality, this saving over five years was likely to be minimal.

I also think that Mr and Mrs M had disposable income that they could've used to make overpayments to either the mortgage or the loans. BRWM's fact-find says Mr and Mrs M's joint income was around £4,200 per month after tax. Mr M disputes having taken a pay cut, and in any event, the notes in the fact-find suggest that Mr M had already taken a pay cut – so I'm satisfied the salary noted for Mr M in the fact-find was correct.

BRWM said Mr M's expenditure was around £3,600 per month, but based on what I've seen this was clearly Mr and Mrs M's joint expenditure, not Mr M's alone. And it included the following non-essential spending:

- £800 food and personal care;
- £800 holidays;
- £100 entertainment.

Mr M strongly disputes that he and Mrs M spent £800 on food/personal care and another £800 per month on holidays. He says he recalls saying that they put aside around £800 a month for things like holidays, but it certainly wasn't a fixed monthly expenditure – it was better described as extra income that they used freely. I'm persuaded by Mr M's account because spending £1,700 per month, every month, on food, personal care, holidays and entertainment seems very unlikely. So, I think the adviser should've recognised that Mr and Mrs M had at least £1,000 per month in disposable income that they ought to have been saving or using to pay down their remaining debt.

But even if I assumed that no overpayments towards the debts were made, the balance of Mr and Mrs M's mortgage when Mr M reached age 60 in 2022 would've been around £27,500 based on the repayments of £500 per month over 10 years. The loan of £20,000 would've had around £10,000 left to repay based on repayments of £250 per month over 10 years. And the other loan would've been cleared as it ended in 2021. So, Mr M would've needed a lump sum of around £40,000 to clear the remaining debts when he retired.

I don't know what lump sum would've been available to Mr M through the PPF at age 60 because BRWM failed to make that comparison. BRWM has told us that if Mr M had taken benefits from the BSPS at 55 he would've been entitled to take TFC of £38,816. But I know that the early retirement factors under the PPF were more favourable. So, I'm satisfied that the TFC available to Mr M would've been at least the £40,000 he required, and probably closer to the £83,430.34 he was entitled to through the PPF at 65. Mr M also had a DCS which at age 60 would have had accumulated benefits for six years and could have provided further income and/or another lump sum which Mr M could have accessed flexibly. So, I'm satisfied that Mr M would've been able to comfortably clear his debts at 60 if he allowed his pension to move with the scheme to the PPF.

For this reason, I don't think Mr M's desire to clear his remaining mortgage was a good enough reason for him to give up a secure, guaranteed, escalating pension income in retirement. Whilst advantages of staying in the scheme and disadvantages of transferring are referred to in the suitability report, the transfer is justified by suggesting Mr M's objectives can't be achieved by staying in the scheme. However, as explained above, I don't think this is true. Alternative options were just not properly discussed and explored. So, I don't think BRWM should've advised Mr M to transfer out of the BSPS. Instead, Mr M should've been advised to let his DB scheme enter the PPF and access his benefits at 60.

BRWM says that Mr M's income needs also couldn't be met by the PPF, saying he required income of £12,000 a year. The fact-find seems to say Mrs M separately required £20,000 a year. But there is no breakdown of this figure so I don't know what liabilities or expenditure this is based on. This analysis ought to have been completed by BRWM at the time rather than relying on a figure suggested by Mr M. So, in the absence of this, I've looked at Mr and Mrs M's expenditure in 2017 to try to ascertain what ongoing expenses they would have in retirement, bearing in mind that spending in retirement generally reduces. Taking out the loan repayments and looking at the remaining ongoing expenses would leave a need for around £1,750 per month. So, that would equate to an annual expenditure of £21,000 between them, or £10,500 each.

I don't know for certain what benefits Mr M would have been entitled to at age 60 through the PPF as BRWM didn't do the necessary analysis at the time, as they should have. But at 65 Mr M could've taken an income of £12,550.60 per year. At 60 this would've been less, but I'm not persuaded that it would've been substantially less given the favourable early retirement factors. Mrs M was entitled to £12,000 per year from her DB scheme at 55. I also think that Mr M would likely have had additional funds remaining from his TFC entitlement and his DCS. So, on balance, I think Mr and Mrs M could've met their income needs between them if Mr M remained in the BSPS and allowed his pension to move with it to the PPF. My key concern here is that none of these options were discussed with Mr M.

In summary, I don't think Mr M had a genuine need for flexibility – that is, I don't think he needed to access his TFC and then leave his funds invested until age 60. I'm also satisfied Mr M's income requirements in retirement could be met without him having to transfer out of the BSPS. So, if suitable advice had been given, I don't think Mr M would have accessed TFC at 55; instead, he would've most likely taken his benefits at age 60. I appreciate that Mr M did, in fact, take his TFC at age 55 to pay down his mortgage. But I don't think that would've happened if he'd been given suitable advice - it seems to me that he only did this because the funds were available and BRWM didn't discourage him from doing so.

Death benefits

According to the fact-find, Mr M said he would like the ability to leave any remaining pension funds to his wife or his children.

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. So telling Mr M he could leave a large sum to his family when he died would have sounded a lot more attractive than the DB scheme where his wife would receive a reduced pension. While Mr M might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think BRWM explored to what extent Mr M was prepared to accept a lower retirement income in exchange for potentially higher death benefits.

I also think the existing death benefits with BSPS were underplayed. Mr M's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr M predeceased her. And if he wanted to leave some of his pension to his children, he could have made provisions for this with his DCS he had with his employer. Alternatively, he could've taken out insurance, or reinvested any excess pension income for the benefit of his children if he genuinely wanted to leave them a legacy. In comparison, if Mr M lived a long life, there might not have been a large or any sum to leave to his beneficiaries from his personal pension, particularly if the growth achieved was less than expected.

BRWM also says Mr M wasn't in good health and had concerns that he wouldn't survive until 86. So, this played a part in him wanting to ensure his pension could be passed on. But Mr M disputes this, saying his health condition has no effect on his life expectancy and it was well managed. Based on what I know about Mr M's condition, people with this condition are expected to have the same life expectancy as those without it. So, I believe Mr M when he says that this wasn't a concern.

In any event, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. Despite what BRWM says, Mr M wasn't in poor health and so more focus should have been on ensuring Mr M would receive his required income over a long period of time.

Concerns about financial stability of BSPS

Mr M was concerned about his pension. Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. He said this is why he wanted to move the pension into his control.

So it's quite possible that Mr M was leaning towards the decision to transfer. However, it was BRWM's obligation to give Mr M an objective picture and recommend what was in his best interest. Mr M was particularly concerned about BSPS moving to the PPF. But from what I've seen, BRWM didn't provide Mr M with an objective picture about the PPF and what this might mean for him specifically. Mr M was clearly interested in retiring early and early retirement reductions were in fact lower in the PPF than in the BSPS – but this wasn't shared with Mr M.

Overall, I don't think BRWM did much to alleviate Mr M's concerns and fears. Instead, it appears to have used these concerns to justify the transfer.

Summary

I accept that Mr M was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing. And I don't doubt that flexibility, control and higher death benefits would have sounded like attractive features. But BRWM wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interest.

I think Mr M could have met his objectives by not transferring his DB benefits. He could have likely covered his income needs at age 60 through the PPF and he would have been entitled to a guaranteed and secure income which continuously increased with inflation. And I don't think he had any immediate need to access his TFC; his remaining debts could've been cleared by him taking his TFC entitlement at age 60 through the PPF.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr M was likely keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr M. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above, I think this advice should have been to remain in the BSPS.

On balance I think Mr M would have listened to the adviser and followed their advice.
Mr M was an inexperienced investor and he was concerned about the security of his pension. This pension made up a significant part of his retirement provision, and I don't think he would've wanted to take any unnecessary risk with it. So, if BRWM had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

BRWM may dispute this because Mr M was given the option to delay his transfer and wait for a new revised transfer value following a review of the calculations used previously by the trustees. However, Mr M rejected this option and confirmed he wanted to proceed with the original transfer. But I don't think that means Mr M would have acted against any advice he was given not to transfer out. I say this because I think Mr M's insistence on proceeding was because of his fear that the transfer value would be lower. But at this point, BRWM had already provided him with a positive recommendation to transfer out of the BSPS, so I'm not surprised that he was keen to secure the value of his pension rather than risk the sum reducing. If Mr M had been told that despite the transfer value offered, transferring out would not have been in his best interests, then I don't think this situation would have arisen.

If Mr M 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. I carefully considered what Mr M likely would have done and on balance I think he would have opted to move to the PPF. I say this because at the time Mr M wanted to retire early. BSPS2 wouldn't have decreased Mr M'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 the TFC entitlement were more favourable under the PPF. So overall, it's likely Mr M's income and TFC entitlement would have been higher in the PPF.

Under BSPS2, the spouse's pension would be set at 50% of Mr M'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, Mrs M had her own DB pension. And I think on balance Mr M's own benefits and higher TFC which he and his wife could benefit from earlier in retirement would have been more important to him.

So, I think BRWM should compensate Mr M for the unsuitable advice, using the regulator's pension review methodology. And it's the benefits offered by the PPF at age 58 which should be used for comparison purposes. This is because I know that Mr M actually retired at this age.

Mr M's representative has said although Mr M retired at age 58, this was due to the department he worked in being outsourced to a contractor, which he felt changed the working culture. However, he said that Mr M returned to work in March 2021 after the contractor left and the department returned to the control of British Steel. Mr M then left again in July 2021 aged 59. Mr M's representative says that but for the change in the working environment, Mr M would've continued to work until age 60. So, it says compensation should be based on Mr M retiring at this age.

I've considered this carefully, but I'm satisfied that it would be fair to base compensation on Mr M retiring at age 58 because this is what actually happened. As I've said above, if Mr M had been suitably advised, I think his pension would've moved with the scheme to the PPF. And then he would've been faced with the same issue with regard to his department. So, I think he still would've decided to retire at that point and he would've needed to access his pension to take income from it. I don't think the fact that Mr M returned to work briefly in 2021 alters the fact that he would've started taking his pension at age 58.

Mr M's representative also says that BRWM should be required to calculate Mr M's entitlement under the PPF and his entitlement through the BSPS2 and pay him whatever is higher. It says this reflects the analysis it should have done at the time of the advice and would demonstrate what was in his best interest. But in making this decision, I've had to decide what would've been suitable advice for Mr M at the time, based on his needs. And as I've explained above, I'm satisfied that Mr M should've been advised to allow his pension to move with the scheme to the PPF. So, the redress calculation should be based on these benefits.

For completeness, I don’t agree with BRWM that Mr M would’ve accessed his benefits at age 55 assuming his pension moved with the scheme to the PPF. I’ve already explained above why that is. BRWM should calculate compensation based on Mr M accessing his benefits through the PPF at age 58, taking TFC and a reduced pension.

Putting things right

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

BRWM 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. Mr M retired at 58, so this should be the basis for the calculations.

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 M's acceptance of the decision.

BRWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M’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 M’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M’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 M 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.

The compensation amount must where possible be paid to Mr M within 90 days of the date BRWM 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 BRWM to pay Mr M.

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.

<u>Additional compensation</u>

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 M has retired (at age 58 in January 2020) and I think he would've done the same if he had gone into the PPF. I say this because it was always his intention to retire early, around age 60 and he actually retired earlier than this due to a change with his department. 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 M. 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 BRWM to undertake a redress calculation on the current known basis (as above), 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 M accepts this he will be doing so on the basis of my understanding as set out above. It's important that Mr M is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

For the upset caused by the unsuitable advice, BRWM should also pay Mr M £300.

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 Bailey Richards Wealth Management Limited to pay Mr M 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 Bailey Richards Wealth Management Limited to pay Mr M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Bailey Richards Wealth Management Limited to pay Mr M any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Bailey Richards Wealth Management Limited pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.
If Mr M accepts this decision, the money award becomes binding on Bailey Richards Wealth Management Limited. My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Bailey Richards Wealth Management Limited should provide details of its calculations to Mr M and his representative in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 April 2022.

Hannah Wise
Ombudsman