DRN-3018179

The complaint

Mr B has complained about advice he received from Bailey Richards Wealth Management Limited ("Bailey Richards") to transfer his defined benefits out of the British Steel Pension Scheme (BSPS). He believes he's suffered a significant loss as a result of the advice.

What happened

In March 2016, Mr B'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 pension benefits, which included transferring the scheme 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.

In May 2017, the 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 B's employer would be set up – the BSPS2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, the BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a personal pension plan. A deadline was set for members to notify the scheme administrators as to their choice by 11 December 2017. This was subsequently extended to 22 December 2017.

After the first announcement from his employer in 2016, Mr B didn't know what to do so he sought advice. He initially contacted a financial adviser, I'll refer to as Firm B. Mr B met with Firm B in June 2016 to talk about his options and he provided Firm B with information regarding his personal and financial circumstances. Firm B didn't have the relevant permissions to advise on defined benefit scheme transfers, such as the BSPS, so Mr B was referred to Bailey Richards for advice in this regard. The paperwork that had been completed with Firm B was forwarded to Baily Richards.

In August 2016, Bailey Richards issued a suitability report to Mr B. This set out Bailey Richards' understanding of Mr B's circumstances, aims and objectives. And it explained that it was only providing advice on the pensions transfer.

The suitability report noted the following about Mr B circumstances:

- He was aged 55, married with two children, neither of whom were financially dependent on him

- He was employed, earning £30,000 per year, his salary having reduced from £43,000. As such, he was struggling with his finances.

- He was in good health and expected to retire at 65 at the latest but would like to retire at 62

- His home was worth around £150,000 and he had an outstanding mortgage of £59,000. He also owned a second property, worth around £125,000. This had an outstanding mortgage of £25,000

- He had an endowment plan that was due to mature in June 2017 with an estimated maturity value of £35,000

- He held benefits within the BSPS which had a current cash equivalent transfer value (CETV) of £288,766.84

Within the suitability report Mr B's aims and objectives were recorded as:

- He'd like to clear one of his mortgages and significantly reduce the other in order to relieve the financial pressure he was are feeling. This would give Mr B the opportunity to leave British Steel and look for another more a suitable role as his outgoings would be greatly reduced and more manageable.

- He had serious concerns about the future of British Steel and the BSPS so he wanted to transfer away and release his tax free cash (TFC)

- He didn't require an income from his pension at that time

- He'd like greater control over the income he receives in retirement

- He wanted the remaining funds to be invested to achieve capital growth on his pension over the Medium (5 to 10 years) term. And to have his fund invested within an investment portfolio that matched his attitude to risk (ATR), with his preference being to have his funds managed

- He would like to have the ability to leave any remaining funds in the event of his death not only to his wife but also his children

The report recorded Mr B's ATR as cautious and it stated that the maximum loss he'd be willing to tolerate to his fund in any one year would be 10%.

Mr B's retirement options were set out as:

1. Leave his deferred benefits with the BSPS until Mr B reached normal retirement age (NRA). At the age of 65 the scheme was estimated to provide an annual pension of £30,631, or a reduced pension of £22,973 and TFC of £153,159.

2. Take the maximum available TFC & pension from BSPS immediately. This was expected to provide a full pension of £12,904, or a reduced pension of £9,126 and TFC of £60,840.

3. Use the BSPS scheme benefits to purchase an immediate Annuity after receiving the maximum TFC. This option was disregarded as Mr B didn't require an immediate income.

4. Transfer his BSPS benefits into a Phased Retirement Plan. This option was disregarded as it wouldn't allow Mr B to take TFC.

5. Transfer the CETV into a new Flexi-Access Drawdown pension plan and take the maximum level of TFC, along with income withdrawals. This option was disregarded as Mr B didn't require an immediate income.

6. Transfer the CETV into a new Flexi-Access Drawdown pension plan and take the maximum TFC and no income withdrawals

Having reviewed all the options, Baily Richards recommended option 6, the flexi access drawdown plan. It said this met with all of Mr B's requirements. In summary, its reasons for making this recommendation were that it allowed Mr B to take TFC of £72,191.71, which was £11,351.71 higher than available through the BSPS, if he took his BSPS benefits immediately. This would enable him to repay his mortgage and part of his second mortgage. He could then use his endowment to repay the remainder of the second mortgage in June 2017. Baily Richards said that this would give Mr B the flexibility he required, allowing him to have his pension actively managed and provide valuable lump sum death benefits as any funds remaining when Mr B died would be passed on to his named beneficiaries.

The transfer value analysis (TVAS) indicated the amount of growth required by the transferred funds to match those being relinquished in the scheme – the critical yield. It concluded that the new arrangement would need to grow by 14.22% to match the benefits Mr B would receive from the scheme at the age of 65, and 13.31% if he took TFC and a reduced pension.

The report also explained that "*The above Critical Yields are all high and fall outside of your Cautious investment risk profile. Therefore, if you did not require your benefits immediately, I would recommend that the benefits remain within the scheme until age 65*". Bailey Richards recommended Standard Life as the SIPP provider and charged 3% as an upfront fee for its advice. Firm B was to provide ongoing investment advice and annual reviews of the plan.

Mr B accepted the recommendation to transfer his BSPS benefits. The funds were sent to the new provider in October 2016. The servicing for the plan was then switched to Firm B in March 2017.

Mr B complained in December 2019, stating that he should have been advised to remain in the BSPS. A separate complaint was made against Firm B. Neither complaint was upheld, and the complaints were brought to this service.

<u>Our investigation</u>

One of our investigators reviewed matters and concluded that the advice to Mr B to transfer was unsuitable. In summary, the investigator thought that:

- The position of the regulator when it comes to giving up safe-guarded benefits like the BSPS is that the adviser should start with the assumption that it isn't in the client's interests to opt out. This means that there should be an extremely compelling reason for recommending that course of action.

- The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, the investigator considered that they provided a useful indication of what growth rates would have been considered reasonably achievable. When the advice was given, the discount rate was 3.7% per year for 9 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8% per year. So the investigator concluded that Mr B was likely to receive a substantially lower pension than the scheme at retirement, as a result of investing in line with that attitude to risk.

- The advice to Mr B was given at a time of uncertainty, as the public consultation on the future of the BSPS was still ongoing. Although the BSPS falling into the PPF was a possibility, it was also explained that a new scheme, commonly called the BSPS2, would be offered to existing BSPS members. The investigator was therefore of the view that it wasn't a sensible idea to provide advice to Mr B during this period of uncertainty, for the simple reason that he wasn't in a position to know what he was giving up.

- Although the CETV was only valid for a limited time, nowhere was it indicated that Mr B couldn't have simply obtained a new CETV and been in a better position to know what he was giving up after the consultation. Had Mr B waited, he would have been left with three choices: the PPF, BSPS2, or transferring to a private plan. The investigator thought that if Mr B been advised to wait, he would have ultimately opted to transfer into the BSPS2.

- Although no critical yield to the BSPS2 was produced, the investigator was of the view that it was likely that any yield produced would have shown that Mr B was likely to be worse off by transferring out, especially when considering the 13.31% in respect of BSPS. Mr B also indicated he was a risk averse client. Given that an income for life is the surest form of pension and a transfer was only going to increase Mr B's level of risk, the investigator thought that Baily Richards should have looked for all possible ways to retain a fixed income for life before transferring it.

- The investigator acknowledged that Mr B needed funds at the time, and therefore he thought considering the BSPS pension wasn't unreasonable. However, he thought that Bailey Richards came to the wrong conclusion that transferring was the right idea. Given the regulatory guidance, the investigator thought that accessing safe guarded benefits should have been recommended only as a last resort. Mr B was 55 at the time of advice, so he could have accessed the BSPS2 benefits early. Mr B wasn't looking to fully retire at this stage, but this would have still been beneficial to him as the TFC would have provided him with enough money to reduce his debts, and the additional income from the BSPS2 scheme would have allowed him to manage payments for what debt remained. And the endowment maturing in 2017 would have reduced the mortgage greatly.

- The investigator thought that the correct course of action from Bailey Richards should have been to refrain from providing advice until the consultation was complete. At this stage, Mr B would have then opted to transfer into BSPS2. If his need for additional funds was still severe at this time, Mr B could have opted for early retirement with a reduction from BSPS2.

Bailey Richards response to the investigator's findings

Bailey Richards didn't accept the investigators findings for a number of reasons. It has provided detailed arguments to support its stance. In summary, it said that:

- The investigator has failed to consider the majority of the points, which formed the basis of the advice to Mr B. Waiting for details of his likely benefits under the BSPS2 before any advice was given to transfer would not have met Mr B's requirements and objectives, which were to take the maximum available TFC immediately aged 55, to reduce his financial burden, retire early and to ensure a benefit for his wife and children upon his death. Mr B's objectives simply could not have been met by remaining in the BSPS or the BSPS2.

- In terms of the critical yield, at no point has it been Bailey Richards case that the transfer would replicate the benefits being give up. Mr B sought advice as he was concerned about the position of BSPS and the ability for the scheme to be able to pay out his pension benefits in the future. It was precisely, therefore this uncertainty that was a driver behind Mr B's wish to transfer his pension away from the Scheme. Mr B was in severe financial difficulty following a reduction in his salary and he approached Bailey Richards for advice in this regard.

- Mr B was provided with information to enable him to make an informed decision. At the time of advice the BSPS2 was an unknown option and Mr B required immediate TFC to relieve his financial situation. Suggesting Mr B wait until more was known about the BSPS2 would not have been in his best interest. The correct question was, even if the income anticipated to be generated from the transferred sum would not match the income from the BSPS at retirement, did Mr B's overall circumstances indicate that a transfer could still be in his best interests?

- Mr B took his TCF cash when he transferred and paid off his mortgage and debt. Had he done this from the scheme this would have triggered an income at a hugely reduced level, which Mr B didn't need. This was the same under BSPS2 – although Mr B would have had to wait to take the benefits from BSPS2, which he wasn't able to do.

- Mr B wanted to leave a lump sum on his death, rather than his wife being tied to a rigid 50% spouse's pension. And had Mr B not transferred out of the BSPS his children could not be any sort of beneficiary due to their ages.

- Mr B intended to retire at 62 and the benefits at that age would be in the region of £12,905pa, reducing to £9,126, if TFC was taken. This as well below Mr B's required income in retirement of 12,000 pa. Factoring in the potential position of BSPS2 and the PPF, this figure would be reduced further. Mr B's retirement aim (of potentially retiring at age 62 if an income of £12,000 pa was feasible for an initial period of 5 years) would likely not, therefore, have been met by staying in BSPS/BSPS2.

- The simple fact is that BSPS was incompatible with a desire to take early benefits – the penalties were too severe. A transfer away from BSPS allowed Mr B's objectives to be met, so, if the transfer was still likely to produce sufficient income for Mr B's needs, a decision to transfer could be justified as being in his best interests. Adopting a "one size fits all" approach to DB pension transfers that mandates a member has to look to secure the maximum possible fixed income at retirement, is not the correct approach to be taking in cases such as this.

- Bailey Richards has no doubt that, faced with the same choice, Mr B would do exactly the same again. It appears that that Mr B's position has since changed from the information provided to Bailey Richards in order to fit the complaint narrative.

- FCA guidance (GC20/1) makes it clear that the advice process is one of balancing the aims and objectives of the client – it is not just about fixing the highest income at an NRA, which is effectively how the investigator is approaching this case.

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. Bailey Richards should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interest (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interest. I'll explain why.

I think it's firstly important to explain that I agree with the investigator that the advice was given at a time of uncertainty. The public consultation was still ongoing and the benefits of the BSPS2 weren't yet confirmed. So, I think best advice would have been for Mr B to have waited until the consultation had completed and more was known about what options he had and what he was giving up. However, Bailey Richards said that this wasn't possible because it wouldn't have met Mr B's objectives. It says that he was in severe financial difficulties and needed access to his tax free cash immediately to repay his mortgage. So, although he didn't require an income at that time, it says he couldn't wait for the outcome of the consultation. And it seems Mr B's financial situation was the main driver for Bailey Richards recommending the transfer.

<u>Financial viability of the transfer and Mr B's financial situation</u>

Bailey Richards seems to accept that Mr B was likely to be worse off at the age of 65 as a result of transferring away from the BSPS. The suitability reported noted that "The above Critical Yields are all high and fall outside of your Cautious investment risk profile. Therefore, if you did not require your benefits immediately, I would recommend that the benefits remain within the scheme until age 65".

Mr B says that he doesn't recall seeing the suitability report and the critical yields weren't explained to him. And because the signed declaration is separate from the report, I can't say with certainty that he did receive a copy. But it does seem there was a meeting between Mr B and Bailey Richards before Mr B decided to proceed with the transfer. So I think it's likely the critical yields were discussed to some extent. However, whether Mr B really knew and understood what he was giving up by taking his tax free cash when he did is unclear.

However, even if Mr B had been fully informed of the risks involved in transferring and what he was giving up at retirement, Bailey Richards ought to be aware that warnings alone wouldn't render unsuitable advice suitable. Bailey Richards needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr B.

Mr B says that his financial situation wasn't as bad as Bailey Richards has made out. He says the pay cut had occurred in 2010, six years before the advice, and he was managing on the reduced salary. And he says that it was the adviser from Firm B that suggested he could take the tax free cash and pay off his mortgage. He says that he wasn't worried about repaying his debts because he had an endowment that was due to mature the following year.

I've considered this further and note that the income and expenditure details do suggest that there were some surplus funds each month after everything had been paid, albeit, only minimal. I'm also conscious that the fact find suggests that Mr B was seeking advice because he was concerned about threats to his pension; it doesn't appear Mr B instigated these discussions because he was concerned about his financial circumstances. Using tax free cash to repay his mortgage appears to have come about after considering his options, which is supported by Mr B's testimony. So I'm not convinced Mr B's financial circumstances were so desperate that it was the main driver for seeking advice.

But even if I'm wrong and Mr B was struggling financially, I think Bailey Richards needed to do more to demonstrate that its advice was in Mr B's best interest. The adviser shouldn't have simply tried to meet Mr B's objectives without considering alternatives.

There is a statement in the suitability report that says "you have confirmed to me that you have considered all other sources of refinance to assist you in reducing your outgoings and repaying and reducing your outstanding mortgages". But I think before advising that Mr B transfer, Bailey Richards should have discussed the alternatives with him, not just noted in the suitability report that Mr B had considered these.

Bailey Richards should have explored with Mr B whether instead of taking his tax free cash, he could take other action which might have improved his financial situation in the short term, such as discussing his options with his mortgage provider. Mr B's endowment was maturing in less than a year. These endowment funds could have been used to significantly reduce his mortgages, thereby reducing his monthly outgoings. I would also have expected there to have been a detailed discussion around his second property. Both parties are in agreement Mr B's daughter was living there. The fact find suggests she wasn't paying rent, Mr B says she was paying below market value but he could have asked her to pay more. Either way, I think Bailey Richards needed to investigate and consider what options Mr B had. There needed to be a robust conversation around what he was giving up in the scheme in order to repay his mortgage. In any event, it appears Mr B did have some disposable income and I've not seen evidence to suggest that he wasn't able to meet his monthly mortgage payments. So while I accept that being mortgage free and having more disposable income is desirable, overall it seems that repaying his mortgage early was a 'nice to have' option for Mr B, as opposed to something that was essential and made transferring necessary for him at the time.

It's impossible to know what Mr B would have done if Bailey Richards had explored these options with him and had a balanced conversation about his finances and what he was giving up in order to have more disposable income. Particularly considering he had some disposable income and his financial situation was due to change in less than a year once his endowment matured.

I acknowledge that after the transfer Mr B did pay off his mortgage with his tax free cash. But I don't think Bailey Richard did enough here to show that Mr B's financial situation was such that taking the tax free cash was the only option he had for improving his financial situation or if indeed it was as unmanageable as it has suggested.

Bailey Richard acknowledges that the critical yields were high and so it must have been aware that there was a significant possibility that Mr B was going to be worse off by transferring. After taking tax free cash of just over £70,000, the illustration for the new arrangement suggests that at 65 Mr B might have been able to purchase a pension £8,140 if the fund grew at the lower rate, £14,200 if it achieved mid-rate growth and £23,700 at the highest rate of growth. In comparison, at the same age, Mr B's BSPS benefits were expected to provide a pension of over £30,000 per year, or almost £23,000 if take free cash of £153,000 was taken. This was more than double the amount of tax free cash Mr B took when he transferred. And even if the benefits had been transferred to the PPF, again at age 65, Mr B would have been entitled to a pension of £26,001.29 per year, or tax free cash of £131,466.40 and a reduced pension of £19,769.93.

I know the investigator had concerns as the analysis of the benefits was done to age 65 and not at Mr B's intended retirement age of 62. However, having reviewed the paperwork, it doesn't appear that Mr B had a fixed plan to retirement at 62, it appears this was a preference but it's also acknowledged that he would work to age 65. Even if that wasn't the case, I think it's likely that the comparisons to 62 would also have shown that Mr B was likely to be better off not transferring.

I acknowledge Bailey Richards has concerns about the use of critical yields as a means of assessing the viability of a pension transfer. But I haven't solely based my decision on the critical yields as I agree that the feasibility of achieving a critical yield alone wouldn't in any case indicate the suitability of a transfer, as set out in COBS 19.1.7B. But given that I'm not persuaded Bailey Richards exhausted all other options before recommending Mr B transfer his pension, I'm not satisfied that it's demonstrated that its advice to transfer and take immediate tax free cash was suitable or that it was in Mr B's best interest. Mr B went to Bailey Richards for advice and it had to take reasonable steps to ensure that any advice it gave him was suitable. And in providing that advice, it needed to make sure that it didn't just facilitate what Mr B thought he might like to do.

<u>Early retirement</u>

Bailey Richards has said in its submissions that that Mr B wanted to retire at 62. But it's said this objective couldn't be met if he'd remained in BSPS, and moved to either BSPS2 or PPF. This is because of the reduction which would have been made to the scheme benefits if Mr B retired before 65.

There are a couple of issues here. Firstly, the entire suitability report and transfer analysis was based on Mr B retiring at 65. The suitability report states "You expect that you will retire at age 65 at the latest but would like to retire at 62". So I don't think there was a set plan in place for Mr B to retire early. And even if that had been the case, I would have expected this to have been discussed in a balanced way. The reality was of course that, although the scheme benefits would be reduced to reflect a longer period of payment, a flexi drawdown policy would also have had less time to grow, and any resulting income would need to last longer. And so the effects of early retirement are felt in both scenarios. Yet the benefits from the BSPS or PPF, would have been guaranteed.

Bailey Richards didn't draw comparisons between the scheme at 62 and the new arrangement which I think it should have done if this was a realistic objective for Mr B, and was being used as a basis for recommending the transfer. I'd expect a business acting in its client's best interests to have calculated and presented the estimated benefits available from the scheme at the preferred early retirement age. And I'd have expected it to illustrate the figures in monetary terms so that the client could see what the application of reduction factors meant in practice to enable them to make an informed decision. But Bailey Richards didn't do this. And because it was providing advice during a period of uncertainty, and while the public consultation was still ongoing, this meant Mr B was unable to understand what the BSPS2 and PPF would pay – in monetary terms – if he took benefits early. In any event, given that Bailey Richards' advice and the new plan was set up, on Mr B retiring at 65, it doesn't appear this was a set objective. And so advice to transfer at the age of 55 and give up the only source of guaranteed income Mr B would have had in retirement, excluding his state pension, on the basis that Mr B may take his benefits earlier than 65, was not in my view suitable advice.

<u>Scheme future</u>

Mr B approached Firm B (and subsequently Bailey Richards) because he was concerned about his BSPS pension. He was worried about what was happening with his employer and the rumours around the PPF and wanted advice on the matter. I appreciate that there will be instances where a client seeks financial advice with concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

Mr B told Bailey Richards he was stressed about the situation with his employer and his pension scheme. But my view here is that Mr B simply didn't need to make any decisions about transferring his defined benefits at that point. I accept that the consultation was still ongoing and there was a prospect of the scheme entering the PPF. But even if this happened, this would still have provided Mr B with valuable benefit guarantees which were likely to be in excess of what he would receive by transferring at the age of 65. Bailey Richards had an obligation to give Mr B an objective picture and recommend what was in his best interest. Had it done so, and explained to him the protections that were in place for his pension scheme and what he stood to receive, even if the scheme was taken over by the PPF, I feel this would have gone some way to alleviating some of Mr B's fears about his pension.

<u>Death benefits</u>

The suitability report stated that alongside tax free cash, one of Mr B's objectives was noted as Mr B having the ability to leave any remaining pension funds to his children as well as his spouse; he didn't want his pension to die with him.

I have concerns about this as a reason for transferring Mr B's benefits. Firstly, Mr B didn't have any particular health issues which would mean that death benefits were of concern at that point. Nor was there any indication that he would not benefit from a pension income derived from the scheme membership upon retirement for a reasonable amount of time.

Accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a lump sum to beneficiaries. While I acknowledge a wish to leave money to his children as well, the recommendation needed to be given in the context of Mr B's best interests in terms of his retirement needs.

The suitability report noted that Mr B's benefits made up the majority of his and his wife's pension provision. It's understandable that Mr B would like to leave a lump sum to his beneficiaries, but I've not seen anything that suggested it was essential, and certainly not of sufficient importance, to justify Mr B compromising the security of his own retirement. And of course, under the scheme, Mrs B would have received a spouse's pension. Which given that she appears to have been reliant on Mr B's income in retirement, would provide an invaluable benefit, should Mr B pass away before her.

So while a lump sum may have been appealing, and there may be some circumstances where a lump sum is more advantageous when compared to an income stream through a spouse's or dependants' pension, I don't think Bailey Richards demonstrated that the benefit of doing so in Mr B's case outweighed the benefit of Mr B's retaining his BSPS benefits. The objective to leave a lump sum needed to be properly weighed up against the guaranteed benefits Mr B was giving up. Bailey Richards should have advised Mr B that his own financial security in retirement took priority, particularly as this represented the majority of his pension provisions and so subjecting it to investment risk, in order to leave a benefit to his daughters on his death, was not in my view suitable advice.

Summary

For the reasons given, I'm not satisfied the recommendation to transfer was suitable for Mr B, nor was it in his best interests. Bailey Richards was aware that, taking account of Mr B's attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer. As I've said above, I'm not satisfied that Mr B's financial situation was such that it warranted giving up his only source of guaranteed income in retirement without first fully exhausting all other avenues. Mr B was still working and had an income, he was managing his finances albeit with little disposable income. I think suitable advice would have been to advise Mr B to seek alternatives for reducing his outgoing in the short term, if he felt this was absolutely necessary, until his endowment matured in less than a year. Giving up his DB pension should have been seen as a last resort.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, Bailey Richards should then have drawn, and conveyed, the conclusion that transferring wasn't in Mr B's best interests, and certainly not at a time when what he was giving up was unknown as the full details of BSPS2 hadn't been confirmed.

Mr B had concerns relating to the BSPS at the time of the advice and I fully acknowledge this. But Bailey Richards was required to give a balanced assessment of the options available and to provide suitable advice. I've thought about whether Bailey Richards provided Mr B with a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Looking at Mr B's objectives – tax free cash and death benefits - I don't think the perceived advantage of these outweighed the guaranteed benefits in the scheme. If properly discussed, Mr B's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of tax free cash to repay his mortgage, which I'm not satisfied he needed to do at that time, particularly given his endowment which was due to mature in less than a year.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. And there's agreement here that the critical yield was unlikely to be achievable to even simply match the scheme benefits. The justification for nevertheless transferring, despite the likelihood that the scheme benefits couldn't be matched (and almost certainly not with the type of investment risk appropriate for Mr B) was that it was nevertheless suitable in view of Mr B's stated objectives and the concerns about the BSPS. Whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what Bailey Richards considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

My view is that Mr B wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility. Mr B's decision to proceed may well have been borne of wider concerns relating to the financial viability of the BSPS. But taking account of his circumstances, including his attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with under either the BSPS2 or the PPF, my view is that Bailey Richards should have advised against the transfer. And I think that, had this happened, Mr B would have followed that advice and not transferred his benefits to the personal pension.

If Mr B had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to BSPS2. I have carefully considered what Mr B would likely have done and on balance I think he would have opted to move to the BSPS2. I say this because although there is a suggestion that Mr B wanted to retire at 62, it's also been noted that this was dependent on him achieving his desired income but that he would work until 65 at the latest. As a result, the benefits available to Mr B under the BSPS2 would likely be higher than through the PPF, even if he did opt to retire at 62. Also, Mr B was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr B chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Putting things right

My aim is to put Mr B, as closely as possible, into the position he'd be in but for Bailey Richards Wealth Management Limited's unsuitable advice. Reinstatement of Mr B's deferred benefits isn't possible. Therefore, Bailey Richards Wealth Management Limited, should undertake a redress calculation in line with the 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.

As I've said above, I think it's the benefits offered by the BSPS2 which should be used for comparison purposes. As such, the calculation on the basis of choosing to enter the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation.

Bailey Richards Wealth Management Limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B'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 B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr B'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 B as a lump sum after making a notional deduction to allow for future 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 Mr B's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

Bailey Richards Wealth Management Limited should also pay Mr B £250 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr B within 90 days of the date Bailey Richards Wealth Management Limited 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 that 90 day period, that it takes Bailey Richards Wealth Management Limited to pay Mr B.

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.

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.

Determination and money award: I require Bailey Richards Wealth Management Limited to pay Mr B 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 additionally require Bailey Richards Wealth Management Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Bailey Richards Wealth Management Limited to pay Mr B 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 B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my decision, the money award is binding on Bailey Richards Wealth Management Limited. My recommendation is not binding on Bailey Richards Wealth Management Limited. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

My decision is that I uphold the complaint. Bailey Richards Wealth Management Limited should undertake the above calculation and pay any resulting redress as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2022.

Lorna Goulding
Ombudsman