DRN-3126896

The complaint

Mr E has complained that Cambrian Associates Limited gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a personal pension plan (PPP).

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 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.

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 E's employer would be set up – the BSPS 2.

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 The main defined benefit OPS had been replaced by a new defined contribution scheme.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, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr E received a letter from the scheme on 22 September 2017, in which was included a transfer value quotation. The cash equivalent transfer value (CETV) was quoted as £145,317.

Mr (and Mrs) E met with Cambrian on 12 October 2017 and his circumstances were recorded as follows:

- He was 35, married, in good health and had three dependent children
- Mr and Mrs E were both employed by Tata Steel with basic salaries of £41,000 and £37,300 respectively.
- Their joint monthly income was £5,040 and joint monthly expenditure was £3,884. This left £1,156 net disposable income.
- Their total assets amounted to £360,000, but they had no cash savings.
- They owned their home, and had an outstanding mortgage of £280,000 with a monthly cost £1,250.

- They also had an outstanding personal loan of £10,000 from Mrs E's father which had enabled them to buy their home.

- Both Mr and Mrs E were contributing 6% pa to the defined contribution scheme with their employer paying a further 10% contribution.

- Mr E was recorded as being a 'balanced' risk investor.

In terms of Mr E's deferred benefit entitlement, he received a statement of benefits in November 2017 from a previous employer which detailed a deferred annual pension of £1,915 at age 60.

He could also expect to receive an annual pension of £27,370 from the BSPS at age 65, or a tax free lump sum of £120,928 and a reduced annual pension of £18,139.

At Mr E's "desired" retirement age of 60 (although this was also set out as being 57), he could expect to receive an annual pension of £16,298 from the BSPS, or a tax free lump sum of £76,839 and a reduced annual pension of £11,525.

Within a "financial summary" produced in October 2017, Mr E's priorities were recorded as follows:

1. He would like the ability to retire early

2. Control and flexibility of his pension income was appealing

3. He was concerned about the security of his pension at Tata and wished to move it

4. Provision for partner and dependents

5. To be able to increase his pension at his realistic retirement age

6. Lump sum death benefits before retirement

7. Tax free cash lump sums at retirement

And then, in a suitability report produced in November 2017, Mr E's main priorities were recorded as follows:

- To move the funds away from the pension scheme unless there was a very good reason not to.

- To give him more flexibility to retire early if he wanted to and to be able to take his benefits flexibly.

TVAS reports indicated the amount of growth required by the transferred funds to match those being relinquished in the scheme – the critical yield. There are three on the file, two versions dated 12 October 2017, and the other 9 November 2017. One of the versions dated 12 October 2017 recorded the critical yields as follows:

BSPS

- Retirement at age 65 with full scheme pension – 6.65% pa
- Retirement at age 65 with tax fee cash taken – 5.68%
- Retirement at age 60 with full scheme pension – 6.88%

- Retirement at age 60 with tax free cash taken – 5.87%

Pension Protection Fund (PPF)

- Retirement at age 65 with full scheme pension – 5.09% pa
- Retirement at age 65 with tax fee cash taken – 4.83%
- Retirement at age 60 with full scheme pension – 5.83%
- Retirement at age 60 with tax free cash taken – 5.56%

The second version of the TVAS dated 12 October 2017 recorded the critical yields as follows:

BSPS

- Retirement at age 65 with full scheme pension – 10.22% pa
- Retirement at age 65 with tax fee cash taken – 9.11%
- Retirement at age 60 with full scheme pension – 10.85%
- Retirement at age 60 with tax free cash taken – 9.7%

PPF

- Retirement at age 65 with full scheme pension – 5.09% pa
- Retirement at age 65 with tax fee cash taken – 4.83%
- Retirement at age 60 with full scheme pension – 5.83%
- Retirement at age 60 with tax free cash taken – 5.56%

And then the TVAS from 9 November 2017 recorded them as follows:

BSPS

- Retirement at age 65 with full scheme pension – 6.65% pa
- Retirement at age 65 with tax fee cash taken – 5.88%
- Retirement at age 57 with full scheme pension – 7.82%
- Retirement at age 57 with tax free cash taken – 6.78%

PPF

- Retirement at age 65 with full scheme pension – 5.1% pa
- Retirement at age 65 with tax fee cash taken – 4.89%
- Retirement at age 57 with full scheme pension – 6.15%
- Retirement at age 57 with tax free cash taken – 5.94%

The suitability report seems to have relied on the first of these, saying the PPP would need to grow by 5.68% pa to match the BSPS benefits at a retirement age of 65, if Mr E took the maximum tax free cash. If Mr E retired at age 57, which Cambrian said was possible as he would by then have worked at his employer for 30 years, the critical yield would be 6.63% pa, although as this doesn't correspond to the figures quoted above, it's unclear as to where this figure was obtained.

Cambrian said that it was possible, but by no means guaranteed, that these critical yields could be achieved. But it said that Mr E would be taking control of his pension affairs.

Cambrian recommended that Mr E transfer his deferred benefits to a PPP in order for him to achieve his objectives, and Mr E accepted the recommendation.

The fees which applied to the transfer advice were as follows:

- An annual Fund Charge 0.65% per annum.
- A product charge 0.40% per annum.
- A £5,812 initial fee, equating to 4% of the current CETV.
- A 0.5% per annum adviser charge which equated to £697 in year one.

Mr E complained to Cambrian in June 2021, saying that he didn't think he'd been given the right advice and that he'd suffered financial loss as a result.

Cambrian declined to uphold the complaint, however. Dissatisfied with the response, Mr E referred his complaint to this service.

One of our investigators considered the matter, and thought that the complaint should be upheld. He said the following in summary:

- Mr E was 35 at the time of the advice and had accrued 10 years' benefits in the BSPS. They would form a significant part of his pension provision, were of a safeguarded nature, and the security of those defined benefits would have been important.
- Mr E was married with dependent children, and the BSPS would have provided them with an income in the event of Mr E's death at a very low cost.
- The regulator's requirement when considering a transfer of defined benefits was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.
- In determining whether this was the case, he first considered the required critical yield to match the scheme benefits.
- The advice had been given during the period in which this service was publishing information with which businesses could calculate future "discount" rates for complaints about transfers which were being upheld.
- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.
- The investigator said that the discount rate was 4.7% pa for a period of 29 years to Mr E's normal retirement date, and 4.5% for retirement at age 57, compared to respective required critical yields to match the BSPS benefits at those same ages of 5.68% and 6.63%.
- He also noted that, in the suitability report, Cambrian had said that there was an assumption of annual growth in the PPP fund growth of 5.2%, net of charges. The PPP provider's own "high" growth rate was 5.37%.
- He said that this meant the potential to improve on the BSPS benefits was compromised – although the critical yields weren't significantly higher than the discount rates and the growth deemed achievable within the PPP, they still meant

that, to match the scheme benefits, Mr E would need to take a higher level of investment risk than that which was acceptable to him, or that would in any case have been aligned with his investment knowledge and experience.

- The investigator also queried the “balanced” risk rating attributed to Mr E, saying that he had no record of investing and that his prior history indicated a more cautious rating. Mr E’s defined benefits were transferred into a money purchase arrangement, which, given his other pension provision in the same kind of arrangement, exacerbated his overall exposure to investment risk.

- The critical yields and charges which would be applied to the pension funds indicated that the transfer would not therefore clearly have been in Mr E’s best interests.

- The investigator was also unpersuaded by the stated rationale for transferring, noting that Mr E was 35 at the time, and although he may have wanted to consider retiring at age 57, this was still 22 years away. There was no reason for him to do so at that point, and if required, he could have transferred closer to his prospective retirement age. This was endorsed by Cambrian’s own comments within the suitability report, which said that Mr E had no real idea of the kind of income he’d require in retirement – and that he’d just taken on a large mortgage and had two very young children.

- Both Mr E and his employer were contributing to his defined contribution scheme, and if Mr E wished to access scheme benefits flexibly at or close to retirement, then he could have accessed these.

- There was also no indication that Mr E actually needed flexibility for his defined benefits – in his situation, financial security would have been his primary concern. The BSPS benefits would have constituted the major part of his retirement provision, and he didn’t have other assets upon which to rely if his pension investments performed badly.

- In terms of death benefits, Mr E’s widow and children would have received dependants’ benefits from the scheme, and although Mrs E would have had her own pension benefits, the investigator noted that she had also been advised to transfer out of the BSPS by Cambrian.

- It was natural that Mr E would want his family to benefit from his pension fund in the event of his death, although this wasn’t recorded as a priority. But had the real picture of the death benefits which would have been available from the scheme and the lump sum benefits which would have been available from other sources been provided, the investigator didn’t think that this would have been a motivating factor behind the transfer.

- Although Mr E had an apparent distrust of his employer, and was concerned about the possibility of the scheme benefits passing into the PPF, this shouldn’t have been a reason to transfer. The advice post-dated the release of the detail which outlined the choice which members had of either transferring into the PPF, or the new scheme (BSPS 2).

- It had been recorded that Mr E wouldn’t have transferred if there was a very good reason not to – and the release of the details relating to the BSPS 2 was a good reason to not transfer. In the knowledge of this detail, Cambrian should have advised against the transfer.

- The investigator considered the objectives set out in the suitability report to have been generic and not at all specific to Mr E's circumstances. Whilst he acknowledged that there were concerns relating to the scheme and what might happen at the time, the BSPS 2 still had guarantees attached and Mr E could have waited until closer to retirement to decide how he wished to format his pension benefits.

The investigator recommended that Cambrian undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr E would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr E's pension plan, but if this wasn't possible, it should be paid directly to Mr E, with a notional deduction for the (basic rate) income tax he would have paid on the pension benefits.

Mr E agreed with the investigator's findings. Cambrian disagreed, however, saying the following in summary:

- The investigator missed, or didn't acknowledge, the existence of Mr E's other deferred benefits from previous employment which would have provided additional guaranteed income in retirement. On this basis, the complaint should be reassessed, as these additional benefits would add extra capacity for loss and risk tolerance to Mr E's circumstances. It would also have enabled him to take additional risks with other sources of income.

- The investigator had dismissed Mr E's direct and quoted desire to transfer unless there was a very good reason not to, and had translated this into evidence that Mr E didn't wish to transfer at all costs. It agreed that Mr E wouldn't have wanted to transfer at all costs, but his own statement indicated that he had a strong pre-existing desire to transfer prior to contact with Cambrian.

- The burden of evidence required to convince Mr E to not transfer was far higher in this case than normal. Given the lower than average critical yield figures, Mr E's distrust of his employer and his stated desire to transfer, it believed that he would have declined any advice to remain in either the closing BSPS or the new BSPS 2 – and would simply have found another adviser to facilitate his desired course of action.

- As it didn't believe that Mr E would have followed advice to enter the BPSP 2, he would only have been left with the alternative of entering the PPF. This would have prevented any possibility of a future transfer, negating the point that Mr E didn't need to receive advice for 22 years.

- The recommended redress would only enhance the value of Mr E's now non-guaranteed defined contribution pension fund. It the outcome remained the same, it requested that it have the option of placing the client into the position he would have been prior to the advice which would be to use a deferred annuity to match the nature of his benefits as they were. It considered that this would be appropriate, given the nature of the complaint and the alternative outcome, and would be in line with this service's principle of placing a customer back in the position they would otherwise have been.

The investigator didn't agree with the points made by Cambrian, however, and an agreement couldn't be reached on the matter, it was agreed that it would be referred to an ombudsman for review.

More recently, the investigator wrote to both parties explaining that, on 2 August 2022, the FCA launched a consultation on proposed charges to the redress guidance for defined benefit transfers. Mr E was provided with the opportunity to have redress calculated on the basis of the current guidance, or to wait until any new guidance was in place (expected in early 2023).

If no response was received, the investigator said that we would assume that Mr E didn't want to wait for any new guidance, and for the redress calculation to be undertaken on the basis of the existing guidance.

Mr E has confirmed that he would like to wait for any new redress methodology to be put in place. This was conveyed to – and acknowledged by – Cambrian.

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 what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable rules, regulations and requirements

This isn't a comprehensive list of the rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time Cambrian advised Mr E were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Cambrian, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Cambrian needed to gather the necessary information for it to be confident that its advice met Mr E's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

2) *ensure that that comparison includes enough information for the client to be able to make an informed decision;*

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of Cambrian's advice to Mr E in the context of the above requirements.

Cambrian's rationale for transferring

Mr E wasn't categorised as an "execution only" or insistent client, and Cambrian was taking him through the advice process from the beginning. Therefore, Cambrian could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, Cambrian undertook its fact finding for Mr E and then set out its assessment of his circumstances and objectives – as I've noted above.

As with the investigator, I've noted above within the COBS rules that the starting assumption for an assessment of Mr E's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives. And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr E would be better off financially as a result of the transfer.

The financial case to transfer

Cambrian obtained TVAS reports for comparison purposes to determine the viability of the transfer to meet Mr E's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. And before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the 29 years left to the scheme retirement age of 65 was 4.7% pa, and for retirement at age 57 it was 4.5%. And the growth rates used in the TVAS to illustrate the benefits which might be payable from a PPP were -0.49% (low), 2.44% (mid) and 5.37% (high).

As illustrated above by the three separate sets of TVAS critical yields on the file, and at least one figure for retirement at age 57 quoted within the suitability report which unfortunately isn't consistent with any of the figures produced by the TVAS, the matter of the actual critical yields required to match the scheme or PPF benefits at ages 57, 60 and 65 isn't straightforward.

However, even if I'm to rely on the lowest of these for the BSPS, at 5.68% pa, and 4.83% for the PPF, both to age 65, these were higher than the discount (or growth) rate deemed achievable over the same period, and the mid-band growth rate used by the pension provider – which might perhaps be a reasonable assumption for a "balanced" risk investor.

Cambrian has said it considered the critical yields to be achievable, albeit with the caveats as noted above. But as with the investigator, I don't think it's more likely than not that the critical yields were in fact achievable, year on year, for the number of years that Mr E had until he reached retirement age and given his recorded attitude to investment risk.

And as a reminder, these growth rates were required to just match the scheme benefits. From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out and repeated by the investigator, it needed to be *clearly* demonstrated that the transfer would be in Mr E's best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr E would be relinquishing.

But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7b.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that Cambrian did provide warnings on the guarantees which would be relinquished, but as Cambrian will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a suitability report, this also wouldn't make otherwise unsuitable advice suitable. Cambrian 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 E.

As I've said above, Cambrian's reasoning for the recommended transfer was that Mr E required flexibility of income due to his particular circumstances and objectives. And so I've given this argument careful consideration.

As a preliminary comment, I don't think that, if Mr E was in fact a "balanced" risk investor, the type of portfolio into which Mr E was advised to place his transferred funds for the purpose of later flexible access was necessarily unsuitable for the risk rating which was attributed to him.

And even without investment experience, I do acknowledge that Mr E was likely to have understood the principle of needing to take some risk to achieve the required reward, along with the discussions around such concepts that he might have had with colleagues who were going through the same process. And so I think Mr E may have had a reasonable understanding of the concept of risk/reward.

But I have similar concerns to those expressed by the investigator regarding the reliability of that risk rating for Mr E, given his lack of investment experience and other assets beyond pension savings.

But I think there's also the wider issue about Mr E's capacity to take financial risks with his pension funds which is pertinent to overall suitability here. Cambrian has suggested that Mr E's additional deferred benefits from a previous employer weren't factored into the investigator's consideration of the complaint, but he certainly noted them in setting out the background to the complaint.

As such, I think the investigator did take these into account, but nevertheless concluded that but Mr E had an overall low capacity of loss, given his other assets. And I'm inclined to agree. Mr E had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer), and the other deferred benefits were projected pay just under £2,000 at age 60. But other than the state pension which wouldn't be payable until age 68, the defined benefits accrued through the BSPS were likely to have been his main source of guaranteed income. Through transferring, Mr E was effectively putting a lot of his eggs in one "money purchase basket". Any reduction in the benefits payable from them would therefore have had a not inconsiderable impact on his financial security in retirement.

But even if a different interpretation of the above was possible, I also don't think Mr E in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr E would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown, or phased withdrawal, arrangement to satisfy changing income needs. But as with the investigator, it's unclear as to why Mr E would have needed such flexibility, especially given his family situation, the investment risk associated with the transfer, his attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

And in particular I've thought about whether Mr E could meet his objectives of retiring early whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. I note that, in the suitability report, it was recorded that Mr E could retire early at 57, but this was presented as an option rather than something which Mr E had himself identified as being a specific goal – perhaps unsurprising given his distance from retirement at that point. And so I'll address the general principle of early retirement, rather than a requirement or desire to do so at a particular age.

And in my consideration of this, I acknowledge that there was no facility for Mr E to take tax free cash from the BSPS 2 or PPF without also starting to take an income.

But as noted above, by age 57, Mr E would have accrued around 23 years' worth of defined contributions in the replacement scheme. And so, as with the investigator's findings, it's likely that he could have relied on the proceeds of this for flexible access to pension benefits, from whatever age after 57, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when needed. It's entirely possible in my view that, based on his earnings, contribution rates and age, and also dependent upon which age after 57 he in fact retired, he would have been able to rely upon the accrued benefits from the defined contribution scheme to defer retirement at the normal defined benefit scheme age of 65, and then be subject to no early retirement income deduction.

Mr E would also have been able to choose a tax efficient level of income or lump sum withdrawals through the defined contribution accrual, until the point that he either needed, or chose to begin taking, benefits from either the BSPS 2 or the PPF. And so any need for flexibility of income could have been addressed in this way.

I've then thought about Mr E's outstanding commitments. Mr E had just taken on a sizeable mortgage and it's unclear as to when this was due to be repaid, but I think it's likely that, with a standard term of 25 years, this would be largely, if not completely repaid by age 60. And if it wasn't, Mr E could have relied upon the tax free cash entitlement from his defined contribution scheme benefits. And so this shouldn't have presented an obstacle to Mr E being able to retire early, and flexibly, through the phasing of his defined contributions benefits until he began taking those from the BSPS 2 or PPF – if indeed he needed to.

But even if a different interpretation was also possible on this, and there was likely to be insufficient headroom in terms of combined income (including any drawdowns from the defined contribution scheme) for Mr and Mrs E's expenditure after Mr E had reached his desired retirement age, and/or the mortgage had needed to be increased/extended in the interim, any remaining mortgage could have been restructured to require lower monthly repayments for the remaining years before Mr E accessed his defined benefit scheme pension funds at age 65.

Alternatively, Mr and Mrs E could have still repaid some of the capital, but at a lower overall rate for the additional years, in order to provide more available income when Mr E retired at age 65.

I've then thought about Mr E's likely acceptance of the proposition of risk/reward. As I've said above, I think Mr E probably understood the principle, and risk warnings were provided by Cambrian. Mr E was accruing further benefits in his defined contribution scheme, and given the contributions rates to that scheme (10% and 6% employer and employee contributions respectively) and the number of years left to retirement compared against the benefits accrued in the final salary scheme, the majority of his pension provision would likely be derived of the defined contribution scheme. As such, Mr E was already by necessity taking investment risk through the replacement scheme.

But in light of this, and as I've said above, I think the guarantees attached to the defined benefits would have been of considerable value and these benefits should not have been relinquished lightly in favour of a flexibility which could in any case have been met by fairly uncomplicated planning around his defined contribution and defined benefit pension accruals and accessibility, even from 57 if required.

And on that particular note, I must also re-emphasise, as did the investigator, that Mr E was 35 at the point of advice, and therefore many years away from retirement. I've noted the comment in the suitability report that Mr E was concerned about the future of the BSPS and his associated benefits. But Mr E's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or 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.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr E distrusted it. And the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice the BSPS 2 seemed more likely than not to be a viable alternative. When the advice was given, there was no imminent prospect of the BSPS entering the PPF. In fact, all indications were to the contrary.

And so my view here is that Mr E simply didn't need to make any decisions about transferring out his defined benefits at that point. The prospect of entering the PPF had receded, but even if this was still the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65. Mr E's plans, including retirement, may in any case have changed significantly in the 22 intervening years between then and Mr E reaching age 57, if indeed this was Mr E's desired retirement age. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr E's retirement.

And so on the basis of what I've said above, it follows that I don't think the planned early retirement, or any other requirement around control over, and flexibility of, income, was a sufficient reason for Mr E to transfer his deferred benefits.

Death benefits

On the basis that Mr E was married with children, death benefits would naturally have been important to him, but given the level of other lump sums which would be payable, the suitability report didn't record death benefits as being a priority.

I won't therefore dwell on this aspect, but I think it's nevertheless worth noting, that, although after the transfer, a lump sum would be payable to his beneficiary/ies, rather than in the form of spouse's/dependants' pensions from the scheme, under the scheme's terms, Mr E's dependants would in any case have been entitled to a lump sum return of his contributions to the scheme, together with compound interest. The fund value of Mr E's defined contribution scheme membership would also have been available as a lump sum.

There is also the matter of the lump sum benefits which would have been paid, had Mr E remained in the same employment – and my understanding is that this would have been four times' his annual salary.

Mrs E would also have been entitled to a spouse's pension equivalent to half of that which would be payable to him, along with a further pension in respect of financially dependent children.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr E's wife and children by way of transferring to the PPP constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr E.

What should Cambrian have done – and would it have made a difference to Mr E's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr E. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr E to make any decision about his BSPS benefits at this point in time and it was the responsibility of Cambrian to explain to Mr E why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of his scheme benefits entering the PPF, which would have ruled out a later transfer. On the contrary, the indication was that the BSPS 2 would be successfully implemented.

I've also thought very carefully about whether the service provided to Mr E was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr E, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, one of the key recorded objectives - possible early retirement – was in any case achievable within the BSPS 2, and would have remained so even in the scenario of entry into the PPF.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr E's income needs could have been comfortably met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr E to relinquish valuable benefit guarantees – especially at the age of 35.

My further view is that, if properly discussed, Mr E'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 income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would be, aside from the £2,000 pa he could expect from his prior employment at age 60, entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Although not a stated objective, tax free cash for the purpose of mortgage repayment (if required) would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, it's not been a straightforward task to ascertain exactly what these were, but if I'm to rely on what was set out in the suitability report – and therefore what was presented to Mr E - the critical yields were higher than the discount rate and the mid band growth rate set out by the TVAS pension provider. And I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits, given Mr E's recorded risk attitude.

And 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 Cambrian considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

Cambrian's view is that Mr E was intent on effecting the transfer. And I've noted the comments relating to Mr E's keenness that the transfer proceed. But this was Cambrian's opportunity to take proper account of Mr E's circumstances and objectives, along with any preconceived concerns about his employer and the scheme benefits, and advise him not to transfer, for all the reasons set out above.

I certainly acknowledge that it wouldn't be straightforward to effectively unwind possibly quite deeply felt concerns. But I think the advantages of Mr E retaining his scheme benefits, if set out in terms similar to those above, would have persuaded Mr E to do just that. And I think any concerns about the pension scheme would have been assuaged if properly managed.

In terms of the responsibilities of Mr E in deciding whether to still proceed (and as I've said above, I accept that Mr E was given risk warnings and was more likely than not capable of understanding them), I don't disagree that properly informed, correctly advised individuals would be in a position to take that kind of responsibility and decide for themselves if they wanted to transfer their defined benefits.

The problem here, though, is that this was a complex matter involving many factors with which Mr E, as a layman, wouldn't have been familiar – hence his reliance on a professional party to take those factors into account and provide suitable, balanced advice.

For the reasons given above, my view is that Mr E simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility.

Mr E's recorded keenness to transfer, unless good reasons were presented as to why he shouldn't, may well have been borne of wider concerns relating to the financial viability of the BSPS, but as I've said above, I think this was due to the absence of a detailed and balanced assessment of the scheme's attributes and prospects in the advice process. And I think there very good reasons for Mr E to not transfer, as set out above.

Taking account of Mr E's circumstances, including his attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that Cambrian should have advised against the transfer.

And I think that, had this happened, Mr E would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr E, nor was it in his best interests. The key contributing factors here are: Mr E's attitude to risk and its incompatibility with the type of investment risk which would have likely been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr E's options and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr E were available without needing to transfer – possible early retirement and flexibility through utilising the different types of BSPS benefits which would have been available to him (or indeed through the PPF).

My view is that, taking account of the critical yields, Mr E's attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely, albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer. As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, it would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr E's best interests.

Putting things right

As I set out above, on 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15- calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr E whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

Mr E would like his complaint to be settled in line with new guidance/rules. I consider it's fair that Cambrian Associates Limited calculates Mr E's redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice. As with the investigator, I consider he would have retained his benefits in the BSPS, and with suitable advice, have then transferred into the BSPS 2.

There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

As I've said above, the reduction for early retirement under the PPF was lower and the commutation factors for tax free cash entitlement were also slightly more favourable under the PPF. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

But for the reasons set out above, I think it's likely that, properly advised, Mr E would have envisaged accessing his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age.

In terms of death benefits, under the BPSP 2 his spouse'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.

And so it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

I've noted Cambrian Associates Limited's suggestion that, if the complaint were to be upheld, it could put in place a deferred annuity on Mr E's behalf. I've thought about this carefully, but the basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr E, and that the FCA's commentary on alternatives such as a deferred annuity, including the possible associated impracticalities and unfairness of outcome, would reasonably apply in this case.

Should a loss be determined, and any resulting amount be paid into Mr E's pension plan, or directly to him, as outlined below and Mr E wishes to take up the option of Cambrian Associates Limited using his fund value and any compensation amount to buy a deferred annuity, then this will be a matter for Mr E and Cambrian Associates Limited, but with the latter ensuring that it takes account of the FCA's guidance within the policy statement in that regard.

Cambrian Associates Limited must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

I don't think there's any clear or persuasive evidence that Mr E would have accessed his defined benefits before the normal scheme retirement age of 65. So, compensation should be based on his him taking benefits at this age.

In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr E'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 E 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 E within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Cambrian Associates Limited has received notification of Mr E's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Cambrian Associates Limited to pay Mr E

Income tax may be payable on any interest paid. If Cambrian Associates Limited deducts income tax from the interest, it should tell Mr E how much has been taken off. Cambrian Associates Limited should give Mr E a tax deduction certificate in respect of interest if Mr E asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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 Cambrian Associates Limited to pay Mr E 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 Cambrian Associates Limited to pay Mr E any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Cambrian Associates Limited to pay Mr E any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Cambrian Associates Limited pays Mr E the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr E.

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

My final decision

My final decision is that I uphold the complaint and direct Cambrian Associates Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 January 2023.

Philip Miller
Ombudsman