DRN-3400808

The complaint

Mr J complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan in 2017.

Pensionhelp Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Pensionhelp".

What happened

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

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 J's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr J was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Pensionhelp which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr J was 58 years old, married and with no dependent children. He was described as being in good health and at the time of the advice he had accrued over 11 years of pension benefits with the BSPS.
- Mr J lived in a home valued at around £250,000 with no mortgage outstanding.
- Mr and Mrs J earned around £38,000 and £25,000 per year respectively. After expenses they had some disposable income left over. Mr J had easy access savings of £5,000 and no other assets or liabilities.
- The cash equivalent transfer value (CETV) of Mr J's BSPS was approximately £150,899. The normal retirement age (NRA) was 65.

Pensionhelp set out its advice in a suitability report on 17 November 2017. In this it advised Mr J to transfer out of the BSPS and invest the funds in a type of personal pension plan. Pensionhelp said this would allow Mr J to achieve his objectives. Mr J accepted this advice and so transferred out. In 2021 Mr J complained to Pensionhelp about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr J referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Pensionhelp said it hadn't done anything wrong and was acting on the financial objectives Mr J had at the time. Pensionhelp later also implied there had been no loss incurred by Mr J.

As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've decided – and why

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

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Pensionhelp's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pensionhelp should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr J's best interests.

I don't think it was, so I'm upholding his complaint.

Financial viability

Pensionhelp referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, Pensionhelp used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

This doesn't fundamentally affect the outcome, but I think it's important to point out that Pensionhelp could have taken time to compare the benefits of the BSPS2 with transferring out, rather than just using the current BSPS for comparisons.

I say this because many weeks before this advice, which was dated 17 November 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time Pensionhelp produced its suitability report.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr J the best opportunity to make an informed decision about what to do. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

Having said all that, Pensionhelp said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 15.7% if Mr J took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 12.48%. In my view, it should have been obvious to Pensionhelp that these critical yield figures were high and probably not achievable.

Indeed, our investigator pointed out that in its suitability report, Pensionhelp implied it wouldn't recommend transferring away on the basis of the critical yields alone. He also said this somewhat *"understated"* the issue – and I agree. In my view, it was very clear that growing a personal pension in excess of these critical yield rates was most unlikely - and there would be little point in Mr J transferring out to a personal pension plan only to receive lower overall benefits at retirement.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 3.3% per year for 6 years to retirement (age 65), which is well below the critical yield figures I've referred to above. I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

At the time, Pensionhelp assessed Mr J's attitude to risk (ATR) as "adventurous" (or level 7 out of 10). But everything I've seen shows Mr J had absolutely no experience of these types of investments. In fact, I think any reasonable assessment of Mr J's circumstances would have placed him in a much lower ATR category, especially as he had only around six more years to retirement left and that this fairly moderate pension represented the majority of his retirement savings. In a whole host of ways, Mr J couldn't afford to take risks.

Pensionhelp says the ATR of 7/10 was arrived at by using a matrix created by a large fund provider. But Pensionhelp's role here was to interpret the written answers Mr J gave to certain hypothetical investment questions on the form and to realistically use these alongside his actual circumstances, experience and knowledge. Pensionhelp should have factored in that when answering questions about investments, he had no experience to draw upon. In short, I think he was placed in an ATR category which was far too high.

So, I think a growth assumption at the lower end of the regulator's projections and also close to the discount rate was most relevant here. This was substantially below the critical yield figures for the BSPS, so I think this too showed that achieving the critical yield(s), year-on-year, upon transferring out just wasn't likely.

In addition to all these things, I've also noted that Pensionhelp said that in order to purchase an annuity to provide all the benefits of equal value to the existing scheme at retirement at age 65, the funds required would be around £362,000 if taking a full pension and £299,000 if taking a pension and lump sum. These sums were much higher than Mr J's CETV, so I think they provide a revealing window into the value of the benefits Mr J was being advised to give up by transferring away.

Although Pensionhelp wasn't as clear as it should have been about this when advising Mr J, it did tell him it wouldn't recommend a transfer on the basis of the critical yield figures alone. And clearly, having said this in 2017, it would be very hard for it now to argue these growth rates *were* achievable.

Elsewhere in its transfer analysis, Pensionhelp also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. Pensionhelp said the critical yields to match the benefits available through the PPF at age 65 were lower. But they were still around 10%. These yields also related to the *reduced* benefits available with the PPF and Pensionhelp itself says Mr J wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr J, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, Pensionhelp's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr J would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, Pensionhelp should have waited and recalculated the comparisons for Mr J when the situation with BSPS2 became clear – we know this was imminent.

I've also considered some projections Pensionhelp used to help show that if he transferred out to a personal plan, the funds could last Mr J well into retirement. Again, I think most of these were based on growth projections which were unrealistic given his actual ATR. It's also fair to say these were certainly not comparing like-with-like. What Pensionhelp was showing Mr J were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to Pensionhelp, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Pensionhelp said Mr J also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

Pensionhelp recommended a transfer to a personal pension based on what it said were Mr J's wider objectives. I have summarised the following themes as supporting the recommendation to transfer away:

- Pensionhelp said Mr J wanted flexibility to take however much he wanted to from his pension, and in ad-hoc amounts.
- Pensionhelp said he could have *"control over the' shape' of your funds"* if transferring out, and that his current scheme wasn't flexible enough.
- It said he wanted to grow his pension, so the recommendation to invest in certain money market funds could achieve this.
- It said the death benefits were more suited to Mr J's circumstances.

Reference was also made to Mr J maximising the tax-free lump sum he could take in a personal pension plan. So, it seems the supporting reasons that Pensionhelp recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr J. I have therefore considered all these issues in turn.

Flexibility and control

I can't see that Mr J required flexibility in retirement in the way suggested, but in any event, 'flexibility' was poorly defined by Pensionhelp. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan.

Mr J had already told Pensionhelp that his expectation was that he'd work on until the age of 65 before retiring. He was 58 years old at the time and I've seen nothing that shows he had made concrete retirement plans. However, in my view Pensionhelp hadn't comprehensively assessed Mr J's retirement needs.

As I've said, the details of the BSPS2 scheme had emerged by the time this advice was given and we know anyway that early retirement under the BSPS and the PPF were possibilities under their respective rules. So I don't think portraying his 'existing scheme' as being so inflexible as to warrant an irreversible transfer-out to a personal plan, was fair. In fact, in my view Mr J's circumstances showed his best interests were served by him accessing a DB-type pension, such as the BSPS2, in exactly the way it was originally designed.

I say this because Pensionhelp itself set out the estimated pension he'd get under the BSPS, which showed a reasonable, but certainly not a high, retirement income. If retiring at 65, for instance, Pensionhelp said Mr J could expect an annual pension of around £8,311. If taking a lump-sum of £36,723 his reduced annual pension would be around £5,508.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. Also in this case, we know Mrs J had very little personal pension provision of her own, so the evidence here seems clear to me that a guaranteed DB pension for Mr J, eventually complemented by Mr and Mrs J's respective state pensions, would represent no more than an adequate retirement income in their case. However, if Mr J 's aspirations or circumstances changed as he neared the age of 65, and he decided he could retire a little earlier, this would have been possible under the BSPS2 (or indeed the PPF). So I think it was wrong to imply there were no flexibilities under these other schemes.

I don't think Pensionhelp adequately explained these things to Mr J as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

I also don't think Pensionhelp took enough account of Mr J's 'second' pension – his employer's new defined contribution (DC) scheme which he had joined. Mr J and his employer were making significant contributions to this of 6% and 10% respectively. So, even a few more years' worth of being in this pension would have mattered - there could have been a reasonable amount in this DC pension to complement his deferred DB scheme (in BSPS2). I've noted he also had another DC pension with a modest sum invested.

The point I'm making here is that I've seen nothing that shows Mr J had a need for so called flexibility in his income going forward. I think the opposite was true and under the auspices of a DB scheme and Mr J's other financial resources, I think he could probably hope to enjoy a satisfactory retirement from a financial perspective. Whenever he chose to draw his pension benefits, on one hand Mr J would have had a long-standing DB pension in the BSPS2 with all the guarantees and benefits this type of scheme brings. And on the other hand, as he was intending to work for over six more years he'd have built up a reasonable DC pension pot, which, if he later found he *did* require any greater flexibility, this could have helped provide this. I've calculated the contributions paid in six years would have exceeded £30,000.

As far as desiring 'control' over his funds, again I think this was poorly defined and no more than a 'stock' objective used to help justify the transfer-out advice. Pensionhelp provides no evidence whatsoever that Mr J had either the desire or capacity to exercise personal control over his pension. The evidence here is that Mr J's previous exposure to investing was non-existent and he could ill afford risk. So, I think he'd have been likely to need help with exercising any control over these funds. As a consequence of this, he'd incur fees and charges in the years ahead. And advising Mr J to invest in higher risk funds such as commodities and property funds when his retirement horizon was relatively short, just wasn't suitable for someone like him. Alternatively, remaining in a DB scheme – such as the BSPS2 - run by trustees, was the much more suitable option for Mr J.

I therefore think Mr J's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. Because he also had a smaller 'second' DC pension, this supported that strategy in my view.

More tax-free cash

In the course of recommending that Mr J should transfer to a personal pension, Pensionhelp promoted that Mr J could access more tax-free cash. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But Pensionhelp should have been telling Mr J at the time that extra tax-free lump sums being removed from a personal pension, also came with consequences in that the amount left for his later retirement years would obviously decrease.

There's simply no evidence that Mr J needed to access higher amounts of cash. He had no mortgage, for example, nor any debts to pay. And Pensionhelp didn't record any other viable reason for Mr J needing large amounts of cash in what at the time was a low interest rate environment. Of course, the BSPS2 or PPF would have facilitated a modest tax-free lump sum too and a corresponding annual pension. There's nothing showing this wasn't suitable for Mr J.

Death benefits

Pensionhelp says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr J died.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pensionhelp explored to what extent Mr J was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr J was only 58 and in good health and was married. So, I think the likely death benefits attached to the DB scheme were substantially underplayed. The spouse's pension provided by the BSPS2 would have been very useful to Mrs J if Mr J predeceased her. I don't think Pensionhelp made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I also can't see whether, or the extent to which, life insurance was discussed in this case. But at 58 years old, a modest and short 'term' life insurance policy may have still been a reasonably affordable product if Mr J really did want to leave a legacy for Mrs J or someone else such as a close relative over a shorter period. But more so, it doesn't appear that Pensionhelp took into account the fact that Mr J could have nominated a beneficiary of any funds remaining in his other DC schemes. So, to this end, Mr J already had some options ensuring part of his pension wouldn't 'die with him'.

However, a more obvious drawback with a personal plan death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr J had lived a long life there could be nothing left at all in his personal pension plan.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr J. I think this objective, listed briefly as it was in the suitability letter, was no more than a generic comment and not meaningful to Mr J's situation.

Control or concerns over financial stability of the DB scheme

It's clear that Mr J, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Pensionhelp said he lacked trust in the company. He'd heard negative things about the PPF and Pensionhelp said he could have more control over his pension fund.

So, it's quite possible that Mr J was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Pensionhelp's obligation to give Mr J an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Pensionhelp should have reassured Mr J that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr J through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Pensionhelp's recommendation to Mr J to transfer out of the DB scheme altogether.

Suitability of investments

Pensionhelp recommended that Mr J invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr J and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr J was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr J was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Pensionhelp ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr J still had a few more years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr J would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think Pensionhelp should have advised Mr J to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr J would have transferred to a personal pension in any event. I accept that Pensionhelp disclosed some of the risks of transferring to Mr J, and provided him with a certain amount of information. But ultimately it advised Mr J to transfer out, and I think Mr J relied on that advice.

I'm not persuaded that Mr J would have insisted on transferring out of the DB scheme, against Pensionhelp's advice. I say this because Mr J was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Pensionhelp had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr J's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if Pensionhelp had explained Mr J was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think Pensionhelp should compensate Mr J for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for Pensionhelp's unsuitable advice. I consider Mr J would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, Pensionhelp should use the benefits offered by BSPS2 for comparison purposes and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance

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 J 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. He would like the complaint to be settled in line with the new guidance / rules. I therefore consider it's fair that Pensionhelp calculates Mr J's redress in line with new guidance and rules when they come into effect.

Pensionhelp 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).

In accordance with the regulator's expectations, this 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 J'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 J 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 J within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Pensionhelp has received notification of Mr J’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 Pensionhelp to pay Mr J.

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

I have also considered the impact on Mr J of the unsuitable advice and transfer. Our investigator recommended that a sum of £250 should be paid to Mr J by Pensionhelp for what he referred to as the distress and inconvenience caused by this unsuitable transfer. I’ve taken into consideration Mr J’s age and circumstances and also that by retirement this DB pension would still have been a significant part of his overall pension entitlement, So I think the thought of losing benefits would have negatively impacted Mr J. I therefore agree that Pensionhelp should also pay Mr J £250 for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I am upholding this complaint and I now direct Pensionhelp Limited to pay Mr J the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Pensionhelp Limited to pay Mr J any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Pensionhelp Limited to pay Mr J any interest as set out above on the sum of £160,000.

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

If Mr J accepts my final decision, the money award becomes binding on Pensionhelp Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 February 2023.

Michael Campbell
Ombudsman