DRN-3429398

The complaint

Mr A complains about the advice he was given by Futures Assured Ltd to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was flawed and unsuitable for him, he believes he should have been advised to join his employer's new DB scheme. He says this advice has caused him a significant financial loss.

What happened

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

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

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

Mr A had approached a financial adviser to get advice about his BSPS pension scheme. This adviser was unable to give Mr A advice about pension planning and so Mr A was introduced to Futures Assured.

Mr A met with Futures Assured in October 2017 to discuss his pension and retirement needs, the situation with his employer and the BSPS. Futures Assured completed a fact-find to gather information about Mr A's circumstances and objectives. This showed that:

- He was aged 49 and married with no financial dependents. He did have five older children.
- He was in full time employment at Tata Steel.
- His wife was also employed, and she had her own pension arrangements.
- Mr and Mrs A both had cash savings of around £20,000.
- Mr and Mrs A owned their own home which was subject to a mortgage.
- Mr A was a member of his employers new defined contribution occupational scheme, it was estimated that this would have a fund value of £20,000 to £30,000 at age 55.

Futures Assured also carried out an assessment of Mr A's attitude to risk, it was recorded that Mr A, and his wife, had limited experience and understanding of investments, and Mr A had been extremely cautious in the past. Nevertheless, Futures Assured thought that Mr A's attitude to risk was five on a scale of one to ten which was qualified as *'You prefer to accept* *the risk of a moderate loss to your money, in return for the potential for a moderate growth above inflation.'* It was noted that despite the relatively short time frame over which he ideally wanted to invest (five years) he still had the capacity to absorb some losses with the investment.

In November 2017, Futures Assured advised Mr A to transfer his pension benefits into a personal pension with Royal London and invest the proceeds in a range of funds which it said matched his attitude to risk. Mr A transferred £564,336.11 to Royal London in January 2018. The suitability report said the reasons for this recommendation were:

- To totally alleviate Mr A's concerns over his employer and the future funding of the DB scheme. And remove the chance of ending up in the PPF.
- Take advantage of the higher transfer value the BSPS was currently offering and avoid a lower value in the future.
- Both Mr and Mrs A wanted to retire at age 55 and the transfer would enable this.
- And they wanted a flexible income. They wanted £1,500 per month in total and they wanted to be able to adjust this when other pensions became payable (such as the state pension).
- They wanted to use the potential tax-free lump sum to repay any outstanding debt and to potentially provide an income.
- Mr A wanted to use the personal pension to provide the maximum death benefits possible to Mrs A.

Mr A complained in 2020 to Futures Assured about the suitability of the transfer advice. He said that the benefits he would receive from the transfer were likely to be lower than those he would receive from the BSPS2. And so, he shouldn't have been advised to transfer.

Futures Assured didn't uphold Mr A's complaint. It thought that the personal pension was more likely to meet his income needs at retirement and the death benefits were also better. Any remaining funds could be passed to his children on his death. The transfer to a personal pension would also lead to him being able to clear any outstanding debts he had. If he moved to the BSPS2 or the PPF this would have led to Mr A not being able to retire at age 55. As he wanted to retire early, he was prepared to accept the loss of a guaranteed income, and the risks associated with the personal pension.

Mr A referred his complaint to our service. An Investigator upheld the complaint and recommended that Futures Assured pay compensation. He said that, over two letters, the transfer was unlikely to match or better the DB scheme benefits Mr A was giving up. Whilst he had an aspiration to retire early it wasn't definite that he would do this. It wasn't clear when he would retire. So, he didn't need to transfer for this reason. And even though there was some uncertainty with his employer and the DB pension scheme, Mr A should have been reassured that the DB scheme would probably have met his needs. So, Mr A should have been advised to transfer to the BSPS2.

Futures Assured disagreed, saying:

- Mrs A was not in good health and so Mr A's pension fund may have been useful to her.
- Joining the BSPS2, or moving to the PPF, would not have allowed Mr A to retire at age 55.
- He did not want take the risk associated with transferring into the BSPS2.
- He did need flexibility if he wanted to retire at age 55, as his wife's pension and the state pension would change the amount of income he would need.

- Death benefits were a main driver of the transfer and if he were to predecease Mrs A, she may have struggled financially. He also wanted to pass his fund value to his children.
- At the time of advice the BSPS2 was only a proposal and so compensation should be based on the PPF rather than the BSPS2

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make 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 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'). And 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 Futures Assured'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

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, Futures Assured should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr A's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Futures Assured produced two transfer value analysis reports (TVAS). These showed how much Mr A's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield), amongst other things.

The first one was based on his existing scheme benefits and the PPF. Mr A didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF. The second TVAS looked at the situation if he moved into the BSPS2. It's not clear if Mr A saw these at the time of sale, so I've concentrated on the information that was reproduced from these in the suitability letter.

Mr A was 49 at the time of the advice and wanted to retire at 55. The critical yield required to match Mr A's potential benefits from the BSPS2 at age 55 was 9.29% if he took a full pension and 4.88% if he took tax free cash and a reduced pension. The critical yield to match the benefits available through the PPF at age 55 was quoted as 7.02% per year if Mr A took a full pension and 6.32% per year if he took tax free cash and a reduced pension.

The critical yield required to match Mr A's potential benefits from the BSPS2 at age 65 was 5.36% if he took a full pension and 3.75% if he took tax free cash and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 3.51% per year if Mr A took a full pension and 3.19% per year if he took tax free cash and a reduced pension.

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 3.1% per year for 5 years to retirement. And up to Mr A's age 65 the discount rate was 4.2%.

I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. That said, the Illustration rates that were given by the product provider – for the investments Mr A was making, which took into account information about the actual funds used and inflation, had a lower projection rate of -0.7%, a middle projection rate of 2.2%, and a high projection rate of 5.1%.

Mr A has indicated that his attitude to risk wasn't as high as 'balanced'. And I think the information recorded about him at the time of sale supports this to some degree. Mr A doesn't seem to have had any investment experience and he said he had been very cautious in the past. It is reasonable that Mr A could take *some* risk with his pension planning, particularly if he wanted to invest over the longer term. But Mr A was potentially investing for only five years and so this may not have applied. And there was a risk that five years would possibly be too short a time for him to recoup any losses made if the fund value fell significantly. And this was Mr A's main pension, so I don't think he had much capacity for loss. Overall, I'm not persuaded his attitude to risk was a high as balanced here. A fairer assessment of Mr A's attitude to risk, in my view, was cautious.

I've taken this into account, along with the composition of assets in the discount rate, to decide if this transfer was financially viable. And I think there would be little point in Mr A giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Looking firstly at the critical yields. The yields at Mr A's intended retirement date of 55 were far higher than the discount rate and the regulator's lower projection rate. And at age 55 the DB transfer needed to produce returns, to meet Mr A's stated aims, that were much higher than it should be assumed that a cautious investment would usually provide. That is somewhere between the regulators lower and middle growth rates.

The situation is less clear at age 65 where some are above and below the critical yield. But Futures Assured's advice was predicated on Mr A retiring at age 55. And Mr A's true attitude to risk was likely to be cautious, the DB transfer was less likely to improve on his DB scheme benefits or the PPF benefits.

Futures Assured has provided cashflow models which it says shows Mr A would've been able to meet his needs despite the high critical yields. I've considered these, but Futures Assured's models show that based on a consistent growth rate of 5%, then Mr A's fund would run out somewhere between around his age 85 and 90.

And lastly, Futures assured said that if Mr A retired at age 55 and took an income of £1,500 per year, increasing at 3% to age 90 (and accounting for his state pension) then his fund would need to grow at 5.8% each year. It said this was achievable. But this is in direct contradiction to what the product provider said was a reasonable assumption from the funds, even if Mr a took a higher risk. And as I've said above, I don't think Mr A had the appetite or capacity to take that level of risk.

Also, as Futures Assured will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

So, overall, I think Mr A was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his tolerance to risk, particularly if he retired early as he wanted to.

And this was recognised at the time of sale. The suitability letter said that the critical yield required to purchase an annuity with similar benefits and escalations to those offered by the existing scheme were high and was unlikely to be achieved on a sustained basis. And it said that if Mr A wanted an annuity with guaranteed benefits then then he shouldn't transfer.

For this reason alone a transfer out of the DB scheme wasn't in Mr A's best interests. Of course financial viability isn't the only consideration when giving transfer advice as Futures Assured has said in this case.

There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. Futures assured said that Mr A was willing to take the risk of lower benefits to increase the flexibility he had at retirement and improve the provision for his wife and children. He was also worried about the situation with his employer and the DB scheme. I've considered these below.

Flexibility and income needs

One of the main reasons that Futures Assured recommended that Mr A transfer to the personal pension is that it would enable him to retire at age 55.

Mr A's main retirement aim was to secure an income for him and Mrs A of £1,500 a month, or around £18,000 a year. I note in its final response that Futures Assured said this should be increased by inflation to around £1,700 a month or £20,000 a year. I've not seen that the advice was given on this basis, but it's not an unreasonable assumption. It also said that Mr A could use the tax free cash to repay any debts that he may have at this time such as their mortgage.

The suitability letter said that if Mr A stayed in the BPS, and joined the PPF, then he would receive an income at age 55 of £17,566. At age 65 this was £26,145. Mr A could also receive a lump sum of £97,320 and a reduced pension of £14,635 at age 55. At age 65 the similar amounts were £136,326 and £20,502.

The suitability letter also provided income figures for the BSPS2. It said these were at best estimates. It said that if Mr A would be likely to receive an income at age 55 of £16,995. This increased to £31,002 at age 65. Mr A could also receive a lump sum of £80,125 and a reduced pension of £12,018 at age 55. At age 65 the similar amounts were £136,976 and £20,545.

Looking at the above amounts it's clear that Mr A could have met his income and tax free cash needs in retirement through the BSPS2 or the PPF at age 65, and probably some time before this. And that after their state retirement ages their overall income would be in excess of their recorded aim.

I've also considered Mr A's situation at age 55 when it was recorded that he wanted to retire. I'll firstly say that part of Mr A's complaint is that this wasn't set in stone, it was more of a 'nice to have' than a certainty. And I note that he hasn't retired at this age and apparently has no immediate plans to do so.

The suitability letter does talk about taking the benefits form the DB scheme early as being subject to a penalty. I don't think this is entirely the right way to look at it as the pension is reduced as it will be paid for a longer time. And to reiterate this was a guaranteed and increasing payment for life. Whereas, all of the indications were that the transferred amount may run out at some point, particularly if Mr A lived a long life.

Looking at the amounts above the income provided before tax free cash is taken from both the BSPS2 and the PPF at age 55 are not too far away from what Mr A said they needed. Furthermore, the fact-find noted Mrs A also wanted to retire at age 55 and she had a DB scheme too. The details of this weren't recorded, but it seems to me that Mr A's DB scheme entitlement, when added to Mrs A's entitlement could most likely have met their aims at this time, whichever scheme he was in.

Mr A said he may have wanted to use the tax free cash to repay some debt. Their mortgage was around £80,000 at the time of advice and this was the main thing they wanted to repay. Mr and Mrs A were paying this without issue, and so it's reasonable to say this would be much reduced at age 55. Futures assured, in its final response, estimated they would still have around £45,000 left to pay when Mr A was 55.

But it was recorded that Mr and Mrs A had around £20,000 in savings and they were regularly saving £200 per month meaning their savings could've been worth over £30,000 at age 55. And Mr A's current employers pension scheme would be worth about £30,000 at age 55. So, I think it's possible that Mr A may have been able to repay this debt in any event without using his tax free cash from the DB scheme. But even if Mr A did want to take the tax free cash, he could've used this to supplement the income he was entitled to from the DB scheme.

Taking all this into consideration I'm not persuaded that the DB scheme (either the BSPS2 or the PPF) wouldn't have met Mr A's early retirement needs.

It seems to me that one of the problems with the advice Futures Assured gave is that it only looks at Mr A's retirement at ages of 55 and 65. Whilst it seems like it may have been *possible* for Mr A to retire at age 55 from the DB scheme this may not have been the best option for him. Many people would like to retire early. But, for most, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr A. But there's no evidence that Futures Assured seriously challenged Mr A's objective of retirement at age 55 and questioned how realistic that was for him. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Futures Assured has said that that once Mr A's state pension became payable he would have too much income. But if that was genuinely the case, Mr A could've saved or reinvested any surplus income for the benefit of his children in a tax-efficient manner such as within a trust.

In summary, I think at whatever age Mr A took the benefits from his DB scheme it was likely to have been an important foundation for their retirement, providing a guaranteed amount that would've covered their main expenses. Meaning that any income received above this could've allowed them to enjoy their retirement fully.

So, I don't think the transfer from the DB scheme was in Mr A's best interests simply due to the increased flexibility it may have offered Mr and Mrs A, which I'm not persuaded they needed. If Mr A genuinely decided to retire at age 55, then I think he could've met his income needs through the BSPS2. And if Mr A decided to continue working beyond age 55, which I think was more likely than not, then his income needs would most likely have been met more comfortably through the BSPS2.

Death benefits

Other than Mr A's general concerns about his employer and the scheme, and early retirement, it seems he was advised to transfer, in the main, due to the different death benefits a personal pension could offer.

The suitability letter says that one of the main benefits of the transfer was that if Mr A retired at age 55 and then was to die. Mrs A – who would also have retired - would have shortfall in her income from around age 60 onwards, that is when Mr A's tax free lump sum would be exhausted. This shortfall would last to her state pension age.

But I don't think the situation is as clear cut as this. If Mr A retired at age 55, his wife would've been entitled to Mr A's full pension in the unlikely event that he died within five years of his retirement and then 50% thereafter. And under the BSPS2 this would've been calculated as if no TFC had been taken. This means that in reality, Mrs A's income need of around £1,500 per month would've been covered under the PPF or the BSPS2 until she was aged 60.

At this point the pension income would halve and Mrs A wouldn't be entitled to her own state pension for another seven years. So, there was potentially a shortfall between Mrs A's ages of 60 and 67. Futures Assured has said this is why a transfer was necessary. But again, Mrs A had her own DB pension, so it isn't clear what this shortfall actually would've been.

And in any event this was a potential need for a lump sum over a finite period in the unlikely event that Mr A died before Mrs A reached age 67. And I think Futures Assured should have explored whether term assurance could have met this need. Mr A was recorded as being in good health and this form of insurance is usually modestly priced where this is the case. And this is the kind of situation that this product is generally used for.

Added to this Mrs A was employed at the time of advice and it may have been that she could've stayed in work if she needed to. And their income requirements were based on both of their expenditures. It's reasonable to assume that Mrs A would need a smaller amount to live on, as costs such as food would be reduced if Mr A died prematurely. Mr A did also have a significant amount of money in cash savings and another employer's scheme.

So it is a possibility that Mrs A may have had a shortfall – in some circumstances – if Mr A was to die prematurely. But the situation where this happens isn't very likely. Given that Mrs A had her own provision, they had savings to rely on, their house would be owned fully. And Mr A's DB scheme death benefits would be significant, I think this was very unlikely to have been a significant problem and it certainly wasn't a good enough reason for Mr A to transfer away his DB scheme benefits.

I appreciate that 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 likely an attractive feature to Mr A. But whilst I appreciate death benefits are important to consumers, and Mr A might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Futures Assured explored to what extent Mr A was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr A was married and so the spouses pension provided by the DB scheme would've been useful to Mrs A if Mr A predeceased her. I don't think Futures Assured made the value of this benefit clear enough to Mr A. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left particularly if Mr A lived a long life. In any event, Futures Assured should not have encouraged Mr A to prioritise the potential for higher death benefits through a personal pension over his security in retirement. Even if this was of a potential benefit to Mrs A due to her medical condition.

Furthermore, if Mr A genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Futures Assured should've instead explored life insurance. Mr A has indicated that there was some discussion about this, but it isn't in the suitability letter.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr A. And I don't think that insurance was properly explored as alternatives to some of these needs.

Control or concerns over financial stability of the DB scheme

The advice was given on the basis that Mr A was very worried about the future of the pension scheme and his employer.

It's clear that Mr A, 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 he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.

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

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So I think this should've alleviated Mr A's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Futures Assured should've reassured Mr A that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr A through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and was in fact higher than the sum he'd receive under the BSPS2 and the critical yields show he was unlikely to be able to exceed this by transferring out. 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've led to Futures Assured recommending Mr A transfer out of the DB scheme altogether.

I also don't see that potentially lower transfer values from BSPS2 in the future were reason enough to transfer. I don't think a transfer out of the DB scheme was in Mr A's best interest, so the potential for a lower future transfer value should not have influenced proceedings.

Suitability of investments

Futures Assured recommended that Mr A invest in funds that he now says have too much risk for him. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr A, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr A should have been advised to remain in the DB scheme and so the investments in these funds wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr A. But Futures Assured wasn't there to just transact what Mr A might have thought he wanted. The adviser's role was to really understand what Mr A needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr A was suitable. He was giving up a guaranteed, risk-free and increasing income within BSPS2 (or the PPF). By transferring to a personal pension Mr A was, in my view, 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. So, I don't think it was in Mr A's best interests for him to transfer his DB scheme to a personal pension now when he had the opportunity of opting into the BSPS2 just for the potential of providing higher death benefits that might be needed in very specific and in my view, unlikely, circumstances.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead.

I don't think it was certain that Mr A would retire very early. I'm not persuaded that this was anything more than a 'nice to have' and it was still some five years away. On balance I think it's more likely than not that Mr A would continue working, possibly up to age 65. So, I don't think that it would've been in his interests to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr A would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr A 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 A chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Futures Assured should've advised Mr A to opt into the BSPS2.

Of course, I have to consider whether Mr A would've gone ahead anyway, against Futures Assured's advice. Futures Assured argues that this is the case, saying that his worries about the future of the DB scheme made this likely.

I've considered this carefully, but I'm not persuaded that Mr A would've insisted on transferring out of the DB scheme, against Futures Assured's advice. I say this because Mr A was an inexperienced investor with a likely lower attitude to risk and this pension accounted for the majority of his retirement provision. So, if Futures Assured 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've accepted that advice.

I'm not persuaded that Mr A's concerns about his employer, or the future of his DB scheme, were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought, didn't think it was suitable for him or in his best interests. If Futures Assured had explained that Mr A could largely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr A would have insisted on transferring out of the DB scheme. I think he would have opted to join the BSPS2 instead.

Our Investigator recommended that Futures Assured also pay M £300 for the distress caused by the unsuitable advice. I don't doubt that Mr A has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

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

Putting things right

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

In this consultation, the FCA 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 A 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 has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr A.

A fair and reasonable outcome would be for the business to put Mr A, as far as possible, into the position he would now be in but for Futures Assured's unsuitable advice. I consider Mr A would have most likely remained in his DB scheme if suitable advice had been given.

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

For clarity, Mr A has not yet retired, and He has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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

Futures Assured may wish to contact the Department for Work and Pensions (DWP) to obtain Mr A'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 A's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr A'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 A 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr A within 90 days of the date Futures Assured receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Futures Assured to pay Mr A.

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.

If the complaint hasn’t been settled in full and final settlement by the time any new guidance or rules come into effect, I’d expect Futures Assured to carry out a calculation in line with the updated rules and/or guidance in any event.

Futures Assured should pay Mr A £300 for the distress and inconvenience caused by the unsuitable advice.

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

My final decision

Determination and money award: I uphold this complaint and require Futures Assured Ltd to pay Mr A 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 Futures Assured Ltd to pay Mr A any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Futures Assured Ltd to pay Mr A any interest as set out above on the sum of £160,000.

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

If Mr A accepts this decision, the money award becomes binding on Futures Assured Ltd.

My recommendation would not be binding. Further, it’s unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A 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 A to accept or reject my decision before 16 February 2023.

Andy Burlinson
Ombudsman