DRN-3470392

The complaint

Mr P complains about the advice given by AMG Wealth Solutions LLP ('AMG Wealth') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr P'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 October 2017 Mr P's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in BSPS which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017.)

Mr P was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr P met with his existing financial adviser, from another business, in October 2017 and they completed a fact-find to gather information about his circumstances and objectives. They also carried out an assessment of Mr P's attitude to risk, which they deemed to be 'low medium' – a rating of 5 on a scale of 1-10. This information was then passed to AMG Wealth because they held the necessary regulatory permissions to advise on DB pension transfers. Mr P met with AMG Wealth on two occasions in December 2017.

Following these meetings, AMG Wealth advised Mr P to transfer his BSPS benefits into a personal pension and invest the proceeds in two funds - a multi asset and a managed fund - which AMG Wealth said was aligned to Mr P's attitude to risk, albeit it appears from what the suitability report says that this accounted for a slightly more cautious approach overall. In summary the suitability report said the key reasons for this recommendation were that Mr P was concerned about the financial security of the new BSPS2 scheme; the transfer away from the BSPS would provide the potential for growth, which when added to Mr P's workplace pension would provide flexibility of benefits; and because Mr P wanted his partner to benefit from the full pension fund value upon his death.

Mr P accepted the advice and in April 2018 around £83,000 was transferred to Mr P's new personal pension.

In 2021 Mr P complained to AMG Wealth about the suitability of the transfer advice – he didn't think the advice was best for him, his pension or his family.

AMG Wealth didn't uphold Mr P's complaint. In summary it said:

- Mr P was given detailed information about his existing DB scheme along with the advantages of remaining in it.
- Mr P received advice about the transfer and the potential benefits, but he was also given detailed risk warnings.
- The transfer was suitable because it met Mr P's stated needs and objectives.
- The advisory process was conducted over a number of meetings, which gave Mr P the time to make an informed decision.
- AMG Wealth carried out a thorough factfinding exercise and took reasonable steps to ensure the transfer was suitable, including adopting the starting point that the transfer was unsuitable.

Dissatisfied with its response, Mr P asked this service to consider his complaint. An investigator upheld the complaint and required AMG Wealth to pay compensation. In summary they said the recommendation wasn't suitable because:

- The transfer to a personal pension arrangement wasn't financially viable – the growth rate required to match Mr P's DB scheme benefits was higher than was reasonably achievable at the time and when considering his attitude to risk.
- There was nothing to support Mr P's need for flexibility – he had at least thirty years to retirement and he didn't have any firm retirement plans.
- There were alternative ways to provide lump sum death benefits – the primary objective of a pension is to provide a regular pension income.
- While Mr P had concerns about the future of his DB scheme, the new BSPS2 would've provided Mr P with his benefits and the PPF represented less risk than transferring.
- Overall they said there was no compelling reason for Mr P to transfer out of his DB scheme which outweighed him giving up the guaranteed benefits he was entitled to. They said a transfer wasn't in Mr P's best interests and said that, had things happened as they should have, Mr P would've opted in BSPS2.

AMG Wealth disagreed. In doing so, it provided a substantive response, which I have read in full. But in summary it said:

- It firstly wanted to highlight some key things Mr P said at the time of the advice, including that he had concerns about his employer; he wanted to transfer out as soon as possible; and that the 'Time to Choose' brochure hadn't changed his view to not remain in the scheme.
- Despite Mr P saying that he had no investment experience in the attitude to risk questionnaire, he did have some investment experience because he was managing his current workplace pension on his own.
- It questions the rationale for the investigator's opinion, which it says appears to be based on the fact that AMG Wealth could not have known what Mr P's circumstances or objectives would be when he reached retirement age and that the only relevant circumstances are those at the time of the advice. It says this approach would suggest there would never be circumstances in which advice to transfer out of a DB scheme would be suitable.
- It did obtain information from Mr P about his objectives in retirement, which were to provide flexibility, the ability to take maximum tax-free cash and no income while he continued to work, and provide lump sum death benefits rather than a spouse's pension as he wasn't married at the time.
- It maintains its view that it took reasonable steps to ensure the advice was suitable based on the circumstances and objectives as expressed by Mr P at the time. It says

it had to have regard for what Mr P said he wanted, in the context of clear advice, but it feels these are now being treated as largely immaterial with the benefit of hindsight.
- The critical yields were discussed in detail with Mr P, so it cannot be said that the value of the benefits being given up weren't considered. But it said the critical yield had limited relevance to Mr P – it was based on a scheme that would no longer exist and while relevant for discussion purposes, income was not a priority.
- It disagrees with the investigator's view that there was limited opportunity to improve on the benefits of the DB scheme because a transfer met Mr P's objectives, while aligned to his attitude to risk.
- It disagrees that Mr P would've had to take more investment risk to achieve the growth rates required – the expectation of the funds chosen was that over a 35-year term the returns would exceed the PPF critical yield and match that of the existing scheme, albeit the existing scheme wouldn't exist in the future.
- It considers the investigator placed a disproportionate focus on the critical yield, which doesn't account for Mr P's wider financial circumstances it was required to take into account.
- It was not inevitable that the BSPS2 would go ahead and it wasn't in a position to know whether the criteria that had to be met for it to be established would be met. It said that it did consider the PPF, but deemed it didn't meet Mr P's objectives, albeit it did point out that this was a less risky option. It also said that the irrationality of scheme members' concerns about the PPF are made with the benefit of hindsight and discount the negative information and messaging, including from the scheme trustee, that was circulating among scheme members at the time.
- There is no evidence Mr P would've remained in the scheme had he been advised to do so. Mr P had a strong and clear desire to proceed with the transfer. It advised him if he wanted a guaranteed pension at 65 he should remain in the scheme – but he didn't want to, which is borne out by his decision to proceed. It believes Mr P would've proceeded in any event and regardless of the advice it gave.

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 AMG Wealth'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. My reasons are set out below.

I can see that AMG Wealth has referred on several occasions to its requirement to take reasonable steps to ensure the advice it gave was suitable for Mr P. And I agree that under COBS, AMG Wealth was required to take reasonable steps to ensure that its personal recommendation to Mr P was suitable for him (COBS 9.2.1). But additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AMG Wealth should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

Financial viability

AMG Wealth produced a transfer value analysis report, as required by the regulator, showing how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – referred to as the critical yield. It produced a number of these reports based on different providers and different investment funds. And from what I can make out, all were based on Mr P's existing BSPS scheme benefits. But Mr P didn't have the option to remain in the existing BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

I can see in the suitability report that AMG Wealth referred to and set out the details of the BSPS2. But it has also argued that there was no certainty at the time of the advice that it would be established – it says there were certain criteria that had to be met and it was in no position to know whether they would be met. I assume it is for this reason that it chose to carry out the analysis using Mr P's benefits in the existing scheme.

But in my view, all of the information available at this time pointed to the BSPS2 going ahead as envisaged. At the time of the advice Mr P had received his "Time to Choose" pack. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. As I said, AMG Wealth referred to this in its suitability report. I accept it's possible this may not have gone ahead, but I still think the benefits available to Mr P through the BSPS2 should've been factored into the advice Mr P was given, so that he was able to make a properly informed decision.

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.

Mr P was 29 at the time of the advice and the advice paperwork said his intention was to continue working until 65, although it said he wanted to access his tax-free cash lump sum at the earliest point while he was still working. The TVAS report dated 18 December 2017, which appears to be the most relevant report here set out the relevant critical yields; at age 65 it was 5.68% if Mr P took a full pension - the TVAS didn't provide the critical yield for a reduced pension and tax-free cash. The critical yield required to match the benefits provided through the PPF was 4.27% if Mr P took a full pension and 4.08% if he took tax-free cash and a reduced pension.

But as I've said above, Mr P remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided instead. The lower annual increases under the BSPS2 would've likely decreased the critical yields to some degree, but I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.7% per year for 35 years to retirement. 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%.

I've taken this into account, along with the composition of assets in the discount rate, Mr P's 'low medium' attitude to risk and also the term to retirement. In my view there would be little point in Mr P giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the critical yield if Mr P took a full pension through his existing scheme at age 65 was 5.68%. So, if Mr P were to opt into the BSPS2 and take the same benefits at age 65, I think the critical yield would've been somewhere between 5.68% and 4.27%, but most likely closer to 5.68%. Given the discount rate of 4.7% and the regulator's middle projection rate of 5%, I think Mr P was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk.

AMG Wealth says that the funds were chosen with the expectation that over a 35-year term the returns would match that of the existing scheme critical yield. But not only was this not guaranteed, as I said above I think there would be little point in Mr P relinquishing the guarantees available to him through the DB scheme only to achieve, at best, the same level of benefits outside the scheme, which appears to be what AMG Wealth is arguing.

The critical yield required to match the benefits provided through the PPF was 4.27% if Mr P took a full pension and 4.08% if he took tax-free cash and a reduced pension. And I accept this is lower than the discount rate. But it is lower only by what I consider to be a small margin.

It's also the case that these rates are only those to match the PPF benefits – not exceed them. And here because the difference between the two rates was so small, I think it's likely that, at best Mr P would end up receiving benefits of broadly the same overall value as those he would receive through the PPF, as a result of investing in line with a low medium attitude to risk. There of course still remained the real risk that Mr P might end up with benefits of a lower overall value than those provided by the PPF.

I can see AMG Wealth says the critical yield had limited relevance to Mr P. It says it was based on a scheme that would no longer exist ,and while relevant for discussion purposes, guaranteed income was not a priority – Mr P wanted to take his benefits flexibly. I've already said why I think AMG Wealth should've provided critical yield figures based on the BSPS2. But I don't think the importance of the critical yield figure should be downplayed here. I still consider it gives a good indication of the value of benefits Mr P was considering giving up. It's also the case that the regulator required AMG Wealth to provide it and so deems it a necessary and important part of the decision-making process. Furthermore I think it was relevant in this case because I don't think Mr P was reasonably in a position to say with any degree of certainty whether he wanted to take a regular income at retirement or not. Mr P's expected retirement was still more than three decades away, so given this period of time I think it's possible that Mr P might want or indeed need some guaranteed income in retirement. And Mr P's DB scheme would provide this.

So given Mr P was likely to receive lower overall retirement benefits by transferring to a personal pension, or at best match those if the scheme moved to the PPF, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as AMG Wealth has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr P's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

One of the key reasons AMG Wealth recommended the transfer was because it provided Mr P with flexibility – for example the advice paperwork said Mr P wanted to access a cash lump sum while he was still working but not take an income at the same time.

But I don't think Mr P knew with any certainty whether he required flexibility in retirement. And in any event I don't think he needed to transfer his DB scheme benefits to achieve it.

Importantly in this case Mr P was only 29 years old and there's nothing to show or suggest that Mr P had anything that could reasonably be described as concrete plans for retirement. And this isn't surprising – he still had a significant period of his working life in front of him. The advice paperwork says Mr P wanted access to a cash lump sum at the earliest opportunity – in this case 58. But it's also recorded that Mr P said *'potentially it is too far to judge...'* So it strikes me that Mr P didn't really know – I think it was simply a 'nice to have' or something that seemed like a good idea to Mr P. There's no evidence that Mr P needed access to a lump sum at this stage and AMG Wealth didn't interrogate Mr P's apparent objective to understand why.

Mr P also had his workplace defined contribution ('DC') scheme, and with the potential of many years' contributions ahead, this had the potential to be worth a not inconsiderable sum. Given the nature of a DC scheme, this already provided Mr P with flexibility – he wasn't committed to take these benefits in a set way.

And while Mr P's DB scheme didn't allow him to take his benefits flexibly – albeit he could've opted to take them early and/or forego some income for a cash lump sum if his needs dictated later on – it seems Mr P already had a degree of flexibility in how and when he took his pension benefits when taking into account both his DB and his DC scheme.

So in any event, Mr P didn't need to transfer his DB scheme benefits at this stage to a personal arrangement in order to achieve flexibility in retirement. Of course, if Mr P did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still many years away. While this wouldn't have been possible if Mr P's scheme moved to the PPF, if he opted to join the BSPS2 he would've retained the ability to transfer out nearer to retirement, if indeed it was required. This ought to have been explained by AMG Wealth.

I can see AMG Wealth says it had to take into account Mr P's objectives and have regard for what he said he wanted. But AMG Wealth's role wasn't simply to transact or facilitate what Mr P said he wanted – it's role was to really understand Mr P's needs, his objectives and his plans for retirement and recommend what was in his best interests. But I'm not persuaded it did this.

Turning to Mr P's income need – I've not seen anything to show that AMG Wealth considered what Mr P's income need in retirement would be as part of its advice. It's likely at this stage Mr P wouldn't have known given it was so far in the future. But without asking and attempting to establish this, I don't think AMG Wealth was in a position to advise Mr P fully on his retirement needs.

Looking at Mr P's circumstances, I've seen nothing to indicate that Mr P needed variable income. And nothing to indicate that either opting into the BSPS2 or moving with the scheme to the PPF wouldn't have provided Mr P with a solid income foundation upon which his other provision could supplement, to meet his overall need.

For example – at age 65 under the BSPS, Mr P was due an annual pension of just over £8,700, and under the PPF it was around £6,600. If Mr P opted into the BSPS2 I think Mr P's pension at 65 would've been somewhere between these two figures (and closer to the BSPS.) Given Mr P didn't have any known need for a cash lump sum, I think Mr P could've met his income needs in the BSPS2 until his state pension became payable at age 68. I think any shortfall could've been met with a combination of Mr P's future wife's pension, and by accessing income and/or by taking his tax-free cash entitlement from his DC scheme. Mr P would've likely had a not insignificant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I think it's also the case that Mr P didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

As I said earlier on, I accept at the time of the advice, the BSPS2 hadn't been established. I think all of the information from the scheme trustees indicated that it was likely the scheme operating conditions would be met, but I accept it wasn't certain. And if Mr P had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. As I said above, at age 65 Mr P would've been entitled to a pension of around £6,600 a year. This was lower than the pension I think he'd be entitled to under the BSPS2. But I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr P would've had his DC scheme to draw on until his state pension became payable, as well as his future wife's pension to supplement their household income. So, I still think Mr P could've met his needs in retirement even if the scheme moved to the PPF.

Overall, I think Mr P could've likely met his income needs in retirement through the BSPS2 or the PPF at age 65. So, I don't think it was in Mr P's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

I can see AMG Wealth said in response to the investigator's view that it believes the rationale they've adopted means there would never be circumstances in which advice to transfer out of a DB scheme would be suitable. But I'm satisfied that in this particular case because Mr P's retirement needs were unknown, it wasn't a suitable recommendation for Mr P to take irreversible decision to transfer.

Death benefits

The suitability report said that Mr P wanted to ensure that his partner could benefit from any available funds in the event of his death, particularly as he wasn't married.

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 P. But whilst I appreciate death benefits are important to consumers, and Mr P might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr P about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr P's security in retirement. And I say potential, because the sum left on Mr P's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

I also think the existing death benefits within the DB scheme were underplayed. While Mr P was single at the time of the advice, it was recorded that he was marrying his partner within six months of the advice. So I think the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr P predeceased her. There was also provision for a children's pension up to age 23 (if they remained in full-time education) which could've been beneficial if Mr P and his wife decided to have children. I don't think AMG Wealth made the value of these benefits clear enough to Mr P. They were guaranteed and escalated – and under the BSPS2 the spouse's pension would also be calculated as if no tax-free cash had been taken. It's also the case that it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Furthermore, I think AMG Wealth ought reasonably to have known that Mr P had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his future wife to receive. And it also knew that Mr P was paying into the current DC scheme and he would've been able to nominate his wife as beneficiary of this plan too.

Furthermore, if Mr P genuinely wanted to leave a legacy for his spouse over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think AMG Wealth should've instead explored additional life insurance. And in my view the starting point ought to have been to ask Mr P how much he would ideally like to leave to his spouse, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be cheap to provide, particularly given Mr P's young age and the fact he was in good health.

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 P. And I don't think AMG Wealth did enough to explore or highlight the alternatives available to Mr P to meet this objective.

Control and concerns about financial stability of BSPS

I have no doubt that Mr P was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF circulating and I can understand why, when asked, Mr P said he wanted to break ties with his employer and wanted to retain control of his pension benefits.

So it's quite possible that Mr P was leaning towards the decision to transfer because of the concerns he had about his employer and the negative perception of the PPF. But it was AMG Wealth's obligation to give Mr P an objective picture and recommend what was in his best interests.

As I've already explained, by this point details of the BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr P through the BSPS2 into account, and I think this would've alleviated Mr P's concerns about the scheme moving to the PPF. I've also noted AMG Wealth's points about Mr P's negative perception of the BSPS2 because he didn't trust his employer. But AMG Wealth ought to have reassured Mr P that an independent board of trustees was responsible for managing the scheme and they were required to act in members best interests.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, I think that AMG Wealth should've reassured Mr P that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe.

As I set out above, the income available to Mr P through the PPF would've still provided a solid base, which his other means could supplement to likely meet his income need at retirement. He was also 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 Mr P's concerns should've led to AMG Wealth recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr P was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr P. But as I said earlier, AMG Wealth wasn't there to just transact what Mr P might have thought he wanted. The adviser's role was to really understand what Mr P needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr P was, at best, likely to receive broadly the same overall retirement benefits at age 65. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr P's best interests for him to transfer his DB scheme to a personal pension at this time when he had the opportunity of opting into the BSPS2.

So, I think AMG Wealth should've advised Mr P to opt into BSPS2. I appreciate that the BSPS2 wasn't guaranteed to go ahead when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. Mr P had over 30 years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, I don't think that it would've been in his interest 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 P would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, Mr P was shortly due to be 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 P chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course I have to consider whether Mr P would've gone ahead in any event, against AMG Wealth's advice. AMG Wealth says there is no evidence Mr P would've remained in the scheme had he been advised to do so. It says Mr P had a strong and clear desire to proceed with the transfer. It says it advised him that if he wanted a guaranteed pension at 65 he should remain in the scheme – but he didn't want to, which is borne out by his decision to proceed. It believes Mr P would've proceeded in any event and regardless of the advice it gave.

I've considered this carefully, but I'm not persuaded that Mr P would've insisted on transferring out of the BSPS against AMG Wealth's advice. I say this because, while Mr P was motivated to transfer when he approached AMG Wealth and I can see that Mr P's recorded comments in the relevant sections of the advice paperwork convey a sense of urgency about things and an anxiety about the scheme's future, on balance, I still think Mr P would've listened to and followed AMG Wealth's advice if things had happened as they should have and it recommended he opt into the BSPS2.

Mr P identified himself as an inexperienced investor during the advice process and I've not seen anything which contradicts this. AMG Wealth has challenged Mr P's categorisation of himself as inexperienced and argues that he had some experience because he was manging his current workplace pension. But I've not seen enough to persuade me that Mr P was actively managing his workplace pension. From what I can see, the pension transfer analysis document simply recorded that Mr P had recently paid more attention to his pension and it had become important to him. In any event, I don't consider Mr P was someone who possessed the necessary knowledge, skill or confidence to go against the advice they were given in complex pension matters. Mr P's pension accounted for the majority of his retirement provision at this time. So, if AMG Wealth had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

AMG Wealth says Mr P had a strong and clear desire to proceed with the transfer. It says it advised Mr P that if he wanted a guaranteed pension at 65 he should remain in the scheme – but he didn't want to, which is borne out by his decision to proceed. But I'm not persuaded this is evidence that Mr P would've proceeded regardless of the advice he was given. As I explained earlier on, not only did AMG Wealth not properly take into account the benefits available through the BSPS2 to allow Mr P to make an informed decision, it's also the case that AMG Wealth's recommendation, as it describes it, was completely undermined by the positive recommendation that Mr P should transfer out of his DB scheme. So it seems to me that Mr P's decision to proceed with a transfer was because AMG Wealth had told him that it was the right thing for him to do.

I'm not persuaded that Mr P's concerns about his employer and the future of the scheme were so great that he would've insisted on the transfer 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. If AMG Wealth had explained to Mr P that he could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr P would have insisted on transferring out of his scheme.

In light of the above, I think AMG Wealth should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr P. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish AMG Wealth – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr P. Taking everything into account, including that I consider Mr P's retirement provision is of great importance to him, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr P whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published.

Mr P 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 P.

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for AMG Wealth's unsuitable advice. I consider Mr P would have most likely transferred his benefits into BSPS2 if suitable advice had been given. So AMG Wealth should use the benefits offered by BSPS2 for comparison purposes.

AMG Wealth 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, as per the usual assumptions in the FCA's guidance, compensation should be based on a normal retirement age of 65 in this case.

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 P's acceptance of the decision.

AMG Wealth may wish to contact the Department for Work and Pensions (DWP) to obtain Mr P'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 P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr P'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 P 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/her/their 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 P within 90 days of the date AMG Wealth 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 AMG Wealth to pay Mr P.

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 AMG Wealth to carry out a calculation in line with the updated rules and/or guidance in any event.

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 AMG Wealth Solutions LLP to pay Mr P 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 AMG Wealth Solutions LLP to pay Mr P any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require AMG Wealth Solutions LLP to pay Mr P any interest as set out above on the sum of £160,000.

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

If Mr P accepts this decision, the money award becomes binding on AMG Wealth Solutions LLP.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 1 December 2022.
Paul Featherstone
Ombudsman