DRN-3472356

Financial Ombudsman Service

The complaint

Mr C complains about the advice given by Pensionhelp Limited to transfer the benefits from his defined-benefit ('DB') occupational pension 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 C'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, members of the BSPS were 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 choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr C was concerned about what the announcement by his employer meant for the security of his pension, so he contacted a financial adviser for advice. Because this financial adviser didn't hold the relevant permission from the Financial Conduct Authority ('FCA') to advise on the transfer of his DB scheme, it referred Mr C to Pensionhelp.

My understanding is that the original financial adviser completed a fact-find to gather information about Mr C's circumstances and objectives, which was sent to Pensionhelp for it to use as the basis of its advice. This documented, amongst other things, that Mr C was 41; he was married with two dependent children; he jointly owned the family home valued at around £480,000, which had an outstanding mortgage of around £149,000; he owned an investment property worth £250,000, which provided an income of around £700 a month – this had an outstanding mortgage of just under £100,000; he and his wife had savings, which jointly came to around £110,000; Mr C's new workplace defined-contribution ('DC') pension scheme was receiving contributions of £700 a month; and his objective was to retire at 60 on an income of £20,000 - £25,000 a year.

Pensionhelp carried out an assessment of Mr C's attitude to risk, which it initially deemed to be a score of 8 on a scale of 1-10 – but was revised to a score of 6 or a 'balanced' approach.

On 20 November 2017, Pensionhelp advised Mr C to transfer his pension benefits into a personal pension and invest the proceeds in a range of investment funds, which it deemed matched Mr C's attitude to risk. In summary, the suitability report said the reasons for this recommendation were to provide Mr C with flexibility as to how and when he accessed his benefits; to provide control over the fund; and provide better death benefits and the ability to pass on a tax-free lump sum to his nominated beneficiaries.

Mr C accepted the recommendation and shortly afterwards around £303,000 was transferred to his new personal pension.

Mr C complained in 2021 to Pensionhelp about the suitability of the transfer advice. Mr C said that he didn't remember speaking to anyone at Pensionhelp and believes the advice to transfer from a guaranteed pension to an investment-based environment was unsuitable for him.

Pensionhelp didn't uphold Mr C's complaint. It provided a substantive 17-page response. I haven't set out everything it said here – but in summary it said:

- Remaining in the DB scheme would not have given Mr C, by itself, the income he needed to meet his core expenditure needs up to state pension age. The only way to achieve things was via drawdown which required a transfer.
- While Mr C had his DC workplace pension, this was based on contributions continuing through to retirement some 19 years away.
- Remaining in the DB scheme would've meant at state retirement age, Mr C would be in receipt of more income than he needed and would pay more tax as a result.
- Transferring improved the potential benefits at Mr C's retirement age of 60.
- Better death benefits could only be achieved by transferring.
- If the BSPS moved to the PPF, Mr C would've lost his right to transfer. And if Mr C had opted for the BSPS2, the transfer value was expected to be lower.
- Overall, the transfer met Mr C's aims and objectives and it was appropriate for his stated attitude to risk.

Dissatisfied with its response Mr C referred his complaint to our service. An investigator upheld the complaint and required Pensionhelp to pay compensation. In summary, the investigator said the transfer wasn't financially viable because the growth rate required to match Mr C's DB scheme benefits wasn't likely achievable. They said Mr C was likely to receive lower retirement benefits as a result. They also said there were no other compelling reasons to justify the transfer to outweigh this – Mr C was 41 at the time so his plans for retirement weren't set; he didn't need flexibility; death benefits shouldn't have been prioritised over Mr C's security in retirement; and his income needs could've been met by remaining in the DB scheme and using his workplace DC scheme. They said if suitable advice had been given, Mr C would've likely remained in the DB scheme and opted to join the BSPS2.

Pensionhelp disagreed. It provided a substantive 13-page response, which I have read in detail. But I haven't set everything out here. The key points of its response can be summarised as follows:

- It believes a transfer was what Mr C wanted and that it was in his best interests based on what was known at the time – it believes it has comfortably demonstrated this in its final response to Mr C's complaint.
- The regulatory environment was different in 2017, when it provided Mr C with advice. The FCA provided significant clarification in 2018 around transfers and made much clearer its expectation on firms.
- It believes the Financial Ombudsman Service's approach of focusing on the absolute need for a fixed and guaranteed income is out of date – the advent of pension freedoms and people's desire to access their pensions flexibly taking account of their individual needs should not be readily dismissed by the Financial Ombudsman Service.
- It believes investigators refer to COBS 19.1.6 to immediately reach the conclusion that all DB pension transfers are unsuitable.

- The situation surrounding BSPS at the time of this advice should not be underestimated or ignored – there were legitimate concerns around BSPS2 (it was not a certainty at the time) and the PPF, and it is unreasonable for the Financial Ombudsman Service simply to assume that a transfer to BSPS2 or the PPF was a straightforward advice issue.
- Mr C was being advised based on retiring early at 60. In this case, had the transfer not been suitable it would've recommended Mr C move with the scheme to the PPF – this was a better solution than the proposed but non-existent BSPS2.
- The cashflow analysis produced shows sufficient income in retirement and a potentially significant lump sum Mr C could leave as a legacy. This is a clear indicator the transfer was affordable and no reason financially why a transfer could not be recommended.
- Reference to the critical yield is a red herring and should not be used as a basis for upholding the complaint. Also reference to discount rates is unreasonable because advisers weren't required to refer to them.
- The investigator made no reference to the drawdown sustainability calculations which showed that, assuming Mr C took an equal income to the projected benefits of the DB scheme at age 60, increasing by RPI each year, Mr C's pension wouldn't run out until he was 113 years old.
- In terms of redress - any calculation should be measured against the PPF because at the time of advice, details of the BSPS2 were unknown and it didn't exist.

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 Businesses ('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 BUSINESS'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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G 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 C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Pensionhelp carried out a transfer value analysis report (as required by the regulator) showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). I can see this was based on Mr C's existing scheme benefits under the BSPS. But at the time of the advice Mr C didn't have the option to remain in the BSPS – he'd received his 'Time to Choose' information, so he either needed to opt into the BSPS2 or move with the scheme to the PPF.

Pensionhelp has argued that the BSPS2 wasn't certain to go ahead, so as the terms were unclear, they were unable to confidently compare this against the transfer option. But I think Pensionhelp overestimated the chance of this not happening. Mr C had received his "Time to Choose" pack by the time the advice was given. 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. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr C through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision. Basing the analysis on the existing BSPS benefits was, in my view, somewhat redundant and wasn't helpful to Mr C.

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 C was 41 at the time of the advice and its recorded that he wanted to retire at 60. The TVAS dated 14 November 2017 set out the relevant critical yields: at age 60 it was 8.32% assuming Mr C took a full pension and 7.06% if he took a cash lump sum and a reduced pension. Critical yields were also produced at age 65 – these were 6.84% and 5.85% respectively. The critical yields to match the benefits available through the PPF at age 60 and 65 were quoted as 5.55% and 5.3% respectively (60) and 4.87% and 4.63% respectively (65).

But as I've said above, Mr C remaining in the existing DB scheme wasn't an option.

So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

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 4.4% per year for 18 years to retirement (age 60). 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 C's 'balanced' attitude to risk and also the term to retirement. In my view, there would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Here, the lowest critical yield based on a retirement age of 60 was 5.3%, which was based on Mr C taking a lump sum and a reduced pension through the PPF. The critical yield if Mr C took the same benefits through his existing scheme at age 60 was 7.06%. So, if Mr C were to opt into the BSPS2 and take the same benefits at age 60, the critical yield would've been somewhere between those figures, and likely closer to 7.06%. Given the discount rate of 4.4% and the regulator's middle projection rate of 5%, I think Mr C was most likely to receive benefits of a lower overall value than those provided by either the BSPS2 or the PPF at age 60 if he transferred to a personal pension, as a result of investing in line with a balanced attitude to risk. In my view to have come close to achieving the desired returns to match the benefits available to him through his DB scheme, let alone exceed them, would've required Mr C to adopt a greater level of investment risk than he was prepared to take.

I can see Pensionhelp says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr C's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

Pensionhelp also questions the importance or relevance of the critical yield because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. Pensionhelp says Mr C didn't want guaranteed benefits like an annuity - it said he wanted to take his benefits flexibly. But the regulator required Pensionhelp to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr C could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for almost another 20 years. I think it's entirely possible that Mr C would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Pensionhelp has pointed to the drawdown sustainability calculations as being a better way of demonstrating suitability and the viability of the transfer. I've already said why I think the critical yield figures are still important in DB transfer cases like Mr C's.
But looking at this analysis, I can see the key assumptions Pensionhelp used to determine that Mr C's fund wouldn't run out until he was well over 100 years old, were based on an investment return of 5.9% each year and an income withdrawal at the same level as Mr C's DB scheme would provide, increasing in line with inflation. Notwithstanding my view on the likelihood of Mr C being able to achieve a consistent investment return at this level each any every year his fund was invested, as I said above, in my view, there would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. So why would Mr C take on investment

risk if he was only going to take the same level of income he could enjoy without that risk by staying in the DB scheme? His DB scheme would pay him a guaranteed and escalating income for life – so I'm not persuaded this analysis demonstrates it was in Mr C's best interests to transfer out of the BSPS.

Pensionhelp has also referred to and provided a cashflow analysis, which I have considered. It's not clear to me whether this was produced and discussed with Mr C at the time – Pensionhelp has indicated it wasn't a requirement to produce this kind of analysis at the time. But in any event, this appears to demonstrate the potential for Mr C to meet his income need and leave a significant lump sum for his family upon his death. Looking at this, I can see Pensionhelp has assumed the same level of investment growth as the analysis above and assumed that from age 60 Mr C would withdraw around £18,000 a year to supplement his rental income to meet his indicated target income. And then from age 67 onwards when his state pension is payable, his withdrawals reduce to around £4,000 a year leaving a residual pension pot of around £500,000 as a legacy upon his death.

Again, notwithstanding the point I made above about the assumed investment return, or that the cashflow analysis does not include any stress testing scenarios to account for periods of poor investment performance and/or spikes in inflation to show how this might affect things, this scenario is one in which Mr C accepts or takes a lower retirement income in exchange for / prioritising lump sum death benefits. As I will go on to explain later on, I don't think this should've been prioritised over his security in retirement, particularly when it appears that Mr C's family would already be well taken care of through existing means in the event of his death - something Pensionhelp documented in the advice paperwork at the time. And crucially as I will also go on to explain, it seems Mr C's income needs could be met too by remaining in his DB scheme. So again, I'm not persuaded this clearly demonstrates it was in Mr C's best interests to transfer his pension.

So overall, given Mr C was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. But I accept that financial viability isn't the only consideration when giving transfer advice, as Pensionhelp has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr C's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It seems that the primary reason Pensionhelp recommended the transfer was to provide Mr C with flexibility – the ability to draw a flexible income of between £20,000 to £25,000 a year.

But I'm not persuaded that Mr C 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 flexibility, if that's what he ultimately required.

Mr C was 41 at the time of the advice. And while I accept he might have given some thought to his retirement, given it was still many years away, I don't think he had anything that could reasonably be described as a concrete retirement plan. I accept Mr C might have liked the idea of retiring early and before the scheme's normal retirement age of 65. But Mr C already had this option available to him - he didn't have to transfer out to achieve this. I also accept that Mr C couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr C had to take those benefits at the same time. But nothing indicates that Mr C had a likely future need to take a cash lump sum and then defer taking his income. I also haven't seen anything to indicate that Mr C had a strong need to vary his income throughout retirement.

Pensionhelp's advice and analysis as I referred to above, was based on giving Mr C the flexibility to reduce the income he took from his personal pension when his state pension became payable. But as I will discuss below, this appears to be tied into prioritising lump sum death benefits, which I don't think was necessary or suitable in the circumstances. Importantly, as I referred to earlier on, I think Mr C's retirement income need could be met by remaining in the DB scheme. Pensionhelp's analysis indicated Mr C would be entitled to an annual pension income of around £17,800 based on the the existing BSPS benefits. Because of the reduced revaluation factors, under the BSPS2 this figure would be lower, but in my view still close to it. While this would cover what Mr C indicated was his core annual expenditure of around £16,500, on its own it wouldn't meet his desired annual income of up to £25,000. But the shortfall could be made up from Mr C's rental income, which was around £700 a month or £8,400 a year.

It's possible that Mr C might not be able to consistently rely in his rental income to make up the shortfall - for example, there might be periods where he wasn't able to let the property. But Mr C and his employer were contributing to his workplace DC pension scheme – an amount of around £8,400 a year. So not accounting for any investment growth, changes in Mr C's salary or changes to his pension contribution rate, this had the potential to be worth in excess of £160,000 assuming around 20 years' contributions. This means that at age 60, Mr C would likely have a not insignificant pension to draw on flexibly, as and when he needed, to supplement his DB scheme income (this ignores joint savings, Mr C's wife's pension provision and from age 67 both their state pensions.) So it wasn't the case that Mr C had to sacrifice flexibility in retirement by opting into the BSPS2.

Pensionhelp says that if Mr C remained in his DB scheme, once his and his wife's state pensions were payable, he would have more income than he needed and as a result would pay more tax. But it seems to me this would be a nice problem to have – I'm not persuaded Mr C would turn down the possibility of having a greater level of income throughout his retirement – an income that was guaranteed and would escalate. A greater income could mean Mr C's standard of living improved, or if he didn't want the extra income he could save / invest it for later on, or it could be used for legacy planning purposes. So I'm not persuaded Pensionhelp's argument demonstrates Mr C had a clear need for flexibility in retirement or that a transfer out of the scheme was in his best interests.

If Mr C had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 60, according to Pensionhelp's analysis, Mr C would've been entitled to a pension of just under £14,000 per year. This was lower than the pension he'd likely 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 C had his rental income, his DC scheme as well as his wife's pension to supplement their household income. So, I still think Mr C could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with the scheme to the PPF.
Overall, I think Mr C's income need in retirement could be met by either the BSPS2 or the PPF. And I'm not persuaded it was in Mr C's best interests to transfer to a personal pension arrangement at this time just to have flexibility that I'm not persuaded he really needed.

Death benefits

Pensionhelp recorded that Mr C preferred to have a potentially tax-free lump sum death benefit paid to his wife and children rather than the taxable reduced spouse's pension provided by the DB scheme.

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 C. But whilst I appreciate death benefits are important to consumers, and Mr C 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 C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr C predeceased her. I don't think Pensionhelp made the value of this benefit clear enough to Mr C. It was guaranteed and escalated and under the BSPS2 it would also be calculated as if no tax-free cash had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

In any event, Mr C already had lump sum death benefits available. Pensionhelp knew that Mr C had generous death-in-service cover if he died before retirement. And it also knew he was contributing to his workplace DC pension scheme, which Mr C could nominate his wife as beneficiary of - if he hadn't already done so.

I'm also mindful that Pensionhelp documented in the advice paperwork that Mr C's wife would most likely have sufficient existing means to meet her income need in the event of Mr C's death. So, it strikes me as a little odd why provision of lump sum death benefits were prioritised and led to Pensionhelp recommending the transfer. But, if Mr C genuinely wanted to leave a legacy to his wife and family over and above that which was already available, and which didn't depend on investment returns, I think Pensionhelp ought to have better explored and ultimately recommended additional life cover. I can see Pensionhelp referred to this, albeit relatively briefly, as an option and it produced quotes for a whole of life insurance policy ranging from £56 a month up to £354 a month. And this was based on a sum assured reflecting the full transfer value.

But I don't think this was a balanced way of presenting things. I say this because, basing the quote on the transfer value of Mr C's pension benefits essentially assumed that he would pass away on day one following the transfer. And I don't think that's realistic. Ultimately, Mr C wanted to leave whatever remained of his pension to his family, which could be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr C how much he would ideally like to leave to his family after taking into account what was already available. And this could've been explored on a whole of life or term assurance basis, which in my view was likely to be cheaper to provide – albeit I've seen nothing to indicate that Mr C couldn't afford a premium of £56 a month or more.

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 C. And I don't think that insurance was properly or fully explored as an alternative.

Control or concerns over the BSPS

I understand that one of the drivers for Mr C seeking advice was concerns he had about the scheme moving to the PPF.

I appreciate that Mr C, like many of his colleague no doubt, 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. There was lots of negative sentiment about the PPF. So it's quite possible that Mr C was 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 Pensionhelp's obligation to give Mr C 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, the advice should've properly taken the benefits available to Mr C through the BSPS2 into account and I think this should've alleviated Mr C's concerns to a greater extent about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that Pensionhelp should've reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and 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. Mr C might not have been able to later transfer out of the PPF – but for the reasons I set out earlier, there was no apparent need for him to do so.

So, I don't think that Mr C's concerns were a compelling reason to recommend the transfer out of the DB scheme altogether.

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 C. But Pensionhelp wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr C shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed (he already had flexibility in any event) and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme, particularly as it appears his beneficiaries already had sufficient means in the event of Mr C's death. So, I don't think it was in Mr C'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.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given. And Pensionhelp has made much of this point. But as I've already said, I think it was clear to all parties that it was likely to go ahead. Mr C had around 20 years before he expected to retire, and I don't think he could be certain at this time exactly when he would retire. 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 C would've retained the ability to transfer out of the scheme nearer to his retirement age *if* he needed to. Also, Mr C 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 C chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

So, I think Pensionhelp should've advised Mr C to opt into the BSPS2.

Of course, I have to consider whether Mr C would've gone ahead anyway, against Pensionhelp's advice.

I've considered this carefully - but I'm not persuaded that Mr C would've insisted on transferring out of the BSPS against Pensionhelp's advice. I say this because, while as I've already said, Mr C was likely motivated to transfer when he approached Pensionhelp, I still think Mr C would've listened to and followed Pensionhelp's advice if things had happened as they should have and it recommended he not transfer out of the scheme. Mr C was not, in my view an experienced investor – so I don't think he was someone who possessed the requisite skill, knowledge or confidence to against the advice they were given, particularly in complex pension matters. Mr C's pension accounted for the majority of his private retirement provision at this time, so if Pensionhelp had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr C's concerns about his employer and the scheme or his desire for lump sum death benefits 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 Pensionhelp had explained that Mr C could likely meet all of his objectives, including crucially meeting his desired income need without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr C would've insisted on transferring out of the BSPS against Pensionhelp's advice.

In light of the above, I think Pensionhelp should compensate Mr C 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 £250 for the distress and inconvenience the matter has caused Mr C. 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 Pensionhelp – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr C. Taking everything into account, I think the unsuitable advice has caused him some distress. So I think an award of £250 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice.

I consider Mr C would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

Pensionhelp must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Pensionhelp should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Pensionhelp should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Pensionhelp's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Pensionhelp may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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 Pensionhelp Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Pensionhelp Limited pays Mr C the balance.

If Mr C accepts this decision, the money award becomes binding on Pensionhelp Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 11 August 2023.
Paul Featherstone
Ombudsman