DRN-3534263

## The complaint

Mr W complains about the advice given by KBFS Financial Limited ('KBFS') 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 W'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 August 2017 scheme members were told that, if the Regulated Apportionment Arrangement ('RAA') was approved (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) they would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

Mr W was concerned about what the recent announcements by his employer meant for the security of his pension, so in August 2017 he contacted his existing financial adviser for advice. Because they didn't hold the relevant regulatory permissions to advise on DB pension transfers, they referred Mr W to KBFS.

Mr R's existing financial adviser completed a fact-find to gather information about Mr R's circumstances and objectives, which KBFS reviewed with Mr R during a telephone meeting. Amongst other things this recorded that Mr W was 48; he was single but had a long-term partner; he had one dependent child; he jointly owned his own home which had an outstanding mortgage of around £25,000 due to be repaid in six years' time; he had savings of around £30,000; and he wanted to semi retire at 58 by working part-time until his early 60's. KBFS also carried out an assessment of Mr W's attitude to risk, which it deemed to be 'balanced'.

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).

On 26 October 2017 KBFS advised Mr W to transfer his pension benefits into a personal pension and invest the proceeds in an investment fund which KBFS deemed matched Mr W's attitude to risk. The suitability report said the reasons for this recommendation were: to enable Mr W to protect the full value of his pension fund in the event of his death and to be able to pass it on to his family; to provide the option of flexible income from age 55 without any reduction in benefits; and to allow Mr W more control over where his pension was invested – Mr W didn't want to enter the PPF.

Mr W accepted the recommendation and some time afterwards, around £360,000 was transferred to his new personal pension.

Mr W complained in 2021 to KBFS about the suitability of the transfer advice using the services of a representative. Mr W said he believes the advice was flawed and has lost out as a result.

KBFS didn't uphold Mr W's complaint. In summary it said it was satisfied the pension transfer was appropriate for Mr W at the time primarily because it enabled him to meet his objective of freeing his pension planning from his employer to provide greater flexibility and choice as to how and when to take the benefits. It said Mr W's DB scheme didn't provide flexible benefits and so it would stop Mr W from being able to retire early. It said the transfer also met Mr W's priority to be able to pass on the benefits of his pension to his partner in the event of his death, which the DB scheme wouldn't allow because he wasn't married.

Dissatisfied with its response, Mr W referred his complaint to our Service. An investigator upheld the complaint and required KBFS to pay compensation. In summary they said the transfer wasn't in Mr W's best interests. They said the transfer wasn't financially viable because of the high critical yield – they said it's likely Mr W wouldn't have been able to even match his DB benefits in the personal pension if he was invested in line with a balanced risk strategy. And they said this was based on a retirement age of 65. But they said, given Mr W indicated he intended to retire at 58, they would've expected KBFS to have produced analysis based on a retirement age of 58. They also said there were no other compelling reasons to justify the transfer as being suitable: there wasn't a genuine need for Mr W to have control over his fund; they didn't think flexibility in terms of Mr W accessing his benefits earlier than age 65 could only be achieved by transferring; and death benefits shouldn't have been prioritised over Mr W's income needs in retirement. They said lump sum death benefits could've been provided by term assurance, rather than a whole of life policy KBFS quoted for. They said this would've been affordable and would've satisfied Mr W's objective without compromising his guaranteed benefits. They said Mr W should have been advised to opt into the BSPS2.

KBFS disagreed. In summary it said it was important to remember that, at the time there was a lot of uncertainty surrounding the pension fund and what might happen. They said at the time, the only guarantee was either transfer to the PPF or transfer out – the BSPS2 was not guaranteed to go ahead. They said Mr W was not married and so under the scheme his partner would not receive half of the deferred pension. They said because of this, a more accurate reflection of the benefits available to Mr W in the TVAS was the hurdle rate. They disagreed with the investigator that a decreasing term assurance policy was a suitable replacement to transferring the pension to achieve things. Mr W wanted to retire early and with no way of knowing what his DC pension fund value would be – he wasn't sure he'd still be paying into the scheme given the uncertainty - he wanted flexible access to his pension to meet his ambition of buying a campervan and travelling whilst young enough to do so. In response to the investigator's point about providing analysis for a retirement age of 58, they said unfortunately the scheme did not provide an early retirement factor to age 58, so 55 was used to give an accurate comparison.

Because the investigator wasn't persuaded to change their opinion, the complaint was passed 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 KBFS' 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, KBFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

*Financial viability*

KBFS carried out a transfer value analysis report (as required by the regulator) showing how much Mr W'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 W's existing BSPS scheme benefits. But at the time of the written advice in late October 2017, Mr W didn't have the option to remain in the BSPS. So basing the analysis on the existing scheme was somewhat redundant and in my view wasn't helpful to Mr W.

KBFS has said that at the time of the advice there was no guarantee the BSPS2 would go ahead. But by the time KBPS issued its suitability letter, Mr W would've received his 'Time to Choose' information with details about the scheme - the BSPS2 would've offered the same income benefits but the annual increases would've been lower. I accept the BSPS2 wasn't guaranteed to go ahead. But in my view, all of the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met. So given this, I think it was reasonable for KBFS to have used the benefits available to Mr W through the BSPS2 in its analysis and advice 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 W was 48 at the time of the advice it was recorded in the fact-find that he wanted to retire at 58 with a view to working part-time until his early 60's. The critical yields required to match Mr W's benefits at ages 55 and 65 were set out in the TVAS report of 10 October 2017 and were 8.01% assuming Mr W took a full pension at age 65 and 19.06% assuming he took a full pension at age 55. The critical yields to match the benefits available through the PPF were 4.99% assuming Mr W took a full pension at age 65 and 4.55% assuming he took a cash lump sum and a reduced pension. At age 55, they were 10.02% and 9.11% respectively.

But as I've said above, Mr W remaining in the BSPS wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided even if that meant waiting for the details to be known. 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.

I can see KBFS has said the reason it didn't provide analysis based on Mr W retiring at age 58 was because the scheme didn't provide an early retirement factor to age 58. But this information was provided in the 'Time to Choose' information Mr W would've most likely received prior to KBFS providing its formal written advice. So I think it could and should've provided analysis based on a retirement age of 58. I think this would've been more meaningful for Mr W given this is what KBFS' advice was based on.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.3% per year for six years to retirement (age 55), 3.7% for nine years to retirement (age 58) and 4.3% for 16 years to retirement (age 65.) 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 W's 'balanced' attitude to risk and also the term to retirement. In my view, there would be little point in Mr W 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 55 (closest to Mr W's recorded intended retirement age) was 9.11%, which was based on Mr W taking a cash lump sum and a reduced pension through the PPF. It was 10.02% based on him taking a full pension.

The critical yield if Mr W took a full pension at 55 through the existing BSPS was 19.06% – no figure was provided for a reduced pension basis. So, based on Mr W taking a full pension at age 55 through the BSPS2, I think the critical yield would've been somewhere between 19.06% and 10.02%, and likely closer to 19.06%. Based on a retirement age of 58, I think the relevant critical yield would've likely been less than 19.06% (age 55) but higher than 8.01% (age 65.) These rates was significantly higher than the discount rate and above the regulator's upper projection rate.

So, given this, I think it was clear that Mr W was likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 at retirement, as a result of investing in line with a balanced attitude to risk. I don't think the position was any different if the scheme moved to the PPF.

I can see that KBFS has questioned the relevance or importance of the critical yield in this case because Mr W was single – the critical yield was based on providing a spouse's pension which was irrelevant to Mr W as his partner was not entitled to it. It says the hurdle rate was a better comparison.

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 W was considering giving up. It's also the case that the regulator required KBFS to provide it and so deems it a necessary and important part of the decision-making process. So KBFS needed to provide an analysis based on the critical yield and I think it is a relevant consideration here.

I accept Mr W was single at the time and the critical yield figure included the spouse's pension benefit the DB scheme provided. But reference to the hurdle rate, while ignoring the spouse's pension, also ignores any guarantees in terms of increases in payment. So I'm not persuaded it is a more appropriate comparison here. In any event, the TVAS recorded that the hurdle rate based on a retirement age of 55 was 5.1% - so I'm not persuaded reference to this rate demonstrates the financial viability of the transfer in this case or that it was in Mr W's best interest to transfer out of the scheme.

I'd add here that I have some concerns about how KBFS assessed Mr W's attitude to risk as 'balanced'. The questions in the attitude to risk questionnaire do not, in my view, readily demonstrate how the resulting profile was arrived at. But given Mr W's investment inexperience, and his answer to what I consider was a key question asked of him at question 10: "*I am willing to bear some risk and chance for loss in an effort to achieve higher returns, but prefer a significant portion of my portfolio to be invested in cautious assets."* I think a 'cautious' approach to risk was more suitable here. That said, because I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr W, which I will go on to explain my further reasons why, it follows that I don't need to consider the suitability of the investment recommendation.

So based on financial viability alone a transfer out of the DB scheme wasn't in Mr W's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as KBFS has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

*Flexibility and income need*

KBFS recommended the transfer because Mr W wanted the option of flexible income and wanted to access his benefits at age 55 without any reduction.

While I'm not persuaded that Mr W knew with any certainty whether he required flexibility in retirement, 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 W was 48 at the time of the advice, and while his intended retirement was still around 10 years away, it's clear from the advice paperwork that he'd given his retirement some thought. The fact-find recorded that Mr W wanted to semi-retire at 58, have access to funds at this point while working part-time until his early 60's. It also recorded that Mr W would like to be able to take a job closer to home to avoid his current lengthy commute. I'd add here that the suitability letter, in my view, paints a slightly confused picture of Mr W's retirement age objective. It says that Mr W wanted to retire "*as soon as possible"* and as I referred to above, to have a flexible income to enable him to retire at 55. But it then refers to him wanting to take money from his pension at age *"55/58."* It's not clear therefore whether Mr W's plan to retire at 58 was as formed as the fact-find completed by his existing adviser might suggest or whether KBFS hadn't fully grasped or understood his objective. But in any event, I disagree with KBFS that Mr W couldn't retire early if he remained in the DB scheme because it didn't provide flexible benefits. I think Mr W could've achieved things by staying in the DB scheme. I'll explain why.

Whether at age 55 or 58, I think it's reasonable to assume Mr W was looking to reduce his hours and work part-time. As I said above, Mr W was considering working outside of his current sector when the time came and closer to home. But based on what KBFS documented in the suitability report that Mr W *"...could reduce your work schedule to part-time which would mean less 15 hour days and less time spent working in hazardous conditions"* this suggests Mr W hadn't ruled out considering reducing his hours in his current job.

Mr W's full-time basic annual income at the time, without overtime, was £35,000. Mr W's recorded annual income need in retirement was around £22,000. So if Mr W worked three days a week, based on his current salary, it's possible that his income would broadly be met by his part-time earnings (around £21,000 assuming 3/5ths of his basic full-time income.) But I can see from KBFS' handwritten telephone note following its initial contact with Mr W that his partner also worked. KBFS appears to have ignored her earnings. But I I think it is reasonable to take them into account given I think Mr W's stated income need was based on a household or joint need – not on an individual basis. So I think any shortfall in this scenario could likely be made up from Mr W's partner's income – I'm not persuaded it was certain to be the case that Mr W would need access to his pension benefits at this stage to help achieve things.

But if Mr W chose to reduce his hours further and work just two days a week for example, this would likely reduce his income to around £14,000 a year leaving a deficit of around £8,000. But ignoring Mr W's partner's income, Mr W was contributing to his workplace DC pension scheme - as was his employer – giving a combined pension contribution rate of 20%. It had a current value of £3,500. So with at least 10 years' contributions ahead, not accounting for investment growth, salary increases or increases in contribution rates, this had the potential to be worth in excess of £70,000 by age 58 - accounting for growth, likely substantially more.

Furthermore Mr W already had £30,000 in savings, which he was adding to at the rate of between £500 - £700 a month. Once his mortgage was repaid after six years, it was recorded that he could add a further £250 a month to this. So by age 58 Mr W could have total savings in excess of £100,000. But even allowing for some capital expenditure over this period, Mr W's savings would likely still amount to a significant amount and likely above £70,000.

So I think Mr W would've had two sources from which he could top up his part-time earnings or take lump sums from to provide him with the flexibility to meet his semi-retirement objective. Mr W could then take his DB scheme benefits once he wanted to stop working altogether – recorded as being in his early 60's. At this point, according to KBFS, Mr W's existing DB scheme income would be somewhere between £15,994 (at age 55) and £22,849 (at age 65) assuming he took a full pension – so slightly less under the BSPS2. But Mr W would still likely have funds in both his DC scheme and savings to supplement his income until his state pension became payable.

It's recorded that Mr W wanted to buy a campervan and go travelling, so he might need access to a cash lump sum to achieve things. KBFS didn't ascertain how much Mr W might need to meet this objective – but given Mr W's two not insignificant existing sources of funds he could draw on for his purpose, I still think he could've likely also met this objective by remaining in his DB scheme.

I don't think the position was any different in the alternative scenario where Mr W chose to leave his current employer at 58 and work part-time in a different job closer to home - I still think he could've achieved things by remaining in the DB scheme. Mr W could choose to either take his DB scheme benefits at 58 and supplement his income through part-time work. Or, if his part-time work earned him enough, Mr W might be able to use his DC scheme and/or his savings and defer taking his DB scheme benefits to achieve a higher starting income when the time came. I think Mr W would still have sufficient funds available to make up any difference in his income until receipt of his state pension.

So it strikes me that Mr W already had the flexibility to achieve his retirement objectives – he didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. But if Mr W 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. And by opting into the BSPS2, Mr W would've retained the ability to transfer out nearer to retirement, if indeed it was required. I think KBFS could've explained this more clearly to Mr W.

If the BSPS2 hadn't gone ahead, Mr W would've moved with the scheme to the PPF. And while the income Mr W would receive was lower than the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower such that it would've made a difference to the recommendation. As I've explained in detail above, Mr W would've likely had other means to draw on flexibly until his state pension became payable.

So overall, I think Mr W could've likely met his objectives and income needs in retirement through the BSPS2 or the PPF and I think he already had the flexibility to achieve his goals. So I don't think it was in Mr W's best interests for him to transfer his pension to have additional flexibility, that I'm not persuaded he needed.

*Death benefits*

One of the primary reasons KBFS recommended the transfer was to enable Mr W to pass on what remained of his pension fund to his partner in the event of his death. Because Mr W was single, his partner wasn't entitled to the DB scheme's spouse's pension.

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 W. But whilst I appreciate death benefits are important to consumers, and Mr W 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 W about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement – it is not a legacy planning tool. I don't think KBFS should've encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I accept Mr W was single and he wanted to provide for his family. But Mr W already had lump sum death benefits available. He had death-in-service benefit, which he could've nominated his partner to be the recipient of – if he hadn't already done so. He was also contributing to his workplace DC pension scheme, which again, he could've nominated his partner as beneficiary of.

But, if Mr W genuinely wanted to leave a legacy for his spouse/daughter, which didn't depend on investment returns or how much of his pension fund remained on his death, I think KBFS should've instead properly explored life insurance. I appreciate KBFS has referred to quotes for a whole of life policy with a sum assured of £600,000 - this was discounted by Mr W because of the cost (the lowest quote was just over £400 a month.) But I don't think that this was a balanced way of presenting this option to Mr W.

It appears the quote was based on the capital value of the scheme's death benefits assuming Mr W died immediately - so essentially assuming that he would pass away on day one following the transfer. But that isn't realistic. Ultimately, Mr W wanted to leave whatever remained of his pension to his family, which would 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 W how much he would ideally like to leave to his partner, after taking into account the above existing benefits, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. And given Mr W's monthly disposable income, likely affordable too.

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 W. And I don't think that insurance was properly explored as an alternative.

*Control or concerns over financial stability of the BSPS*

I understand that Mr W, like many of his colleagues no doubt, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was likely worried his pension would end up in the PPF.

There were lots of negative sentiment circulating about the PPF. So it's quite possible that Mr W was leaning towards the decision to transfer because of the concerns he had about his employer, his negative perception of the PPF and his concerns about the BSPS2. But it was KBFS' obligation to give Mr W an objective picture, taking the emotion out of the equation 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 W through the BSPS2 into account. I think this should've alleviated some of Mr W'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 KBFS should've reassured Mr W that the scheme moving to the PPF wasn't as concerning as he thought or had been led to believe. Importantly Mr W still had the option of taking early retirement through the PPF. And I still think the income available to Mr W through the PPF would've still provided a solid base, which his other means could supplement to meet his overall income need at retirement.

Crucially 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. Mr W might not have been able to later transfer out of the PPF – but given what I said earlier on about Mr W already having the flexibility to achieve his objectives, I don't think there was an apparent need for him to do so.

So I don't think that Mr W's concerns about his DB scheme was a compelling reason to recommend a transfer out of the DB scheme altogether.

*Summary*

I accept that Mr W was likely motivated to transfer out of the BSPS and that his concerns about his employer and the scheme were real. And 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 W. But KBFS wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr W 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 W already had flexibility to retire early or take a phased retirement, so he shouldn't have been advised to transfer out of the scheme on the basis that his DB scheme didn't provide flexibility in how and when he took his benefits. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr W'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 KBFS should've advised Mr W not to transfer out of the scheme and to opt into the BSPS2.

As I said earlier on, KBFS believes the BSPS2 wasn't an option at the time. And as I also said, I appreciate the BSPS2 wasn't guaranteed to go ahead at this time. But I think everything pointed to it likely going ahead, so this ought to have been the position KBFS adopted – I think it is fair and reasonable for it to have done so. And while Mr M indicated he wanted to retire at 58, he was also considering working part-time until his early 60's which could've been still with his current employer. So, I don't think that it would've been in his best 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 W would've retained the ability to transfer out of the scheme nearer to his retirement age - if his needs demanded it. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

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

I've considered this carefully, but I'm not persuaded that Mr W would've insisted on transferring out of the BSPS against KBFS's advice if things had happened as they should have and they'd recommended he opt into the BSPS2. I say this because, while as I've already said, Mr W was likely motivated to transfer when he approached KBFS, on balance, I still think Mr W would've listened to and followed its advice. I've seen nothing to suggest Mr W was an experienced investor, so I don't think he possessed the requisite skill, knowledge or confidence to against the advice he was given, particularly in complex pension matters.

Mr W's pension accounted for all of his private retirement provision at the time and in my view, his attitude to risk was cautious. So, if KBFS 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.

I'm not persuaded that Mr W's concerns about his employer or 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. So if KBFS had explained that Mr W could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr W would've insisted on transferring out of the BSPS if KBFS had given suitable advice that he not do so and that he should opt into the BSPS2.

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

I can see the investigator also recommended an award of £200 for the distress and inconvenience the matter has caused Mr W. 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 KBFS – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr W. Taking everything into account, including that I consider Mr W's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him some distress. So I think an award of £200 is fair in all the circumstances.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

KBFS 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.

KBFS 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 W and our Service upon completion of the calculation.

For clarity, Mr W has not yet retired, and he has no immediate 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 W'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, KBFS should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W 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 W receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr W accepts KBFS' offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, KBFS 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 W'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.

KBFS should also pay Mr W £200 for the distress and inconvenience the matter has caused.

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 KBFS Financial Limited to pay Mr W 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 KBFS Financial Limited pays Mr W the balance.

If Mr W accepts this decision, the money award becomes binding on KBFS Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 24 August 2023.
Paul Featherstone
**Ombudsman**