DRN-3545622

The complaint

Mr C complains about the advice NTM Financial Services Ltd ('NTM') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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 NTM, 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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr C's employer would be set up – the BSPS2.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. I haven't been provided with a copy of the pack sent to Mr C. But I'm aware that those gave scheme members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

The DB scheme administrators gave scheme members, including Mr C, until 11 December 2017 – which was later extended to 22 December 2017 – to make their choice between the PPF and BSPS2. If Mr C didn't make a choice the default position was that his pension benefits would move to the PPF. The BSPS trustees had previously provided him with a cash equivalent transfer value ('CETV') which expired in February 2018.

Mr C approached NTM for pension transfer advice in November 2017. NTM told him it might struggle to provide advice before the time to choose deadline of 22 December 2017. It completed a fact-find with him and an assessment of his risk appetite. It also obtained a transfer value analysis ('TVAS') report. Amongst other things, NTM recorded that:

- Mr C was aged 52, married to Mrs C, with 3 children, two of whom were under sixteen and financially dependent.

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- He was employed with a yearly income of £36,000 giving him a net monthly income of £2,042.
- Mrs C was 45 years old, working and earning around £11,000 a year.
- They had regular outgoings of £1,464 a month**.**
- They owned their own home which was worth £180,000. It had an outstanding mortgage that was due to be repaid when an endowment matured in June 2018.
- They had two loans. One had an outstanding balance of around £1,300 and was due to be repaid in August 2018. The second had a balance of around £16,000 and wouldn't be repaid until 2021. They also had a credit card debt of around £1,400.
- Mr C and his employer were contributing towards his employer's defined contribution ('DC') pension scheme.
- Mr C's preferred retirement age was 56. He thought he would need an income of around £2,000 a month in retirement.
- He had a "high" attitude to risk.
- He had no investment experience.
- His DB fund had a CETV of £477,266.
- The BSPS would have paid him a full yearly pension of £26,728 at age 65. Alternatively, he could have taken a tax free cash ('TFC') lump sum of £118,000 and a reduced pension of £17,713.
- The growth rates required to match those benefits from an alternative pension (the critical yields) were 8.49% and 6.74% respectively.
- At age 65 the PPF would entitle Mr C to a yearly pension of £22,135; or TFC of £115,019 and a reduced pension of £17,318. The critical yields to match that were 4.5% and 4.09%.
- At age 55 the BSPS would have paid Mr C a yearly pension of £14,396. Or he could have taken TFC of £67,870 and a reduced pension of £10,180. The critical yields were 28.12% and 19.08%.
- The PPF would pay Mr C a yearly pension of £14,870 at age 55. Or he could take TFC of £82,091 and a yearly pension of £12,360. The relevant critical yields were 12.54% and 11.11% respectively.

On 21 December 2017 NTM sent Mr C its suitability report setting out its analysis. It recommended he should transfer his DB funds to a named personal pension. Amongst other things it said Mr C:

- Was unhappy about the potential for his pension to go into the PPF.
- Wanted to retire at age 56.
- Wanted the ability to access his pension benefits flexibly and take a higher income earlier in his retirement.
- Wanted to leave the pension fund remaining on his death to his family for them to access as they wished.
- Wanted to take control of his pension investments.

The suitability report said that transferring would allow Mr C to meet his objectives. It said that by taking an income equivalent to his DB scheme by drawdown the funds would last beyond his life expectancy.

Mr C met with NTM on 5 January 2018 to discuss its recommendations. Mr C confirmed he hadn't opted into the BSPS2 because it wasn't guaranteed and wasn't his best option for early retirement and TFC. On the same day NTM provided an illustration from the named personal pension provider, showing what his transferred pension could be worth to him at his preferred retirement age of 56.

Mr C accepted NTM's recommendation to transfer. He paid an initial fee to it of £9,545 for its advice and arranging the transfer. He also agreed to pay it fees for ongoing investment advice of 0.64% of the value of his fund. Also, the personal pension provider would charge him 0.05% of the fund value for setting up the pension together with a platform charge of .3% a year and an admin charge of £80. There were also individual fund charges amounting to around 0.46% a year.

In 2021 Mr C complained to NTM that it had misadvised him. He said he didn't think NTM gave a fair assessment of the "downfalls" of a personal pension against remaining within the DB scheme.

NTM didn't initially give a substantive reply to Mr C's complaint. So Mr C referred it to our Service. After he'd done so NTM replied to the complaint. Amongst other things it said it had provided figures within its suitability report for Mr C retiring at age 55, rather than his desired retirement age of 56 as the DB scheme's administrators wouldn't provide figures at age 56. It said that by the time he transferred, in January 2018, Mr C no longer had the opportunity to opt for the BSPS. So his only choices were to allow his pension to move to the PPF or to transfer. It added that the income from the PPF wouldn't allow him to retire at age 56. It said Mr C's only real choice in order to meet his objectives was to transfer. It also said it had explained the risks involved in a transfer to a personal pension.

One of our Investigators looked into Mr C's complaint. The Investigator didn't think NTM had dealt with Mr C fairly. The Investigator recommended that NTM should compensate Mr C for any loss he suffered because of its unsuitable advice. The Investigator also said NTM should pay Mr C £500 to address his distress and inconvenience arising from the unsuitable advice. NTM didn't provide a substantive reply to our Investigator's assessment. 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 Businesses 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 NTM's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

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

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that it 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.

The FCA's review,

NTM told us the FCA had reviewed some of its files where it had given advice in similar circumstances to Mr C's. It said the FCA didn't find it had done anything wrong. I wasn't party to what the FCA reviewed or what it found, nor do I need to be. Our function isn't a regulatory one. And while I'm required to consider the regulator's rules, guidance and standards, my role is to decide whether NTM has acted fairly and reasonably in all the specific circumstances of this complaint not simply to look at what the FCA did. So the FCA's file review of other cases isn't relevant to that consideration.

Financial viability

NTM carried out a transfer value analysis report ('TVAS' - as the regulator required) 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). NTM's TVAS showed two such comparisons, the first was with Mr C's benefits from the BSPS and the second with Mr C's benefits if he allowed his pension to move to the PPF.

When Mr C approached NTM for advice he had until 22 December 2017 to tell the BSPS trustees whether he wanted to opt for the BSPS2. He had until February 2018 to decide if he wanted to transfer out of the DB environment altogether. NTM didn't send Mr C its suitability report until 21 December 2017. So it's unlikely he'd received and read it before the BSPS2 deadline had passed. Mr C met with NTM in January 2018 to discuss its recommendations. At that meeting Mr C confirmed that he hadn't opted into BSPS2. And as this was a one-time only process, Mr C couldn't, at a later date, have changed his mind and opted for the BSPS2. That meant Mr C was only left with two options:

- Allowing his pension to move into the PPF.
- Transferring to an alternative arrangement.

As such the only comparison within NTM's TVAS of any real value was looking at the benefits of a transfer to a personal pension against those provided by the PPF. So that's what I've focused on below.

NTM gave its advice 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. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable.

Prior to October 2017 this Service published similar rates on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I think they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

Mr C was aged 42 at the time of the advice and said his preference was to retire at age 56. NTM didn't provide any figures for retirement at age 56 and instead gave those for age 55. It said that was because the DB scheme administrators didn't provide figures for age 55. It's notable that NTM didn't ask for a copy of Mr C's *time to choose* booklet. I'm aware that document set out a table of the relevant factors that would have allowed NTM to calculate Mr C's benefit entitlement from the BSPS2 and the PPF at any age between 55 and 64. And given that the BSPS wasn't ever going to be an option for Mr C, I think it should have shown those figures for Mr C retiring at age 56. But it didn't do so. I think that was an avoidable oversight. And, as it didn't give those figures, I've referred to the figures it did show at age 55 below.

The critical yields required to match Mr C's PPF benefits at age 55 were 12.54% if he took a full pension and 11.11% if he took TFC and a reduced pension. At the scheme's normal retirement age of 65 the critical yields were 4.50% a year if Mr C took a full pension and 4.09% if he took TFC and a reduced pension.

The relevant discount rates closest to when the advice was given which I can refer to were published by the Financial Ombudsman Service for the period before 1 October 2017. They were 2.7% for two full years to retirement at age 55, 2.8% for three full years to retirement at age 56 and 4% for 12 full years to retirement at 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 C's "high"' attitude to risk and also the term to retirement. 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. But here, given the lowest critical yield was 4.09% and the highest 12.54%, I think Mr C was likely to receive benefits of a lower overall value than the PPF at retirement.

NTM said its cash flow models showed that Mr C would be able to take equivalent benefits from the DB scheme or PPF and that the funds would last beyond his life expectancy. NTM hasn't shown its calculations, only the results of those, so it's not possible to check their accuracy. But, it said its figures are based on a return of 5% a year every year. However, some of the funds that NTM had recommended Mr C invest in fell into the "*adventurous*" risk category. Such funds tend to be fairly volatile. So consistent growth at a level of 5% seems unlikely.

Also if there was a sustained period of poor performance or a market crash then there was a very real chance that Mr C's fund would grow at a much slower rate or could suffer losses. In those circumstances Mr C's fund could be significantly less than NTM's models show.

Similarly NTM said Mr C wanted to transfer his funds in order to be able to take higher sums at an early age. But taking higher sums sooner would have the effect of reducing the funds remaining with less scope for growth. That could see those funds being depleted quicker than expected. But NTM's models don't appear to reflect that.

Further, NTM's TVAS shows that, after three years investment, before Mr C turned 56, if the fund grew at 5% each year, it would be worth £546,274. That sum would increase to £565,641 after four years investment, around five months after Mr C turned 56. Those figures indicate that by Mr C's 56th birthday his fund would be worth something like £557,500. But that is without factoring in the effects of inflation. In contrast the named pension provider's illustration showed what Mr C's fund would likely be worth at his 56th birthday, after allowing for a growth rate of 5% but being reduced by inflation of 2.5% as well as product and adviser charges. That illustration showed the fund would be worth £482,000 at age 56. That is £75,500 less than NTM's advice was based upon.

Further NTM's cash flow models appear to be based on Mr C taking equivalent income to the DB scheme at age 56. As far as I can tell it hasn't adjusted its models to show Mr C taking an income of at least £24,000 a year (£2,000 a month) from age 56, which is what he said he believed he needed. Neither, has it shown the outcome of models which are "stress tested" to allow for the possibility of market crashes or poor performance.

It follows that I don't think NTM's cashflow models are likely to be representative of Mr C's situation in retirement.

That said, given his attitude to risk, if his fund did grow at the regulator's mid-level projection rate there was scope for Mr C's investments to make him slightly better off in retirement if he retired at age 65 compared to the PPF benefits. But that was anything but guaranteed. Transferring meant putting his funds at risk for only the marginal possibility that he could be better off by doing so. And, if his funds didn't meet NTM's projected growth rates, then he would likely be worse off in retirement. I don't think that "*clearly demonstrates*", as the regulator required, that it was in his best interests to transfer.

Of course financial viability isn't the only consideration when giving transfer advice. So I've gone on to consider whether NTM has clearly demonstrated that its advice was in Mr C's best interests. When doing so I've been mindful that NTM's role was to find out what Mr C's wants and needs were and why. Its role wasn't simply to do what Mr C wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and income needs

NTM said that transferring allowed Mr C to retire at 56. But having considered the evidence, I don't think Mr C had a genuine need to access his pension funds earlier than the normal scheme retirement age.

Mr C told NTM that his preference was to retire at 56. I can fully understand his wish to retire early. In fact I think most people would say that they would like to retire early if given the chance. I also think the majority would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their retirement for. It seems to me that this is something Mr C was likely to reassess once he reached age 56. In fact Mr C turned 56 two years ago. But he told us that he still hasn't retired. So I think early retirement was something that was – most likely – nice to have rather than a genuine need for Mr C.

I can understand why Mr C would aspire to retiring at age 56. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to have been a more likely prospect for Mr C at the time of NTM's advice. But there's no evidence that NTM seriously challenged his wish of early retirement at age 56. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

It's also notable that Mrs C was seven years younger than Mr C. She would still be only 49 years old when Mr C turned 56. So it's reasonable to assume that she would keep working and earning for some years to come. But NTM appears to have entirely ignored Mrs C's ability to contribute towards the household's outgoings. And assuming she retained her income of £11,000 a year and Mr C had a pension from the PPF of £12,360, that would leave them only around £640 a year short of their £24,000 a year target.

And it's notable that Mr C was also paying into his employer's DC scheme. In response to Mr C's complaint NTM said that, by the time he turned 56, that pension would have a fund of around £28,400. So, Mr C could have used that fund to top up his income from the PPF until his state pension became payable at age 67 if he'd been serious about retiring at age 56.

But, as I've said above, and as has actually happened, I don't think Mr C's plans to retire at 56 were concrete. So I think it would have been reasonable for NTM to apply less weight to Mr C's desire for early retirement when giving its advice.

That said, it's true to say that Mr C couldn't have had the same level of flexible access to his PPF funds as he could from a personal pension. While he could have chosen to take his pension from the PPF early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from the PPF. Whereas the personal pension would allow Mr C to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr C had any concrete need to take TFC at all or to vary his income throughout retirement.

Also it's not the case that Mr C wouldn't have any flexible access to funds, as he would have been able to draw down sums from his DC pension. And, if he left that until he was 65, without factoring in salary increases, or investment growth, the DC fund could be worth in the region of £72,000 by the time he turns 65. So while the option of drawing all his pension income flexibly might seem like something that would be nice to have, I don't think Mr C had any genuine need for that flexibility that would be worth giving up guaranteed benefits for.

Death benefits

Mr C told NTM that he thought the potential for a lump sum for his wife, should he die before her, would be more beneficial than the spouse's benefit from 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. That's because whatever was left within it at the date of his death would be passed on to Mr C. If that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the PPF would pay Mr C half of Mr C's yearly PPF pension entitlement after he died. But that pension would die with her. So Mr C couldn't leave it as a legacy for their children after she died.

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 funds to a personal pension because of this, the priority here was for NTM to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr C was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr C's withdrawals from it in the meantime.

I also think the existing death benefits attached to the PPF were underplayed. In fact NTM's suitability report doesn't refer to the PPF death benefits at all, it only quotes Mr C's entitlement from the DB scheme. I think it's worth noting that death benefits from the PPF were not as generous as from the DB scheme. For example the PPF wouldn't provide any form of capital sum on Mr C's death. But by the time NTM sent Mr C its suitability report, he would lose entitlement to the DB scheme benefits as the deadline to opt into BSPS2 would expire the next day. So I think it should have also covered off what the death benefits from the PPF were but it didn't do so.

Further, regardless that the PPF death benefits were less generous than those from the BSPS, I don't think that justified a recommendation to transfer to a personal pension.

Mr C was married. The PPF would have paid Mrs C 50% of Mr C's yearly pension entitlement on his death. This was guaranteed and escalated it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mr C lived a long life, he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Also, Mr C had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, then life insurance may have met his needs.

I've noted that NTM did look into the cost of life insurance. Its suitability report said that would cost Mr C around £527 a month. So it didn't think that was viable on grounds of cost. But I don't think NTM presented this option in a balanced way. NTM based the quote on the full transfer value of Mr C's DB scheme. In other words it essentially assumed that he would die on day one following the transfer and that isn't realistic. Ultimately, Mr C wanted to leave whatever remained of his pension to his wife or children, which would be a lot less than the full transfer value if he lived a long life; his investment suffered losses or if he drew down large sums from it in the early years of retirement. A fairer manner in which to provide Mr C with realistic options would have been for NTM to ask Mr C how much he would ideally like to leave as a legacy, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the risk attached with Mr C transferring his pension. And I don't think NTM did enough to highlight the value of Mr C's existing death benefits or to explore the alternatives available to him.

Control or concerns over financial stability of the DB scheme

NTM said Mr C wanted control over how his pension was invested and of his "*own destiny in retirement*". But NTM recorded that Mr C had no investment experience. So, I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And I think his desire for this has been overstated. I don't think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme.

Rather, I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr C, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism regarding the likelihood of a solution. I also don't doubt Mr C was worried his pension would end up in the PPF or that he'd heard negative things about it and this was why he said he preferred to have control over his pension fund.

It's also 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. But that is why it was even more important for NTM to give Mr C an objective picture and recommend what was in his best interests.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And, as I've explained above, Mr C could have met his needs in retirement and retained guaranteed benefits from the PPF.

It follows that I'm not persuaded the uncertainty Mr C experienced when he entered into the advice process was sufficient reason for NTM to recommend he should transfer his safeguarded benefits from a DB scheme, even one that was likely to be moving to the PPF. That's because to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have been a significant driver in NTM recommending Mr C transfer out of the DB scheme altogether.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr C. But NTM 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.

NTM was in a good position to have analysed, tested, challenged and advised Mr C about what was in his best interests for retirement planning. It knows valuable pension pots like Mr C's DB scheme were paid into with the intention of providing for retirement. So, I don't think it was in Mr C's best interests for him to transfer his DB scheme funds to a personal pension.

I appreciate that, by the time Mr C received, considered and accepted NTM's advice, he could no longer opt for the BSPS2. So his only option other than a transfer was the PPF. Something he'd said he didn't want. But by allowing his pension to move to the PPF, he would have retained a guaranteed, risk-free and increasing income. And by transferring to a personal pension Mr C was unnecessarily putting his pension funds at risk. I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a personal pension when he could retain safeguarded benefits within the PPF.

Of course, I have to consider whether Mr C would have gone ahead with the transfer anyway if it wasn't for NTM's advice. I accept that Mr C is an adult and plainly capable of making his own decisions. But, after thinking about this carefully, I'm not persuaded he would have transferred if it wasn't for NTM's recommendation that he should do so. That's because, at the time of its advice, Mr C's BSPS pension accounted for the majority of his retirement provision. He was an inexperienced investor who had no need to put his pension funds at risk and he was paying NTM for its expertise. So, if NTM had given clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted the expert professional advice he was paying for.

It follows that I don't think NTM's advice to Mr C to transfer out of his DB scheme was suitable for him. Instead I think it should have advised him to allow his DB funds to move to the PPF. So, I think it's fair for NTM to compensate Mr C for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice. And, as he's been concerned that the pension fund he'd contributed to for over 35 years has been unnecessarily put at risk as a result of NTM's unsuitable advice, I think it should pay him £500 to address that distress and inconvenience.

Putting things right

A fair and reasonable outcome would be for NTM to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. As I've said above, I think Mr C would have remained in the DB scheme which would then have moved into the PPF.

NTM 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.

When making the calculation NTM (or providers acting for it) 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's representative and our Service upon completion of the calculation.

For clarity, Mr C has not yet retired, and as far as I'm aware he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 PS22/13 and 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, NTM should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his personal 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 NTM's offer to calculate how much of his 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 his 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, NTM 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.

NTM should also pay Mr C £500 compensation to address his distress and inconvenience arising from its unsuitable advice.

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

My final decision

Determination and money award: I uphold this complaint and will require NTM Financial Services Ltd 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 NTM Financial Services Ltd pays Mr C the balance.

If Mr C accepts my final decision, the money award becomes binding on NTM Financial Services Ltd.

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 22 September 2023.

Joe Scott
Ombudsman