DRN-3553706

The complaint

Mr K complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr K'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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying 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. Alternatively, members of the BSPS 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr K's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

Mr K was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice and met with NTM in August 2017.

NTM recorded some information about Mr K's circumstances. It noted that he was 53, divorced with two children, one of whom was still financially dependent. Mr K was employed earning approximately £34,000. He was living with his partner but didn't own any property. He had savings of around £41,000 and an outstanding credit card balance of around £1,700. Mr K's income exceeded his outgoings with NTM's notes saying he had £1,400 surplus disposable income per month. NTM also carried out an assessment of Mr K's attitude to risk, which it deemed was 'low'.

On 18 September 2017, the BSPS provided Mr K with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £454,812.70.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

NTM issued a revised letter summarising its recommendation (a suitability report) on 3 November 2017 following the revised CETV. This said Mr K wanted to retire no later than 58, but as close to 55 as possible. He wanted an income of £2,000 a month in retirement and his priority was to have this income earlier while he was able to trave,l which is what he planned to do in retirement. He was attracted to the flexibility a personal pension provided and the ability to control his income and decide how and when he took his benefits. Because he wasn't married, he had no need for the spouse's pension and he wanted his loved ones to benefit from his pension after his death.

NTM recommended that Mr K transfer his pension as it would provide him with flexibility and the control he desired to vary his income; to provide a higher level of tax-free cash; to provide greater lump sum death benefits; and to address his concerns about the changes to the BSPS by meeting his objective of wanting to break all ties with his employer. NTM recommended a pension provider and investment fund that it said was in line with his attitude to risk.

Mr K complained to NTM in 2021 about the suitability of the transfer advice. In essence he didn't think the advice to give up a guaranteed pension income was suitable for him.

NTM didn't uphold Mr K's complaint. In addition to setting out a timeline of the events leading up to the 'time to choose' exercise, Mr K's interactions with NTM and his objectives at the time, in summary it said it was unable to find any indication that the adviser failed to cover all the options available to Mr K. It said the recommendation met his stated objectives and the risks associated with the recommendation were fully covered in line with the regulator's expectations. It said alternative approaches were discounted and Mr K was given time to consider the advice prior to agreeing to transfer. It said Mr K had accessed some of his tax-free cash and deferred taking income, which couldn't have been achieved without flexible access to benefits. It said overall its advice to transfer was suitable.

Dissatisfied with its response, Mr K referred his complaint to us and one our Investigators looked into the complaint. They upheld the complaint because they concluded the advice was unsuitable as Mr K wasn't likely to improve on the benefits he was already guaranteed by transferring. And they said there were no other compelling reasons to justify the transfer – for example Mr K didn't have to transfer to retire early, greater or different death benefits wasn't a suitable reason to transfer and his concerns about the scheme could've been better managed instead of recommending he transfer. They said if suitable advice had been given, Mr K would've likely remained in the DB scheme and chosen to join the BSPS2.

NTM said that, while it didn't agree the advice was unsuitable, in the interests of resolving things it had carried out a loss calculation. And the calculation showed Mr K had not suffered a loss, so it said there was no redress to pay.

Mr K nevertheless asked for his complaint to be resolved by an Ombudsman. So the complaint was referred to me for 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 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.

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 the transfer was in Mr K's best interests.

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 transfer value analysis ('TVAS') report, that NTM was required to carry out by the regulator, said that the critical yield - how much Mr K's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was in excess of 50% to match the full pension he'd have been entitled to under the scheme at age 55 (the earliest age Mr K indicated he wanted to retire.) Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 32.99%. To match the full pension the PPF would've paid from 55 the critical yield was 20.87% and to match the tax-free cash and reduced pension the PPF would've offered, it was 18.12%.

- Despite the fact it was known by the point NTM instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr K, the analysis was based on the BSPS benefits. And while I can see NTM did acknowledge this in a file note and said that the critical yields based on the benefits under the BSPS2 would been lower, I think it would've been helpful if it had produced the analysis using the BSPS2 benefits to show the precise critical yields.
- In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 55 were likely to be between those of the BSPS and the PPF.

- Given Mr K indicated that, while 55 was his ideal retirement age 58 was more likely, I also think NTM should've produced critical yield figures based on a retirement age of 58. I think this would've been more meaningful and relevant to Mr K and would've put him a properly informed position.

- Given Mr K's recorded 'low' attitude to risk, the discount rate of 2.5% for one year to retirement and the regulator's lower projection rate, I think Mr K was always likely to receive pension benefits, from age 55, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. To have come anywhere close to achieving the returns needed would've required Mr K to take on a significant level of risk – far greater than he indicated he was prepared to take. Indeed, NTM said as much in its suitability report. And I don't think the position would've been any different based on a retirement age of 58 – I think the critical yields would've still been significantly above the regulator's lower projection rate

- For this reason alone, I don't think a transfer to a personal pension arrangement was in Mr K's best interests.

- NTM recorded that Mr K wanted to retire as close to 55 as possible but no later than 58. And it said that a personal pension would provide control and flexibility so he could vary his income at the beginning of his retirement and take lump sums. At 53 Mr K had no doubt given his retirement some thought – albeit I'm not persuaded his retirement age was set in stone given his retirement appears to have been contingent on the level of financial support his son needed whilst in further education.

- But, Mr K didn't have to transfer his pension to retire early - he already had this option available to him. I accept he couldn't take his DB scheme benefits flexibly. But I'm not persuaded Mr K had a strong need to vary his income throughout retirement. NTM referred to Mr K being able to take a higher income at the beginning of his retirement. But it strikes me this was simply a feature of transferring to a personal pension arrangement rather than a genuine objective of Mr K's. And as I will refer to later on, NTM didn't carry out any analysis to demonstrate that taking a higher level of income from his pension was feasible or sustainable by transferring.

- NTM said Mr K was keen to access his tax-free cash lump sum at 55 and defer taking an income. It said he wanted to use this for discretionary spending – for example taking holidays, giving money to his partner for home improvements and supporting his son. But I don't think NTM should've encouraged Mr K to access his pension benefits early for this reason. The reasons Mr K gave were not in my view compelling reasons. Mr K had accumulated savings, he had significant surplus income and his capacity for borrowing the money he needed for these things was strong. So I think these were reasonable alternatives NTM should've pointed out first before recommending he transfer his guaranteed benefits to achieve things.

- NTM also said Mr K wanted access to a higher tax-free cash lump sum. But it didn't say why this was needed. And it didn't quantify Mr K's capital expenditure needs to demonstrate that the only way he could achieve things was by transferring. So I don't think it was in Mr K's best interests to transfer for flexibility.

- Mr K wanted an income of £2,000 a month in retirement. But NTM didn't carry out a detailed income and expenditure in retirement analysis to interrogate this figure and determine if this was what Mr K truly needed. It strikes me he gave this figure because this was broadly the amount he was currently spending each month. And it appears NTM just accepted what he said.

- I don't think this was a realistic target income based on a retirement age of 55 – 58. Mr K's DB scheme full pension at 65 was around £23,634 a year and less if he chose to take a cash lump sum. I think NTM should've managed Mr K's expectations and been honest with him that this wasn't going to be achievable based on his target retirement date. Had it done so, this would've allowed Mr K to reconsider his plans. And just because his DB scheme couldn't meet this target amount, I don't think it was in Mr K's best interests to transfer out, particularly when NTM didn't demonstrate to him that he could sustainably meet his target income from age 55-58 by transferring to a personal pension. All the cashflow modelling it carried out was based on taking the same level of income the DB scheme would provide – not £2,000 a month.

- I think Mr K's current income and expenditure suggested his retirement income need would be far less than £2,000 a month – his disposable income while working was £1,400 a month. So, in the circumstances I think Mr K stood a better chance of meeting his needs by remaining in his DB scheme. It provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. I think this was a more appropriate way for Mr K to meet his future retirement income needs rather than risking his guaranteed benefits to attempt to do so.

- NTM recorded that because Mr K wasn't married, the spouse's pension wouldn't be payable and so he wanted the flexibility of death benefits offered by a personal pension. But the priority here was to advise Mr K about what was best for his retirement. I accept the existing scheme didn't provide death benefits to unmarried partners – but it's possible that Mr K might get married in the future, in which case the spouse's pension could've been valuable to his family in the event of his death.

- In any event, while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by the income Mr K drew in his lifetime. And so it may not have provided the legacy that Mr K may have thought it would.

- If Mr K had wanted to leave a legacy for his family, NTM could've explored life insurance as an alternative. Reference was made to a whole of life policy for a sum assured for the amount of the transfer value, which was discounted on cost – in excess of £500 a month. But I don't think this was a fair and balanced way to present this option to Mr K. It should've been based on what amount he wanted to leave to his family instead. Afterall, Mr K wanted to leave whatever remained of his pension upon his death, which was likely to be a lot lower than the original transfer value amount. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence NTM did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr K. I don't think that insurance was properly explored as an alternative. And ultimately NTM should not have encouraged Mr K to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr K may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF and that he wanted to break all ties with them. But it was NTM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr K with guaranteed income and the option of accessing tax-free cash. Mr K was unlikely to improve on these benefits by transferring. So, entering the

PPF was not as concerning as he might've thought. Also, Mr K wasn't going to break ties with his employer by transferring because he was connected to them in other ways – he intended to continue his employment and he was contributing to the new workplace pension scheme. So, I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr K's best interest to give up his DB benefits and transfer them to a personal pension at this time, particularly when he had the option of opting into the BSPS2. And I also haven't seen anything to persuade me that Mr K would've insisted on transferring, against advice to remain in the DB scheme. It was recorded that he was an inexperienced investor and I don't think he had the requisite knowledge, confidence or skill to go against the advice he was given. Indeed it was recorded that he would seek expert advice when decisions needed to be made.

So, I'm upholding the complaint as I think the advice Mr K received from NTM was unsuitable for him.

I can see the investigator also recommended an award of £250 for the distress and inconvenience the matter has caused Mr K. 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 NTM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr K. Taking everything into account, including that I consider Mr K is now at the age when his retirement provision is of even greater importance to him and he's worried that he'll lose out in retirement, 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 NTM to put Mr K, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr K would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given. I think because Mr K's early retirement plans weren't concrete, I'm not persuaded he would've opted for the PPF and accepted the risk that the reduction in benefits might not be offset by the more favourable terms for very early retirement.

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.

NTM 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 K and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

For clarity, while Mr K accessed his tax-free cash, he has not yet retired or started drawing an income benefit, and he has no concrete plans to do so at present.
So, compensation should be based on the scheme's normal retirement age (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 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 K'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 K redress as a cash lump sum payment,
- explain to Mr K 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 K receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr K accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr K 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 K's end of year tax position.

Redress paid to Mr K as a cash lump sum will be treated as income for tax purposes. 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 K'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 NTM Financial Services Ltd to pay Mr K the compensation amount as set out in the steps above, up to a maximum of £160,000.

NTM Financial Services Ltd should also pay Mr K £250 for the distress and inconvenience this matter has caused.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that NTM Financial Services Ltd pays Mr K the balance.

If Mr K accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr K can accept my decision and go to court to ask for the balance. Mr K 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 K to accept or reject my decision before 27 December 2023.
Paul Featherstone
Ombudsman