

The complaint

Mr T complains about the advice given by Esteem Money Ltd to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In October 2017 Mr T's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in the BSPS, which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017.)

Mr T was concerned about what the announcement by his employer meant for the security of his DB scheme, so he sought advice. In November 2017 Mr T met with Esteem Money - having been introduced to them by another adviser - and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr T was 44 years old; he was working full-time; he was divorced; he was looking to buy a home; he had no savings; and he had around £600 of credit card debt. Esteem Money also carried out an assessment of Mr T's attitude to risk, which after further discussion with Mr T it deemed to be 'moderate'.

In the same month Esteem Money advised Mr T to transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in a range of investment funds, which Esteem Money deemed matched Mr T's attitude to risk. The suitability report gave nine bullet point reasons for the recommendation, but in summary the key reasons for this recommendation were:

- Mr T's circumstances meant he would benefit from the flexibility of a personal pension arrangement.
- Mr T had no need for an automatic spouse's pension.
- The analysis showed Mr T would receive a larger tax-free cash lump sum as a result of transferring out of the DB scheme.
- Esteem deemed the investment growth required to match the benefits available through Mr T's DB scheme were achievable referring to both the critical yield and hurdle rate figures.

- Mr T's DB scheme was in deficit.

Mr T accepted the recommendation and in March 2018 a little over £141,000 was transferred to Mr T's new personal pension and invested in line with the recommendation.

Mr T, through his representative complained in 2021 to Esteem Money about the suitability of the transfer advice.

Esteem Money didn't uphold Mr T's complaint. In summary it said:

- Mr T's objectives agreed and confirmed were to preserve the value of his pension for his children in the event of his death; he wanted to access his benefits early; and he would like to retire at 60.
- Mr T's attitude to risk and capacity for loss was not low as claimed by Mr T's representative.
- Mr T had no need for a widow's pension and saw this as a waste of money.
- The growth achieved on Mr T's pension has exceeded the single life critical yield figure, which in the event of his death will be paid to his children in line with his wishes.
- Overall, it believes the advice was suitable as it was the only option that fully met Mr T's stated needs.

Dissatisfied with its response, Mr T, via his representative asked this service to consider his complaint. And an investigator upheld the complaint and required Esteem Money to pay compensation. In summary they said a transfer wasn't suitable. They said a transfer to a personal pension was unlikely to improve on Mr T's DB scheme benefits given the level of growth required to match them. In addition they said there were no other compelling reasons to justify a transfer out of the DB scheme – for example Mr T's retirement was many years in the future and his plans weren't known at this time; he already had flexibility through his current workplace pension; his pension was designed to provide a retirement income and not a tool to provide a legacy for his children; other ways of providing for his children could've been explored; and by moving to the BPS2 Mr T would've retained the option of transferring in the future when his retirement plans were clearer.

Esteem Money disagreed. In doing so it provided a substantive response in a 12-page letter. While I have read everything in full, in summary the pertinent points to Mr T's complaint it made are as follows:

- It was concerned about the way the complaint had been considered because it wasn't clear proper regard had been given for the relevant rules at the time or the context in which the advice was given – specifically whether as per COBS 9.2.1R it had taken reasonable steps to ensure the recommendation was suitable, which is only what it was required to do.
- The investigator's assessment placed disproportionate weight on the critical yield, which it regards as a blunt tool, and on the comparison with the discount rate, which it wasn't obliged to refer to. It says in Mr T's case, as a single man, he had no requirement for a spouse's pension, so the hurdle rate was more appropriate consideration, which was achievable.
- No adequate regard was paid to Mr T's circumstances – in particular that he wouldn't

need to solely rely on his DB scheme income in retirement and that he didn't require a guaranteed income to his retirement income needs.

- The assessment was premised on the flawed assumption that Mr T had the option of transferring to the BPS2, when it wasn't certain it would proceed.
- Inadequate weight was given to the fact that Mr T made a fully informed decision to proceed, which is clearly recorded in the advice paperwork from the time.
- Causation has not been properly considered or assessed. It says it is unclear how the Financial Ombudsman Service can be confident about what Mr T might otherwise have done. It believes there is no evidence Mr T would've opted into the BPS2 had he been advised to do so. It says the evidence indicates that Mr T would've gone ahead with the transfer in any event because he was attracted to the beneficial characteristics of the personal pension and he wanted to avoid the risk of moving to the PPF.
- There is no evidence that Mr T has suffered a loss as a result of the transfer.

Esteem Money also asked for an oral hearing. It said the investigator's findings are in stark contrast to the evidence from the time - so it believes an oral hearing where evidence from both parties can be heard before a final decision is issued will ensure the complaint is fairly determined.

The investigator didn't change their opinion, so the complaint was referred to me to make a final decision and to decide whether to hold an oral hearing.

I turned down Esteem Money's request for an oral hearing because I was satisfied I could make a decision on this case fairly without hearing oral evidence. So, I'm now providing my final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS').

And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Esteem Money's actions here.

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

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

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

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

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

I can see that Esteem Money has said there are inconsistencies with how this service and the regulator consider the suitability of DB transfer advice cases. It also says no consideration has been given for the material rules at the time in considering this case.

But as I've set out clearly above, I'm satisfied that I have 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 in deciding what I think is fair and reasonable in the circumstances of this complaint.

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

Financial viability

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 T was 44 at the time of the advice and the advice paperwork said his intention was to retire at 60. The critical yield required to match Mr T's benefits at age 60 if he opted into the BPS2 and transferred to a personal pension arrangement was 7.94% if he took a full pension and 6.59% if he took a tax-free cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 60 was quoted as 7.1% per year if Mr T took a full pension and 6.79% per year if he took a cash lump sum and a reduced pension. I can see both Esteem Money and the investigator referred to the critical

yields associated with the benefits available under the BSPS – Esteem produced a TVAS using the benefits available to Mr T through the existing scheme as well as the BSPS2. But Mr T didn't have the option of remaining in the BSPS, so it is the figures associated with the BSPS2 which are relevant here.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.3% per year for 15 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr T's 'moderate' attitude to risk and also the term to retirement. In my view there would be little point in Mr T 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, assuming Mr T opted into the BSPS2 and took his full pension at 60, the critical yield was 7.94%. This was significantly higher than the regulator's middle projection rate – it was approaching that of the upper rate - and over 3% higher than the discount rate. If Mr T chose to take his cash lump sum and a reduced pension at 60, the critical yield was still higher than the middle projection rate.

I think it was clear Mr T was likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk. In my view, to have come close to achieving the level of growth required, it would have required Mr T to take a higher level of investment risk than I think he indicated he was prepared to take. And even then I think it's more likely than not Mr D would be worse off financially at retirement if he transferred out. The respective critical yields required to match the benefits provided through the PPF were 7.1% and 6.79% - both of which were higher than the middle projection rate and still above the discount rate. So I don't think the position was any different even if the scheme moved to the PPF.

Esteem Money has said that it is unfair to place weight on the discount rate when it wasn't a requirement by the regulator to refer to. I accept businesses didn't have to refer to it. But while I haven't based my findings solely on this, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses, like Esteem Money were free to use the discount rate as this was considered a reasonable assumption of the likely returns. And in any event, I've considered this in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr T's attitude to risk, which leads me to believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

I can also see that Esteem Money says too much weight has been placed on the critical yield – Mr T was a single man so he didn't need a spouse's pension. It goes on to say that the hurdle rate is a more appropriate consideration, which it says was achievable.

But I don't think the importance of the critical yield should be downplayed here. I still consider it gives a good indication of the value of benefits Mr T was considering giving up. It's also the case that the regulator required Esteem Money to provide it and so deems it a necessary and important part of the decision-making process. So Esteem Money needed to provide an analysis based on the critical yield and I think it is a relevant consideration here. While Mr T was divorced, so I accept the spouses pension wouldn't have been important to him at the time, it's possible that it would've been in the future if Mr T did get married again

later in life. I acknowledge it's recorded that Mr T said he didn't anticipate getting married again, but it was still a possibility later on. Also the 'Hurdle Rate' did not account for the guaranteed and escalating income in retirement the DB scheme provided. Furthermore I don't think Mr T could realistically say with any certainty whether he would want to take a fixed regular income at retirement or not. He wasn't expecting to retire for at least another 15 years – so it's entirely possible that Mr T would want at least some guaranteed income in retirement, which he could achieve by taking benefits from the DB scheme.

Overall, even if the BSPS2 hadn't gone ahead and Mr T's pension moved to the PPF where his benefits would be reduced, he was unlikely to be able to improve on those benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr T would be financially worse off in retirement. So based on this alone, I don't think a transfer was in Mr T's best interests.

But I accept that financial viability isn't the only consideration when giving transfer advice, as Esteem Money has argued in this case. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered below whether such other reasons applied here.

Flexibility and income needs

It's recorded that Mr T would benefit from much greater freedom and flexibility regards accessing his pension and that he liked the idea of accessing cash at 55.

But having considered the evidence, I don't think Mr T needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement – if indeed that's what he required.

Crucially Mr T was only 44 at the time of the advice. And based on what I've seen he didn't have any concrete plans retirement plans. The suitability report referred to Mr T having greater freedom and flexibility by transferring, but there was nothing specific to Mr T's circumstances to say why it was a suitable recommendation for Mr T to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be. I'm not persuaded he any firm plans to take his tax-free cash and defer taking his income, or indeed to vary his income throughout retirement. I can see the advice paperwork records that Mr T liked the idea of accessing some cash at 55. But it also records that Mr T had no specific reason for wanting to do so, other than to be able to help his children if needed. So it strikes me that this was more of a 'nice to have' or a feature of transferring to a personal pension arrangement rather than a genuine objective. Just because Mr T might have thought it was a good idea or sounded attractive, it doesn't mean that Esteem Money had to execute what he thought he needed – it was for Esteem Money to decide what was in Mr T's best interests and advise him accordingly.

I also think Esteem Money ignored the retirement funds that Mr T would be building up over the next 15 years or more through his employer's workplace DC scheme. Esteem Money recorded that Mr T's contribution along with his employer's was 16% of his salary and he would continue to invest.

So given Mr T's current income at the time and not accounting for any investment growth, in around 15 years (when Mr T indicated he might want to retire) it would be worth in the region of £103,000. And with another five years' contributions to age 65 it would be worth £135,000 – again without accounting for any investment growth. So with even modest investment growth, I think this would amount to a not insignificant sum.

This means at Mr T's intended retirement age of 60, if he opted into the BSPS2, and given

there was no known need for the tax-free cash, he could take a full pension of £7,374 a year. At age 65 this would rise to £9,929 a year. And while Mr T's income need in retirement wasn't really known – the fact find simply has a question mark recorded against the relevant section – I can see it was estimated that Mr T needed £1,000 a month net to meet his expenditure. And while this alone wouldn't have met Mr T's need in full, in my view this would've provided a strong foundation for Mr T's retirement, and importantly it was guaranteed. Mr T could then make up the difference by supplementing this with his other smaller DB scheme income (Esteem Money didn't know what this was, so it wasn't factored into its advice, when I think it should have been) together with accessing income and or lump sums from his DC scheme until his state pension became payable from age 67. As I said above, I think Mr T would've likely had a significant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr T would've had to sacrifice flexibility in retirement by opting into the BSPS2.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr T had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 60 Mr T would've been entitled to a pension of £7,271 per year or £8,980 at 65. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr T would've had his two other pension schemes to draw on until his state pension became payable. So, I still think Mr T could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Overall I think Mr T could've met his likely retirement income needs by remaining in the DB scheme and supplementing his income with his other pensions. And I think this was the case whether Mr T opted into BSPS2 or the scheme moved to the PPF - I don't think he needed to risk his guaranteed benefits to do so.

Death benefits

The advice paperwork records that Mr T wanted his children to benefit from his pension – he wanted them to always be beneficiaries even when no longer dependant.

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

A pension is primarily designed to provide income in retirement – not a lump sum to a family after death. So I don't think the potential for greater, or different death benefits should have been prioritised over this and Mr T's security in retirement.

And I say potential, because the sum left on Mr T's death was dependent on investment returns and if he lived a long life, and/or investment returns were lower than expected, there may not have been a large sum to pass on anyway.

Mr T's DB scheme provided pre-retirement benefits in the form of a children's allowance. And Mr T could nominate his children as the beneficiaries of his new workplace pension – if he hadn't already done so. He also had his death in service cover, which again I see no

reason why he couldn't nominate his children to benefit from this too. So Mr T already had the ability to ensure the majority of his pension would be passed on in line with his wishes.

If Mr T genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Esteem Money could've explored additional life insurance. And in my view the starting point ought to have been to ask Mr T how much he would ideally like to leave to his children after taking account of the above existing means. And to ensure any extra sum was specifically for his children, he could've taken extra cover out on a whole of life basis and written it in trust for the benefit of his children. Given Mr T's age, his recorded good health and his income, I think this was likely to have been affordable.

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 T. And I don't think Esteem Money did enough to explore or highlight the alternatives available to Mr T to meet this objective.

Control or concerns over financial stability of the DB scheme

I have no doubt that Mr T was concerned about his pension and the future shape of the scheme in light of the recent announcement by his employer. I think it's likely he knew of other colleagues who were transferring and there was lots of negative sentiment about the PPF. So it's possible that Mr T was also considering transferring because of these concerns about his employer and what might happen.

But it was Esteem Money's duty to give Mr T an objective picture and recommend what was in his best interests. At the time of the advice, all of the available information from the scheme trustees indicated that, while not guaranteed, the new BSPS2 scheme would likely go ahead. And I think this is what Esteem Money should've been clear with Mr T to help alleviate his concerns.

Esteem Money has said Mr T wanted to avoid the risk of his pension ending up in the PPF. But despite the 10% reduction in starting benefits and the fact the increases in payment in the PPF were lower, importantly the income was still guaranteed. And the income available to Mr T through the PPF would've still provided a strong foundation towards the overall income he thought he needed at retirement and he was unlikely to be able to exceed this by transferring out. So I think Esteem Money ought to have reassured Mr T that, even if there was a chance the BSPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or might have been led to believe. Mr T might not have been able to later transfer out of the PPF – but for the reasons I've set out earlier, I don't think Mr T would've needed to, to achieve his goals.

Summary

I accept that Mr T was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control, and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr T.

But Esteem Money wasn't there to just transact what Mr T might have thought he wanted or that sounded attractive. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free, and increasing income whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr T was unlikely to achieve greater overall retirement benefits at his intended retirement age of 60. And I don't currently think there were any other particular or compelling reasons which would justify the transfer and outweigh this. Mr T did not have any firm retirement plans and his need to access cash at 55 appears simply to have been a 'nice to have' and not a genuine objective. So, I don't think it was in Mr T's best interests for him to transfer his DB scheme to a personal pension at this time.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given - but I think it was clear to all parties that it was likely to be going ahead. Mr T had at least 15 years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr T would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Esteem Money should've advised Mr T to opt into the BSPS2.

Esteem Money says that inadequate weight has been given to the fact that Mr T made an informed decision to proceed with the transfer. And it believes the evidence indicates Mr T would've transferred in any event - it challenges the view that Mr T would've accepted any advice to opt into the BSPS2.

I've therefore thought carefully about what Mr T would, more likely than not have done had things happened as they should have and had Esteem recommended Mr T opt into the BSPS2.

I accept that Esteem Money disclosed the risks of transferring to Mr T and provided him with information in the suitability report. But the provision of information doesn't make an unsuitable recommendation suitable. And ultimately it advised Mr T to transfer out, and I think, more likely than not, Mr T relied on that advice. While Mr T was motivated to transfer when he approached Esteem Money, on balance, I still think Mr T would've listened to and followed Esteem's advice if things had happened as they should have and it recommended he opt into the BSPS2. Mr T was an inexperienced investor who in my view neither possessed the necessary knowledge, skill nor confidence to go against the advice they were given - particularly in complex pension matters. Furthermore Mr T's pension accounted for the majority of his retirement provision at the time.

So, if Esteem Money had provided Mr T 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 T's fears about the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Esteem Money had explained that Mr T could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr T would have insisted on transferring out of his scheme against Esteem Money's advice.

In light of the above, I think Esteem Money should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BPS2 that should be used for comparison purposes.

I can see that, while it appears Esteem Money was making a general point, in response to the investigator's assessment it said that if a redress award is deemed necessary then it is the PPF which it should be measured against. It says this is the only outcome someone would have had if they'd stayed in the BPS. But as I said above, all of the information at the time indicated that the scheme would go ahead and this is what Esteem Money should've said to Mr T and based its advice on. So I'm satisfied it is fair and reasonable in the circumstances that the benefits available to Mr T under the BPS2 should be used for comparison purposes.

Esteem Money also argues, again more generally, that a complainant should be made to purchase an annuity if a guaranteed income is what they should have had rather than a cash award for them to enjoy. In Mr T's case, it is evident that he will benefit from flexibility by virtue of the position he's in now. But that has only arisen because of the unsuitable advice. Ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

Esteem Money says there is no evidence that Mr T has suffered a loss as a result of the transfer. I don't think Esteem Money is saying that it has already carried out a redress calculation and it shows no loss. So whether Mr T has lost out as a result of the unsuitable advice will be determined once Esteem Money undertakes a loss calculation in line with what I'll set out in the 'Putting things right' section below.

Finally I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr T. 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 Esteem Money - which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr T. Taking everything into account, including that I consider Mr T's retirement provision is of great importance to him, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA said that it considers that the current redress methodology in [Finalised Guidance \(FG\) 17/9](#) (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes

take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr T whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

Mr T has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr T.

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for Esteem Money's unsuitable advice. I consider that suitable advice been given, Mr T would've opted into the BSPS2.

Esteem Money must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, because Mr T has no plans to retire, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of the decision.

Esteem Money may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr T's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr T within 90 days of the date Esteem Money receives notification of his acceptance of my final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Esteem Money to pay Mr T.

It's possible that data gathering for a SERPS adjustment may mean that the actual time

taken to settle goes beyond the 90-day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90-day period in which interest won't apply.

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 Esteem Money Ltd to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

Esteem Money Ltd should also pay Mr T £300 for the distress and inconvenience this matter has caused.

Where the compensation amount does not exceed £160,000, I would additionally require Esteem Money Ltd to pay Mr T any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Esteem Money Ltd to pay Mr T any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Esteem Money Ltd pays Mr T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T.

If Mr T accepts this decision, the money award becomes binding on Esteem Money Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 3 February 2023.

Paul Featherstone

Ombudsman