DRN-3580380

The complaint

Mr T has complained that NTM Financial Services Ltd gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd 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, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (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 T's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr T first met with a representative of NTM Financial Services Ltd in October 2017. At this time Mr T had already been provided with a Cash Equivalent Transfer Value (CETV) for the deferred benefits he had accrued under the BSPS scheme.

At the time of advice, it was expected that in respect of his preserved pension rights he would be presented with three options:

(i) become a member of the new BSPS 2, which was another final salary scheme, but which retained most of the benefits of the existing BSPS.
(ii) remain a member of the existing BSPS, which would eventually move into the PPF in March 2018; or

(iii) take advice about transferring the value of his benefits out of the BSPS to a PPP (or SIPP).

Once the proposal for the BSPS 2 received formal approval from The Pension Regulator ("TPR") on 11 September 2017, these changes were communicated to BSPS members in late September under the 'Time to Choose' exercise. Mr T and his adviser would have had access to the full information about the BSPS 2.

The fact-find completed by NTM recorded the following details about Mr T:

- He was aged 46, single, in good health, with a financially dependent child.
- He was employed, earning £32,601 per annum.
- He owned his own home, valued at £140,000, with a mortgage of £43,000.
- Mr T had a loan and credit card debt of £11,000
- Mr T's preferred retirement age was noted as 57.

There was no detailed income and outgoings information, however income was recorded as £1,580 per month and fixed outgoings were £900 per month. Surplus income was estimated to be £680 per month. Mr T sought an income of £1,800 per month in retirement.

Mr T was also a member of the Group Personal Pension (GPP) offered by the employer, contributing 6% of his salary and with his employer contributing 10%. The benefits included a four times' salary death in service payment.

An attitude to risk questionnaire was completed on 16 October 2017, and Mr T was assessed as "4 out of 7", where "1" was the lowest risk and "10" the highest, which in the notes was described as "Average/Medium" risk. Mr T's stated investment aim was growth and, having reviewed the answers from the Risk Profile Questionnaire, the risk profile was amended from "Average" to "Low". However this additional page wasn't signed or dated, and the suitability report and investment choice was based on "Average/Medium" risk.

In terms of Mr T's deferred benefit entitlement, NTM estimated that he could expect an annual income from the scheme of around £15,354 at age 65. Mr T received a total CETV from the BSPS for his deferred benefits of £239,128.

The reasons given by the financial adviser for recommending the transfer were as follows:

- To provide flexible income.
- To give Mr T the ability to retire at 57 and incur no reductions
- Better death benefits and Mr T would be able to pass on any unused pension fund in full.
- The fund would no longer enter the PPF and would not be under his employer's control.
- Mr T would have the ability to take a larger tax-free lump sum.
- The ability to meet his goal of having £1,800 per month income in retirement.

In the suitability report, the reasons for recommending the transfer to a PPP were based on providing Mr T a list of advantages and disadvantages of transferring his pension and a "Pro's and Con's" document.

A recommendation was made, an application form was completed, and the funds were transferred into the PPP. The charges associated with the transfer were:

- Initial advice charge of £4,592.76
- Servicing and review fee of 0.65% pa
- Platform charge of 0.30% pa

- Fund charges weighted average 0.37% pa (although in the critical yield examples set out below, 0.22% was used, resulting in possibly lower critical yields than should have been the case)

Mr T then raised a complaint about the advice with NTM as he felt that it hadn't explored all the options available for him to retire early and had concluded that only a transfer could achieve this.

NTM responded to Mr T with its reasons for disagreeing with him and why it was satisfied that the advice he had received was suitable.

Dissatisfied with the response, Mr T referred his complaint to this service.

Having considered the complaint, our investigator thought that it should be upheld. He said the following in summary:

- Mr T was 46 at the time of the advice and had accrued over 20 years' benefits in the BSPS. They would form the bulk of his pension provision, and would therefore have been valuable to him.
- This was also noted in the fact find questionnaire, which also set out that the BSPS benefits would be "*a major portion of his retirement funding which should be protected as a far is reasonably possible"*. And the simplest way of achieving this was to recommend that Mr T not transfer his defined benefits.
- By opting to join the BSPS 2, which Mr T should have been advised to do, he would have retained the safeguarded benefits providing the low risk foundation to his retirement income, which coupled with his GPP benefits, would have constituted a healthy mix of risk/reward for an inexperienced investor seeking professional, balanced advice.
- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.
- The advice had been after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.
- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.
- The discount rate was 4.4% pa for the period up to Mr T's normal retirement date (65), and 3.5% up to age 55. This compared to respective required critical yields to match the BSPS benefits at 65 of 7.39%, and to match them at 55 of 12.22%. For the PPF, these were 4.42% and 8.69% respectively.
- Pension illustration growth rates set by the regulator were 2%, 5% and 8% for low, medium and higher projected returns.
- The pension provider illustration also gave projected rates of growth, for the asset mix which would be suitable for a moderate investor such as Mr T, of 1.67%, 4.67% and 7.67% (adding back the 2.5% deducted within those for inflation) for the low, mid and high growth rates.
- Taking these figures into account, the critical yields weren't reasonably achievable, and there was no reasonable prospect of Mr T improving upon the scheme benefits.

- Mr T did have some capacity for loss, given his net disposable income, but he had no savings, and debts in the form of a mortgage, credit cards and a loan. And the defined benefits were, at the time, almost the entirety of his pension provision.
- The defined contributions which would be accrued over the term left to Mr T's retirement, and what this would mean in terms of added flexibility around accessing his benefits, hadn't been assessed in the suitability report.
- There needed to be a comfortable margin for the transferred benefits to be able to improve upon those which would be received from the scheme, especially when the investment risk had passed from the scheme to Mr T. But in this case, it was unlikely that the OPS benefits would be matched through transferring, let alone bettered.
- If the transfer proposition had been explained impartially and constructively, as per COBS 19.1.6 in the regulator's handbook, then Mr T's apparent desire to have growth, competitive charging, flexibility at retirement and professional management were all already provided by the scheme.
- It was NTM's responsibility to demonstrate to Mr T that the transfer was in his best interests, but it hadn't fulfilled this requirement here. COBS 9.2.6 said that if a firm couldn't obtain the necessary information to assess suitability, it shouldn't make a personal recommendation to the client, but NTM didn't undertake a full review of the option to transfer to the BSPS 2.
- Mr T may have been concerned about the future of the BSPS, but it was NTM's responsibility to manage those concerns and provide a balanced view of the available options.
- Even if BSPS 2 wasn't ultimately deemed viable, many of the important guarantees would remain in the PPF.
- One of the recorded objectives was for Mr T to be able to retire early, but he was 46 at the time of the advice, and couldn't have accessed his benefits before age 55. And so, with around ten years to go until retirement was even possible, Mr T's views on this could change radically in the intervening period.
- There was no real exploration or assessment of Mr T's surplus income, and how this was being used, and his likely income and expenditure in retirement – or why his income need by that point would exceed his current expenditure.
- Suitable advice would have been to wait until Mr T was nearer retirement to make any decision about transferring, if indeed this was required. But it was in any case likely that Mr T wouldn't have needed to access his defined benefits before age 65 if he'd been properly advised.
- Although the death benefits would have been formatted in a different way, with any remaining pension fund paid as a lump sum, Mr T had no health issues which would mean that death benefits would have been of concern at that point. And the financial needs of Mr T should have been given prominence over any legacy for his dependants. There had in any case been no review of actual need in this regard – just a quotation for an alternative whole of life policy based on the transfer amount.
- If flexibility of income remained a priority for Mr T as he approached retirement age, then he could have factored in his GPP benefits, which would likely have meant that he wouldn't ever need to consider transferring his defined benefits.
- Although some of the advantages and disadvantages of transferring were set out in the suitability report, disclosing risks and product features wouldn't render unsuitable advice suitable.

- The FCA had also commented on the timing of the provision of a suitability report in COBS 9.4, saying that this needed to be provided in good time before the transfer was effected.
- But the application form for the PPP was dated 16 October 2017, which preceded the suitably report (dated 17 October 2017), and the illustration which wasn't issued until 17 November 2017. And so it seemed that the decision to transfer had been made before full advice was formally delivered, in breach of COBS 9.4.
- There was simply no need for Mr T to take on the investment risk associated with transferring out, and he would have benefitted from increases in deferment had he opted for either the BSPS 2 or the PPF.

The investigator recommended that NTM undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr T would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr T's pension plan, but if this wasn't possible, it should be paid directly to Mr T, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He also said that NTM should pay Mr T £300 in respect of the distress and inconvenience the matter would have caused him due to the realisation that he's lost out on valuable guaranteed benefits.

Mr T agreed with the investigator's findings. NTM said that it intended to respond, but has submitted no further comments to date.

As no further response from the business was received, the (new) investigator informed both parties that the matter would be referred to an ombudsman for review.

The investigator then informed NTM that he'd enquired of Mr T as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Mr T confirmed that he'd like any redress calculation to be conducted on the basis of the existing guidance.

The investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require NTM to use the FCA's BSPS-specific calculator to determine any redress due to Mr T.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr T's complaint, they should let him know by 6 June 2023. In response, Mr T confirmed that he was happy with the prospect of the BSPS-specific redress calculator being used.

The complaint has now been referred to me for review.

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.

And having done so, I've reached similar conclusions to those set out by the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time NTM advised Mr T were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like NTM, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, NTM needed to gather the necessary information for it to be confident that its advice met Mr T's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) *take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of NTM's advice to Mr T in the context of the above requirements and guidance.

NTM's rationale for transferring

Mr T wasn't categorised as an "execution only" or insistent client, and NTM was taking him through the advice process. Therefore, NTM could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr T and his circumstances and objectives were recorded – as I've noted above.

As with the investigator, I've noted above within the COBS rules that the FCA's guidance was that the starting assumption for an assessment of Mr T's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr T would be better off financially as a result of the transfer.

The financial case to transfer

NTM obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr T's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.4% pa. And the growth rates used in the TVAS to illustrate the benefits which might be payable from a PPP (with the effects of inflations removed) were 1.67% (low), 4.67% (mid) and 7.67% (high).

The critical yields to age 65, at 7.39% and then 12.22% to age 55 (and likely somewhere approaching this for age 57), therefore comfortably exceeded both the discount (or growth) rate deemed achievable over the same period, and the mid growth rate used by the pension provider – which might perhaps be a reasonable assumption for an "average" risk investor.

The above critical yields were calculated on the basis of the BSPS benefits, rather than the BSPS 2 benefits. The critical yields to match those which would be produced by the PPF at age 65 were 4.42% pa, and 8.69% pa to age 55.

Given what was known about the proposed BSPS 2 and Mr T's own projected benefits, I think it ought to have been possible to produce critical yields for that proposed successor scheme as well. But in the absence of those, I think that assuming critical yields somewhere between those for the BSPS and the PPF wouldn't be unreasonable in estimating those which might be required for the BSPS 2. But these would still have been higher than the growth rate which would reasonably have been projected for an investor such as Mr T.

NTM itself said it considered the critical yields to likely be unachievable, and I agree - I think it's more likely than not that the critical yields were in fact unachievable, year on year, for the number of years that Mr T had until he reached either early or normal retirement age. And as a reminder, these growth rates were required to just match the scheme benefits.

From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr T's best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr T would be relinquishing.

But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that NTM did provide warnings on the guarantees which would be relinquished, but as NTM will be aware, and as noted by the investigator, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. NTM needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr T.

As I've said above, NTM's reasoning for the recommended transfer, despite the likely inability of the transferred benefits to match those which would have been produced by the scheme, was that Mr T required flexibility of income due to his particular circumstances, objectives, and concerns about his employer and the pension scheme. And so I've given this argument careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr T may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

I also think it's quite possible that Mr T had an "average" risk rating, given his age and number of years to retirement – although I have also noted the lower risk classification as well. But I think there's also the wider issue about Mr T's capacity to take financial risks with his pension funds which is pertinent to the overall suitability of what was recommended here. The investigator concluded that Mr T had some capacity for loss in view of his disposable income, but given his paucity of other assets and outstanding debts, he didn't think that this was significant, such that he could afford to place his defined benefits at risk.

And I'm inclined to agree. Mr T had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer) by retirement. But other than the state pension which wouldn't be payable until age 67, the defined benefits accrued through the BSPS were still likely to have been his main source of guaranteed income. Through transferring, Mr T was effectively putting a lot of his eggs in one "money purchase basket". Any reduction in the benefits payable from them would therefore have had an impact on his financial security in retirement.

But I also don't think Mr T in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr T would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy changing income needs.

But other than concerns around the employer and associated scheme, which I'll address further below, it's unclear as to why Mr T would have wanted or needed such flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his average attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

I've also thought about whether Mr T could meet his objectives of retiring early whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. And in my consideration of this, I acknowledge that there was no facility for Mr T to take tax free cash from the BSPS 2 or PPF without also starting to take an income.

But as noted above, by age 65, Mr T would have accrued around 19 years' worth of defined contributions in the replacement scheme, or 11 years by age 57. Given the likely value of this separate pot of money on the basis of the employer and employee contribution rates, this could be used to plug any gaps between him starting to take flexible benefits and his OPS/state pension beginning. It's possible that he could have relied on the proceeds of his defined contributions plan for flexible access to pension benefits, from whatever age after 57, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when needed.

Alternatively if, on the basis of an income requirement which outstripped this over the years left to age 65 – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr T could then have begun to take the scheme benefits early if needed.

Mr T would also have been able to choose a tax efficient level of income (or lump sum withdrawals if he later decided he wanted them) through the defined contribution accrual, until the point that he either needed, or chose, to begin taking benefits from either the BSPS 2 or the PPF. And so any need for flexibility of income could have been addressed in this way.

Mr T may then have been in the fortunate position of receiving an income which was higher than his actual needs, especially when the state pension began, but he could have simply reinvested any excess as he saw fit, or, to provide a legacy for his child or extended family, immediately gift it away to avoid it being subject to inheritance tax.

NTM has suggested that Mr T was willing to accept the trade-off between a secure income and risk to achieve his objectives. As I've said above, although Mr T didn't have any particular financial experience, I think he may have understood the principle of risk/reward, and risk warnings were provided by NTM.

But as I've noted above, Mr T was accruing further benefits in his defined contribution scheme, and given the likely accumulation of funds in that scheme, compared against the benefits accrued in the final salary scheme, at the normal scheme retirement age, around 19 years of his pension accrual at age 65 (or 11 at age 57) would likely be derived of the defined contribution scheme. As such, Mr T would already by necessity have been taking investment risk through the replacement scheme.

In light of this, and given that in the 28 years up to that point Mr T had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of considerable value and shouldn't have been relinquished lightly in favour of a flexibility which was loosely defined around the apparent desire for early retirement and concerns around the employer/scheme.

And on that particular note, as with others in his position, I think it's fair to say that Mr T would have been concerned about the future of the BSPS and his associated benefits. But Mr T's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr T distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the point of the "Time to Choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative.

There were still conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

I also have concerns around the way in which the situation at that time was portrayed to Mr T. At several points in the recommendation report, the lack of employer underpinning was mentioned, but this wouldn't by the point of advice have meant that Mr T's pension benefits were in peril, with the fallback position being that, even if the BSPS 2 couldn't be formed, they would be transferred into the PPF.

And again, the loss of the guarantee from the employer was mentioned, but the benefits (albeit in a slightly reduced form) would have been guaranteed even in the PPF.

Although the benefits of the PPF were mentioned in a later part of the report, I think Mr T's concerns would have been reinforced by much of the language used, rather than mitigated. And as I've said above, I think by the time of the advice, the formation of the BSPS 2 was the more likely of the possible outcomes.

As I've said above, the prospect of Mr T's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

And so I think that, had Mr T's concerns been better managed, the seeming key driver for having control over his pension benefits would also have diminished.

Mr T therefore didn't need to make any decisions about transferring out his defined benefits at that point. The prospect of Mr T's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

Mr T's plans, including retirement, may in any case have changed significantly in the 11 intervening years between then and him reaching age 57. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr T's retirement – and Mr T would have been able to transfer out of the BSPS 2 if needed.

There may have been lower CETVs offered in the future if gilt yields and other market factors changed, but for the reasons given, I think that Mr T could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he did ultimately decide that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr T or his adviser could then assess at that point whether the transfer represented good value.

And so on the basis of what I've said above, it follows that I don't think the mooted early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr T to transfer his deferred benefits.

Death benefits

NTM said in the suitability report that the different format of the death benefits was appealing to Mr T. And it's fair to say that, if Mr T remained single, the death benefits offered by the transfer would likely be more beneficial to Mr T's child and/or his extended family.

But I have several concerns about this as a reason for transferring Mr T's benefits. Firstly, he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

The second is that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for children who are likely to no longer be dependent by that point. The recommendation needed to be given in the context of Mr T's best interests rather than those of his then dependent child (who would in any case receive a dependant's pension from the scheme until leaving full time education), or extended family.

And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual's best interests. The desire to leave a legacy to a child or extended family members cannot reasonably have subjugated Mr T's own personal requirement to benefit from his accrued pension benefits. The wish to leave any such legacy should have been properly weighed against the guaranteed benefits Mr T was relinquishing, and NTM should have advised him that his own financial benefit took priority here.

There was also no suggestion as to why a lump sum, beyond the death in service lump sum payment which would be paid if he remained in the same employment, would have been important to Mr T's child or extended family in the event of his death. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr T compromising the security of his own financial future.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr T's child or extended family by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr T personally.

What should NTM have done – and would it have made a difference to Mr T's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr T. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr T to make any decision about his BSPS benefits at this point in time and it was the responsibility of NTM to explain to Mr T why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr T's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr T was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr T, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, one of the key recorded objectives - possible early retirement – was in any case achievable within the BSPS 2, and would have remained so even in the scenario of entry into the PPF.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr T's income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr T to relinquish valuable benefit guarantees – especially at the age of 46.

My further view is that, if properly discussed, Mr T's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, should Mr T's relationship circumstances change in the future, albeit in a different format from those available from the PPP.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, the critical yields were higher than the discount rate and the mid band growth rate set out by the pension provider. And I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits, given Mr T's recorded risk attitude.

Taking account of Mr T's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that NTM should have advised against the transfer.

And I think that, had this happened, Mr T would have followed that advice and not transferred his benefits to the PPP.

<u>*Summary*</u>

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr T, nor was it in his best interests. The key contributing factors here are: Mr T's recorded attitude to risk and its incompatibility with the type of investment risk which would have likely been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr T's options and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr T were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him.

My view is that, taking account of the critical yields, Mr T's recorded (if not in fact lower) attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely (as also indicated by NTM), albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, NTM would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr T's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

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 the unsuitable advice.

In terms of the option Mr T would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr T's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. My understanding is that Mr T was in the process of divorcing at the time of the advice, and I can't see that it was recorded that he envisaged remarrying in the foreseeable future, and so I don't think this particular enhancement over the PPF benefits would have had much resonance for Mr T at that time.

The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

One of Mr T's recorded objectives was the ability to retire early. And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF.

But for the reasons set out above, even if Mr T envisaged retiring early, I think it's likely that, properly advised, he could have accessed his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age. The advantages of early retirement through the PPF wouldn't therefore have applied.

And so, for the reasons given, my view is that it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

I therefore consider that Mr T would most likely have remained in the occupational pension scheme and opted to join the BSPS 2 if suitable advice had been given. And as I've set out above, given the amount of time left to retirement, I don't think it could be assumed that Mr T would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions flexibly if required.

NTM Financial Services Ltd 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 Financial Services Ltd 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 T and our service upon completion of the calculation.

Mr T hasn't yet retired, and my understanding is that he has no plans to do so early at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T'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 Financial Services Ltd should:

- calculate and offer Mr T redress as a cash lump sum payment,

- explain to Mr T before starting the redress calculation that:

  - its 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 defined contribution pension

- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr T accepts NTM Financial Services Ltd's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr for the calculation, even if he ultimately decides not to have any of its redress augmented,

  and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses 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 T'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.

Determination and money award: I require NTM Financial Services Ltd to pay Mr T the compensation amount as set out above, up to a maximum of £160,000.

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

If Mr T accepts this final decision, the award will be binding on NTM Financial Services Ltd.

My recommendation wouldn't be binding on NTM Financial Services Ltd. Further, it's unlikely that Mr T could 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 my final decision.

As with the investigator, my view is that this matter will have caused Mr T a not inconsiderable amount of concern about his security in retirement. As such, I agree that NTM Financial Services Ltd should also pay Mr T £300 in respect of this.

My final decision

My final decision is that I uphold the complaint and direct NTM Financial Services Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 31 October 2023.

Philip Miller
Ombudsman