DRN-3580424

The complaint

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

What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In 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 H'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.

On 22 September 2017, the BSPS provided Mr H with a summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of £302,689.99.

Mr H contacted NTM for advice about his BSPS pension. NTM has provided notes that indicate it first met with Mr H on 1 October 2017. These say Mr H was now looking for advice about what was best to do. Mr H indicated he had a low tolerance for risk and, because of having limited knowledge or experience of investments, would be cautious. NTM said Mr H would need to consider his attitude to risk and should only proceed if he was prepared to accept at least a balanced level of risk.

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

NTM spoke to Mr H again on 23 October 2017 and completed a fact-find to gather information about his circumstances and objectives. Mr H was 45, married, in good health, with two financially dependent children. He was employed full time with his monthly income significantly exceeding his outgoings. He owned his own home with an outstanding mortgage of £15,000 but this was due to be repaid within five years. Mr H had no other debts and had savings of around £72,000 which he was adding to regularly, through his disposable income. In addition to the benefits held in the BSPS, Mr H was also a member of his employer's new defined contribution ('DC') pension scheme.

NTM says Mr H hoped to retire at age 55 with an income of approximately £2,000 per month in retirement. It said Mr H wanted to avoid his pension falling into the PPF, he wanted control over his pension and the flexibility to take pension benefits to suit his needs – such as a higher income earlier in retirement. It also said Mr H wanted his wife to receive the full benefit of his pension in the event of his death and that Mrs H was concerned about the reduction in benefits under the DB scheme which only offered a 50% spouse's pension. NTM said Mr H was aware of the option of entering the BSPS2 and considering this.

NTM said Mr H still wanted to minimise risk but had said not at the expense of meeting his objectives. And it says, as the pension was to be tied up for several years, he agreed he could take more risk and was happy to accept a higher level of risk. At the same time though NTM also carried out an assessment of Mr H's attitude to risk as part of the fact find. And the results of this analysis subsequently said Mr H's risk tolerance was 'very low'.

On 15 November 2017, NTM sent Mr H a suitability report summarising its recommendation. The report was dated 13 November 2017. NTM recommended that Mr H transfer his pension benefits into a personal pension. It said the reasons for this were that it provided Mr H the flexibility and death benefits he was interested in as well as likely giving him access to a greater amount of tax-free cash ('TFC') if he retired at 55. NTM said Mr H wanted to break all ties with his employer as he felt let down by what had happened, and a transfer gave him control over his pension and his "*own destiny in retirement*", ensuring the decision could be made for his interests, whereas the scheme would make decisions for all members. The report also recommended a new pension provider and how Mr H's pension should be invested – although this noted that the portfolio recommended was based on a minimum investment timeframe to age 57. NTM also advised Mr H to agree to it providing ongoing reviews and servicing of his pension, for an annual fee.

Mr H complained in 2021 about the suitability of the transfer advice. NTM didn't uphold Mr H's complaint. It said, although it was recorded Mr H had a cautious attitude to risk, it had informed him that if he could not accept the appropriate level of risk to meet his objectives, he shouldn't transfer. But, as Mr H indicated he was willing to accept the risks to meet his objectives, it thought a transfer was suitable as it met those.

Mr H referred his complaint to our service. One of our Investigators considered the complaint. He thought it should be upheld and that NTM should compensate Mr H for any loss the DB transfer had led to. He said, the evidence from the time indicated that Mr H was averse to risk. He thought Mr H was unlikely to improve on the benefits he could've received through the BSPS2 and PPF. And he didn't think Mr H had a genuine need to transfer because, while he might've aspired to retire early, his plans were unconfirmed. So, the Investigator thought suitable advice would've been not to transfer and that Mr H would likely have joined the BSPS2 had this been given.

NTM hasn't provided any further comments for our service to consider but we have assumed that it did not agree with the Investigator's opinion. As a result, the complaint was referred to me to make a final decision.

What I've decided – and why

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

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

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.

Was NTM's advice suitable?

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that it was in Mr H's best interests. NTM's role wasn't to put in place what Mr H might've thought he wanted. It was to give him clear, objective advice about what was in his best interests, particularly bearing in mind that the primary purpose of a pension is to provide the holders needs in retirement. And having looked at all the evidence available, I'm not satisfied a transfer was in his best interests.

From the information I've seen I'm satisfied that Mr H was clear from the start of the advice process that he had a low tolerance for risk. He had been prompted to contact NTM in the first place because of the concern over the position of the BSPS pension in general. And in the first meeting NTM recorded that Mr H said he didn't understand investments and would be cautious due to his lack of experience. This aversion to risk was reiterated throughout the correspondence I've seen. And an assessment of Mr H's tolerance for risk confirmed that this was 'very low'.

The suitability report also said that Mr H's attitude to risk was 'very low'. And it stated, "*if you are not happy to accept at least a balanced investment approach level of risk, it would be inappropriate for us to recommend that you transfer out of the BSPS at this current time*".

NTM was required to take into account all of the relevant information about Mr H when giving advice. And his attitude to risk was particularly relevant here. The advice should've been based on his actual attitude to risk, and what was in his best interests bearing this in mind. Even if that meant the recommendation went against some of the objectives he might've expressed a preference for - the advice here shouldn't have been based on wish fulfilment.

But rather than recommending against a transfer, based on the assessment of risk it had carried out, NTM seems to have instead persuaded Mr H to accept that he was willing to take a higher degree of risk. And then, when he agreed to this, recommended a transfer because of his other stated objectives. While I acknowledge that Mr H is an adult and plainly capable of making his own decisions, I don't think getting him to accept more risk, in order to make the recommendation appropriate demonstrates NTM was acting in his best interests. And for the avoidance of doubt, I'm satisfied that the assessment that he had a 'very low' attitude to risk, was likely accurate.

Financial viability

NTM carried out a transfer value analysis ('TVAS') report (as required by the regulator). This included a calculation of how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as he was entitled to under the DB scheme (the critical yield).

Having reviewed a copy of the TVAS, the critical yield figures appear to have been based on matching Mr H's existing scheme, the BSPS, based on the revaluation assumptions noted. But Mr H didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF if retaining his DB scheme benefits. But while a critical yield was calculated in respect of moving to the PPF, there was no comparison to the BSPS2.

NTM's role was to look at and advise Mr H about what was in his best interests. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. And in my view, in order to assess what was in Mr H's best interests and give him enough information to make a fully informed decision, I think this should've included analysis of the benefits the BSPS2 would've offered.

NTM has argued that BSPS2 may not have gone ahead. And has said that this uncertainty was part of the reason Mr H sought advice. But I think NTM is overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the point NTM instructed the TVAS reports and provided Mr H advice. Mr H's employer had agreed actions with the pension's regulator, and these had been carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations in September 2017. Mr H had also received his "time to choose" pack – with joining the new scheme one of the options. And details of the new scheme had been provided; the BSPS2 would've offered the same income benefits as the BSPS but the annual increases would've been lower. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident that the BSPS2 would go ahead. And enough information was available to enable a TVAS to be completed to analyse these benefits. Of course, it's possible it may not have gone ahead. But given it appeared likely to proceed I still think the benefits available to Mr H through the BSPS2 should've been factored into the TVAS reports and subsequent advice so that he was able to make an informed decision.

These issues notwithstanding, I've considered the information that was included in the TVAS report.

The critical yield to match the full pension the BSPS would've provided at age 65 was calculated as being 6.83%. Or to match the level of TFC and reduced pension the BSPS would've offered, 5.71%. To match the full pension the PPF would've offered at 65 the critical yield was 4.57%. And to match the TFC and reduced pension the PPF would've offered at that point, 4.27%.

Critical yields were also calculated for retiring at age 55 – as NTM says this was Mr H's preference. To match what the BSPS would've offered at that age the critical yield was 10.31% for a full pension and 8.05% for TFC and a reduced pension. And to match what the PPF would've offered at age 55 the critical yields were 7.2% and 6.78% for the same respective options.

While again a comparison of BSPS2 benefits was not produced, even though I think it should've been, from experience, BSPS2 critical yields for early retirement tended to be closer to those of the PPF. And for retirement towards the normal retirement age, moved more towards and gradually became more in line with those of the BSPS.

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.

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. This was 4.4% for 19 years to retirement – relevant if Mr H retired at 65. And for 9 years to retirement – the case if Mr H retired at 55 – it was 3.7%. 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, what I've said about Mr H's attitude to risk and also the term to retirement. There would be little point in Mr H giving up the guarantees available to him only to achieve, at best, the same level of benefits outside the scheme. But here, I think Mr H was likely to receive benefits of a lower overall value at retirement, than both the BSPS2 and the PPF, as a result of investing in line with his attitude to risk. And for early retirement the benefits after transferring were, in my view, likely to be substantially lower.

NTM referred in its suitability report to cash flow models that it said indicated, if Mr H achieved consistent growth of 5%, he could draw equivalent benefits to those he was giving up on a flexible basis, and the fund would last beyond his life expectancy. And it noted the past performance of the fund it was recommending indicated this could be achieved.

But those models relied on 5% being achieved year on year. This was not guaranteed and, based on Mr H's actual attitude to risk, appears to have been unlikely to be sustained. And, if Mr H didn't draw benefits equivalent to those he was giving up – which NTM indeed suggested was his intention as he would draw a higher income earlier in retirement – the fund would've been likely to run out much sooner. Potentially not leaving Mr H with the provisions he needed later in life – which is something that it was noted Mr H was concerned about. As NTM will also be aware, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

Taking all of this into account from a financial viability perspective, I don't think a transfer out of the DB scheme was in Mr H's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

NTM says Mr H wanted to retire at age 55 and have an income of around £2,000 per month. And that transferring was the only way to achieve this. Mr H has confirmed now, several years after the advice, that he would still like to retire at age 55. But he says he is pragmatic about this, his plans are still not finalised and weren't at the time.

As I've already said, it wasn't NTM's role to put in place what Mr H might've believed he wanted or base its advice on wish fulfilment. It was to provide Mr H objective advice about what was in his best interests – even if that went against what he thought he wanted.

At the time of taking advice, Mr H was still nearly ten years from his apparent intended retirement or when he'd be able to begin drawing benefits. I don't doubt that Mr H may've aspired to retire early. I think, when asked, most people would say they would like to retire early. But, for the majority, early retirement means a significant drop in income. Which would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, the majority choose not to retire. And given the time to retirement and that his circumstances could be subject to change, I don't think it's likely Mr H's plans were finalised.

In addition, Mr H could've drawn benefits early under both the PPF and the BSPS2. So, he didn't need to transfer in order to draw benefits from age 55, if he did ultimately decide he wanted to do so.

NTM said the only way Mr H could draw an income of £2,000 per month from his pension at age 55 was by transferring.

The TVAS said, under the PPF, from age 55, Mr H could take either an annual pension starting at £10,297.85 or TFC of £58,166.43 and a reduced pension of £8,733.47. So, this wouldn't have met his income objective. Again, what benefits would be payable under the BSPS2 doesn't appear to have been calculated. And by failing to do this, NTM didn't give Mr H all of the relevant information to consider. But given the PPF benefits for early retirement tended to be more generous than the BSPS2, I don't believe Mr H would've been able to meet his stated income objective through the BSPS2 alone at 55 either.

But Mr H was also a member of his employer's new defined contribution pension scheme. So, he would've had the proceeds of that to combine with his DB scheme at retirement, to potentially assist in meeting his income objective. NTM doesn't seem to have gathered information about the level of contributions being made to this pension by Mr H and his employer. Which I think was a failing on its part as this information would've been useful. But it did note that this pension was valued at just under £5,000 at the time of the advice – less than a year since it was established. And given Mr H's salary and what I know about the base level of contributions to this pension that I've seen in other complaints, before even accounting for growth, Mr H increasing contributions or being awarded any pay rises, it's likely that by 55 this policy would've been worth around £48,000.

On top of this, Mr H had savings and deposits of over £70,000. And he indicated he was continuing to grow this amount regularly, because his income exceeded his expenditure – which is supported by the fact find. So, as it was almost ten years until he could take any benefits from his pension, it's reasonable to think this amount was likely to have increased quite significantly, particularly bearing in mind his mortgage was due to be cleared in under five years, by the time he might've come to utilise it.

So, Mr H wouldn't have just had the benefits of the DB scheme to rely on to meet his income objective. And a combination of his provisions was likely to make this more achievable, with the DB scheme pension also continuing to escalate in payment. This is before accounting for any income or pensions Mrs H would continue to receive. And Mr H has said he was pragmatic about his objectives and whether they were achievable and remains so.

More importantly though, while the flexibility of a personal pension would've allowed Mr H to draw £2,000 per month from age 55, I can't see that there was any analysis of how long this level of withdrawal could be sustained for. All of the cash flow models NTM carried out were only based on replicating the benefits of the DB scheme – a significantly lower income level – and relied on achieving 5% growth consistently, which was not guaranteed. These indicated that there would come a point where the fund would run out, but again were based on much lower income levels being taken. And based on the CETV, I don't think the level of withdrawal's NTM says Mr H wanted to make were likely to be sustainable in the long term. And again, Mr H indicated one of his concerns was the pension running out. The BSPS2 or PPF on the other hand provided a guaranteed income for Mr H's lifetime with little risk borne by him.

Overall, I don't think it was in Mr H's best interests to make an irreversible decision to transfer his pension at the point he did and give up the guaranteed escalating benefits he'd have been entitled to. While Mr H might've given thought to retiring early, given the time until he was intending to retire, I don't think those plans were finalised and could've been subject to change, just as his circumstances and needs may have altered. I don't think transferring just to have flexibility that he didn't necessarily need and that may not have resulted in his pension being sustainable, was in his interests. And, if he had joined the BSPS2, I understand he'd have retained the option of transferring closer to retirement, had he wanted to pursue this at that point.

Death benefits

NTM said Mr H wanted his wife to benefit from his whole pension fund and that Mrs H was concerned about only receiving a 50% spouse's pension in the event of Mr H's death. It is worth noting though that this was what Mrs H was already entitled to under the BSPS, before any of the issues arose. So, while rates of escalation were altering, overall, the position regarding death benefits was unchanged. And there is no indication that Mr and Mrs H had expressed concern about this previously or put any thought to transferring to achieve alternate death benefits, before the issues with the management of the BSPS arose. So, I'm not sure this was as great a concern as suggested.

In any event, I recognise 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 might've been an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think NTM explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

The spouse's pension that would be provided by the DB scheme was 50% of what Mr H would've received. But this was guaranteed, and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer was always likely to be different to that figure – unless Mr H had passed away immediately, which was unlikely. As well as being dependent on investment performance, it would've also been reduced by any income Mr H drew in his lifetime. Mr H was recorded as being in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy. And given the implication of the advice was that Mr H would draw a high income from the pension from age 55, it appears likely the fund would've been significantly depleted by the time he reached his average life expectancy, and possibly eroded entirely. So, the pension may not have provided the legacy that Mr H may have thought it would.

It was indicated that Mr H potentially had death in service benefits from his current employer, which appear, in my view, to have been a more appropriate method by which to leave a legacy to his estate. The new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB scheme. And, if Mr H didn't think these were enough and genuinely wanted to leave a further legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, life insurance was an option.

NTM said, in the suitability report, that this was discounted because it was expensive, and it quoted a monthly premium of £250.44 to provide cover equivalent to the CETV. But it has also provided a copy of the research it undertook around this. And this indicated that whole of life cover for this amount was available with a much lower, guaranteed premium under £80 per month, from a different provider. Which, given Mr H's disposable income, appeared more affordable.

Also, basing the quote on the transfer value of Mr H's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. As I've explained whatever remained of Mr H's pension on his death was likely to be a lot less than the CETV if he lived a long life and / or if investment returns were poor. So, the starting point ought to have been to ask Mr H how much he would ideally like to leave to his spouse, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

In any event, NTM should not have encouraged Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement. And I don't think different death benefits available through a transfer to a personal pension meant the transfer was in Mr H's best interests or justified the likely decrease of retirement benefits for him.

Control or concerns over financial stability of the DB scheme

NTM said Mr H wanted control over how his pension was invested and his "*own destiny in retirement*". But it was recorded that Mr H had very limited investment experience or knowledge and had a very low attitude to risk. So, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And I think his desire for this has been overstated.

Rather, I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr H, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism regarding the likelihood of a solution. I also don't doubt Mr H was worried his pension would end up in the PPF or that he'd heard negative things about it, and this was why he said he preferred to have control over his pension fund. It's also possible that Mr H was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. But that is why it was even more important for NTM to give Mr H an objective picture and recommend what was in his best interests.

NTM has said that Mr H wanted a clean break from his employer and had lost faith in its management of the pension. But I note he still worked for them, was a member of the employer's new pension scheme and indicated he had no intention of changing jobs. So, while this might've been a reasonable emotional response, transferring for this purpose wasn't in my view, in Mr H's interests.

As I've explained, by the time of the advice details of BSPS2 were known and, despite what NTM has suggested, it seemed likely it was going ahead. The "time to choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated some of Mr H's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that NTM should've reassured Mr H that the scheme moving to the PPF wasn't as concerning as he thought. He didn't have firm retirement plans but could've in any event taken benefits early under the PPF. And while the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk and, as I've explained, I don't think he was likely to be substantially better off by transferring, such that taking this risk was in his interests – particularly giving his attitude to and tolerance for risk. So, I don't think that these concerns should've led to NTM recommending Mr H transfer out of the DB scheme altogether.

Suitability of investments

NTM recommended how the pension be invested with the new pension provider. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But again, NTM wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand Mr H's circumstances, separate his concerns stemming from the consultation and his unconfirmed plans for retirement from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was always very likely to obtain lower retirement benefits and in my view, had no other particular reason to transfer which would justify giving up these guarantees. His plans for retirement were not finalised and transferring doesn't appear likely to have allowed his apparent objectives to be achieved sustainably. And the alternative death benefits weren't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr H's best interests for him to transfer to a personal pension. And I think NTM should've recommended that he not transfer.

Mr H had nearly 10 years before he reached the age at which he'd indicated he might like to retire or that he could even think about beginning to draw benefits. But as I've explained I'm satisfied his plans were in any event unconfirmed and he would've taken a pragmatic view on this – particularly given sustaining the level of income that was discussed seems unachievable. 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 necessarily have been offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr H 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 NTM should've advised Mr H to opt into the BSPS2.

Of course, I have to think about whether Mr H would've gone ahead anyway, against NTM's advice.

I've considered this carefully, but I'm not persuaded that Mr H would've insisted on transferring, against NTM's advice. Again, I acknowledge that Mr H is capable of making his own decisions. But Mr H was an inexperienced investor with a very low attitude to risk and this pension accounted for the majority of his retirement provision. So, if NTM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests – which again, based on his actual attitude to risk it had already suggested was potentially the case – I think that would've carried significant weight and he would've accepted that advice.

I'm not persuaded that Mr H's concerns about the consultation were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. So, I don't think Mr H would have insisted on transferring out of the DB scheme.

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

Putting things right

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

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 H and our Service upon completion of the calculation.

For clarity, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of my 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 H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his personal pension

- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H 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 H'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 H the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

If Mr H 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 H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 11 September 2023.

Ben Stoker
Ombudsman