DRN-3583145

The complaint

Mr W complains about the advice given by Cambrian Associates Limited to transfer the benefits from his defined-benefit ('DB') occupational pension 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 W'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 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 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 W has told us that he chose to opt-into the BSPS2 prior to the deadline.

Nevertheless, concerned about what this all meant for the security of his pension, Mr W sought advice. Mr W met with Cambrian Associates in January 2018 having been referred to them by a colleague. On 12 January 2018 Cambrian Associates completed a fact-find to gather information about Mr W's circumstances and objectives. Amongst other things this recorded that Mr W was 34; he was separated; he had two dependent children; he owned his own home (unencumbered); he had no cash assets and no liabilities; and he wanted to retire at early at 57 on an income of £20,000 a year. Cambrian Associates also carried out an assessment of Mr W's attitude to risk, which it deemed to be 'balanced'.

On 17 January 2018 Cambrian Associates advised Mr W to transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in an investment fund, which Cambrian Associates deemed matched Mr W's attitude to risk.

In summary, the suitability report said the reasons for this recommendation were:

- Neither the BSPS nor the PPF would provide Mr W with the income he needed to retire at 57.

- To provide flexibility to adjust the income Mr W could take from his pension.

- To provide tax-efficiency

- To enable Mr W to pass on any remaining pension fund upon his death to his daughters.

- To alleviate Mr W's concerns about the financial stability of his employer and to provide him with control of his pension.

Mr W duly accepted the recommendation and sometime later, just under £238,000 was transferred to his new personal pension.

In 2021 Mr W complained to Cambrian Associates about the suitability of the transfer advice. He said he felt he'd received bad advice to transfer.

Because Mr W hadn't received a response from Cambrian Associates about his complaint within the required timeframe, he asked us to consider his complaint.

An investigator upheld the complaint and required Cambrian Associates to pay compensation. In summary they said that, given the critical yield required to match Mr W's scheme benefits, the opportunity to improve on them by transferring and investing in line with a balanced attitude to risk was limited. They said Mr W didn't have the capacity for loss given this pension accounted for his main income provision in retirement at the time. They said because Mr W's retirement was more than 20 years away, they didn't think Mr W would've known what his requirement were including his income need. They said Mr W didn't need control of his pension and death benefits shouldn't have been prioritised over providing an income. They said Mr W was contributing to his workplace Defined Contribution ('DC') scheme which he could've used to retire early allowing him to defer taking his DB scheme benefits. They said if suitable advice had been given, Mr W ought to have been advised to opt into the BSPS2 which they said Mr W would've likely accepted.

Cambrian Associates disagreed. It said the investigator had not addressed, or not addressed in enough detail some key points. In summary it said:

- Mr W's objective centred around an intention to retire at age 57.

- Mr W could not achieve his objective through the BSPS, PPF or BSPS2 – there was a shortfall in the income he would receive, so the transfer was suitable and was the best possible outcome.

- By transferring it's likely at least some of the pension fund will be available for Mr W's daughters should he pre-decease them. Through the existing scheme, the BSPS2 or the PPF once the benefits had been in payment for five years, they would've ceased on his death.

- If Mr W had entered the PPF, this would've prevented him from transferring in the future.

- It disagrees with the investigator's finding about Mr W's capacity for loss because it ignores his DC pension, which would likely amount to a considerable sum he could use to provide an income in retirement.

- The investigator incorrectly believed Mr W's desire for 'control' of his pension benefits was about him wanting to carry out self-investment – but this was about him taking ownership of his benefits and not having his pension under the control of the BSPS, BSPS2 or the PPF.

- It disagrees Mr W's DB pension formed the majority of his income in retirement because Mr W had his DC pension and other means, including his state pension to help provide him with an income.

- It disagrees a critical yield in excess of 8.29% a year would need to be achieved to make the transfer worthwhile – this takes account of a spouse's pension which was not a requirement of Mr W at the time and his other objectives of control and to be able to retire early were met by the transfer.

The investigator wasn't persuaded to change their opinion, so the complaint was passed to me for a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Cambrian Associates' 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.

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, Cambrian Associates should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Cambrian Associates carried out a transfer value analysis report (as required by the regulator) showing how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

Despite Cambrian Associates providing evidence in its business file, which appears to show that it calculated the income Mr W would receive through the new BSPS2 at his target retirement age, I can see the TVAS was based on Mr W's existing BSPS scheme benefits. But at the time of the advice, Mr W didn't have the option to remain in the BSPS. So basing the analysis on the existing BSPS benefits was somewhat redundant and in my view wasn't helpful to Mr W.

The advice paperwork referred to the 'Time to Choose' period and said: *"Members of the BSPS are now able to choose whether they want to keep their pension in BSPS, and receive benefits under the PPF compensation limits, or transfer their pension to a new employer sponsored scheme with the same benefits as the BSPS but with reduced annual increases, this is known as BSPS2."* But the deadline for members to choose of 22 December 2017 had passed at the time of the advice. Nevertheless, because Mr W has told us that he opted into the BSPS2 prior to the deadline, analysis of the benefits available to Mr W through the new scheme was relevant. So I think the benefits available to Mr W through the BSPS2 should've been factored in with Cambrian Associates' analysis and advice so that he was able to make an informed decision.

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 W was 34 at the time of the advice and it was recorded in the advice paperwork that he wanted to retire at 57. The TVAS dated 15 January 2018 set out the relevant critical yields: at age 57 it was 8.29% per year assuming Mr W took a full pension and 7.06% per year if he took a cash lump sum and a reduced pension. The critical yields required to match the benefits provided by the PPF at age 57 were 5.72% and 5.5% respectively. Cambrian Associates also produced critical yields based on the scheme's normal retirement age of 65 – based on a full pension it was 6.41% and on a reduced pension basis it was 5.45% and through the PPF 4.84% and 4.64% respectively.

But as I've said above, Mr W remaining in the BSPS wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

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 4.5% per year for 22 years to retirement (age 57) – it was 4.7% per year for 30 years to retirement (age 65.) I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr W's 'balanced' attitude to risk and also the term to retirement. In my view, there would be little point in Mr W 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, the lowest critical yield based on a retirement age of 57 was 5.5%, which was based on Mr W taking a reduced pension through the PPF. The critical yield if Mr W took the same benefits through his existing scheme at age 57 was 7.06%. So, based on taking the same benefits through the BSPS2 at age 57, I think the critical yield would've been somewhere between those figures, and likely closer to 7.06%. So given this rate was significantly higher than the discount rate of 4.5% and 2% greater than the regulator's middle projection rate, I think Mr W was most 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 a balanced attitude to risk. I don't think the position was any different if the scheme moved to the PPF. In my view, to have come close to achieving the returns required would've required Mr W to take on a greater level of risk than he'd indicated he was prepared to take.

While the advice wasn't predicated on Mr W retiring at the scheme's normal retirement age of 65, for completeness I'd add that given the critical yields quoted in the report, at best, I think the opportunity to improve on the benefits available to Mr W though the DB scheme were limited as a result of transferring and investing in line with his stated attitude to risk.

I can see Cambrian Associates has pointed to the fact that the critical yield takes account of a spouse's pension, which was not a requirement of Mr W at the time. I accept Mr W was separated at the time and the spouse's benefit provided by the scheme might not have seemed important at the time. But not only was Mr W young at the time of the advice and there was a good chance, in my view, that he might want to marry again at some point in the future, regardless I still consider the critical yield gives a good indication of the value of benefits Mr W was considering giving up and so a key indicator of the viability of the transfer.

The TVAS report also showed that, assuming Mr W took an income of equal value to the estimated benefits provided by the existing scheme, increasing by RPI per annum from a drawdown arrangement, at the medium rate of return the fund would run out by the time Mr W was 73 assuming he took a full pension or 74 with a reduced pension. This is significantly shorter than Mr W's life expectancy at the time, which in my view is further evidence that the transfer was not financially viable and Mr W was likely to end up with lower overall retirement benefits as a result of transferring out of the scheme.

I can see that Cambrian Associates produced a cashflow analysis report, which showed that Mr W could take his target income a year of £20,000 and still have a significant fund value to pass on to his family in the event of his death. But this was based on Mr W transferring the estimated total value of his workplace DC scheme at age 57 to his personal pension, so the analysis is not based solely on the transfer value of Mr W's BSPS benefits. In any event, as I will set out below, I don't think Mr W needed to risk his BSPS benefits to achieve things and I don't think higher death benefits should've been prioritised over Mr W's security of income in retirement.

So based on financial viability alone and given I think Mr W was likely to receive lower overall retirement benefits at his intended retirement age by transferring to a personal pension arrangement, I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Cambrian Associates said at the time – it acknowledged that it didn't think the critical yields were achievable, but thought Mr W's overall objectives meant the transfer was nevertheless suitable. So I've considered these other considerations and whether a transfer was suitable and in Mr W's best interests, despite providing overall lower benefits.

Flexibility and income needs

One of the key reasons Cambrian Associates recommended the transfer was to meet Mr W's objective for flexibility – to enable him to adjust his income in retirement, which it said wasn't possible through the DB scheme because the income payments are rigid and cannot be altered in any way.

But I'm not persuaded that Mr W knew with any certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, if that's what he ultimately required.

Mr W was 34 at the time of the advice. And while it's possible he had given his future retirement some thought, given it was more than 20 years away and he still had the majority of his working life in front of him, I don't think he had anything that could reasonably be described as a set retirement plan. Mr W's desire to want to retire early at 57, was in my view likely based on the earliest age he would be entitled to access his benefits rather than being a firm objective.

I accept Mr W liked the idea of retiring early, but he already had this option available to him – he didn't have to transfer out to achieve this. I also accept Mr W couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr W had to take those benefits at the same time. But nothing here indicates that Mr W had a likely future need to take a cash lump sum and defer taking his income. I also haven't seen anything to indicate that Mr W had a strong need to vary his income throughout retirement. So it strikes me that 'flexibility' and the ability for Mr W to vary his income was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr W's at the time.

Despite this, importantly Mr W was contributing to his workplace DC pension scheme. And the nature of a DC scheme means this already provided Mr W with flexibility – he wasn't committed to take these benefits in a set way. Cambrian Associates recorded that a total of 16% of Mr W's salary was being invested here – a combination of employer and employee contributions. So by age 57, based on current contributions alone and without accounting for growth, salary increases or increases in contribution rate, this could be worth around £138,000. And according to Cambrian Associates own analysis, it thought it could be worth around £377,000 based on an assumed growth rate. Whether it would achieve this level of growth or not, I think Mr W could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr W retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early - if that's what he ultimately decided.

So in any event, Mr W didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. And he didn't have to sacrifice this by opting into the BSPS2. But if Mr W did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age.

Cambrian Associates ought reasonably to have known that Mr W had chosen to opt into the BSPS2, so he would've retained the ability to transfer out nearer to retirement, if his needs later demanded it. I think Cambrian Associates could've explained this more clearly to Mr W.

Turning to Mr W's income need – while I don't think Mr W could in any way know for certain what his income need more than 20 years in the future would be (in that time his circumstances could likely change) it was recorded that he wanted £20,000 gross a year from age 57. And despite what Cambrian Associates said in its suitability report that: *"Early retirement under the BSPS would not provide you with the level of income you require at your age 57 (only providing a reduced income of £13,340 per annum) - therefore, under the BSPS it would not be feasible for you to retire early."* I think Mr W could likely meet his overall income need using the income from either the BSPS2 or the PPF (if the new scheme didn't go ahead) supplemented by his other provision.

For example, Cambrian Associates' analysis showed that at 57, under the existing scheme, Mr W would be entitled to an annual pension of just under £15,000. Because of the reduced revaluation factors, under the BSPS2 this figure would be lower. And as I said earlier on, Cambrian Associates also carried out a separate calculation of the estimated income Mr W would receive through the BSPS2, which showed it was around £13,300. This was the figure it referred to in the suitability report. Assuming its calculation was accurate, although this alone wouldn't meet Mr W's income need, he would've likely had a not insignificant amount in his workplace DC pension as I referred to above, which he could draw on flexibly, as and when needed, to top up his income or take a lump sum. I'm mindful too that Mr W had a significant monthly disposable income, which would've given him a high capacity to save his excess income in the years to his retirement to give him further scope to supplement his income / improve his standard of living – at least until his state pension being payable later on.

So it seems likely that if Mr W did decide to retire at 57 (by no means certain) he could've met his income need by remaining in the DB scheme and using his other means to supplement things. I don't think he needed to risk his guaranteed benefits at this stage to achieve things.

If the BSPS2 hadn't gone ahead, Mr W would've moved with the scheme to the PPF. And while the income Mr W would receive was likely lower than the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower such that it would've made a difference to the recommendation - according to Cambrian Associates the difference was negligible. As I've said above, while Mr W's retirement plans and needs weren't fully formulated and he would've had his DC scheme and savings to draw on flexibly until his state pension became payable.

So overall, I think Mr W could've likely met his income needs in retirement through the BSPS2 or the PPF. And I don't think it was in Mr W's best interests for him to transfer his pension just to have flexibility that I'm not persuaded he really needed.

Death benefits

Cambrian Associates also recommended the transfer because it would provide lump sum death benefits and enable Mr W's daughters to benefit from his pension fund.

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 W.

But whilst I appreciate death benefits are important to consumers, and Mr W 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 W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool.

I accept that Mr W was separated at the time, so the existing death benefits attached the DB scheme and specifically the spouse's pension might not have seemed of value to him. But Mr W was only 34, so it's entirely possible that he would re-marry again in the future, so the spouse's benefit would in my view become a valuable benefit. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Cambrian Associates should not have encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful too that Mr W already had lump sum death benefits available to him through his workplace DC scheme – he also had death-in-service benefit, which would've paid out in the event of Mr W's death before retirement. And Mr W could've nominated his children as beneficiaries of these if he hadn't already done so. Mr W also owned his own property outright, so his daughters stood to inherit a not inconsiderable sum here too.

But if Mr W 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 Cambrian Associates should've instead explored and ultimately recommended additional life insurance, which could be written in trust for their benefit. I appreciate that the suitability report mentioned a whole of life policy, for a sum assured equivalent to the Mr W's pension transfer value, which was quoted at £142.17 a month. The adviser recorded that this was discounted because Mr W didn't want to go through an underwriting process or commit to paying a high monthly premium for the rest of his life for his daughters to benefit from a lump sum.

While Mr W's stated response might suggest this was not a genuine priority of his given his, I don't think that this was a balanced way of presenting this option to Mr W. Cambrian Associates based the quotes on a sum assured for the full transfer value. But basing the quote on the transfer value of Mr W's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr W wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life, he took more from his pension than expected and/or if investment returns were poor. So, the starting point ought to have been to ask Mr W how much he would ideally like to leave to his family, taking into account his existing benefits. 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 given Mr W's age and affordable, notwithstanding that I think £142 a month was already affordable given Mr W's recorded monthly disposable income of more than £1,700.

Overall, I don't think different death benefits available through a transfer to a personal pension arrangement justified the likely decrease of retirement benefits for Mr W. And I don't think that insurance was properly explored as a suitable alternative.

Control or concerns over financial stability of the BSPS

Cambrian Associates also recommended the transfer because Mr W wanted to break all ties with his employer and because of his concerns about the financial stability of the scheme and his employer, he wanted to take control of his pension.

I understand that Mr W, like many of his colleagues no doubt, was concerned about his pension.

So it’s quite possible that Mr W was leaning towards the decision to transfer because of these concerns. But it was Cambrian Associates’ obligation to give Mr W an objective picture and recommend what was in his best interests.

As I’ve explained, by this point details of BSPS2 were known and Mr W had elected to opt into it. So, to a greater extent Mr W had already taken action which ought to have alleviated some of his concerns about the scheme overall moving to the PPF. But I think Cambrian Associates could’ve alleviated any concerns that remained by properly taking into account the benefits available to him through the BSPS2 in its analysis and advice.

But even if there was a chance the BSPS2 wouldn’t go ahead, I think that Cambrian Associates should’ve reassured Mr W that the scheme moving to the PPF wasn’t as concerning as he thought or might have been led to believe. Importantly Mr W still retained the ability to retire early. Mr W didn’t have any firm retirement plans at this stage - but I think the income available to Mr W through the PPF would’ve still provided a solid base, which his other means, including his DC scheme could supplement to meet his overall income need at retirement. Crucially I don’t think he was likely to be able to exceed this by transferring out.

And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. Mr W might not have been able to later transfer out of the PPF – but given what I said earlier on about him already having flexibility to vary his income and take lump sums, I don’t think there was an apparent need for him to do so.

So I don’t think that Mr W’s concerns about the BSPS and his employer was a compelling reason to recommend a transfer out of the DB scheme altogether.

Summary

I accept that Mr W was likely motivated to transfer out of the BSPS and that his concerns about the scheme and 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 have sounded like attractive features to Mr W. But Cambrian Associates wasn’t there to just transact what Mr W might have thought he wanted. The adviser’s role was to really understand what Mr W needed and recommend what was in his best interests.

Ultimately, I don’t think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr W was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr W did not have any firm retirement plans, so he shouldn’t have been advised to transfer out of the scheme just to have flexibility that I’m not persuaded he really needed, and the potential for higher death benefits wasn’t worth giving up the guarantees associated with his DB scheme. So, I don’t think it was in Mr W’s best interests for him to transfer his DB scheme to a personal pension at this time.

So, I think Cambrian Associates should’ve advised Mr W that his decision to opt into the BSPS2 was a suitable one and in his best interests.

Of course, I have to consider whether Mr W would've gone ahead anyway, against Cambrian Associates’ advice.

I’ve considered this carefully, but I’m not persuaded that Mr W would’ve insisted on transferring out of the BSPS against Cambrian Associates’ advice.

I say this because, while as I've already said Mr W was likely motivated to transfer when he approached Cambrian Associates, on balance, I still think Mr W would've listened to and followed its advice if things had happened as they should have and Cambrian Associates had recommended he not transfer out of the scheme. Mr W was not an experienced investor or someone who appears to have possessed the requisite skill, knowledge or confidence to against the advice they was given, particularly in complex pension matters. Mr W's pension accounted for most of his private retirement provision at the time – so, if Cambrian Associates had provided him 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 W's concerns about the scheme 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. And in relation to Mr W's desire to break all ties with his employer - it's clear that he still worked for the same employer and he intended to continue to do so. Mr W was also a member of the new DC pension scheme. So, Mr W wasn't going to achieve a separation from his employer by transferring as he would remain tied to his employer in other respects.

So, if Cambrian Associates had explained all of this and that Mr W could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr W would've insisted on transferring out of the BSPS if Cambrian Associates had given suitable advice that he not do so and that his decision to opt into the BSPS2 was the right one in the circumstances.

In light of the above, I think Cambrian Associates should compensate Mr W for the unsuitable advice, in line with the regulatory rules for calculating redress for non-compliant pension transfer advice.

I can see the investigator also recommended an award of £200 for the distress and inconvenience the matter has caused Mr W. 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 Cambrian Associates – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr W. Taking everything into account, including that I consider Mr W's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him some distress. So I think an award of £200 is fair in all the circumstances.

Putting things right

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

Cambrian Associates 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.

Cambrian Associates 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 W and our Service upon completion of the calculation.

For clarity, Mr W has not yet retired, and he has no firm 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 W'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, Cambrian Associates should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts Cambrian Associates' offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Cambrian Associates 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 W'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.

Cambrian Associates should also pay Mr W £200 for the distress and inconvenience the matter has caused.

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

<u>Determination and money award</u>: I uphold this complaint and require Cambrian Associates Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Cambrian Associates Limited pays Mr W the balance.

If Mr W accepts this decision, the money award becomes binding on Cambrian Associates Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 10 October 2023.
Paul Featherstone
Ombudsman