DRN-3590984

The complaint

Mr D complains about the advice AJH Financial Services Ltd ('AJH') gave 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 D'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')[1] , 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 said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr D's employer would be set up – the BSPS2.

In September 2017, at Mr D's request, the DB scheme administrators sent him information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') quotation.

In October 2017 the DB scheme administrators sent its members "*time to choose*" packs. Those gave members three options:

- To stay in BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

The administrators gave Mr D until 11 December 2017 - which was later extended to 22 December 2017 – to make his choice, otherwise the default position was that his pension benefits would move to the PPF. Mr D did not submit a pension choice to the administrators.

Mr D approached a firm of financial advisers for advice about his pension options. He was some way down the advice process when that firm told him it no longer had the regulator's permission to give the relevant pension advice. On the recommendation of a colleague Mr D then approached AJH for advice.

AJH met with Mr D on 27 December 2017. It gathered information about his entitlement under his current DB scheme and obtained transfer value analysis (TVAS) reports. It received two TVAS reports, showing slightly different figures. While AJH has referred to

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

some of the figures from the first TVAS in its suitability report, in this decision I will mainly focus on the second TVAS as that specifically compares benefits with the named personal pension relevant to AJH's advice. AJH completed a fact-find with Mr D and an assessment of his risk appetite. It also received an illustration from a named personal pension of what Mr D's pension might be worth if he transferred his benefits into it. Amongst other things, AJH noted:

- Mr D was 49 years old and in good health, married with three children, two of whom were still financially dependent on him.
- He was working full time earning £37,000 a year. His wife was also working. They had a joint income of £3,490 a month net with regular outgoings of £2,296 a month.
- They owned their own home. It was worth around £110,000 with an outstanding mortgage of £70,000 repayable for a further 12 years with monthly repayments of £530.
- Mr D had joined his employer's money purchase pension scheme and together they made contributions of 16% of his salary to it.
- His preference was to retire between ages 55 and 60 but he recognised that retirement at 55 might be a "*pipedream*" and that retiring at 60 was likely more achievable.
- He had a "lowest medium" attitude to risk.
- He wanted to transfer because:
    - he'd lost trust in the DB scheme;
    - he wished to avoid its early retirement penalties;
    - he hoped to increase his pension.
- He believed he would need £18,000 a year income in retirement.
- His DB scheme benefits had a CETV of £339,309.
- At age 65 Mr D's entitlement from the PPF was a full pension of £17,124 a year or tax free cash ('TFC') of £89,266 and a reduced pension of £13,373 a year.
- The growth rates required (the critical yields) to match those benefits from a personal pension were 4.48% and 4.16% respectively.
- At age 60 the PPF would pay him a full yearly pension of £13,866 or TFC of £74,807 and a pension of £11,197 a year.
- The critical yield to match the early retirement benefits were 5.49% and 5.1%.

Mr D met with AJH again in January 2018. It discussed its analysis with him and advised him to transfer his DB benefits to a named personal pension. It also gave him an illustration prepared by the named personal pension provider as to what his pension benefits might be if those were invested in its scheme. Around six days later Mr D applied to transfer his DB benefits to the named personal pension.

The following month AJH sent Mr D a detailed report setting out its analysis and the reasons for its recommendations. Such reports are commonly known as suitability reports, so that's the term I'll use in this decision. Amongst other things AJH said:

- When Mr D initially joined the DB scheme the retirement age was 60. That had since changed to 65 but Mr D still wanted to retire early.
- Benefits from the DB scheme would be reduced if he took those early.
- Mr D didn't wish to risk his benefits being transferred to the PPF.
- Mr D was concerned about his employer's intentions towards the pension fund and so didn't wish his benefits to go into the BSPS2 and he was apprehensive that it might not go ahead or itself go into the PPF.
- He wanted to break all ties with his employer and preferred to move his pension funds to a personal pension plan.
- He had lost confidence in the existing scheme.

- His top three priorities for his pension funds were:
    - The ability to retire early
    - Lump sum benefits if he died before retirement.
    - increase his pension.
- The cashflow model in a TVAS showed that, if his fund grew at 3.5% a year and Mr D took drawdown income equivalent to his BSPS2 benefits (£15,038 a year) from age 60 his fund would deplete at age 87.
- Another model showed that if his fund grew at 6%, he could take his desired income of £18,000 a year and his fund would last well beyond his life expectancy up to age 111.
- There were advantages and disadvantages of transferring, which it explained, as well as the risks associated with doing so.
- It had recommended that Mr D transfer his DB scheme benefits as doing so would allow him to achieve his objectives of increased flexibility of how his funds were accessed; also greater flexibility for his wife in the event of his death; and would address his concerns over the stability of the DB scheme.

In March 2018 the named personal pension provider confirmed that it had set up Mr D's pension and it gave him an updated illustration of what his pension might be worth at age 60.

Mr D complained about AJH's advice in 2021. In short Mr D said he believed the advice to transfer out of his DB scheme wasn't suitable for him. AJH didn't uphold Mr D's complaint. It provided a detailed response to his concerns. In brief it said Mr D couldn't have achieved his objectives while remaining in the DB scheme, which transferring allowed.

Mr D brought his complaint to our Service. One of our investigators looked into it. She upheld it and recommended AJH pay Mr D compensation. In summary our investigator didn't feel that AJH's advice was suitable for Mr D. She noted that, by the time AJH gave its advice the deadline for Mr D to tell the DB administrators of his pensions choice had passed. So he had lost the opportunity to choose the BSPS2 and staying in the scheme would have meant moving with it to the PPF. In those circumstances the only meaningful comparison in terms of pension benefits for his funds was the PPF. She thought Mr D was likely to be worse off by transferring away from the safeguarded benefits of the DB scheme and the PPF. She also recommended that AJH pay Mr D £300 compensation for the distress and inconvenience the unsuitable advice caused him.

AJH appointed professional representatives to respond to our investigator's assessment. But, for ease of reading, I will refer to the representatives' comments as being AJH's. It didn't agree with our investigator's view. Amongst other things it said that our investigator hadn't paid any regard to Mr D's stated needs and objectives. It added that it believed Mr D would have gone ahead with a transfer regardless of its advice.

The investigator wasn't persuaded to change her opinion, so 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.

In responding to this complaint and replying to our investigator's assessment of it AJH has made a number of detailed points. I've considered carefully everything it's said. But in this decision I don't intend to address each and every point individually and instead will focus on the matters which I see as being at the heart of Mr D’s complaint and the reasons for my decision.

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

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of AJH'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 broadly similar reasons to those our investigator gave.

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

Financial viability

AJH obtained transfer value analysis reports (as required by the regulator) showing how much Mr D’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). As I've said above, while AJH received two of these reports for ease of reference and simplicity I will mainly refer to the latter of those two, which shows slightly lower critical yields than the first.

AJH provided its advice 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 our Service published similar rates 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 D was 49 at the time of the advice and his preferred – realistic – retirement age was 60. The scheme’s normal retirement age was 65. The critical yield required to match Mr D’s benefits at age 65 from the PPF was 4.48% if he took a full pension and 4.16% if he took TFC and a reduced pension, Those rates climbed if Mr D took his pension at age 60 to 5.49% if he took a full pension and 5.1% if he took TFC and a reduced pension.

The relevant discount rate closest to when AJH gave its advice which I can refer to was published by our Service for the period before 1 October 2017. It was 4.3% for 15 years to retirement at age 65 and 3.8% a year for ten years to retirement at age 60. 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 D’s ‘lowest medium’ attitude to risk and also the term to retirement.

I appreciate that the critical yield figures and discount rates for Mr D retiring at age 65 are broadly comparable with each other – although less so once early retirement is considered. But there would be little point in Mr D giving up the guarantees available to him through the PPF only to achieve, at best, the same level of benefits outside of it. And as the lowest critical yield here was 4.16% it seems very unlikely that Mr D would be able to significantly improve on his pension income by transferring and investing in line with his attitude to risk. And if he retired early, I think he was likely to receive benefits of a lower overall value by transferring his pension.

AJH has added that Mr D had no intention of buying an annuity and as such the critical yield, which is a measure of the growth rate required to match the guaranteed benefits from the scheme, wasn’t relevant. I’ve considered this information carefully. On the point of not wanting an annuity, Mr D was over 10 years from his preferred retirement date and 15 years from the scheme’s normal retirement age. I don’t think, given how far from the event he was, he could realistically say with certainty whether he would want to take a regular income at retirement or not. It’s entirely possible that, by the time he reached retirement age, Mr D would want at least some guaranteed income in retirement.

AJH has provided a cashflow model in its TVAS, which shows Mr D would’ve been able to meet drawdown funds equivalent to his DB benefits from age 60 until he was 86 or 87 years old (depending on which TVAS is considered) if he took a full pension, and 91 or 92 if he took TFC and a reduced pension. I’ve considered this, but I note the model it refers to is based on consistent “mid” level growth of 3.5% a year every year. So, if there were market crashes or sustained periods of poor performance then there was a very real chance that Mr D’s fund would grow at a much slower rate and would be depleted far sooner.

AJH provided another model which showed that Mr D could take his desired income of £18,000 a year and still have funds left in his personal pension until he was 111 years old. But, that model was based on a consistent growth rate of 6% a year. That figure is considerably higher than the discount rates and the regulators mid-level projection for growth. So I don’t think that level of consistent growth would’ve been achievable for someone with Mr D’s risk appetite. AJH said the named personal pension had achieved cumulative annual growth of 8.79% for the three years prior to the advice and 10.38% for the five years before the recommendation was made. But as AJH is aware, past performance is no guarantee for future performance. So I think the discount rate and the regulator's projection rates are more indicative of the likely growth Mr D could reasonably achieve.

Further I note the named personal pension provider gave its own cashflow illustration projecting how it thought Mr D's fund might perform. That illustration projected a 4.7% growth (2.2% after allowing for inflation of 2.5%). The provider also showed how the effect of adviser and product charges would affect growth in real terms. That showed the charges would further reduce the growth to 3.2%, or 0.7% after making an adjustment for inflation. And it's notable that Mr D's funds would not be subject to charges if they remained in the DB scheme or once they entered into the PPF. So I'm not persuaded that the historic performance of the named personal pension fund was sufficient reason to recommend Mr D should risk giving up his safeguarded benefits for.

It follows that I think it's likely that, at best, transferring to a personal pension could maybe match the benefits Mr D would otherwise have been entitled to from remaining in the DB scheme and moving with it to the PPF if he retired at 65. But if he retired early he was likely to be worse off overall. Further, there are significant risks involved in investing in a personal pension. And, as I've said above periods of poor performance could mean that Mr D would be substantially worse off as a result of transferring. For this reason alone transferring to a personal pension wasn't in Mr D'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. So I've gone on to consider whether AJH has clearly demonstrated that its advice was in Mr D's best interests. When doing so I've been mindful that AJH's role was to find out what Mr D's wants and needs were and why. Its role wasn't simply to do what Mr D wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and early retirement

AJH said that by transferring Mr D could enjoy flexible access to his pension income, which would allow him to retire early or to vary the amounts he took from his pension, allowing him to take more in the earlier years. But having considered the evidence, I don't think Mr D needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

I don't doubt that, when asked, Mr D told AJH that he would like to retire early. In fact it seems that they discussed retirement at age 55 but identified that was not a realistic proposition and so AJH based its advice on retirement at age 60. I can fully understand Mr D's desire to retire early. I think most people would say when asked that they would like to do so if given the chance. But I think that was likely more of an aspiration than a definite plan. And I believe most people would understand that having the opportunity to retire early isn't worth compromising their income security over the remainder of their life for. It seems to me that this is something Mr D was likely to reassess once he grew nearer to retirement age.

Further, the named personal pension provider's projections for growth were far more conservative than AJH's models. And while those don't show that early retirement was unachievable as a result of transferring, a consistent period of poor performance could see Mr D deplete his funds earlier than anticipated. That's particularly the case if he had to rely on those funds heavily in the early years of his retirement before his state pension became payable.

I also think it's worth noting that AJH's suitability report presented early retirement – either from the DB scheme or the PPF – as being something to be avoided because of the *penalties* that came with doing so. Whereas it sold the possibility of early retirement as a benefit of transferring. But, the *penalties* that AJH referred to were in fact nothing more sinister than actuarial adjustments. Those adjustments reflect that, by taking a pension earlier, it's likely that the pot to pay for that pension will have to last longer. As such the actuaries calculate a reduction in the yearly pension to allow for the fact that the pensioner will claim the pension – most likely – for a longer period. That's not a '*penalty'* for taking the pension early, it's simply a compromise for having the benefits of that pension over a longer period. And I think describing early retirement factors as a *penalty* wasn't providing Mr D with information that was clear, fair and not misleading.

Similarly, while Mr D could access benefits from his personal pension without a *penalty,* any such deduction would reduce the remaining pension pot and also decrease the amount the fund would grow by. So drawing down funds from an earlier date would in effect either lessen: the amounts Mr D could take as income; the time frame he would have funds available for; or – as I explain below – the remaining funds available as a death benefit. So taking money from his personal pension early could have a more significant effect on Mr D's income in retirement than taking benefits from the scheme or the PPF early. That's because the benefits from the PPF would continue to grow in line with the relevant indexation regardless of how early Mr D took it. But I don't think AJH made this clear.

Further Mr D would have other sources of income at retirement. Most notably Mr D was also paying into his group money purchase pension scheme. And, if the contributions continued at 16% a year without ever changing or increasing, and without factoring in any growth, the fund could be worth over £63,000 by the time Mr D reached 60. I appreciate that Mr D couldn't guarantee that he would stay in the same job until retirement and he was clearly concerned about his employer's future. But if he changed jobs it's likely he would continue paying into a pension. And, if he'd been insistent on retiring at age 60, then he could have used those money purchase pension funds to bolster his income from the PPF until his state pension became payable at age 67, while retaining the guaranteed benefits from the PPF. But I can't see that AJH put this prospect to him.

In any event I don't think Mr D had a concrete need to take early retirement. As I've said above I can understand why he would want to retire early. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr D. But there's no evidence that AJH seriously challenged his objective of early retirement. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

That said, it's true to say that Mr D couldn't have had the same level of flexible access to his PPF funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow Mr D to draw down funds as he saw fit. It's also the case that Mr D could have taken 25% of his entire personal pension fund as TFC whereas the PPF has stricter rules about how much can be taken as a lump sum, although that can be more generous than from the DB scheme where early retirement is taken. But while I can see why a higher lump sum and more choice over how much to take and when might have been an attractive prospect to him, I'm not persuaded that Mr D had any concrete need to take TFC at all or to vary his income throughout retirement. And if Mr D did need flexible access to funds, he could have arranged to take those from his money purchase pension.

So while the option of drawing all his pension income flexibly might seem like something that would be nice to have, I can't see that Mr D had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time AJH gave its advice. So I don’t think it was in his best interests to transfer.

Death benefits

AJH said that, in the event of his death, Mr D would like his wife to have the same access to his pension benefits as he did. It also recorded that death benefits before retirement were important to him.

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 D. That’s because whatever was left within Mr D’s personal pension at the date of his death would be passed on to his family. And, if that happened before his retirement or soon after then that would likely be a significant sum. In contrast the PPF would pay Mr D’s wife 50% of his yearly pension after he died.

But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his DB scheme benefits to a personal pension because of this, the priority here was to advise Mr D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of the PPF Mr D was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not need for many years to come.

I also think the existing death benefits attached to the PPF were underplayed. Mr D’s wife would receive 50% of his pension on his death and that would be payable to her until her death. And I don’t think AJH made the value of these death benefits clear enough to Mr D when compared to those available from the personal pension. Not only were they guaranteed and escalated but they were not dependent on investment performance or how much was left in the pot, whereas the sum available to Mrs D on Mr D’s death in a personal pension was.

Given the size of the CETV I can understand that Mr D might have thought that guaranteed a significant lump sum for his family on his death. But, the available fund was reliant on a number of factors, including investment growth, and as I've said above, a period of poor performance could reduce the sum available as a death benefit. Further, the fund would reduce as Mr D drew down money from it. So if Mr D took higher sums from it in the early years of his retirement, then that could significantly reduce the amounts available to live off, let alone to leave as a legacy for his family on his death.

It’s also notable that Mr D could nominate any beneficiary of his choosing to receive the remaining funds he had accumulated in the money purchase pension on his death. So, he already had a means of ensuring part of his pension didn’t die with him.

If Mr D genuinely wanted to leave a legacy for his family, which didn’t depend on investment returns, I think AJH could have further explored life insurance with him. Mr D already had a significant death in service benefit through his employer which would have been worth around £148,000. But if he wanted an extra sum, then he could have taken extra cover out on a whole of life or term basis. I understand that AJH did raise this possibility with Mr D but he told it that he was more concerned with the actual loss of money from the pension fund on death rather than obtaining a life insurance policy to cover the loss. In other words Mr D’s motivation wasn’t so much leaving a legacy but was focused on his family not losing out on the pension he contributed towards if he should be unfortunate enough to die early. And that suggests to me that greater death benefits wasn't a genuine objective for Mr D. Instead, it was simply a consequence of transferring his pension. Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr D.

Control or concerns over financial stability of the DB scheme

I'm aware that many BSPS members like Mr D had serious concerns about the security of their pension pots and also the future of their employer. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr D. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand 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. And the evidence indicates that Mr D was most likely leaning towards transferring when he sought advice. But AJH was tasked with rationally addressing Mr D's concerns and providing an appropriately balanced view of the available options. And in order to recommend that Mr D should give up his safeguarded benefits AJH needed to be able to clearly demonstrate that doing so was in his best interests.

By the time that Mr D had his first meeting with AJH he'd already missed the deadline to return his "*time to choose*" options to the DB scheme administrators. That meant he could no longer opt to transfer his benefits to the BSPS2, his only remaining options were to allow his DB benefits to move to the PPF or to transfer to an alternative arrangement. But it doesn't appear that AJH identified this as its suitability report refers on a number of occasions to comparisons with the BSPS2.

And, I think AJH should have reassured Mr D that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr D through the PPF would have most likely provided a greater income than that available from investment in a personal pension. Mr D could also look forward to an income from his money purchase pension and then later from his state pension. And although the increases in pension payments from the PPF were lower than from the BSPS or the BSPS2, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to AJH recommending Mr D giving up his safeguarded benefits.

I also think Mr D's desire for control over his pension benefits was overstated. Mr D was not an experienced investor and I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think this was a genuine objective for Mr D – it was simply a consequence of transferring away from his DB scheme.

It seems to me that Mr D's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.

Further AJH should have explained to Mr D that allowing his pension to move to the PPF would effectively take it out of the influence of his employer. And in any event, Mr D was not intending to leave his employment and his money purchase pension remained connected to his employer. In other words transferring out of the scheme didn't achieve a 'break' from his employer. So, I think AJH missed the opportunity to reassure Mr D that staying in the scheme and allowing his pension to move to the PPF would essntially remove those funds from any plans his employer might have for the pension funds.

So, I'm not persuaded that the uncertainty that Mr D experienced when he entered into the advice process was sufficient reason for AJH to recommend that he should transfer his safeguarded benefits to a personal pension. I also understand that Mr D was concerned by the reductions in his pension benefits from the PPF. But there was a possibility that by moving to a personal pension the volatilities and risks of the investment markets could see his pension income reduced even further. So, I don't think Mr D's concerns about reductions in income from the PPF should have led to AJH recommending Mr D transfer to a personal pension.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr D. But AJH wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

AJH was in a good position to have analysed, tested, challenged and advised Mr D about what was in his best interests for retirement planning. It knows valuable pension pots like Mr D's DB scheme were paid into with the intention of providing for retirement. And ultimately, I don't think the advice AJH gave to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income from the PPF. By transferring to a personal pension Mr D was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr D's best interests for him to transfer his DB scheme to a personal pension when he would have had the opportunity of taking secure benefits from the DB scheme after it moved to the PPF.

Of course, I have to consider whether Mr D would have gone ahead with the transfer anyway if it wasn't for AJH's advice. And, after thinking about this carefully, I'm not persuaded he would have done so. I accept that Mr D most likely entered into the advice process with an idea he wanted to transfer his pension. But he was an inexperienced investor and his DB pension accounted for a significant portion of his retirement provision at the time. So, if AJH had given him clear advice against transferring his safeguarded benefits, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice.

AJH said that if Mr D was concerned about the loss of guaranteed income he should be able to show evidence of looking into a deferred annuity. And, if he doesn't want to buy one now that indicates that he was always going to transfer. But I disagree. After following AJH's recommendation and transferring, Mr D will benefit from flexibility. But he's only in that position because of the unsuitable advice. And ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this here.

It follows that I don't think AJH's advice to Mr D to transfer out of his DB scheme was suitable for him. And I think it should have advised him to stay with the BSPS even if it was moving to the PPF. So, I think AJH should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Mr D, I think AJH should also pay him £300 to address that.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

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

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

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for the new guidance to come into effect.

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

For clarity, Mr D has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr D's acceptance of the decision.

AJH may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr D's SERPS/S2P entitlement.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect AJH to carry out a calculation in line with the updated rules and/or guidance in any event.

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

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

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr D within 90 days of the date AJH receives notification of his acceptance of my final decision. Further AJH must add interest to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes AJH to pay Mr D.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above. In those circumstances, any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

In addition AJH should pay Mr D £300 to compensate him for the distress and inconvenience its unsuitable advice has caused him.

AJH should provide details of its calculations to Mr D in a clear, simple format.

Additional compensation

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be completed by April 2023.

It's been announced that:

"When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out."

"*For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out*."

The amounts of possible increases are yet unknown. The scheme now expects to be able to have information on this by April 2023. Mr D would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. I think it's fair any such increases are taken into account when compensating Mr D**.**

I don't think it's reasonable for AJH to delay the compensation calculation in its entirety until the buy-out is completed. It had previously been expected to happen in late summer 2022, but this has since been updated to April 2023 and so I'm conscious that this could be delayed further due to its complexity. To give some certainty to the parties, I think it's fair AJH calculates and pays Mr D any compensation due now as set out above comparing his existing benefits with the PPF. Once the buy-out is completed and more detailed information is available how exactly PPF benefits will increase, AJH should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time. They should base their calculations on the benefits Mr D would have been entitled to after the buy-out.

This calculation should be done as soon as possible after the new buy-out benefits are known. AJH should keep up to date with developments on this matter, for example any information published on www.oldbritishsteelpension.co.uk. Equally, if Mr D becomes aware further information is available, he should let AJH know. If the second calculation results in a higher redress amount than the first calculation, AJH must pay Mr D the difference. If the second calculation results in the same or a lower redress amount than the first calculation, no further action should be taken.

The compensation amount of the second calculation must where possible be paid to Mr D within 90 days of the date a public announcement is made that the buy-out has completed. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of announcement for any time, in excess of 90 days, that it takes AJH to pay Mr D.

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 AJH Financial Services Ltd to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require AJH Financial Services Ltd to pay Mr D any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require AJH Financial Services Ltd to pay Mr D any interest as set out above on the sum of £160,000.

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

If Mr D accepts this decision, the money award becomes binding on AJH Financial Services Ltd. My recommendation would not be binding. Further, it’s unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 8 March 2023.

Joe Scott
Ombudsman