DRN-3591122

The complaint

Mr S complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Pensionhelp Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Pensionhelp".

What happened

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

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr S's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr S was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Pensionhelp which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr S was 39 years old, single and with no dependent children. He was described as being in good health and at the time of the advice he had accrued over 21 years of pension benefits with the BSPS.

- Mr S lived in a home valued at around £160,000 with a 13-year mortgage outstanding of around £80,000.

- Mr S earned around £45,000. After expenses he had some disposable income left over. Mr S had savings of £20,000 and was paying a type of car loan. He had no other assets or liabilities.

- The cash equivalent transfer value (CETV) of Mr S's BSPS was approximately £318,790. The normal retirement age (NRA) was 65.

Pensionhelp set out its advice in a suitability report on 25 November 2017. In this it advised Mr S to transfer out of the BSPS and invest the funds in a type of personal pension plan. Pensionhelp said this would allow Mr S to achieve his objectives. Mr S accepted this advice and so transferred out. In 2021 Mr S complained to Pensionhelp about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr S referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Pensionhelp said it hadn't done anything wrong and was acting on the financial objectives Mr S had at the time.

As the complaint couldn't be resolved informally, it's come 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 also 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'). 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 Pensionhelp'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pensionhelp should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr S's best interests. I have also carefully considered the final response letter from Pensionhelp (30 November 2021) and the representations from its legal adviser (27 June 2022). I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr S's complaint.

Financial viability

Pensionhelp referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, Pensionhelp used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

Pensionhelp now says that using critical yields isn't fair or relevant mainly because Mr S wasn't wanting to buy an annuity. However, I disagree with this. The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr S was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

However, before assessing the critical yields in Mr S's case, I think it's important to point out that Pensionhelp could have taken time to compare the benefits of the BSPS2 with transferring out, rather than just using the current BSPS for comparisons. We know BSPS was being stopped. Also, many weeks before this advice, which was dated 25 November 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time Pensionhelp produced its suitability report.

It's true the situation was dynamic in that some changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr S the best opportunity to make an informed decision about what to do. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS). In my view, all this shows the advice probably wasn't quite as comprehensive as it ought to have been.

Having said all that, Pensionhelp said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 6.19% if Mr S took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 6.73%. However, Pensionhelp also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr S had apparently expressed a desire to retire early.

However, as I'll explain more about later, retirement was still a very long way off for Mr S and so I very much doubt whether retiring at 60 was anything more than something he just aspired to, rather than being part of a real plan. For the age of 60, the critical yields came out at 5.98% (no tax-free cash) and 4.94% (with tax free cash) respectively.

However, I think Mr S would have found some key aspects of the suitability report confusing. For example, on page 3 of the report, the adviser said this about achieving the critical yield,

> *"We have carried out a comparison of your potential scheme benefits and a transfer to a personal pension. We <u>do</u>* [my emphasis] *believe that the critical yields required to match the scheme benefits are achievable based on your attitude to risk".*

However, on page 10 it says,

> *"The critical yield required to replicate the scheme benefits at age 60 is not* [my emphasis] *achievable based on your attitude to risk (assumed long term investment return of 5.90% per annum)".*

I think all this needed a careful explanation, but I don't believe it was made clear enough what Pensionhelp was actually saying. Pensionhelp was saying that retiring at 60 *might* meet the critical yield *but only* if Mr S took a tax-free lump sum, something he'd expressly said he might not do upon accessing his benefits. But I don't think there was any real doubt at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was going to be unlikely. Using the age of 60 wasn't strictly giving Mr S the full picture here or enough information about the various critical yield rates to allow him to make an informed decision; he'd only said he *"may"* retire at 60. And Pensionhelp unilaterally assuming a growth rate of 5.9% (as shown above) was also, in my view, an exaggeration. I say this with the following in mind.

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 and was only 4.6% per year for 25 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. So, Pensionhelp assuming growth of 5.9% over such a long period in the future probably wasn't credible.

At the time, Pensionhelp assessed Mr S's attitude to risk (ATR) as "balanced" (or level 6 out of 10). But everything I've seen shows Mr S had no experience of these types of 'money market' investments. Although he filled out an ATR questionnaire, Mr S didn't have any relevant investment experience to call upon and despite having around £20,000 in savings, there's no evidence this was invested in anything other than a deposit type bank account. This was confirmed in the knowledge and experience assessment by Pensionhelp which recorded that *"this would be my first investment – I have no previous knowledge or experience of investments".* I've considered that Mr S had joined the new TATA Steel defined contribution (DC) scheme moving forward. But there's no indication he was invested in anything other than the 'off the shelf' investment strategy and he likely had no direct responsibility for making investment decisions. In short, I think categorising his ATR as 6/10 only pushed him into investment strategies that he most likely wasn't comfortable with.

I've seen that Pensionhelp also said he had a high capacity for loss (CFL). But I think this was also a mis-categorisation. Mr S lived in a modest home, had a mortgage with several years left to run and he also had a vehicle purchase contract. Saying he had a high capacity for loss implied he could accept significant investment losses. Generally, the higher his capacity for loss, the more risk he'd be able to take, but that doesn't necessarily mean that he should have been advised to take that level of risk. Our investigator explained these mis-categorisations in some detail and I agree with what he said.

Ultimately I think the adviser pushed Mr S's ATR and CFL categories into areas that were too high. This was all a part of what I'd say was advice that fell short of what Mr S had the right to expect; although this didn't really change anything anyway.

That's because Pensionhelp seemed to accept that higher levels of growth most likely wouldn't be achievable. By definition, it was admitting that 6.19% couldn't be achieved - it effectively told Mr S this. However, to be clear, the regulator's growth assumptions were at very best 5% for a 'mid' rate return. But as I've set out above, I do think the growth assumptions should have been more appropriately measured against the 'low' regulators rate of nearer 2%. So, I think a growth assumption at the lower end of the regulator's projections and also close to the discount rate was most relevant here. This was around 2-to-4½% and substantially below the critical yield figures for the BSPS, so I think this too showed that achieving the critical yield(s), year-on-year, upon transferring out was unlikely.

I've also noted that using the NRA of 65, Pensionhelp's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was £1,073,434. Even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £536,221.

To reiterate, these figures are found in Pensionhelp's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr S's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr S could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, Pensionhelp also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. Pensionhelp said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and Pensionhelp itself says Mr S wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr S, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, Pensionhelp's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr S would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, Pensionhelp should have waited and recalculated the comparisons for Mr S when the situation with BSPS2 became clearer.

I've also considered some projections Pensionhelp used to help show that if he transferred out to a personal plan, the funds could last Mr S well into retirement. Again, I think most of these were based on growth projections which were unrealistic given his actual ATR. It's also fair to say these were certainly not comparing like-with-like. What Pensionhelp was showing Mr S were comparisons with plans which lacked the guarantees and benefits of a DB scheme. They relied on investment risk which I think was too high, factored in over many years.

Of course, according to Pensionhelp, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Pensionhelp said Mr S also had other reasons to transfer away, so

I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

As I've said, the suitability report noted that the critical yield required to replicate the scheme benefits *"is not achievable based on your attitude to risk"*. In my view, what this means is that the Pensionhelp adviser was acknowledging from the outset that transferring away from a DB scheme for financial viability reasons probably wasn't worthwhile. So, knowing the transfer simply didn't 'add up' from a financial perspective, I think that this ought to have meant that any transfer recommendation which did follow, really ought to have been based on quite powerful 'other' reasons. I've therefore looked carefully at what these reasons were.

Pensionhelp recommended a transfer to a personal pension plan based on what it said were Mr S's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away:

- Pensionhelp implied that Mr S wanted to retire at the age of 60. It said that by transferring away from a DB scheme and into a personal one Mr S could have a greater degree of control over the way in which his benefits were paid.

- Pensionhelp said he'd be able to select the timing and type of benefits taken at retirement and vary his income to suit his tax situation. It said this would be particularly useful in that he had another pension and so he could reduce the amount he'd need to draw from that if he transferred his DB funds.

- Pensionhelp said he could more flexibly pass on the benefits from a personal plan, potentially tax-free, if he died.

I have therefore considered all these issues in turn.

Retiring early

I've taken into account that Mr S approached Pensionhelp for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

But as I've mentioned above, Mr S was still only 39 years old and in good health. In this context, I think Pensionhelp's adviser saying Mr S had specific uses for his retirement funds lacked credibility.

In my view, the adviser portrayed the DB scheme opportunity Mr S had with the proposed BSPS2 in a negative dimension. I say this because references were made to a DB scheme paying an increasing and fixed amount at retirement, rather than a more flexible arrangement which he could find with a personal pension plan. The implication here was that transferring to the BSPS2 was somehow too restrictive for Mr S and unsuitable for him.

But I think it's important to focus for a moment here on Mr S's comparatively young age by pension standards. The evidence I've seen here is that Mr S – understandably - had no concrete plans whatsoever for his retirement. As I've said, he only referred to the possibility of retiring at 60. With 20 – 25 years still left to when he'd be actually contemplating retiring, there's simply no way that what he might possibly use the money for, should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which Pensionhelp had already acknowledged could mean lower overall financial benefits at retirement.

So whilst I'm sure, like most people, Mr S probably wanted to stop working as early as possible, I think what he told the adviser could only ever have been general retirement aspirations on his part. In reality, there was no plan to retire early. It was simply far too early to speculate about this.

Flexibility and control

In a similar vein, Pensionhelp also said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income.

However, I can't see that Mr S required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Pensionhelp. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr S required changing how his retirement benefits ought to be paid. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr S and his employer - 6% and 10% respectively. It had already reached around £5,000 in value and still had up to 25 years left to run (20 years if he did eventually retire early). So, this secondary pension would have afforded Mr S any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr S wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr S could have been in a very agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time – up to 25 years. So, if Mr S ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

Pensionhelp even advised in the suitability report that by transferring away from a DB scheme, he'd be able to flexibly access those benefits. This would then allow him to not dip into his Tata Steel DC pension when that became payable. In my view, this makes no sense at all and it merely demonstrates the shortcomings of the advice.

I've also seen no evidence that Mr S had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr S was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr S himself had no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £318,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr S would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

Pensionhelp itself set out the estimated pension he'd get under the BSPS. In my view, this showed a reasonable income when assessed against what Mr S had speculated that he might need in retirement. Of course, I've already explained the unpredictability of assessing retirement needs so far in advance and at such a young age. However, Mr S speculated that he might have needed around £20,000 per year in 'todays' money.

Pensionhelp's analysis said that if retiring at 65, Mr S could expect an annual pension of around £23,462. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 60, this was still £14,515 per year. And it certainly isn't unreasonable to say that by then, Mr S could have built up a DC fund well in excess of £200,000. So, I don't think there's anything showing Mr S's pension entitlements wouldn't have easily met his anticipated requirements, without any need to transfer from a DB scheme.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think Pensionhelp adequately explained these things to Mr S as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr S's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, this supported that strategy in my view.

Death benefits

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 BSPS2 contained certain benefits payable to a spouse and children if Mr S died. Mr S wasn't married and didn't have children and so the adviser told Mr S that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated.

I think there was clearly a discussion about this because Mr S said he could think of a close family member to whom he could leave such a lump-sum. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr S.

But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pensionhelp explored to what extent Mr S was prepared to accept a lower retirement income in exchange for different death benefits.

Mr S was only 39 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr S had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 60 was at least mentioned – Pensionhelp's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 60 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I also can't see whether, or the extent to which, life insurance was discussed in this case. But at 39 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr S really did want to leave a legacy for a specific relative or someone else. But more so, it doesn't appear that Pensionhelp took into account the fact that Mr S could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr S already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr S. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr S's situation.

Control or concerns over financial stability of the DB scheme

It's clear that Mr S, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Pensionhelp said he lacked trust in the company. He'd heard negative things about the PPF and Pensionhelp said he could have more control over his pension fund.

So, it's quite possible that Mr S was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Pensionhelp's obligation to give Mr S an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Pensionhelp should have reassured Mr S that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr S through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Pensionhelp's recommendation to Mr S to transfer out of the DB scheme altogether.

Suitability of investments

Pensionhelp recommended that Mr S invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr S and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr S was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr S was 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. I think Pensionhelp ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr S's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr S still had many more years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr S would have 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.

On this basis, I think Pensionhelp should have advised Mr S to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr S would have transferred to a personal pension in any event. I accept that Pensionhelp disclosed some of the risks of transferring to Mr S, and provided him with a certain amount of information. But ultimately it advised Mr S to transfer out, and I think Mr S relied on that advice.

I'm not persuaded that Mr S would have insisted on transferring out of the DB scheme, against Pensionhelp's advice. I say this because Mr S was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Pensionhelp had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr S's concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if Pensionhelp had explained Mr S was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think Pensionhelp should compensate Mr S 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 the business to put Mr S, as far as possible, into the position he would now be in but for Pensionhelp's unsuitable advice. I consider Mr S would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Pensionhelp should use the benefits offered by BSPS2 for comparison purposes.

Pensionhelp 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.

Pensionhelp 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 S and our Service upon completion of the calculation.

For clarity, Mr S 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 S'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, Pensionhelp should:

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S 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 S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts Pensionhelp's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S 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 S's end of year tax position.

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

<u>Determination and money award</u>: I am upholding this complaint and I now direct Pensionhelp Limited to pay Mr S 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 Pensionhelp Limited pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

If Mr S accepts my final decision, the money award becomes binding on Pensionhelp Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 7 September 2023.

Michael Campbell
Ombudsman