DRN-3626742

The complaint

Mr T complains about the advice given by KBFS Financial Limited to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a personal pension. The BSPS was a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr T is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr T.

What happened

In March 2016, Mr T'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 June 2017, Mr T's employer provided him with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £367,503.19.

KBFS says Mr T met with another financial adviser (which I'll refer to as 'Firm A') in July 2017. As he was interested in transferring his benefits from the BSPS a specialist pension adviser was required. As Firm A didn't hold the relevant permissions to provide advice, it put Mr T in touch with KBFS in August 2017.

KBFS has provided a copy of information it recorded about Mr T's circumstances. This appears to be a combination of information gathered by Firm A and details KBFS gathered during a telephone call with Mr T. KBFS noted Mr T was 47, in good health, married with one child. Mr T's son's age wasn't recorded, but the recommendation letter later noted he was still financially dependent.

KBFS recorded that Mr T was employed full time. He and Mrs T owned their own home but had a mortgage with an outstanding balance of approximately £38,000. This was noted as being due to finish when Mr T reached age 55. It also recorded that Mr T had a car loan, to which he was paying £220 per month, that had approximately two years left to run. It said Mr T had approximately £9,000 in savings and that his monthly income exceeded his outgoings and provided disposable income of around £600 per month.

In addition to his BSPS pension, Mr T was also a member of his employers new defined contribution pension scheme. But KBFS doesn't appear to have gathered any information about how much his benefits were valued at or what contributions Mr T and his employer was making.

KBFS said Mr T had lost faith in his employer and felt he and his colleagues had been consistently lied to. So, he wanted control over his pension and wanted to transfer at that time – despite not intending to retire or being able to take pension benefits for several years – because of this mistrust. KBFS said Mr T explained he was thinking of making a change to his employment at age 55, as he felt working beyond that point in his current role might impact his health. He was likely to move to a part time role, potentially with a different employer, and begin drawing from his pension. His desired income in retirement was recorded as £2,000 per month. KBFS says Mr T also wanted the option of taking his pension at age 55 without his benefits being reduced. He didn't want to move to the PPF as he wouldn't have flexibility and his pension would be reduced and he didn't want to just leave a 50% pension to his wife, he wanted the option of leaving the entire fund. KBFS says Mr T told it he'd already spoken to six previous advisers and the risks of transferring had been fully explained to him. It also says Mr T indicated he'd been ready to transfer based on the advice of another firm but had chosen to continue speaking to other advisers in the hope of finding a better deal.

KBFS also carried out an assessment of Mr T's attitude to risk, which it deemed to be 'balanced'.

KBFS arranged for a transfer value analysis ('TVAS') to be carried out on 16 August 2017. The introduction within the report explains that its purpose was to *"give an indication of the likelihood of being able to match or exceed the benefits provided by your existing scheme with a transfer to an alternative plan."* The report noted it was comparing the existing benefits with those that could be purchased by transferring to a specific provider – which happened to be the provider that KBFS ultimately recommended to Mr T.

The TVAS included calculations of the critical yield – the growth rate required of a new pension to allow Mr T to purchase equivalent benefits to those he was due under the BSPS. This was calculated as being 6.63% if Mr T retired at age 65. This appears to have been based on him not taking tax-free cash when drawing his pension. The report also confirmed that to purchase an annuity providing benefits equal to that Mr T was entitled to under the BSPS, he'd need a fund value of £964,905.06.

Critical yield figures were also calculated for the growth that would be required to match the benefits Mr T would be due under the PPF at age 65. These were noted as being 3.53% if Mr T took a full pension or 3.15% if he took a reduced pension and tax-free cash.

KBFS wrote to Mr T on 21 August 2017. This letter began by saying that Mr T had told KBFS to limit its advice to his BSPS pension. And so, KBFS had only gathered information necessary to be able to advise on that, and its recommendations may have been different if it had been asked to undertake a full review. The letter briefly summarised some of the key information from the TVAS. It said that under the BSPS Mr T would be entitled to an annual pension of £22,881 from age 65. And under the PPF he would be entitled to £18,916.17 per year from age 65. It also included the critical yield figures – although did not refer to them as critical yields or provide any in depth explanation of these. And it briefly summarised the potential risks involved with a transfer and included a graph and some figures related to potential performance of a new pension. The letter then asked Mr T to complete a section confirming he understood its content and asked him to confirm why he wished to transfer.

All of the forms to enable Mr T to transfer appear to have been sent to him on 23 August 2017 – including the client agreement, personal pension illustration and risk outline. KBFS says that Firm A then met with Mr T to talk him through these documents. KBFS says Mr T was reminded of the risks involved but still wanted to proceed.

I've seen copies of application forms to enable the transfer that were signed on 29 August 2017 – the date KBFS says Mr T met with Firm A. And I can see that KBFS signed a declaration that it had provided Mr T with pension transfer advice on 31 August 2017.

On 12 September 2017, KBFS sent Mr T a written summary of its advice. This said it confirmed the recommendations made to Mr T as part of his recent financial planning review.

KBFS said Mr T's objectives were to protect the full value of the fund in the event of his death, greater flexibility in how benefits could be taken so he could retire at 55 and control over the funds as he didn't want to enter the PPF and didn't trust his employer. It recapped the critical yield and how much Mr T would need to buy an annuity to match his BSPS benefits. And said if he were intending to buy an annuity it wouldn't recommend transferring. But it said Mr T wasn't intending to buy an annuity. And even though the critical yield to match the BSPS benefits may not have been achievable, KBFS thought transferring to a personal pension was suitable for Mr T as it best allowed him to meet his goals. So, it recommended he transfer, as well as a pension provider and product that it felt best met Mr T's attitude to risk.

I understand the transfer went ahead in line with the recommendation in January 2018.

Mr T complained to KBFS in 2021. He said the advice was unsuitable and he thought a transfer should not have been recommended because the personal pension was highly unlikely to match the guaranteed benefits that were given up.

KBFS didn't uphold Mr T's complaint. It said Mr T had already obtained a transfer value before contacting it. And KBFS says he said he'd already spoken to several financial advisers about transferring before speaking to it and was aware of the risks involved. KBFS said Mr T had lost faith in his employer and its ability to manage his pension. It says he didn't want to transfer to the PPF or the new BSPS2 scheme, which at the time was not confirmed, because he wanted to retire at age 55 and take his benefits flexibly. It says Mr T felt this wouldn't have been possible under either of the alternatives and the income he'd have been due would've been reduced due to early retirement and wouldn't have been enough to meet his stated need of £2,000 per month. KBFS also said Mr T was keen to take advantage of the good transfer value being offered and was also unhappy at the prospect of the pension dying with he and his wife and wanted to be able to leave a legacy for his son. So, it felt the advice to transfer was appropriate.

Mr T referred his complaint to our service. One of our Investigator's considered the complaint and thought it should be upheld and that KBFS should pay compensation in line with the regulators redress methodology for unsuitable DB transfer advice as well as £300 for the distress caused. In summary, she felt, Mr T didn't have much capacity for loss and that he was inexperienced, so was more cautious than KBFS suggested. And, even if he went into the discussion thinking transferring was a good idea, it was KBFS's role to advise him, rather than put in place what he might've believed he wanted. She didn't think, based on how long Mr T had until he might retire, that a decision needed to be made at that time to provide flexibility in retirement. She also didn't think transferring to provide alternate death benefits was appropriate. And she felt there was limited scope for the new pension to improve his retirement benefits.

KBFS disagreed. It said that the critical yield referred to by the Investigator was to match the benefits due under the BSPS. But the BSPS was not going to exist. So, the more relevant comparison would've been to the critical yield for matching the benefits available through the PPF – which it felt was achievable. It disagreed that Mr T was more cautious than had been recorded. And KBFS maintained that it felt that the advice was suitable based on the information available to it at the time and Mr T's objective of wanting control over his pension at a time of significant uncertainty. It said that, while information about the BSPS2 had been published at the time of the advice, it was not guaranteed that this would go ahead. So, it felt the Investigator's opinion was based on hindsight. And the only certainty was that the BSPS would transfer to the PPF and Mr T would then not have the option of transferring out. KBFS also said that, given that Mr T had spoken to a number of other advisers before KBFS, including at least one that had recommended he transfer, even if it had advised him against transferring he would likely still have gone ahead via another business.

The investigator wasn't persuaded to change their 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.

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 and the general advice process followed

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 KBFS'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 concerns about the advice process followed here in general. I understand Firm A put Mr T in touch with KBFS as it couldn't provide the advice Mr T required. The information KBFS has provided suggests its last conversation with Mr T was on 22 August 2017. And the next day it sent him the relevant forms to complete in order to proceed with the transfer. But a written explanation of its advice, by way of a suitability report, wasn't provided to Mr T until 12 September 2017. So, Mr T hadn't been given a written summary of the advice, to read and consider independently, before being asked to complete the relevant application forms. And I don't think any of the written communication I've seen prior to the suitability report, were enough to say that he would've been in an informed position when proceeding.

I also note that KBFS says that Firm A met with Mr T again on 29 August 2017. And that it talked him through the relevant application forms and reiterated the risks involved. But again, I understand Firm A wasn't authorised to provide pension transfer advice – which was why KBFS was involved. I'm not sure it was therefore appropriate for Firm A to be the party talking Mr T through the application. KBFS should've been the party doing this as part of the advice process, given it was responsible for the advice. And I'd argue that this shouldn't have been done until a suitability report had been provided.

So overall, I'm not satisfied that the general process followed here was appropriate or that it was designed to ensure that Mr T made a fully informed decision before committing to an irreversible pension transfer.

That notwithstanding, I also don't think a transfer was right for Mr T. 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, KBFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

KBFS carried out a TVAS report (as required by the regulator). And it made reference to the information and comparison within the report when giving advice. But I think there are issues with the TVAS that call into question how useful it was as a comparison.

The majority of the comparison was based on Mr T's existing scheme benefits via the BSPS. This included the section showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield) and the amount that would be needed to purchase an annuity providing the same benefits. But Mr T didn't have the option to remain in the BSPS as it was.

Indeed, this is something KBFS has said in response to our Investigator's opinion when saying the critical yield of 6.63% was not a relevant comparison. But I'd argue that is something that should've been also explained to Mr T as part of the advice process. And I can't see that it was.

The TVAS did include a comparison to the PPF. But there was no analysis of the BSPS2. KBFS has argued that the details of the BSPS2 were unknown, and it was not certain that it would be going ahead. However, on 11 August 2017, the BSPS2 was formally announced – five days before the TVAS was completed. And I think it would've been reasonable for KBFS to await details of this scheme before completing its analysis and giving a recommendation. By not doing so, I think KBFS has assessed the suitability of the transfer on information it knew was incomplete. Which I don't think was fair to Mr T or would allow him to make an informed decision. And I also don't think giving advice on what was in Mr T's best interests was reasonable when KBFS had failed to take this into account.

KBFS has made mention of Mr T, like many people in his situation, being told they needed to make a choice. But I understand *"Time to Choose"* letters were not issued until October 2017. And on 25 August 2017, before KBFS provided written advice here, an important update was issued in respect of BSPS transfer values – saying that the expected payment into the BSPS by Mr T's employer, as part of its agreement with the pension regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, as in Mr T's case, updated valuations would be issued in October 2017, which would be guaranteed until at least December 2017. The payment referred to into the BSPS was made and confirmed via announcement on 11 September 2017 – again before the written recommendation was issued – which reaffirmed that revised transfer values would become available.

So, I don't think Mr T was in a position where he could not wait for details of the BSPS2 or had to make an immediate decision. I acknowledge there was uncertainty and Mr T may've been understandably anxious. But that is why it was even more important that KBFS give him a balanced assessment and suitable advice, based on all of the information. So, I think it would've been appropriate for KBFS to await information relating to the BSPS2 before proceeding, given the announcements and updates prior to the advice and what was known at the time.

Another issue with the TVAS report is that all comparisons were based on Mr T retiring at age 65. But KBFS has said that Mr T intended to retire at age 55 – and indeed has relied on this as a reason for the advice being suitable. I think it should therefore have also included comparisons and critical yields to illustrate the value of the benefits Mr T would've been due at age 55. The actuarial reductions for early retirement under the PPF are typically more favourable than a lot of DB schemes. So, this would've been important information for Mr T to consider. And without such comparisons again I don't think Mr T was in a position where he could make an informed decision.

KBFS has said that Mr T was not willing to accept a reduction in his retirement benefits, which he'd have incurred if retiring early under the DB scheme. But KBFS ought to have rationally addressed those concerns and a meaningful comparison of what Mr T would've been entitled to under the PPF and the BSPS2 if retiring early would've been an appropriate way to begin doing this.

Notwithstanding these issues, I have considered the information within the TVAS when looking at whether the transfer was in Mr T's interests from a financial viability perspective.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr T was 47 at the time of the advice. Again, it was noted that he wanted to retire at age 55 but the comparison caried out was based on taking benefits at age 65.

The critical yield required to match Mr T's benefits in the BSPS at age 65 was 6.63%. This appears to have been based on him taking a full pension. No separate figure was given for taking tax-free cash and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 3.53% per year if Mr T took a full pension and 3.15% per year if he took TFC and a reduced pension.

The BSPS2 would've offered the same income benefits as the BSPS, but the annual increases would've been lower. The lower annual increases under the BSPS2 would've likely decreased the critical yields in comparison to the BSPS. But I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65. So, the critical yield in relation to taking a full pension at age 65 through the BSPS2 was likely to be between 6.63% and 3.53%. And in my view was likely to be closer to 6.63%.

The discount rate at the time was 4.4% per year for 17 years to retirement – the case if Mr T retired at 65. For further comparison, 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 T's attitude to risk and also the term to retirement. KBFS recorded that Mr T had a 'balanced' attitude to risk. Our Investigator thought Mr T's attitude was more likely to be 'cautious' given the information from the time. Based on the answers to the attitude to risk questionnaire and the wider circumstances – Mr T's apparent desire to transfer in order to safeguard these pension benefits because of the mistrust of his employer and ongoing uncertainty and the shorter term to retirement if he did intend to retire at age 55 – I'm inclined to agree that he was more likely to be more cautious when it came to risk. But even if I agree that he had a 'balanced' approach to risk, I don't think it makes a significant difference here.

There would be little point in Mr T giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Based on the information I've mentioned, I think on balance Mr T was likely to receive benefits of a lower value than those available through BSPS2 at 65 as a result of transferring and investing in line with his attitude to risk. The information suggests he was more likely to potentially be able to match the benefits he'd receive through the PPF, outside of the scheme. But any improvements appeared unlikely to be substantial, were not guaranteed and were subject to investment and longevity risk that weren't present in relation to the guaranteed benefits available. And I don't think I can reasonably say improvements were more likely than not.

Again, KBFS hasn't evidenced any meaningful comparison of the benefits Mr T would've been due at age 55 or a cashflow analysis based on taking benefits flexibly at 55. But in my experience, critical yields tend to be higher for shorter terms to retirement, as the pension fund will have less time to grow in value, even accounting for the actuarial reduction in starting pension benefits. And the discount rate for 7 full years to retirement, as would've been the case if Mr T were retiring at age 55, was lower, at 3.4%. So, on balance I think it is also likely that Mr T would've received benefits of a lower overall value by transferring and investing in line with his attitude to risk if he retired at 55.

So, considering the information I've seen it doesn't appear that a transfer, on the basis of financial viability, was in Mr T's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

KBFS said Mr T wanted to retire at age 55 and take an income of £2,000 per month in retirement. And Mr T has acknowledged that his job role at the time of the advice, which was very physically demanding in nature, was not something that he wanted to continue doing long term, if possible. But he has said his plans, at the time of taking advice were very much uncertain. He says he wasn't intending to give up work altogether at age 55 – something which the fact find appears to support. And he said he also hadn't made a decision to change employer.

I don't doubt Mr T would've been interested in retiring early if possible – I think most consumers would be when asked. But I think he was realistic about this and it appears he was aware he would probably need to continue to work beyond that age, albeit he hoped to do so on a part time basis. So, I don't think he had an intention to solely rely on his pension benefits from age 55, to meet his income needs. And in any event, he was 47 at the time KBFS advised him to transfer – over 7 years from making a decision about this. I don't think his plans were finalised and could've been subject to change, just as his circumstances and needs may have altered. So, I don't think he *needed* to transfer at the time.

KBFS has said if Mr T remained with the BSPS and moved with it to the PPF he'd have lost the option of transferring at a later date. And it says there was no certainty that the BSPS2 would become a reality and our suggestion otherwise was based on hindsight. But I don't agree and think KBFS has overstated the chance of the BSPS2 not happening.

The restructuring of the BSPS had been ongoing for a significant amount of time by the time Mr T took advice. And on 11 August 2017, the pensions regulator had approved an arrangement that included the BSPS2 being established subject to certain conditions being met. Part of the agreement made with the pension's regulator was that a payment into the BSPS would be made by Mr T's employer. And that payment, of £550 million, was made on 11 September 2017, before written advice was issued to Mr T here. I think this indicated a commitment on the part of Mr T's employer to the arrangement it had agreed with the regulator, including the BSPS2.

KBFS could also have waited for further updates before providing advice. When the lump sum payment into the BSPS was made, an update was provided stating amended transfer values would be forthcoming and that these would be valid for at least two further months. KBFS could've awaited this before advising, and I think it would've been appropriate to do so particularly given all indications had been that the lump sum payment was likely to improve transfer values, so waiting would've been in Mr T's interests. These updated values when provided, were accompanied by the "time to choose" pack. And this gave further details of the BSPS2 and that joining it was one of the options open to BSPS members. So, by that time I think there was a confidence that the BSPS2 would go ahead, the details of it were broadly known and that joining this and later considering a transfer if appropriate was an option for Mr T.

Mr T would also have been able to take pension benefits under the BSPS2 or the PPF from age 55. So, he didn't need to transfer in order to begin accessing a pension income from 55.

KBFS says Mr T was unwilling to accept a reduction to the benefits he'd receive at age 55 compared to what he'd be entitled to at 65. But even under the existing BSPS, he wasn't entitled to the same benefits at 55 that he would've been due at 65. It is true that if Mr T drew his benefits at age 55 under either the PPF or the BSPS2 the amount he could take would be subject to an actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by retiring at age 55 Mr T would've been receiving his pension for 10 years longer. It was a trade-off, rather than a penalty. But I don't think, based on the information I've seen, that KBFS gave an appropriately balanced explanation of this. And if it had, I think Mr T would've been more willing to accept it.

I also don't think that Mr T needed to transfer to meet his income needs in retirement. KBFS didn't record a great deal of information about the benefits Mr T would be entitled to under the DB scheme. But the TVAS estimated the BSPS would pay an annual income of £22,881 from age 65 and the PPF would pay £18,916.17 from that point. The income from the BSPS2 was likely to have been between the two. These annual amounts on their own would not have met Mr T's stated income need of £2,000 per month.

And if Mr T began drawing benefits from age 55, the starting pensions would've been significantly lower under both the PPF and the BSPS2. It isn't clear by how much, as this information was omitted from the TVAS. But there was a one-page document in KBFS' file which suggested the BSPS would pay an estimated £12,482.33 from age 55. Approximately half of what Mr T expected to need. And it'd be reasonable to assume the benefits offered by the BSPS2 and the PPF would be at best around this level from age 55. So, on their own, would not have met Mr T's income needs.

But the income from the PPF or the BSPS2 would've been guaranteed for life. And would've continued to escalate while in payment. Providing Mr T with certainty. And these were unlikely to have been Mr T's only source of income from age 55.

As I've mentioned, Mr T indicated he intended to continue to work at least part time from age 55. The income he received from the part time work would've supplemented the income provided by either the BSPS2 or the PPF.

The fact find also indicated that Mr T had £9,000 in savings and disposable income each month of around £600. So, it appears he could've increased his savings in the years until he age 55, giving him a further pot to potentially use flexibly.

Mr T was also a member of his employers new defined contribution scheme. And it appears he'd have likely continued to contribute to this until at least age 55, if not beyond in the event he changed role but remained with the same employer. Which would've provided him some additional retirement provisions that could've been used flexibly to supplement his income from the DB scheme if necessary. KBFS failed to gather any meaningful details of this pension or the level of contributions being made. But typically, in other cases I've seen, the combined contributions to this scheme from Mr T's employer and other customers have started at around 16% of salary. Assuming the same level of contributions were made into Mr T's pension, based on his recorded salary, and before even accounting for increases in salary, investment growth or Mr T increasing his contributions, by age 55 this fund would likely have been worth in excess of £40,000. And again, could've been used flexibly to supplement income from the DB scheme.

And when Mr T reached state retirement age, his and Mrs T's state pensions, in conjunction with the guaranteed pension provided by the BSPS2 or the PPF would've continued to meet his income needs.

Taking all of this into account, I don't think transferring to achieve flexibility was something that Mr T needed at the time of the advice. Given the time until he was intending to retire, I don't think Mr T's plans or needs were known and certainly were not finalised. Nor do I think transferring was the only option for meeting the objectives he'd indicated he was considering at the time. And I don't think it was a suitable recommendation for Mr T to give up his guaranteed benefits when he did. If Mr T later had reason to transfer out of his DB scheme I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

Death benefits

KBFS say Mr T didn't like the idea of Mrs T only receiving a 50% pension in the event of his death and the fund dying with he and Mrs T and not leaving a legacy for his son. I'd note that although KBFS has argued a legacy for Mr T's son was one of his objectives, this doesn't appear to have been talked about at the time of the advice and seems to have only been mentioned in response to the complaint. Rather it was improving death benefits for Mrs T that seems to have been noted as a motivation for transferring at the time of the advice.

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 T. But whilst I appreciate death benefits are important to consumers, and Mr T 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 T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think KBFS explored to what extent Mr T was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. The spouse's pension was guaranteed – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr T drew in his lifetime. Again, the apparent intention, on which KBFS based its advice, was for Mr T to draw from the pension benefits from age 55 and use this to largely support his income needs of £2,000 per month until this could be scaled back when he started receiving the state pension. Based on this, it appears likely the fund would've been significantly depleted by the time Mr T reached his average life expectancy. So, the legacy wouldn't have been the same as the CETV and appears likely to have been significantly less. In any event, KBFS should not have encouraged Mr T to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

KBFS says Mr T declined to consider life insurance as an alternative. And there is a whole-of-life insurance quotation on file. But this is dated January 2018, several months after the advice was given. So, it isn't clear if this was genuinely explored at the time of the advice. In any event though, even if Mr T did decline to consider life insurance, that doesn't mean I think it was in his best interests to transfer his pension to alter the death benefit provision – for the reasons I've explained.

Control and concerns over financial stability of the DB scheme

I think Mr T's desire for direct control over his pension benefits was overstated. Mr T was not, based on the information I've seen, an experienced investor and I cannot 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 that this was a genuine objective for Mr T – it was simply a consequence of transferring away from the BSPS.

I think this objective was more linked to the uncertainty about the BSPS. It's clear that Mr T, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism. I also don't doubt Mr T was worried his pension would end up in the PPF or that he'd heard negative things about the PPF and this was why he said he preferred to have control over his pension fund.

With this in mind I think it's quite possible that Mr T was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was KBFS's obligation to give Mr T an objective picture and recommend what was in his best interests.

As I've explained, I think KBFS should also have waited so that the option of the BSPS2 could've been fully considered and explained. Prior to the advice being given there were several important updates regarding the BSPS2 that indicated it was progressing and appeared likely to be an option for customers in Mr T's position. So, the advice should've properly taken the benefits available to Mr T through the BSPS2 into account and I think this should've alleviated some of Mr T's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that KBFS should've reassured Mr T that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr T through the PPF would've still provided a significant portion of the income he thought he needed at retirement. And, when combined with his other means, appears likely to have allowed him to meet those goals. He was also unlikely 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. So, I don't think that these concerns should've led to KBFS recommending Mr T transfer out of the DB scheme altogether.

Suitability of investments

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

Summary

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

Looking at the sequence of events, I'm not sure that is what happened here. The direct interaction between KBFS and Mr T seems to have been limited. KBFS sent Mr T forms to complete to enable a transfer before issuing its written recommendation. And it seems to have been left to the other adviser, Firm A, to answer questions about this. So, based on what I've seen it does very much look like KBFS enabled the transfer based on what Mr T thought he wanted, rather than whether it was suitable for him.

And ultimately, I don’t think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T was very likely to obtain lower retirement benefits and in my view, for the reasons I’ve explained, there were no other particular reasons which justified a transfer and outweighed this. So, I think KBFS should’ve advised Mr T not to transfer his benefits from the DB scheme.

Mr T had over 7 years before he reached the age at which he’d indicated he might like to retire. But his plans were in any event unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. I say this because while it is true the PPF would’ve provided a more favourable actuarial reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction in benefits he accepted would end up being offset by this more favourable actuarial reduction for early retirement. And by opting into the BSPS2, Mr T would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think if KBFS had correctly advised him against transferring Mr T would’ve opted into the BSPS2.

Of course, I have to consider whether Mr T would've gone ahead anyway, against KBFS' advice. KBFS argues that this is the case. It says it believes Mr T had already decided to transfer based on a mistrust of his employer. And KBFS says Mr T had already spoken to half a dozen other advisers and had only not transferred, based on the advice of another adviser who also recommended that he do so, as he was looking for a better deal in terms of ongoing fees.

I’ve considered this carefully, but I’m not persuaded that Mr T would’ve insisted on transferring out of the DB scheme, against KBFS’ advice. Mr T had obtained a CETV from the trustees of the BSPS before speaking to KBFS. But he’d also been told by that point about significant potential changes to the BSPS and that he’d likely have to make a choice at some point. Obtaining a CETV allowed him to make an informed choice. But I don’t think this means his mind was already made up.

As I’ve explained, I don’t doubt that Mr T had a negative opinion of his employer at that time, given what had happened with the BSPS to that point. But his employer and the pension scheme trustees were not entirely one and the same. And if KBFS had done more to draw that distinction I think this would’ve addressed some of Mr T’s concerns.

Mr T has acknowledged speaking to several different advisers. He says he was completely unsure of what to do and that uncertainty meant he wanted to gather as much information and opinion as possible. I don’t think this is unreasonable. And the fact that he asked Firm A and subsequently KBFS for its advice indicates to me he hadn’t made a decision, otherwise he would’ve had no need for seeking further advice. KBFS says that he only did so as he was seeking a better deal on fees. But even if that was part of his motivation, I don’t think that means he was going to ignore the advice that was provided to him.

Mr T says that none of the other advisers had recommended against transferring (although very few of the discussions had gotten much further than fees). So, there is no indication that he had already rejected similar advice. And I’m not persuaded that Mr T would’ve insisted on transferring out of the DB scheme, against KBFS’ advice. Mr T, like many of his colleagues, had been given a lot of information about the BSPS in the months before taking advice. And I don’t doubt he’d taken the time to take all of that information on board. But the information I’ve seen indicates that otherwise he was an inexperienced investor with a cautious or at best balanced attitude to risk.

And this pension accounted for the majority of Mr T's retirement provision. I don't doubt he was concerned about what may happen to his pension, particularly given the consultation that had been ongoing. And he might've thought that transferring was a good idea. But, if KBFS had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr T's concerns about the consultation, or the potential appeal of alternative death benefits and flexibility 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. If KBFS had explained that Mr T could meet his objectives without risking his guaranteed pension, either through the BSPS2 or the PPF, meaning he didn't need to be overly concerned about the prospect of the pension entering the PPF, I think that would've carried significant weight. So, I don't think Mr T would have insisted on transferring out of the DB scheme.

In light of the above, I think KBFS should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that KBFS also pay Mr T £300 for the distress caused by the unsuitable advice. I don't doubt that Mr T has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

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 - CP22/15-calculating redress for non-compliant pension transfer advice.

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. However, 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.

A policy statement was published 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 T whether he preferred any redress to be calculated now in line with current guidance or to wait for any new guidance / rules to be published.

Mr T would like to wait for the outcome of the consultation before his complaint is settled. I consider it is fair that KBFS waits for the outcome of the consultation to settle this complaint.

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme and opted into the BSPS2 had he been suitably advised.

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and its proposed updates to the DB transfer redress methodology, I'm satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Mr T.

KBFS must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9). A copy of the calculation should also be provided to Mr T and his representatives.

For clarity, Mr T has not yet retired and I understand he has no plans to do so at present. So, compensation should be based on his normal scheme retirement age of 65.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance / rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T'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, it should be paid directly to Mr T 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 compensation amount must where possible be paid to Mr T within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and KBFS has received notification of Mr T's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes KBFS to pay Mr T.

Income tax may be payable on any interest paid. If KBFS deducts income tax from the interest, it should tell Mr T how much has been taken off. KBFS should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

In addition, KBFS should pay Mr T £300 for the distress caused by the disruption to his retirement planning. And I think this payment does not need to be held back while the relevant calculation is ongoing and should be made within 30 days of KBFS being notified of Mr T's acceptance of my decision.

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 KBFS Financial Limited to pay Mr T 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 KBFS Financial Limited to pay Mr T any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require KBFS Financial Limited to pay Mr T any interest as set out above on the sum of £160,000.

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

If Mr T accepts this decision, the money award becomes binding on KBFS Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 January 2023.

Ben Stoker
Ombudsman