DRN-3628222

The complaint

Mr B's complaint is about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension. Mr B believes the advice was unsuitable for him and this has caused a financial loss.

What happened

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

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr B was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. On 19 December 2017, Mr B's existing financial adviser contacted NTM and asked it if it would provide Mr B with pension transfer advice. On the same day, NTM provided Mr B's adviser with documents including a fact-find, which it asked Mr B to complete.

Mr B's adviser returned the completed fact-find on 29 December 2017 to enable NTM to understand Mr B's circumstances and objectives upon which to base its advice. Amongst other things this recorded that Mr B was 45 (soon to be 46); he was married with three children; he and his wife jointly owned their home, which had an outstanding mortgage of around £130,000; he had credit card debts of around £32,000; jointly he and his wife were saving around £800 a month but this was typically spent during the year; he had no existing investments and no real cash savings to speak of; and he wanted to retire at 55.

Mr B indicated that he had no prior investment experience and he saw himself as a 'low risk' investor. NTM appears to have carried out a further assessment of Mr B's attitude to risk resulting in it deeming Mr B to be an 'average' or 'balanced risk' investor.

Mr B met with NTM on 4 January 2018 to discuss the completed documents.

It's recorded in a meeting file note that Mr B had decided not to opt into the new BSPS2 and that the deadline to do so had passed.

In a report dated 8 January 2018, NTM advised Mr B to transfer his DB scheme benefits into a personal pension and invest the proceeds in a portfolio of funds NTM deemed matched Mr B's attitude to risk. In summary, the suitability report said the reasons for this recommendation were: to provide Mr B with the control of his pension; to provide better (lump sum) death benefits for his family; to enable Mr B to break ties with his employer; and to enable Mr B to have flexibility in retirement - the ability to vary his income and take lump sums.

In a further meeting with NTM on 11 January 2018 to discuss the recommendation, Mr B accepted the recommendation and sometime later, around £427,000 was transferred to his new personal pension and invested as recommended.

In 2021 Mr B complained to NTM, via our Service, about the transfer advice. Mr B told us that he thought he'd been misadvised about transferring his pension. In his complaint form he said he was told by the adviser that the BSPS2 wouldn't likely be viable in the long-term and it would eventually go to the PPF, and that he didn't know what he was doing.

NTM didn't uphold Mr B's complaint. In addition to setting out a timeline of the events leading up to the 'Time to Choose' exercise, Mr B's interactions with NTM and summarising his circumstances and objectives, in summary it said that there was no evidence the adviser stated the BSPS would not survive. It said it noted that the option to move to the BSPS2 had already expired prior to Mr B meeting with NTM. It said a file note records that Mr B had already chosen not to transfer to the BSPS2. It said in relation to Mr B's comment that he didn't know what he was doing, it believes Mr B engaged with the advice process and he received both written and verbal advice. It said there was no evidence that Mr B was not fully informed.

Dissatisfied with its response, Mr B asked us to consider his complaint. An investigator upheld the complaint and required NTM to pay compensation. In summary they said, while Mr B may have liked the idea of retiring early, there is no evidence he had any firm plans – they didn't think this was an objective that had to be met at Mr B's age of 45. They said NTM didn't carry out a detailed income and expenditure analysis to show how Mr B's stated income need of £1,500 a month in retirement was arrived at, particularly given his current household income of around £4,000 a month was typically all being spent. They said any need Mr B had for flexibility could've been achieved though his workplace defined contribution pension – they also thought any need Mr B might have had for a cash lump sum could've been satisfied using this. They didn't think lump sum death benefits were of overriding importance or justified a transfer out of the scheme. And they said given the growth rates required to match Mr B's DB scheme benefits, they thought they were unlikely to be consistently achieved.

For these reasons they didn't think the transfer was suitable. The investigator also raised concerns about the apparent discrepancy in Mr B's recorded attitude to risk in the advice paperwork, which showed it was 'low' and then 'average'. And they thought Mr B's capacity for loss was low given Mr B had no savings, he had outstanding debts and he had two children who would remain financially dependent on him for several years. The investigator concluded by saying that NTM should've advised Mr B to transfer to the BSPS2 because it was the better option for him in the circumstances.

NTM disagreed. It provided an 11-page substantive response. While I have read this in full and I will refer to some of the more detailed points later on, in summary it said:

- The investigator didn't address the complaint Mr B made but instead adjudicated on a complaint he'd not made. It believes Mr B had not complained about the overall advice to transfer out. It said the first part of Mr B's complaint was typed and it believes from the language used that it is not the words of Mr B but of some other unidentified person.

- The investigator misunderstood the timeline of events and the options available to

Mr B at the time of the advice.

- The investigator mis-understood the level of benefits set out in the evidence.
- The evidence does not support the apparent conclusion reached that Mr B would've done whatever NTM advised him to do – this contradicts NTM's understanding of Mr B's attitude at the time of the advice.
- The investigator failed to give a balanced perspective to the use of flexible benefits to achieve Mr B's objectives.
- The investigator failed to give appropriate weight to Mr B's circumstances and objectives.
- The investigator failed to appreciate the rationale for NTM's advice.
- There are serious flaws in the investigator's approach to their assessment of the case.

The investigator wasn't persuaded to change their mind. They referred NTM back to their original view, which they said covered all of the points it had raised in response. They added that they were satisfied Mr B's complaint was clearly about the advice to transfer his BSPS benefits – they said Mr B was entitled to express his complaint in any way he saw fit.

Because things couldn't be resolved informally, the complaint was passed to me to make a final decision.

Before issuing my final decision, I wrote to both parties to say that I intended to uphold the complaint for broadly the same reasons as the investigator, but I wanted to clarify the basis upon which I intended to direct NTM to put things right. I said that the investigator had concluded that NTM should've advised Mr B to opt into the BSPS2 because this was the best option for him in the circumstances. But I said this option wasn't available to Mr B – he'd made the decision not to join the BSPS2 and the advice process didn't begin until after the deadline to opt into the BSPS (22 December 2017) had passed. So NTM could not recommend this course of action. I said that I intended to conclude that if suitable advice had been given, Mr B would've remained in the scheme and moved with it to the PPF – so it is the benefits available to Mr B through the PPF which should form the basis of the loss calculation.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Firstly, I'd like to address NTM's point about the investigator not addressing the complaint Mr B made but instead went on to consider something different i.e. the suitability of the advice, which was not a complaint Mr B had made.

For the avoidance of doubt, our role is to look at the whole picture and think about what lies at the heart of a complaint. And I agree with the investigator here – I'm satisfied the crux of Mr B's complaint is about the suitability of the advice he received to transfer his BSPS scheme benefits to a personal pension. I think Mr B's initial email complaint to us was clear about what his concerns were – he said*: "I think I been misadvised about transferring my pension..."* But, even if Mr B wasn't entirely clear, just because he didn't, or perhaps couldn't articulate his complaint fully or use the language NTM might have expected him to use when complaining about the suitability of the advice (notwithstanding that I think he was sufficiently clear) this doesn't mean we can't consider what we feel NTM should've looked at when it considered Mr B's complaint. To not do so would, in my view, be treating Mr B unfairly. I think our role is to do more than just look at a complaint as it's written or explained to us – what we refer to as our inquisitorial remit. And it is for these reasons that I'm satisfied it is appropriate for me to address what I believe lies at the heart of Mr B's complaint, which is the suitability or otherwise of the pension transfer advice he received in 2018.

Financial viability

NTM carried out a transfer value analysis report (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). I can see this was based on Mr B's existing BSPS scheme benefits. But as I explained above, at the time of the advice Mr B didn't have the option to remain in the BSPS – he'd chosen to move with the scheme to the PPF. So while it’s possible that NTM had to include the existing benefits in the TVAS report, it is only the benefits available to Mr B through the PPF that are relevant in this case.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr B was 45 (soon to be 46) at the time of the advice and it was recorded in the advice paperwork that he wanted to retire early at 55. The TVAS report of 8 January 2018 set out the relevant critical yields. As I said above, only the benefits available to Mr B through the PPF are relevant here, so I have ignored those relating to the existing scheme. Remaining in the scheme wasn’t an option. To match the benefits available to Mr B through the PPF at his target retirement age of 55, the critical yields were 6.69% assuming Mr B took a full pension and 6.25% if he took a cash lump sum and a reduced pension.

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 3.7% per year for nine years to retirement (age 55.) 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 B’s recorded ‘average’ or ‘balanced’ attitude to risk (I’ll discuss this in more detail below) and also the term to retirement. In my view, there would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here the lowest critical yield was 6.25%. And this rate was significantly higher than the discount rate and it was still above the regulator’s middle projection rate. Given this, I think it was clear that Mr B was likely to receive benefits of a substantially lower overall value than those provided by the PPF by transferring out and as a result of investing in line with a ‘balanced’ attitude to risk.

I can see NTM implies that too much weight has been placed on discount rates. I haven’t based my findings solely on this, but I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses, like NTM, were free to use the discount rate as this was considered a reasonable assumption of the likely returns. And in any event, I’ve considered this in tandem with the regulator’s published projection rates, which providers were required to refer to. And it is this combination, along with Mr B’s attitude to investment risk, which leads me to be believe he’d likely be worse off in retirement if he transferred out of the DB scheme.

NTM says the investigator failed to consider the hurdle rate, which it says is a useful tool to understand the level of risk with a personal pension. But the hurdle rate ignores any spouse’s pension benefit as well as increases in payment. So in my view, reference to this rate underplays the true value of the DB scheme benefits Mr B was considering giving up. I still consider reference to the critical yield gives a good indication of the value of benefits Mr B was considering giving up. I also think it is a relevant and important consideration here, particularly given Mr B's circumstances and the fact that I don't think he could realistically say with any certainty whether he would want to take a fixed regular income at retirement or not. Mr B wasn't expecting to retire for another at least nine years – so it's entirely possible that he would want at least some guaranteed income in retirement, which he could achieve by taking benefits from the PPF.

In NTM's response to the investigator it has also referred to the drawdown analysis – it says that the advice to transfer clearly demonstrated a financial benefit to Mr B from age 60 using the FCA's assumed growth rate of 5%: Mr B could replicate the benefits given up and his fund would last beyond his life expectancy and the fund value would be in excess of £147,000 or he could take a greater initial income of £9,066 (increasing) which was sustainable to age 100 at 5% growth rate and would also leave a surplus fund value.

It's not clear to me where NTM has got these figures from - they do not appear to relate to Mr B's case. The figures do not correlate to the those provided in the suitability report – for example the starting income is significantly lower than Mr B was entitled to and the retirement age of 60 was never under consideration. It strikes me NTM has copied and pasted the figures from a different set of analysis. But looking at the drawdown analysis in the suitability report, I'm not persuaded this demonstrates the transfer was suitable or that it was financially viable. The fundamental issue with it is that the analysis does not assume Mr B draws the level of annual income he said he wanted to target at age 55 – it only assumes the level of income available through the existing scheme which was lower than he said he needed. So I don't think this was helpful for Mr B. In addition and notwithstanding this, the analysis assumes a consistent growth rate of 5% per year. NTM has not shown for example the impact on Mr B's pension fund by factors such as periods of poor performance and/or increases in inflation – there is no stress testing. Furthermore the analysis assumes that Mr B would be happy and it was suitable for him to take his pension benefits via drawdown. But I'm not persuaded it was based on what I think Mr B's true level of risk was. I'll explain why.

Notwithstanding my view that by adopting a balanced risk approach meant Mr B was likely to be worse of in retirement as a result of transferring, I have concerns about how NTM ultimately deemed Mr B was prepared to take an 'average' or 'balanced' approach to risk with his pension. I say this because, in the fact-find document it's recorded that Mr B saw himself as a 'low-risk' investor. The description of this risk categories is, in my view, reasonably clear and in plain easy to understand language, so I think Mr B would've likely understood it. This was not an assessment where answers to a series of questions are scored to arrive at an overall risk profile – the question asked of Mr B in the fact-find was a simple and direct one: '*Which statement reflects your attitude to risk*'.

Given this, together with Mr B's lack of investment experience, it leads me to believe a low-risk approach was the true level of risk Mr B was prepared to take here.

Yet in the risk profile questionnaire, some of the answers Mr B gave conflict with the low-risk group he originally indicated he saw himself in, in the fact-find – albeit the first and in my view important question Mr B was asked still indicated he was a 'low risk taker'. And this assessment appears to have resulted in categorising Mr B as an 'average' or a 'balanced' risk investor.

It seems to me from the evidence presented that NTM 'talked up' Mr B's risk profile to 'balanced' as part of this separate risk profiling assessment and in its discussions with him to support or justify the advice to transfer.

I think NTM should've placed greater weight on Mr B's original answer to his risk categorisation. I accept that the adviser's job is to advise, so this might include challenging

or questioning an investor's risk profile; particularly if the profile doesn't match their knowledge or experience or they give conflicting answers in a profiling assessment.
But on the other hand and in this case, Mr B had given what I think was a clear indication as to the level of risk he was prepared to take with his pension.

This was not a minor investment in an ISA where a small regular monthly contribution was at stake and in the overall scheme of things might not have much impact – this was a significant investment and a transaction that was irreversible. Mr B did not have much if any capacity for loss – this pension accounted for almost all of his private retirement provision at this time, he had no real cash assets, he had outstanding liabilities and he still had financial dependents. I'm mindful too that NTM recorded Mr B had surrendered his mortgage endowment policy because it was not on track to meet its target amount. I think this is further evidence to support Mr B's low risk attitude.

So taking everything into account, I don't think it was fair or reasonable for NTM to have encouraged/persuaded Mr B to take on a greater level of risk than he clearly indicated he was prepared to take. I think NTM's advice ought to have been based on Mr B's willingness to accept, at best a low-risk attitude towards investing.

In summary, because I don't think the transfer was financially viable, for this reason alone a transfer out of the DB scheme wasn't in Mr B's best interests. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below

Flexibility and income needs

NTM recommended the transfer to provide Mr B with flexibility – the ability to vary his income during the early years of retirement, which couldn't be achieved through the PPF.

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

Mr B was approaching 46 years old at the time of the advice. And while I accept he might have given some thought to his future retirement, I don't think he had anything that could reasonably be described as a concrete retirement plan. Mr B indicated that he wanted to retire at 55 - but I think Mr B, like most people if asked, liked the idea of retiring as early as possible. But I'm not persuaded it was a firm objective at the time. For example the adviser's initial meeting note refers to the possibility of Mr B continuing to work but doing less.

Of course Mr B already had the option of taking early retirement– he didn't have to transfer out to achieve this. I accept Mr B couldn't take his benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr B had to take those benefits at the same time. But nothing here indicates that Mr B had a strong need to take a cash lump sum and defer taking his income. For example, based on the information recorded in the fact-find about Mr B's mortgage, this was due to be repaid in around nine years' time, so before or around the time Mr B was thinking about retiring.
And nothing was recorded about any intended essential large capital expenditure to support a need for a cash sum but defer taking an income.

I can see Mr B had a not insignificant outstanding credit card debt of around £32,000, which might suggest Mr B needed access to a lump sum in the future and at the earliest opportunity and not necessarily want an income too. But firstly I think there was scope for Mr B to reduce, if not fully repay this before he was thinking about accessing his benefits –

the fact-find records that he was paying around £345 a month towards it and that one of the amounts was on a 0% interest rate, and it appears there was scope to divert some of the surplus income he was saving towards its repayment. Secondly, I think the debt was affordable and there's nothing to indicate that would change, so it doesn't appear there was financial pressure which would necessitate access to a lump sum to ensure its timely repayment. I think if any debt remained outstanding at the time Mr B wanted to retire, he could've used some of his tax-free cash entitlement at the same time as taking his income.

Also, while Mr B might have liked the idea of having a higher income in the early stages of his retirement, I haven't seen anything to indicate that Mr B had a strong need to vary his income throughout retirement – I don't think Mr B knew with any degree of certainty what his income needs would be at this stage. So it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr B's at the time.

Nevertheless, I think Mr B already had a degree of flexibility if that's what he ultimately required at the time. This is because Mr B was contributing to his workplace DC pension scheme and had been since April 2017. And the nature of a DC scheme means this already provided Mr B with flexibility – he wasn't committed to take these benefits in a set way. Based on the recorded contributions in the fact-find both Mr B and his employer were making into his pension, it appears around £7,100 was being added a year. On this basis, taking account of the likely value at the time of the advice, by age 55, and without accounting for any salary increases, increases in contribution rate or investment growth, I think Mr B's pension could be worth in excess of £70,000. Taking investment growth into account, it's possible it could be substantially more. I think Mr B could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr B retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early - if that's what he ultimately decided.

So in any event, Mr B didn't need to transfer his DB scheme benefits to a personal pension arrangement in order to achieve flexibility in retirement.

Turning to Mr B's income need. While I don't think Mr B could say with any degree of certainty what retirement income he would need given his intended retirement was at least nine years away - and I can't see that NTM attempted to carry out any detailed analysis of his likely expected income and expenditure in retirement - it was recorded that Mr B wanted £1,500 a month net. On the basis that Mr B's mortgage was repaid at this time, his wife would continue working and his income requirements would be lower than when he was working, this doesn't appear unreasonable. But it was more than Mr B was entitled to through the PPF. So if NTM didn't think it was a viable proposition for Mr B to retire at 55, I think it was incumbent on it to say so.

That said, I still think Mr B stood a better chance of meeting his objective by retaining his DB scheme benefits and that the income from the PPF would've provided him with a solid guaranteed income foundation upon which he could use his other provision to supplement – at least until his state pension became payable. Mr B also said he might continue to work, so I think he had several options open to him to meet his overall income need.

For example, if Mr B chose to continue working, say part-time as it appears he alluded to, and his income deficit was relatively small, he could use his DC scheme to supplement this. This would allow him to defer taking his DB scheme benefits for longer meaning the starting income would be higher than taking it immediately at 55. Alternatively, at age 55 through the PPF Mr B was entitled to a full pension of around £14,800, which he could supplement through any earned income. Once Mr B decided to retire fully, he could use his DC scheme to make up any difference in income need until his state pension became payable. Mr B's wife also had her own pension provision, which could supplement things when she retired recorded as likely being around four years after Mr B turned 55.

But if Mr B chose not to continue working beyond 55, I still think he had the flexibility and means to likely achieve things. Mr B could choose to take a reduced income of around £12,400 through the PPF and the maximum tax-free cash of around £82,000. Allowing for repayment of any outstanding debt, Mr B could use the remaining lump sum to supplement his income after which he could use his DC scheme until his state pension became payable.

It appears to me that Mr B had several options open to him to meet his objectives and already had the flexibility he needed to retire early – if that's what he ultimately decided to do. So I don't think it was in Mr B's best interests for him to transfer his pension just to have (greater) flexibility that I'm not persuaded he really needed.

Death benefits

NTM also recommended the transfer to enable Mr B to have lump sum death benefits to provide for his family in the event of his death – Mr B wanted to ensure his wife was able to maintain the same level of income in retirement in the event of his death.

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 B. But whilst I appreciate death benefits are important to consumers, and Mr B 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 B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool. And I don't think NTM explored to what extent Mr B 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. Mr B was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr B predeceased her. I don't think NTM made the value of this benefit clear enough to Mr B. This was guaranteed and escalated. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, NTM should not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful there that Mr B already had lump sum death benefits available to him. He had death-in-service benefit, which would provide his wife with a lump sum if he died before retirement. And he was also contributing to his workplace DC scheme, which he could nominate his wife as beneficiary of if he hadn't already done so.

Furthermore, if Mr B genuinely wanted to leave a legacy for his wife, which didn't depend on investment returns or how much of his pension fund remained on his death, I think NTM should've instead explored additional life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured equivalent to the transfer value – this was discounted by the adviser because of the cost (£375.41 a month).
But I don't think that this was a balanced way of presenting this option to Mr B. Basing the quote on the transfer value of Mr B's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr B wanted to leave whatever remained of his pension to his wife, which would be a lot less than this if he lived a long life and/or if investment returns were poor.

So, the starting point ought to have been to ask Mr B how much he would ideally like to leave to his wife, taking into account the lump sum benefits he already had, and this could've been explored on a whole of life or term assurance basis, which was likely to be cheaper to provide. Given Mr B's surplus income, I see no reason why this wouldn't have been affordable. I think this is the solution NTM ought to have ultimately recommended to satisfy Mr B's objective rather than recommend he transfer out of his DB scheme to achieve things.

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 B. And I don't think that insurance was properly explored as an alternative.

Control or concerns over the PPF

I understand that Mr B, like many of his colleagues no doubt, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried about his pension ending up in the PPF – albeit Mr B appears to have chosen this route because he didn't opt into the BSPS2. So it's quite possible that Mr B was leaning towards the decision to transfer because of the concerns he had. But it was NTM's obligation to give Mr B an objective picture and recommend what was in his best interests.

While I can see NTM said in its suitability report that the PPF *'provides excellent protection and would secure most of the income you desire'* in my view, NTM somewhat undermined things because it went on to say that it wouldn't meet Mr B's stated objectives for flexibility, the ability to tax plan using tax-free cash and lump sum death benefits.

I think NTM should've done more to reassure Mr B that the scheme moving to the PPF wasn't as concerning as he thought or been led to believe. Importantly Mr B still had the option of taking early retirement. Mr B didn't have any concrete retirement plans at this stage - but I think the income available to Mr B through the PPF would've still provided a solid base, which his DC scheme and perhaps part-time work income could supplement to likely meet his overall income need at retirement. Crucially 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. Mr B might not have been able to later transfer out of the PPF – but given what I said earlier on about him already having flexibility, I don't think there was an apparent need for him to do so.

So I don't think that Mr B's concerns about the PPF was a suitable or compelling reason to recommend a transfer out of the DB scheme altogether.

Suitability of investments

Because I think the level of risk Mr B was prepared to take with his pension was lower than the risk profile of the recommended investment funds, I think the investment strategy recommended was unsuitable. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr B, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr B 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 accept that Mr B was likely motivated to transfer out of the BSPS and that his concerns about the scheme were real. And 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 B. But NTM wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

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

Because as I explained earlier on, Mr B had chosen not to opt into the BSPS2 but instead had decided to remain with the existing scheme and move with it to the PPF, in light of this and because the deadline had already passed to opt into the BSPS2, I think NTM should've recommended that Mr B remain in the scheme and move with it to the PPF.

Of course, I have to consider whether Mr B would've gone ahead anyway, against NTM's advice. NTM argues this is the case saying there is no evidence he would've followed whatever NTM advised – this is not supported by the evidence and contradicts NTM's understanding of Mr B's attitudes at the time.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the BSPS against NTM's advice.

I say this because, while as I've already said Mr B was likely motivated to transfer when he approached NTM, and I'm mindful that I understand Mr B had received advice to transfer prior to dealing with NTM which didn't go ahead, on balance, I still think Mr B would've listened to and followed NTM's advice if things had happened as they should have and NTM had recommended he not transfer out of the scheme. Mr B doesn't appear to have had much if any prior investment experience, so I'm not persuaded Mr B possessed the requisite skill, knowledge or confidence to against the advice he was given, particularly in complex pension matters.

Mr B's pension accounted for almost all of his private retirement provision at the time and I believe his true attitude to investment risk was low. So, if NTM had provided him with clear advice against transferring out of the scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that any concerns Mr B might have had about his employer, or the concerns he had about the scheme entering the PPF, 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. Regarding Mr B's desire to break all ties with his employer - it's clear that he still worked for the same employer and he hadn't indicated he intended to find alternative employment. Mr B was also a member of his employer's new DC pension scheme. So, Mr B wasn't going to achieve a separation from his employer by transferring, as he would remain tied to the employer in other respects.

So if NTM had clearly explained this and that Mr B could likely meet all of his objectives without risking his guaranteed albeit reduced pension, I think that would've carried significant weight. So, I'm not persuaded Mr B would've insisted on transferring out of the BSPS if NTM had given suitable advice and recommended that he should remain in the scheme and move with it to the PPF.

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

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr B. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish NTM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr B. Taking everything into account, including that I consider Mr B is now at the age when his retirement provision is of great importance, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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

NTM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

NTM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr B and our Service upon completion of the calculation.

For clarity, Mr B 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 B'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, NTM should:

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

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B'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.

NTM should also pay Mr B £300 for the distress and inconvenience the unsuitable advice has caused.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require NTM Financial Services Ltd to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that NTM Financial Services Ltd pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 28 September 2023.
Paul Featherstone
Ombudsman