DRN-3628287

The complaint

Mr L complains about the advice given by Vision Independent Financial Planning Ltd ('Vision') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Our Investigator thought the complaint should be upheld. Vision didn't entirely agree with this outcome, but it has now agreed to calculate and pay any loss Mr L may have suffered. Mr L, and his representative, didn't disagree with the merits of the Investigator's opinion but they thought the compensation should be changed. As no agreement was reached the complaint was passed to me.

I issued my provisional decision saying that Mr L's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

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

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

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

Mr L met with Vision in October 2017 to discuss his pension and retirement needs. I understand a colleague, or a friend, had referred him to Vision as he was concerned about the situation with his employer and the BSPS.

Vision completed a fact-find to gather information about Mr L's circumstances and objectives. This showed that he:

- *Was 43 years old and in good health.*
- *Was married with two children aged 17 and 22.*
- *Was employed earning £34,000 a year.*
- *Owned his property valued at £105,000, subject to an £18,717 mortgage.*
- *Had £5,300 in savings but he didn't have any risk-based investments.*

In respect of his pension benefits he was a deferred member of the BSPS scheme. The letter he received on 18 September 2017 showed that he had been a member of this for around 26 and a half years that it would have provided a pension of £16,765.86 at age 65. The transfer value was £428,048.55.

Mr L had also recently joined his employers new defined contribution scheme. He was paying 6% of his gross salary into this, and his employer was also paying 10%.

Vision also carried out an assessment of Mr L's attitude to risk, which it said was 'adventurous'. But it was also noted that he had little experience or knowledge of risk-based investments and so a 'balanced' approach was more appropriate here.

On 29 November 2017, Vision advised Mr L to transfer his pension benefits into a personal pension and invest the proceeds in funds that met his attitude to risk. The suitability report said the reasons for this recommendation were:

- *He wanted to retire at his age 57.*
- *He had been offered a significantly increased transfer value.*
- *He was concerned about a reduction in his DB scheme benefits both if he transferred to the BSPS2 or the PPF.*
- *He wanted a retirement income of £18,000 a year.*
- *He wanted control over his investment strategy.*
- *He wanted to provide the best possible death benefits for his family.*

Mr L complained in 2021 about Vision. He said that because of the unsuitable advice he has lost guarantees that were provided by the scheme and will be financially worse off in retirement. The complaint was made to the Financial Ombudsman Service first and then forwarded to Vision.

Vision didn't uphold Mr L's complaint. It said:

- *It was well known that the BSPS2 would offer lower benefits than the BSPS. And Mr L's transfer value was particularly high.*
- *Mr L wanted to retire early, and the transfer offered a realistic opportunity for him to do this by using the fund flexibly. It would not have been possible for him to retire early if he had not transferred.*
- *He wished to break all ties with his employer and have full control of his pension fund.*
- *The death benefits were greater with the personal pension.*
- *Overall, Mr L's priorities were clearly best met by the transfer and Mr L confirmed this was the case shortly after the advice was given.*

Mr L referred his complaint to our service. An Investigator upheld it and recommended that Vision pay compensation. They said the transfer was not financially viable and Mr L was unlikely to improve on the benefits that he gave up. His other objectives weren't enough to outweigh this. Mr L should've been advised to opt into the BSPS2 scheme. They didn't think the recommendation was suitable for Mr L.

Vision disagreed, saying:

- *It has used an FCA sponsored tool which shows that the advice was suitable.*
- *It wasn't reasonable for Vision to have allayed Mr L's distrust in the BSPS, Mr L made his own decisions about this, and Vision was in no place to change them.*
- *Mr L confirmed he was fine to give up the guaranteed BSPS2 benefits and he understood the impact of the transfer. He made it clear that he did not want his pension to go into the BSPS2.*

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

However, following this in March 2023, Vision said that whilst it doesn't agree with the Investigator's conclusions it will take a pragmatic approach and perform a loss assessment. It said it would do this in

April 2023 when new guidance on DB transfer loss assessments came into force. Vision asked Mr L for some further information to complete this loss assessment, I understand that, so far, Mr L has not provided this information.

And Mr L's representative, on Mr L's behalf, didn't agree with the Investigators opinion. It said that:

- *Mr L has suffered severe distress and inconvenience due to the advice, which has included sleepless nights.*
- *Mr L has found it upsetting that Vision continued to contact him about the complaint.*
- *Vision should have settled the complaint at the time of the Investigator's opinion in May 2022. As it hasn't done this Mr L will likely receive a lower amount of compensation due to changes in interest rates.*
- *Vision shouldn't be allowed to pick and choose when it calculates the loss. Vision should use the current regulatory loss assessment assumptions, but use May 2022 as the loss assessment date.*

What I've provisionally 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 Vision'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.

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

Financial viability

Vision carried out a transfer value analysis report ('TVAS') - as required by the regulator - showing how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). However, this was based on his existing scheme benefits and Mr L didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

Vision has said that BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr L through the PPF. But I think Vision overestimated the chance of this not happening; Mr L had received his 'time to choose' pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr L through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision.

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

Mr L was 43 at the time of the advice and wanted to retire at age 57. The critical yield required to match Mr L's benefits at age 57 was 5.99% if he took a full pension and 4.90% if he took tax-free cash and a reduced pension. The same calculations to Mr L's age 65 were 4.7% and 3.99%.

The critical yield to match the benefits available through the PPF at age 57 was quoted as 5.28% per year if Mr L took a full pension and 4.94% per year if he took tax-free cash and a reduced pension. Again, the same figures at his age 65 were 3.99% and 3.77%.

But as I've said above, Mr L remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

The relevant discount rates closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.5% per year for 21 years to retirement, Mr L's age 65. And 4.1% for 13 years to retirement, his age 57. 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 L's 'balanced' attitude to risk and also the term to retirement.

Mr L says that his attitude to risk was not as high as balanced and he is concerned that his pension planning is at risk. Whilst Mr L's attitude to risk was recorded as being relatively high he doesn't seem to have had any investment experience. Which does make it more difficult to say that he understood and agreed with the risk he was taking here. That said, I don't think I can reasonably conclude that he didn't want to take some risk, as it was clear that he did. Even if his attitude to risk possibly wasn't as high as balanced.

There would be little point in Mr L 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 around 4% and this was at his age 65. For his intended retirement age of 57 it was between 5% and 6%. Given this, I'm not persuaded that Mr L was likely to receive benefits of a higher overall value than the DB scheme at retirement, as a result of investing in line with his attitude to risk. This could be the case even if the scheme moved to the PPF.

Vision has provided cashflow models which it says show Mr L would've been able to meet his needs. I've considered these, and Vision's models show that this is the case, given certain assumptions. I won't examine these in more detail here as Vision is now willing to settle this complaint.

And in any event, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

Vision says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings just on this, I think it 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 were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr L's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

Vision also says that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. Vision says Mr L didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required Vision to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr L could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another thirteen years. It's entirely possible that Mr L would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme). And he's essentially said that this is what he did want.

As Mr L was not likely to match the benefits he was giving up, a transfer out of the DB scheme wasn't in Mr L's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Vision has said in this case. 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

It seems one of the main reasons that Vision recommended this transfer was for the flexibility and control it offered Mr L. He wanted to retire early, if possible, and he thought the flexibility that a personal pension had would better enable him to do this.

It's evident that Mr L could not take his DB scheme benefits flexibly in the same way he could from a personal pension. Although he could choose to take tax-free cash and a reduced annual pension, Mr L had to take those benefits at the same time.

Given that Mr L was so far away from retirement there wasn't a detailed analysis of what his income or expenditure needs would be at this time. This isn't entirely unreasonable given how far away this was. But it is difficult to properly plan for retirement without this. It was recorded that Mr L intended to retire at age 65 but was keen to see the impact of early retirement was on the income he could receive. He wanted an income of £18,000 per year at whatever age he could retire.

The TVAS showed that from the BSPS, at age 65, Mr L could receive a pension of about £25,500 a year or a cash lump sum of £116,857 and a reduced pension of £17,500. And at his age 57 he could receive an annual pension of £17,000 or tax-free cash of £83,000 and a reduced pension of £12,452. And Mr L would receive his state pension which would be around £8,300 and payable at his age 67 and he was building up benefits in his new employers DC scheme.

So based on the BSPS figures Mr L would clearly have more than enough at age 65, he could take a pension which was very close to the full amount he wanted and a significant amount of tax-free cash. Or a guaranteed pension that was in excess of what he said he wanted. He would have his state pension in a few years' time and it's reasonable to think that Mrs L would also have some pension provision as well.

The situation is less clear if he were to retire early. But at age 57 he could still receive a pension of around £17,000. Or a tax-free lump sum of £83,016 and an annual pension of around £12,500. This isn't too far away from his stated aims.

Added to this, at 57, Mr L would be building up a fund over the next 13 years, through his employer's DC scheme. The fact-find says Mr L and his employer were contributing around £450 per month into this. So, if he were to retire at age 57 he and his employer would have contributed about £70,200 over 13 years. And by assuming modest net growth of 2% over this time, the funds could be worth in the region of £80,000. So, he could use this fund, which could provide another £8,000 to £9,000 a year over ten years, to top up even the lower figure the BSPS would provide. Again, this would meet or exceed his recorded income needs to his state pension age. And his state pension could effectively replace the DC scheme benefits at this point.

So, I think it's likely that any shortfall could've been met by Mr L accessing income or tax-free cash from his DC scheme. Mr L would have likely had a significant pension to draw on flexibly, as and when he needed, to top up his income. And his wife would also have some provision for them to draw on.

And Vision should have given Mr L an indication of what he would receive from the BSPS2 and in order for him to properly decide if he wanted to consider joining it. As before the pension available from the BSPS2 would have similar benefits, albeit with lower revaluations. So it would still be a valuable benefit to Mr L and he would likely have met his aims if he had joined it.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr L had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF.

The TVAS showed that from the PPF, at age 65 Mr L would've been entitled to a pension of £23,022.27 or a tax-free lump sum of £121,005 and an annual pension of £18,162.79. At age 57 this was £16,584 or a tax-free lump sum £91,584.35 plus an annual pension of £13,765.45. Which is a higher starting amount than the BSPS pension. These amounts overall are similar to what the BSPS would have provided. So, I don't think this would have a made material difference to Mr L's decision.

As I've said above, Mr L would've had his DC scheme to draw on until his state pension became payable, as well as his wife's pension to supplement their household income. So, I still think Mr L could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

And even if this didn't entirely work out as Mr L wanted it to then he was unlikely to obtain better benefits at retirement if he transferred his funds to a personal pension. So, I still think Mr L had a better chance of achieving his target retirement income in the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension.

Overall I think the benefits he already had were very likely to meet his needs. So, I don't think it was a suitable recommendation for Mr L to give up his guaranteed benefits now, especially when his needs in retirement weren't certain. And, if Mr L later had reason to transfer out of his DB scheme, he could have done so closer to retirement.

Death benefits

It was recorded that Mr L wanted to improve on the death benefits that his dependents could receive from his pension planning.

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

Furthermore, if Mr L genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Vision should've instead explored life insurance.

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

Control or concerns over financial stability of the DB scheme

It's clear that Mr L, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund. He was particularly concerned about the changes with the business and he felt that his pension scheme 'may not be there' in the future.

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

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr L through the BSPS2 into account and I think this should've alleviated Mr L'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 Vision should've reassured Mr L that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr L through the PPF would've still provided all, or a significant portion of, the income he thought he needed at retirement, and he was 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 Vision recommending Mr L transfer out of the DB scheme altogether.

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

But it ought to have been explained that Mr L's employer and the trustees of the BSPS2 were not the same. And in any event, Mr L was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn't achieve a 'break' from his employer. So had Vision explained that Mr L's belief regarding the control his employer had over his pension was misplaced, I think he would have been reassured by this.

I think Mr L's desire for control over his pension benefits was overstated. He was not an experienced investor, and I cannot see that he 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 L – it was simply a consequence of transferring away from his DB scheme.

Suitability of investments

Vision recommended that Mr L invest in a third party's pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr L, it follows that I don't *need to consider the suitability of the investment recommendation. This is because Mr L should have been advised to remain in the DB scheme and so the investments in the funds 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 L. But Vision wasn't there to just transact what Mr L might have thought he wanted. The adviser's role was to really understand what Mr L needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr L was suitable. He was giving up a guaranteed, risk-free and increasing income within BSPS2 (or the PPF). By transferring to a personal pension Mr L was, in my view, unlikely to obtain better retirement benefits when he retired. And there was a real risk they would be lower. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr L's best interests for him to transfer his DB scheme to a personal pension now when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr L had at least 13 years before he wanted to retire, and it seems he expected to work a bit longer than this.

So, 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, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr L would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr L was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr L chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Vision should've advised Mr L to opt into the BSPS2.

Vision says that regardless of the advice given, Mr L made an informed choice to proceed with the transfer. I accept that Vision disclosed the risks of transferring to Mr L, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr L to transfer out, and I think Mr L relied on that advice.

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

I'm not persuaded that Mr L's concerns about the PPF was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. And if Vision had explained Mr L was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would've carried significant weight.

I'm aware that in some communications with Vision Mr L appeared motivated and perhaps anxious to get the transfer completed. But Mr L had received advice from Vision that he should transfer out of the DB scheme. So, I think his words have to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to opt into the BSPS2. And I don't think this demonstrates he'd have gone against the advice.

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

Mr L's representative has said that Mr L has suffered emotional distress throughout this process, as a result of this situation, which has included sleepless nights. I don't doubt that Mr L 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.*

But I've also taken into account that Vision has now offered to perform a loss assessment but has been unable to do so as it needs more information. It has asked for this information but has not received it so far.

I would have thought either receiving compensation for any losses he may have suffered, or being informed that the advice has not caused him a loss, would do a great deal to ease any worries Mr L is having. So, I would urge Mr L, or his representative, to provide any outstanding information Vision needs as a matter of urgency. And similarly, Vision should perform the loss assessment and pay any compensation due as soon as it can after this.

So, in the circumstances, I think £300 is reasonable compensation for any distress Mr L has suffered.

Developments

Vision, and Mr L, both received my provisional decision. And both parties haven't anything to add to what I said about the merits of the complaint.

However, Vision has questioned the need for a final decision as it has agreed to calculate and pay compensation. It is waiting for information from Mr L to enable it to do this. And it would like the complaint to be 'paused' while this process is ongoing.

And Mr L's representative feels that any loss calculated should be at the date our Investigator first upheld the complaint in May 2022. Calculating the loss now is likely to mean that Mr L will receive lower compensation.

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.

Vision and Mr L didn't raise any new points about the merits of the complaint after receiving my provisional decision. So, I've reached the same conclusions about this as I did before, for the same reasons. I still think Mr L's complaint should be upheld and I won't add anything to what I said earlier about this.

I appreciate that Vision feels than a decision is not needed because it has agreed to calculate and pay the compensation our Investigator recommended. But Mr L doesn't entirely agree with the method of compensation, and he has asked for an ombudsman's decision. So, I did need to issue a final decision, despite what Vision has agreed to do.

And Mr L, and his representative, think that the compensation should be calculated using the regulator's assumptions applicable at the time, our Investigator upheld the complaint. I explained in my provisional decision why, I don't agree that would be fair. That's because any loss assessment of this type should be performed as per the regulator's rules for determining redress at the date of calculation using the most up to date methodology and assumptions. This will give the most accurate indication of whether the advice has caused a loss. Performing a loss assessment at any other time would be incorrect. It would potentially over, or under, compensate a consumer and it wouldn't be right.

Mr L's representative says that, due to current market conditions, performing the loss assessment now would be less beneficial to Mr L. It has said that Vision has tried to minimise its liability through procrastination to take advantage of this.

I don’t think this is the case here. Vision clearly didn’t agree with the Investigator’s opinion and asked for an ombudsman’s decision. It has a right to do this, as Mr L has also done. I don’t think this is unnecessarily delaying the complaint.

Vision has now decided to calculate and pay compensation, again this isn’t unreasonable and was the outcome Mr L was seeking when he first raised his complaint. And I’m not persuaded that its offer was made at this time with the purpose of reducing how much it will pay. In any event Vision hasn’t been able to perform a loss assessment. So, there is no certainty about whether any compensation will be due, and if so, what that amount will be.

Taking all of this into account, I still don’t see a reason to require Vision to depart from using the regulator's current defined benefits pension transfer redress methodology. And this would mean using the current assumptions and a current date of calculation.

And I again would remind Mr L, and his representatives, that if Mr L accepts this decision, then the information that is needed to allow Vision to undertake the loss assessment should be provided as soon as possible.

Putting things right

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

Vision 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.

Vision 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 L and our Service upon completion of the calculation.

For clarity, Mr L 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 of 65, 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 L’s acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Vision should:

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his personal pension

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

Redress paid to Mr L as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Vision 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 L'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.

Vision should pay Mr L £300 for any distress the unsuitable advice has caused him.

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 Vision Independent Financial Planning Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Vision Independent Financial Planning Ltd pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on Vision Independent Financial Planning Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept a final decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 13 October 2023.

Andy Burlinson
Ombudsman