DRN-3633626

The complaint

Mr P has complained that Esteem Money Ltd, trading as Esteem Money, gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd 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, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr P's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr P was introduced to Esteem by his own financial adviser who didn't have the appropriate permissions to give defined benefit transfer advice in 2017.

Following an initial fact find, Mr P's personal situation was documented as follows:

- He was 33 and lived with his partner.
- He had two dependent children aged eight and one.
- He was employed, earning £32,000 gross a year.
- He and his partner owned their own home valued at £140,000 with an outstanding mortgage of £95,000 with 20 years left.
- He was in good health with no knowledge of any family history of health issues.
- He had £1,000 in cash savings and unsecured debt of £7,800 across loans and credit cards.
- Household expenditure was recorded as £1,450 a month and this left £1,335 a month disposable income.
- He and his partner had life cover for the mortgage. He also had death in service (DIS) life cover of three times his salary.

Mr P's retirement key objective was summarised as follows:

"Your main concern is to ensure that the pension benefits are not lost on your premature death, as you and [partner] are not married and do not intend to, she would not qualify for the spouse's benefit. You want to ensure she receives the full value on your death, and that if she predeceases you, the fund would also be available for the children".

Mr P had two pension arrangements. The BSPS entitlement with a cash equivalent transfer value (CETV) of £113,219.96 guaranteed until 15 December 2017, and his defined contribution arrangement, which was receiving 6% member contributions and 10% employer and would have had a relatively small value at the time of the advice.

At normal retirement age (65) Mr P's deferred defined benefits pension under the BSPS would provide an income of £11,045 pa with the option to take tax free cash and a reduced income.

His attitude to risk (ATR) was agreed as "moderate" and this was described in the suitability report as follows:

"You prefer to invest in a broad range of core stock-market linked investments, where the overall returns achieved are more closely linked to the performance of the underlying assets. In so doing, this will provide you with the potential to benefit from real capital growth.

However, you should be aware that investment values will fluctuate according to market conditions".

Mr P had no knowledge and experience of financial products and investments. A defined benefit pension Transfer Analysis (TVAS) had been undertaken to show the level of investment growth required in order to replace the benefits under the BSPS2 and the PPF at age 65. This was the "critical yield", and was calculated as follows:

- To match the BSPS benefits at age 65, a transfer would need a critical yield of 5.16%.
- To match the PPF benefits at age 65, a transfer would need a critical yield of 4.85%.

Esteem recommended that Mr P transfer the BSPS entitlement to a PPP portfolio and invest in the "Governed Portfolio 4" which invested in around nine funds spread across different assets and locations.

Fund charges were disclosed to Mr P. Esteem would be taking an initial (contingent) fee of £2,500 and the introducing advisor would take 1% pa for ongoing servicing. The PPP charges were disclosed as annual management charge of 0.45% - fund charges were not disclosed.

In October 2021, Mr P complained to Esteem, saying that the advice to transfer was unsuitable.

Esteem responded, concluding that the advice to transfer had been suitable.

Dissatisfied with the response, Mr P referred his complaint to this service.

Having considered the complaint, our investigator thought that it should be upheld. He said the following in summary:

- As Mr P only had a small amount of defined contributions at the point of the advice, the defined benefits within the BSPS would form the most significant part of his pension provision.

- There were understandably concerns about the BSPS at the time of the advice and time was of the essence in choosing what to do. But Esteem could have provided reassurance regarding his options to enter the BSPS 2 or the PPF, rather than recommending the transfer.

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- The main (and only) reason for recommending the transfer, as confirmed in the suitability report and the final response letter, was the lump sum death benefits which would be provided by the transfer. The benefits which would be provided by the BSPS were considered to be inferior when compared to those which would be provided by a PPP.

- But the retirement benefits should have been considered as being primarily for Mr P's benefit, rather than for his family.

- To place Mr P in an informed position, Esteem should have discussed alternatives and provided whole of life quotes to match the lump sum benefits.

- The critical yields to match the benefits provided by the BSPS 2 and the PPF were lower than for the BSPS, but for the BSPS 2, this was 5.16% pa to match the scheme benefits at age 65.

- The advice had been given when this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate of the more than 30 years until Mr P's normal retirement date was 4.7% pa.

- Taking this into account, in addition to the regulator's projection rates of 2%, 5% and 8% for the low, mid and high growth assumptions, along with Mr P's attitude to risk, there was limited scope for the scheme benefits to be bettered through a transfer.

- In the regulator's guidance issued in June 2017, it said the following:

  "This guidance will make clear that in order to provide a suitable personal recommendation an adviser should consider the following elements:

  • the client's income needs and expectations and how these can be achieved, the role safeguarded benefits play in providing this income and the impact and risk if a conversion or transfer is made"

- There were call notes detailing a discussion about Mr P retiring early at age 57 with an income of £900 pm. Mr P had agreed in communication with the investigator that he would like to leave the steel industry at 57, but had no recollection of specific monetary amounts being discussed. This was unsurprising, the investigator said, given the number of years until Mr P's prospective retirement.

- The Retirement Planning Report showed an income of £12,000 pa being taken from age 57, but Mr P had no need to transfer to achieve this as he would have accrued 25 years' defined contributions, which at a fund growth rate of 3% would have meant a fund value of around £190,000, unadjusted for wage increases.

- This would have provided the £900 pm required, even adjusting for inflation, until Mr P was 65. But if Mr P needed to access his scheme benefits sooner, this was possible under both the BSPS 2 and the PPF. The evidence didn't support the position of the transfer being able to meet Mr P's true income need.

- There was no reason for Mr P to transfer when he did, and given the critical yield and lack of consideration of alternatives, the advice couldn't be said to have been in Mr P's best interests.

The investigator recommended that Esteem undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr P would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr P's pension plan, but if this wasn't possible, it should be paid directly to Mr P, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

Additionally, the investigator recommended that Esteem pay Mr P £300 in respect of the impact the worry about losing his pension would have had on him.

Mr P agreed with the investigator's findings. Esteem didn't, however. I've read its response in its entirety, but summarise the main points below:

- If the complaint was upheld, the comparator should be the PPF as this was the only option open to members if they chose to stay in the BSPS.

- The harsh environment of the steel industry meant that early retirement was often a key objective. And the death benefits in the event of premature death were typically higher in the case of transfers.

- Disproportionate emphasis had been placed on the critical yield, which was a blunt tool, and didn't take into account Mr P's single status. The "hurdle rate", which required a lower growth rate to match the scheme benefits, was therefore more relevant here.

- The BSPS 2 didn't exist at the time of the advice and there were no guarantees that it would be implemented. Further, a transfer into the PPF would represent a reduction in overall benefits and members quite understandably viewed this prospect negatively.

- Mr P made a fully informed decision to transfer. He didn't at any time suggest that his circumstances or objectives had been misunderstood, and the risks and disadvantages of the transfer were conveyed to him.

- There was no evidence that Mr P had suffered a financial loss as a result of the transfer.

- It needed to take reasonable steps to ensure that the transfer was suitable, and exercise reasonable skill and care in advising Mr P - not provide a guarantee that it would work out to be in Mr P's best financial interests.

- The critical yields quoted by the investigator related to the BSPS rather than the BSPS 2 – for the latter the figures were 4.53% and 4.65% assuming that Mr P took tax free cash.

- But for the hurdle rate, which was the more relevant given Mr P's marital status, they were 3.59% and 3.06% respectively. These were both realistic and achievable.

- The recommended fund had demonstrated a 4.93% compound annual growth rate over five years up to June 2022, and 8.93% since its launch.

- The regulator had warned against placing too much reliance on critical yields and that this should not be at the expense of an individual's personal circumstances, which also needed to be taken into account.

- Mr P in any case had no intention of buying an annuity, and would not be reliant upon that income in retirement.

- There was no evidence that Mr P would have remained in the scheme and transferred to the BSPS had he received different advice.

- Mr P was now having second thoughts about his fully informed decision to transfer and had raised the complaint in the hope of receiving redress.

Esteem also requested an oral hearing. Further communication passed between the investigator and Esteem, in particular relating to the latter's comments that the hurdle rate would be more relevant than the critical yield in this case, given Mr P's single status. The investigator clarified that, at the time of the advice, Mr P had two dependent children, and so it wasn't only spouse's death benefits which needed to be factored in.

But as agreement couldn't be reached, the investigator said that the complaint would be referred to an ombudsman for review.

The investigator then enquired of Mr P as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Esteem to use the FCA's BSPS-specific calculator to determine any redress due to Mr P.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr P's complaint, they should let him know by 5 June 2023.

In response, Esteem confirmed that it would be using the BSPS-specific redress calculator if an ombudsman upheld the complaint.

The complaint has now been referred to me for review.

At my request, the investigator has enquired of Esteem as to why it had requested a hearing, asking it to set out the reasons for this so I could take them into account when deciding whether a hearing was necessary. Esteem hasn't responded, however.

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'd firstly say that, with regard to Esteem's initial hearing request, and in the absence of further reasoning as to why one might be necessary, I'm satisfied that there's sufficient information on the file for me to be able make a decision on the basis of what's fair and reasonable in the circumstances here.

And having the considered the merits of the case, I've reached similar conclusions to the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time Esteem advised Mr P were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Esteem, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Esteem needed to gather the necessary information for it to be confident that its advice met Mr P's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) *take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of Esteem's advice to Mr P in the context of the above requirements and guidance.

Esteem's rationale for transferring

Mr P wasn't categorised as an "execution only" or insistent client, and Esteem was taking him through the advice process. Therefore, Esteem could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr P and his circumstances and objectives were recorded – as I've noted above.

As with the investigator, I've noted above that the FCA's guidance was that the starting assumption for an assessment of Mr P's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr P would be better off financially as a result of the transfer.

The financial case to transfer

Esteem obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr P's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but I agree that they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.7% pa. And the mid band growth rate set out by the regulator for growth assumptions was 5% pa.

I've noted what esteem has said about the critical yields quoted by the investigator being to match the BSPS benefits rather than those from the BSPS 2. But the critical yield to age 65, at 5.16%, exceeded both the discount (or growth) rate deemed achievable over the same periods, and the mid growth rate set out by the regulator – the latter of which might perhaps be a reasonable assumption for a "moderate" risk investor.

In its response to the investigator's view, Esteem quoted the lower critical yields to match the benefits provided by the BSPS 2 of 4.53% assuming that Mr P took tax free cash.

From a purely financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr P's best interests.

On the basis of retirement at 65, the critical yield *if* Mr P planned to take the tax free lump sum was below the discount rate, and so may on the face of it have seemed achievable.

But I think it's also worth noting that the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B. And so I've then considered the overall suitability of the transfer, taking into account other considerations.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that Esteem did provide warnings on the guarantees which would be relinquished, but as Esteem will be aware, and as noted by the investigator, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. Esteem needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr P.

As set out above, Esteem's predominant reason for transferring was to provide lump sum death benefits, given his single status (which I address further below). But he was also recorded as wanting flexibility of income due to his particular circumstances, objectives (including the prospect of early retirement), and concerns about his employer and the pension scheme. And so I've given this argument careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr P may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

I also think it's quite possible that Mr P had a "moderate" risk rating, given his age and number of years to retirement.

Esteem has also said that Mr P wouldn't be reliant upon the income from the BSPS in retirement.

But this does then beg the question as to why Mr P needed to transfer his guaranteed benefits at all.

As set out by Esteem, Mr P had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer) by retirement. But other than the state pension which wouldn't be payable until age 67, the defined benefits accrued through the BSPS were still likely to have been his only source of *guaranteed* income. Through transferring, Mr P was effectively putting all of his eggs – barring the state pension - in one "money purchase basket".

And I just can't see why Mr P needed to take the associated additional risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr P would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy potentially changing income needs.

But other than concerns around the employer, with which Mr P said he wished to break all ties in relation to his pension, and associated scheme, which I'll address further below, it's unclear as to why Mr P would have wanted or needed such additional flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his moderate cautious attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

And if Mr P wished to retire early (in 30 or so years' time), he could do so whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. And in my consideration of this, I acknowledge that there was no facility for Mr P to take tax free cash from the BSPS 2 or PPF without also starting to take an income.

But by age 65, Mr P would have accrued around 32 years' worth of defined contributions in the replacement scheme, or 27 years by age 60. Given the likely value of this separate pot of money on the basis of the employer and employee contribution rates, this would likely be used to fund the bulk of his retirement needs between age 60, if indeed, as asserted by Esteem, he needed to do so at all, and his OPS/state pension beginning. It's in fact likely that he could have relied on the proceeds of his defined contribution plan for flexible access to pension benefits, from whatever age after 57, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when (or if) needed.

Alternatively if, on the basis of an income requirement which outstripped this over the years left to age 65 (for example if his circumstances changed) – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr P could then have begun to take the scheme benefits early if needed.

Mr P would also have been able to choose a tax efficient level of income (or lump sum withdrawals if he later decided he wanted them) through the defined contribution accrual, until the point that he either needed, or chose, to begin taking benefits from either the BSPS 2 or the PPF. And so any need for flexibility of income could have been addressed in this way.

Mr P may then have been in the fortunate position of receiving an income which was higher than his actual needs, especially when the state pension began, but he could have simply reinvested any excess as he saw fit, or, to provide a legacy for his family, immediately gift it away to avoid it being subject to inheritance tax.

Mr P may have been willing to accept a measure of risk for the sake of improving his income in retirement (albeit according to Esteem apparently not needed in any case), and as I've said above, although Mr P didn't have any particular financial experience, I think he may have understood the principle of risk/reward, and risk warnings were provided by Esteem.

But as I've also noted above, Mr P was accruing further benefits in his defined contribution scheme, and given the likely accumulation of funds in that scheme, compared against the benefits accrued in the final salary scheme, at the normal scheme retirement age, around 32 years of his pension accrual at age 65 (or 27 by age 60) would likely be derived of the defined contribution scheme. As such, Mr P would already by necessity have been taking investment risk through the replacement scheme.

In light of this, and given that in the eight years up to that point Mr P had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of some significant value as a foundation of stable, escalating income to hedge against uncertain returns in the defined contributions scheme, especially for a moderate risk rated individual, and shouldn't have been relinquished lightly in favour of a flexibility which was loosely defined around the apparent desire for early retirement (some 23 years before this would be even be possible) and concerns around the employer/scheme.

I've also noted what Esteem has said about the historic performance of the recommended portfolio before the advice, and since. And as impressive as this might have seemed at the time of its response to the investigator's view, I note that this has been somewhat less impressive since then, with a return over the last year of around 1.5%.

And this is rather the point. Even employing the benefit of known performance before the advice, and the benefit of hindsight in terms of performance since, Mr P had 32 years until the scheme's normal retirement date, and whilst looking at fund performance (and indeed interest rates and CPI) over a few years might suggest that, if that trend continued, the funds would perform well, that trend needed to be sustained for a very long time. And the reasonable likelihood of that kind of stable environment, which would at the very least match the required critical yields (which, blunt instrument or not, were still a reasonable indicator of the required returns) for that length of time was, in my view, low.

And on the particular note of Mr P's concerns about the employer and the scheme, as with others in his position, I think it's fair to say that Mr P would have been concerned about the future of the BSPS and his associated benefits. But Mr P's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr P distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the point of the "Time to Choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative.

It's fair to say that there were still conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

And so I think that, had Mr P's concerns been better managed, a seeming key driver for having control over his pension benefits would also have diminished.

Mr P therefore didn't need to make any decisions about transferring out his defined benefits at that point. The prospect of Mr P's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

Mr P's plans, including retirement, may in any case have changed significantly in the 24 intervening years between then and him reaching age 57. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr P's retirement – and Mr P would have been able to transfer out of the BSPS 2 if needed.

There may have been lower CETVs offered in the future if gilt yields and other market factors changed, but for the reasons given, I think that Mr P could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he did ultimately decide that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr P or his adviser could then assess at that point whether a transfer represented good value.

And so on the basis of what I've said above, it follows that I don't think the mooted early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr P to transfer his deferred benefits.

Death benefits

As set out in the suitability report, this was the predominant reason for the transfer. And so I've carefully considered what Esteem said in the suitability report about the different format of the death benefits being appealing to Mr P, given his relationship status.

And it's fair to say that, if Mr P remained unmarried, the death benefits offered by the transfer would likely be more beneficial to Mr P's partner, given the scheme rules.

The investigator made the point that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy in the form of a lump sum. And in general terms I'd agree - the recommendation needed to be given in the context of Mr P's best interests, and any dependent children would in any case receive a dependant's pension from the scheme until leaving full time education.

But I do acknowledge the point about Mr P's partner. However, as partners who'd had children together, I think it's more likely than not that they would have envisaged having a joint vested interest in Mr P's security in retirement.

So there was a financial trade off to be considered between the likelihood for Mr P and his partner to be able to benefit from the higher guaranteed income than would be received by way of a transfer, for a reasonable number of years, and the prospect of Mr P's partner being able to benefit from a lump sum payment in the event of his death.

In my own consideration of this, I've firstly noted that Mr P was recorded as being in good health. And he had no health issues which might mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

If Mr P died whilst still employed, his partner would have received the death in service benefit, at several multiples of his salary, plus a return of his defined contributions up that point. There would also be the fund value of his defined contributions, in addition to the return of his own contributions. Dependent upon what point before retirement this occurred, Mr P's partner could therefore in any case have comfortably received several hundreds of thousands of pounds as a lump sum. And I also note that life cover was in place to repay the outstanding mortgage.

And all of this of course precludes the possibility that Mr P and his partner may have married in the interim. As far as I'm aware, there was no recorded prospect of that at the time of the advice, and so I haven't factored this into the above assessment, but given the number of years to retirement, and the benefits to be gained by retirement age for Mr P's partner if they, for example, had little or no pension provision of their own, I don't think it can necessarily be ruled out as a possibility.

I therefore think that Mr P more likely than not had an entirely understandable desire to leave a financial legacy for his partner, but given the other sources of lump sum payments, in addition to the mortgage being repaid by life cover already in place, I don't think the lump sum which would have derived from transferring was essential, and certainly not to the extent that it would justify Mr P compromising the security of his own, and his partner's, financial future whilst still alive.

So for the reasons given, I don't think the prospect of a lump sum benefit by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr P personally, and his partner.

What should Esteem have done – and would it have made a difference to Mr P's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr P. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr P to make any decision about his BSPS benefits at this point in time and it was the responsibility of Esteem to explain to Mr P why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr P's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr P was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr P, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, especially relating to flexibility and lump sum death benefits, I don't think enough weight or consideration was given to the means, such as the defined contributions plans, as set out above, of providing for Mr P's partner beyond the benefits which might be payable from the scheme.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr P's income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr P to relinquish 8 years' valuable benefit guarantees – especially at the age of 33.

My further view is that, if properly discussed, Mr P's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits beyond the five years' guaranteed payment period were also payable from the defined benefit scheme, should Mr P's relationship circumstances change in the future, albeit in a different format from those available from the PPP.

Taking account of Mr P's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that Esteem should have advised against the transfer.

And I think that, had this happened, given that Mr P would have been reliant on the advice given to him, he would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to the conclusion that the recommendation to transfer wasn't suitable for Mr P, nor was it in his best interests. The key contributing factors here are: the lack of a comprehensive and balanced portrayal of Mr P's options and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least three of the key benefits sought by Mr P were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him, along with lump sum death benefits through the other means available, both before and after retirement.

Although the critical yield to age 65 on the basis of Mr P taking tax free cash at retirement may have been lower than the discount rate, as the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out by COBS 2.1.1R and COBS 19.1.6, Esteem would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr P's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice.

In terms of the option Mr P would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr P's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. But as Mr P was single at the time, and unless he had undisclosed plans to marry, I don't think this particular enhancement over the PPF benefits would have had much resonance for him at that time.

The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

One of Mr P's recorded objectives was the possibility of being able to retire early. And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF.

But for the reasons set out above, even if Mr P envisaged retiring early, I think it's likely that, properly advised, he could have accessed his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age. The advantages of early retirement through the PPF wouldn't therefore have applied.

And so, for the reasons given, my view is that it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

I therefore consider that Mr P would most likely have remained in the occupational pension scheme and opted to join the BSPS 2 if suitable advice had been given. And as I've set out above, given the amount of time left to retirement, I don't think it could be assumed that Mr P would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions flexibly if required.

Esteem Money Ltd, trading as Esteem Money, 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.

Esteem Money Ltd, trading as Esteem Money, 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 P and our service upon completion of the calculation.

Mr P hasn't yet retired, and cannot do so for many years So, given my comments above about not in any case likely needing to access the defined benefits before age 65, 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 P'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, Esteem Money Ltd, trading as Esteem Money, should:

- calculate and offer Mr P redress as a cash lump sum payment,

- explain to Mr P before starting the redress calculation that:

- its 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 defined contribution pension

- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr P accepts the offer of Esteem Money Ltd, trading as Esteem Money, to calculate how much of its redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

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

Determination and money award: I require Esteem Money Ltd, trading as Esteem Money. to pay Mr P the compensation amount as set out above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I would also recommend that Esteem Money Ltd, trading as Esteem Money, pays Mr P the balance.

If Mr P accepts this final decision, the award will be binding on Esteem Money Ltd, trading as Esteem Money.

My recommendation wouldn't be binding on Esteem Money Ltd, trading as Esteem Money. Further, it's unlikely that Mr P could accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept my final decision.

As with the investigator, my view is that this matter will have caused Mr P a not inconsiderable amount of concern about his security in retirement. As such, I agree that Esteem Money Ltd, trading as Esteem Money, should also pay Mr P £300 in respect of this.

My final decision

My final decision is that I uphold the complaint and direct Esteem Money Ltd, trading as Esteem Money, to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 December 2023.

Philip Miller
Ombudsman