DRN-3633977

Financial Ombudsman Service

The complaint

Mrs T complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable and believes this has caused a financial loss.

What happened

In March 2016, Mrs T's former employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme, of which she was a deferred member) 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 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 Mrs T's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the 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).

In November 2017, the DB scheme administrators sent Mrs T information about her deferred entitlement under the DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mrs T had 17 years 5 months of pensionable service in the DB scheme and that the total transfer value of her benefits was £260,363.26.

Mrs T approached NTM and an initial meeting was held on 11 December 2017 to discuss her options. NTM completed a joint fact-find with Mrs T, and her husband Mr T, to gather information about their circumstances and objectives along with undertaking an assessment of their attitude to risk.

At that time Mrs T was 48 years old and married to Mr T who was 49 years old. They had two grown up non-dependent children. Both Mrs T and Mr T were working. Mrs T was a deferred member of the BSPS and an active member of her current employer's group personal pension plan ('GPP'). Mr T was also a member of the BSPS along with a member of his employer's new defined contribution ('DC') pension scheme. Mrs T and Mr T owned their own home which was valued at £102,000 and was mortgage free. They also owned a second property valued at £85,000 on which they had an outstanding mortgage of £36,000 which was due to be repaid in 2022. It was also noted that they had no savings. Mrs T had outstanding car finance of £11,500 and Mr T had credit card debt of £12,900 along with outstanding car finance of £5,000. The fact-find also noted that Mrs T's attitude to risk ('ATR') was 'low' and Mr T's ATR was 'low to medium'.

On 18 December 2017 NTM produced its joint suitability report, sending it to Mrs T and Mr T on 22 December 2017. NTM recommended that Mrs T transfer her DB scheme pension benefits into a personal pension and invest the proceeds with a provider I shall call A. The suitability report said the reasons for this recommendation were because Mrs T and Mr T wanted: -

- the flexibility to take early retirement. Mrs T wanted to retire at age 55 and Mr T wanted to retire at age 57;
- flexibility around how they took their income benefits in retirement;
- to obtain the maximum tax-free cash ('TFC') possible in order to fund higher expenditure in the early years of their retirement;
- to take control of their pensions and avoid any further uncertainty or decline in their benefits;
- a retirement income of £1,500 each;
- to ensure their pension benefits weren't lost on death and that they could both inherit a capital sum rather than receive a spouse's pension that;
- to avoid their pension benefits moving to the PPF.

The suitability report stated both Mrs T's and Mr T's ATR was 'average'. And it said that the growth rates required (the critical yields) to match the benefits from the PPF for retirement at either age 65 or age 55 were achievable based on Mrs T's current attitude to risk.

A follow up meeting was held between NTM and Mrs T and Mr T on 11 January 2018 to review the contents of the suitability report. On the same day Mrs T signed the application forms to proceed with the transfer.

On 15 December 2021, Mrs T complained to NTM about the suitability of the transfer advice she had received. Specifically she said that a personal pension was inferior to the guarantees and security offered by a DB scheme.

NTM looked into Mrs T's complaint but didn't think that it had done anything wrong. It said the advice it gave her in 2017/2018 was regulatory compliant. And it said it had been unable to advise Mrs T on transferring to BSPS2 because the date for opting into that scheme had expired prior to it providing its advice. In summary, NTM said that a transfer to the PPF would not have been appropriate for meeting her stated objectives or in her circumstances in general.

Unhappy with the outcome of NTM's investigation into her complaint, Mrs T complained to the Financial Ombudsman Service. One of our Investigators looked into Mrs T's complaint and recommended that it was upheld. He thought that whilst the transfer was potentially financially viable based on Mrs T having a balanced attitude to risk he noted that NTM had initially noted her to be a low-risk investor. Our Investigator thought the sudden change in Mrs T's attitude to risk was without explanation and he also thought she had a low capacity for loss. For these reasons, together with there being a lack of other compelling reasons to justify the transfer, our Investigator thought that NTM hadn't been able to clearly demonstrate that the transfer had been in Mrs T's best interests.

Our Investigator said NTM should undertake a redress calculation assuming that Mrs T had moved to the PPF. If a loss was established, our Investigator recommended that NTM compensate Mrs T in line with the regulator's guidance on how to calculate redress in unsuitable DB transfer complaints. Our Investigator also recommended that NTM pay Mrs T compensation of £250 for any distress and inconvenience caused.

NTM replied to our Investigator to say that it was prepared to carry out the redress calculation, without any admission of liability, in order to establish if Mrs T had sustained a financial loss. It asked our Investigator to obtain some information from Mrs T that it needed in order to be able to run the calculation. Mrs T declined to provide the information NTM needed, stating she preferred her complaint to be referred for an ombudsman's decision. Because this complaint couldn't be resolved informally, the complaint was referred to me to make a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for 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

What follows 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.

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 Mrs T's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

NTM carried out a transfer value analysis report ('TVAS') – as required by the regulator – which showed how much Mrs T's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (known as the 'critical yield'). NTM's TVAS showed two comparisons, the first with Mrs T's benefits from the BSPS and the second with her benefits if they moved to the PPF.

When Mrs T approached NTM for advice she had until 22 December 2017 to tell the trustees of the BSPS whether she wanted to opt into the BSPS2 (and until February 2018 to decide if she wanted to transfer out of her employer's DB pension scheme altogether). NTM didn't send Mrs T its suitability report until 22 December 2017 which was too late for her to read it before the deadline for opting into the BSPS2. Mrs T then met with NTM in January 2018 to discuss its recommendations by which time there were only two options open to her – allowing her DB pension scheme to move to the PPF or to transfer it out to an alternative arrangement. Consequently, the only comparison within the TVAS of any real relevance was that which compared the benefits of transferring to a personal pension with the benefits provided by the PPF.

Mrs T was aged 48 at the time of the advice and she said she wanted to retire at age 55. In the TVAS, NTM said the critical yield to match the benefits available through the PPF at age 55 was 3.81% per year if Mrs T took a full pension and 3.37% per year if she took TFC and a reduced pension. At the scheme's normal retirement age of 65 the critical yields to match the benefits available through the PPF were 2.94% and 2.68% respectively. I've kept in mind too 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%.

Prior to October 2017 the Financial Ombudsman Service published future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. They provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. In Mrs T's case the discount rate for retirement at age 65 – still over 16 years away - was 4.3%. That is above the rate required to match the PPF benefits. And that discount rate falls to 3.3% for early retirement at age 55 which is slightly below the rates required to match the PPF benefits.

So, by taking early retirement at age 55, the gap between the critical yield required and the likely growth rate meant Mrs T would likely be worse off by transferring to a personal pension and taking early retirement. I accept that the growth rate required for retirement at age 55 is only slightly below the discount rate. But there would be little point in Mrs T giving up the guarantees available to her through the PPF only to achieve, at best, the same level of benefits outside the scheme. But here as I've said, given the lowest critical yield was 3.37%, I think Mrs T was likely to receive benefits of a lower overall value than those offered by the PPF if she retired early at age 55 as a result of investing in line with a medium ATR.

And whilst it's arguable that the critical yields for the PPF at age 65 may have been achievable for someone with a medium/balanced attitude to risk, I'm unable to agree with the assessment NTM's about Mrs T's ATR in any event. I say this because in the fact-find Mrs T ticked the box to say she aligned her ATR with *'investors in the Low risk group [who] are prepared to take a small degree of risk with their financial decisions'*.

I've taken note of NTM's ATR questionnaire which Mrs T completed on the same day as the fact-find. It contains twelve questions each with a selection of tick box answers. NTM assessed Mrs T's answers and classed her as having an 'average' ATR, scoring her at 51 out of a possible 100. But I would expect someone whose ATR is assessed as 51 out of 100 to be able to display some evidence of previous investment experience. The fact-find mentions that there was once an ISA (which no longer existed) and some shares in Mrs T's former employer's company. But the fact-find, which was jointly completed, doesn't state whether the ISA and the shares belonged to Mr T (who NTM categorised as having a medium ATR) or Mrs T. None of the meeting notes on file indicate that Mrs T had any investment experience either or that she held any savings or investments at all. Mrs T's only assets were her home and her mortgaged investment property (in which one of her children lived).

And the meeting notes document that Mr and Mrs T understood the need to achieve a return greater than the critical yield and that Mr T was happy to accept that level of risk. The notes are silent though on whether Mrs T felt the same or whether, despite understanding what was required, she was comfortable with the level of risk necessary.

So I don't think there was anything in Mrs T's profile that, in my view, could lead to the conclusion that she should reasonably be classified as someone whose ATR was average/medium and who was willing to take the investment risks necessary to achieve the returns needed so that her personal pension fund grew to a point that it was able to match the benefits offered by the PPF. And I can't ignore that her initial response to NTM's question about her ATR (on its fact-find) was that she saw herself as a low-risk investor.

Given her personal circumstances at the time, I think Mrs T should more reasonably have been assessed by NTM as having a low ATR. Had that been the case, I think that it's unlikely she would be willing to take the investment risks necessary to achieve an annual investment return in excess of 2.68% (a rate that is greater than the regulator's lower projection rate) just to match at age 65 the PPF benefits being given up. In any event, there would be little advantage to giving up the guarantees associated with the PPF just to be able to match – not even exceed – the benefits being given up.

Nor do I think that the length of time Mrs T had to go to retirement meant her capacity for loss was significant. I can see that Mrs T had no savings at the time of the advice. She had a mortgage with five years to run and credit card debt she was trying to clear. And there was a family wedding to help pay for in the near future. So I don't think Mrs T could afford to 'gamble' by transferring her DB scheme. The income she was forecast to receive at retirement from the PPF is, I think, one she didn't have the capacity to lose.

So I think Mrs T was likely to receive lower benefits than those offered by the PPF if she retired early at age 55. Similarly, if Mrs T waited until age 65 to retire, given that the critical yield was 2.68%, that her ATR should more reasonably have been assessed as no more than low and that the regulator's lower projection rate was 2%, I think she was likely to receive benefits of a lower overall value than those from the PPF when retiring at age 65 as well. Transferring meant putting Mrs T's funds at risk for only a small possibility that she could be better off by doing so (and then only if she deferred any retirement to age 65). And should Mrs T's funds not meet NTM's projected growth rates then she was likely to be worse off in retirement. So I don't think NTM has been able to 'clearly demonstrate' (as required by the regulator) that it was in Mrs T's best interests to transfer her DB scheme benefits to a personal pension.

In any event, whatever age Mrs T planned to retire at, for the reasons I've given here, I think she was likely to be financially worse off by transferring to a personal pension than she was from leaving her benefits in the DB scheme and letting them move into the PPF. For this reason alone I don't think a transfer was in Mrs T's best interests. So I've gone on to consider the other key reasons that NTM cited for recommending a transfer.

Flexibility, income needs and early retirement

NTM said that transferring meant Mrs T could retire early at age 55. But having considered the evidence here I don't think Mrs T had a genuine need to access her pension funds earlier than the scheme's normal retirement age of 65. I'll explain why.

I can fully appreciate Mrs T's stated desire to retire early – most people would say they would like to do the same if given the chance. But I also think that the majority of people that said as much would understand that having the opportunity to retire early isn't worth compromising income security for the remainder of their retirement for. So I don't think it's unreasonable to assume that Mrs T would have reassessed her situation once she reached the age of 55. In fact Mrs T is almost 55 now and told us she has no current expected early retirement date. So I think that early retirement was something that was most likely to be a 'nice to have' rather than a genuine need.

When faced with the prospect of a significant drop in income by taking early retirement, one that would reduce both spending power and lifestyle choices, most people elect not to do so. Instead they choose to keep working to support their current and future lifestyles. I think that was a more likely prospect for Mrs T at the time of NTM's advice. But I've seen no evidence that NTM challenged Mr T's wish to retire at age 55.

And whilst it's true to say that Mrs T couldn't have had the same level of flexible access to her PPF funds as she could from a personal pension, and I can see that flexible access might have been an attractive prospect for her, I'm not persuaded that Mrs T had any concrete need to vary her income throughout retirement. But, if she believed she did, there was no requirement for her to give up the safeguarded benefits from her DB scheme in order to have some flexible access to retirement funds. I say this because by the time she was advised by NTM, Mrs T had worked for her current employer for almost 5 years which had provided her with a GPP. NTM didn't obtain details from Mrs T about the value of her GPP so there's nothing on the file from the time of the advice to indicate what it might have been worth at that point in time or in the future. Mrs T remains employed however so it is reasonable to assume that her GPP remains in place and continues to grow.

The nature of a GPP is such that it already provided Mrs T with flexibility – she wasn't committed to take its benefits in a set way. Mrs T could have taken lump sums as and when required and adjusted the income she took from it according to her needs. So, I think if Mrs T retained her DB pension by moving into the PPF this, combined with her GPP, would have likely given her the flexibility to retire early - *if* that was what she ultimately decided.

And while she could have chosen to take her pension from the PPF early, if she had wanted to take TFC, then she would have had to take that at the same time as drawing a regular income from his pension. Whereas the GPP would allow Mrs T to draw down funds as she saw fit. But while I can see why the flexibility associated with a personal pension might have been an attractive prospect for Mrs T, I'm not persuaded that she had any concrete need to take TFC at all. I've seen reference to Mrs T needing £20,000 some three years after the advice to assist with the cost of a wedding, but Mrs T would only have been aged 51 by that point and unable to access any tax-free cash in any event.

NTM also documented that Mrs T wanted a retirement income of £1,500 per month. It said she couldn't achieve this by remaining in her DB scheme. I've already said above that I don't think the transfer was a financially viable one for Mrs T. It is also significant though that at the time of the advice, Mrs T had seven years to go before her stated preferred retirement date. I can accept that with all the discussion around her former employer's pension at the time, Mrs T may have begun to think about her retirement plans but I'm not persuaded from the evidence that I've seen that they were set in stone. I say this for example because there is no evidence that Mrs T had given any thought to her expenditure needs in retirement aside from citing a global figure of £1,500 per month and stating that she thought she would need more income in the early years of her retirement and less as she aged.

NTM appears to have recommended that Mrs T transfer her DB scheme benefits because she couldn't achieve her income objective of £1,500 per month by transferring to the PPF. But I'm not persuaded that NTM did enough here to interrogate Mrs T's retirement income objective in order to determine whether or not it was realistic or achievable. Notably, NTM did not carry out an analysis of Mrs T's potential expenditure in retirement to determine whether or not £1,500 per month was what she actually needed in order to achieve her retirement goals. And nor am I sure how NTM could reach this conclusion without fully understanding what Mrs T's pension entitlement from her GPP was forecast to be. By failing to find out about Mrs T's GPP NTM didn't have full regard to Mrs T's information needs and wasn't, in my view, in a position to fully advise her.

And in the circumstances, and if it was having regard to Mrs T's information needs, I think that in addition to ascertaining what level of income and tax-free cash Mrs T might be able to expect from her GPP, part of the analysis could have included what income she could expect to receive from the PPF at age 60. That way she could have seen what effect delaying her retirement to that age would have on the income she could expect to receive. The outstanding balance on the mortgage on Mr and Mrs T's second home was due to be cleared before Mrs T reached age 55 as was their credit card debt. Taking both into account, NTM could then have explored how the pension paid by the PPF together with Mrs T's GPP pension could have met her income needs at both ages 55 and 65 (and preferably age 60 too).

It was NTM's responsibility to determine whether giving up the secure, guaranteed benefits associated with the PPF was in Mrs T's best interests. As part of this I think it was necessary to carry out this analysis. If NTM didn't think Mrs T's plans were realistic then it should have made that clear to her. That way she would have had the information she needed to make a fully informed decision and that includes the option to reconsider her target retirement income and her target retirement date. However, I'm not persuaded this was carried out clearly such that I can reasonably conclude that NTM acted in Mrs T's best interests.

Death benefits

Mrs T was attracted by the lump sum death benefits offered by transferring to a personal pension because she thought they offered her family a much higher degree of protection and flexibility than the death benefits on offer from the PPF. Mrs T also preferred that the death benefits associated with a personal pension allowed her to select how they would be paid.

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 were likely an attractive feature to Mrs T. That's because whatever was left of the personal pension fund on the date of her death would be passed to Mr T (or her nominated beneficiaries). If that happened before Mrs T retired, or shortly after, then that would likely be a significant sum. In contrast the PPF would pay Mr T half of Mrs T's yearly pension entitlement after she died. But that pension would die with him so Mr T wouldn't be able to leave it as legacy for their children.

But whilst I appreciate death benefits are important to consumers, and Mrs T might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Mrs T about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. But in transferring out of her DB scheme, Mrs T was essentially giving up a guaranteed, index linked, increasing income in retirement in exchange for a potential lump sum that her family may never receive. And if Mrs T lived a long life, her pension fund could have been considerably depleted, meaning there would be little by way of a legacy in any event.

I don't think NTM explored to what extent Mrs T was prepared to accept a lower retirement income in exchange for higher death benefits. I also think the existing death benefits attached to the PPF were underplayed. In fact, NTM's suitability report doesn't refer to the PPF death benefits at all, only quoting Mr T's entitlement from the DB scheme. It is worth commenting that the death benefits from the PPF aren't as generous as those provided by the DB scheme. For example, the PPF doesn't provide any form of capital lump sum on death. But because Mrs T had lost the entitlement to the DB scheme benefits by the time she received NTM's suitability report, I think NTM should have included an explanation in the report about what the PPF's death benefits were; however, it didn't do so.

Regardless of any inferiority in the death benefits offered by the PPF in comparison to those from the BSPS, I don't think this justifies a recommendation to transfer Mrs T's DB scheme benefits to a personal pension.

Mrs T was married, so the spouse's pension provided by the PPF scheme would've been useful to Mr T in the event of her death. It was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mrs T lived a long life, or she took large sums from it in early retirement, or if her investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mrs T to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

Furthermore, if Mrs T's concern about wanting to leave a lump sum legacy was genuine one, then NTM should have reminded her that she was a member of a GPP where she would have been able to nominate beneficiaries for this plan too (if she hadn't already done so). Alternatively, if Mrs T wanted to leave a legacy for Mr T and their children, which didn't depend on investment returns or how much of her pension fund remained on her death then life insurance may have met her needs.

I've noted that NTM did look into the cost of life insurance which its suitability report said would cost Mrs T £247 a month. NTM didn't think that was viable on the grounds of cost. But I don't think that NTM presented this option in a balanced way. I say that because NTM based the quote on the full transfer value of Mrs T's DB scheme which essentially assumes that she will die on day one after the transfer which isn't, in my view, a realistic way to look at it. Ultimately, Mrs T wanted to leave whatever remained of her pension to her husband or children which would be a lot less than the full transfer value if she lived a long life or if investment returns were poor. So, the starting point ought to have been to ask Mrs T how much she would ideally like to leave to her husband and children, and how much she could afford to pay each month. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled her to leave a legacy without risking her retirement income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the risk attached to transferring Mrs T's pension. And I don't think NTM did enough to highlight the value of the death benefits associated with the PPF or to explore the alternatives available to her.

Control or concerns over financial stability of the DB scheme

I understand that Mrs T, like many of the BSPS scheme members probably felt at the time, was concerned about her pension and specifically it ending up in the PPF. So it's possible

Mrs T was leaning towards the decision to transfer her DB scheme benefits to a personal pension because of the concerns she had. But it was NTM's responsibility to provide Mrs T with an objective viewpoint and recommend what was in her best interests.

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

But I think NTM should have done more to reassure Mrs T that her DB scheme moving to the PPF wasn't as concerning as she thought or had been led to believe. It would have still given her the option to take early retirement, if that was something she ultimately decided she wanted to do. I think the income available to Mrs T through the PPF would have provided her with a solid base which her GPP, and ultimately her state-pension, could supplement to likely meet her overall income need in retirement. But I think, most significantly, Mrs T was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income it provided was guaranteed and was free from investment risk. Mrs T would have course been unable to have transferred out of the PPF at a later date but, given what I have mentioned about her already having flexibility, I don't think that there was any need for her to do so.

So I don't think that Mrs T's concerns about the PPF were a suitable or compelling reason for NTM to recommend she transfer out of the DB scheme to a personal pension.

I also think Mrs T's desire for control over her pension benefits was overstated. Mrs T was not an experienced investor and I cannot see that she had an interest in or the knowledge to be able to manage her pension funds on her own. So, I don't think that this was a genuine objective for Mrs T – it was simply a consequence of transferring away from her DB scheme. It seems to me that Mrs T's stated desire for 'control' related more to moving her pension away from a former employer that she didn't trust than to any resolution on her part to begin to manage her investment.

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 Mrs T. But NTM wasn't there to just transact what Mrs T might have thought she wanted. The adviser's role was to really understand what Mrs T needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs T was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs T was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. So I think NTM should have advised Mrs T to remain in her DB scheme (and move with it to the PPF).

Of course, I have to consider whether Mrs T would've gone ahead anyway, against NTM's advice. I've considered this carefully, but I'm not persuaded that Mrs T's concerns about the PPF were so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she had sought out, didn't think it was suitable for her or in her best interests. I say this too because Mrs T was an inexperienced investor with a likely 'low' attitude to risk and this pension accounted for the majority of her retirement provision. So, if NTM had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

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

Finally, like our Investigator, I agree that NTM should pay Mrs T compensation of £250 for the distress and inconvenience its unsuitable advice about her pension has caused her. Mrs T has said that she has suffered stress and worry about her future pension and retirement. Where a financial business, through its words or deeds, causes a consumer trouble or upset, the Financial Ombudsman Service can require it to pay compensation. I've thought about what this means for Mrs T and I'm satisfied that an award of £250 is fair and reasonable in the circumstances of her complaint and in line with the Financial Ombudsman Service's approach to awards of this nature in general.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs T as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs T 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 Mrs T and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

For clarity, Mrs T has not yet retired, and Mrs T 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 T'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 Mrs T redress as a cash lump sum payment,
- explain to Mrs T before starting the redress calculation that:
    - her 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 her redress prudently is to use it to augment her GPP pension
- offer to calculate how much of any redress Mrs T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs T accepts NTM's offer to calculate how much of her redress could be augmented, request the necessary information and not charge Mrs T for the calculation, even if she ultimately decides not to have any of her redress augmented, and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs T's end of year tax position.

Redress paid to Mrs T 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 Mrs T'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require NTM Financial Services Ltd to pay Mrs T the compensation amount as set out in the steps above, up to a maximum of £170,000.

NTM Financial Services Ltd should also pay Mrs T compensation of £250 for the distress and inconvenience its unsuitable advice caused her.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that NTM Financial Services Ltd pays Mrs T the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mrs T can accept my decision and go to court to ask for the balance. Mrs T may want to consider getting independent legal advice before deciding whether to accept any final decision.Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 6 December 2023.

Claire Woollerson
Ombudsman