DRN-3634031

The complaint

Mr T complains about the advice given by NTM Financial Services Ltd ('NTM') 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

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In 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 R'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 Mr T information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr T had 22 years of pensionable service in the DB scheme and that the total transfer value of his benefits was £276,609.27.

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

At that time Mr T was 49 years old and married to Mrs T who was 48 years old. They had two grown up non-dependent children. Both Mr and Mrs T were working and, as well as being a deferred member of the BSPS herself, Mrs T was an active member of her current employer's workplace pension scheme. Mr and Mrs 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 had an outstanding mortgage of £36,000 which was due to be repaid in 2022. It was also noted that they had no savings but that Mr T had credit card debt of £12,900 along with outstanding car finance of £5,000. Mrs T had outstanding car finance of £11,500. Mr T and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme. The fact-find also noted that Mr T's attitude to risk was 'low to medium' and that Mrs T's was 'low'.

On 18 December 2017 NTM produced its joint suitability report, sending it to Mr and Mrs T on 22 December 2017. NTM recommended that Mr T transfer his 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 Mr and Mrs T wanted: -

- the flexibility to take early retirement. Mr T wanted to retire at age 57 and Mrs T wanted to retire at age 55;
- 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, in Mrs T's case, would add to her taxable income, possibly tipping her into the higher rate income tax bracket;
- to avoid their pension benefits moving to the PPF.

The suitability report recorded Mr and Mrs T's attitude to risk as 'Average'.

In the suitability report NTM also noted that the growth rates required (the critical yields) to match the benefits from Mr T's DB scheme "cannot be achieved" for retirement at either age 65 or age 55 by investing in line with his attitude to risk.

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

On 13 January 2022, Mr T complained to NTM about the suitability of the transfer advice he had received. Specifically he said that a personal pension was inferior to the guarantees and security offered by a DB scheme.

NTM looked into Mr T's complaint but didn't think that it had done anything wrong. It said the advice it gave him in 2017/2018 was regulatory compliant. And it said it had been unable to advise Mr T on transferring to BSPS2 because the date for opting into that scheme had expired prior to it providing its advice. NTM also said Mr T's priority had been to have flexibility and control around how he took his pension benefits which a transfer to the PPF would not have facilitated. NTM said Mr T's DC scheme wouldn't have provided this either because it wasn't projected to have a large enough fund value by the time Mr T reached age 57. Finally, NTM said that the critical yields for the PPF were achievable for an investor (such as Mr T) with a balanced attitude to risk.

Unhappy with the outcome of NTM's investigation into his complaint, Mr T complained to the Financial Ombudsman Service. One of our Investigators looked into Mr T's complaint and recommended that it was upheld. He thought that the transfer wasn't financially viable and that there were no other compelling reasons which justified transferring Mr T's DB scheme benefits to a personal pension plan. Our Investigator said NTM should undertake a redress calculation assuming that Mr T had moved to the PPF. If a loss was established, our Investigator recommended that NTM compensate Mr 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 Mr 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 Mr T had sustained a financial loss. It asked our Investigator to obtain some information from Mr T that it needed in order to be able to run the calculation. Mr T declined to provide the information NTM needed and said he preferred his 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 Mr T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

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

When Mr T approached NTM for advice he had until 22 December 2017 to tell the trustees of the BSPS whether he wanted to opt into the BSPS2 (and until February 2018 to decide if he wanted to transfer out of his employer's DB pension scheme altogether). NTM didn't send Mr T its suitability report until 22 December 2017 which was too late for him to read it before the deadline for opting into the BSPS2 passed. Mr T then met with NTM in January 2018 to discuss its recommendations by which time there were only two options open to him – allowing his 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.

Mr T was aged 49 at the time of the advice and he said he wanted to retire at age 57. In the TVAS, NTM didn't provide any comparison figures for retirement at age 57, instead giving them for age 55 (along with those for the scheme's normal retirement date of age 65). NTM says this is because the DB scheme administrators didn't provide figures for age 57 but my understanding is that Mr T's 'Time to Choose' booklet set out a table of relevant factors that would have allowed NTM to calculate Mr T's benefit entitlement from the BSPS2 and the PPF for any age between 55 and 64. Given that remaining in the BSPS was never an option for Mr T, I think that NTM should have run the calculation for him at his preferred retirement age of 57. As it didn't do so I've referred below to the figures it did show at age 55 instead.

In the suitability report, NTM said the critical yield to match the benefits available through the PPF at age 55 was 11.42% per year if Mr T took a full pension and 10.65% per year if he 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 5.2% and 4.83% respectively.

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 Mr T's case the discount rate for retirement at age 65 – still over 15 years away - was 4.3%. That is below the rate required to match either the BSPS or PPF benefits. And that discount rate falls to 3.4% for early retirement at age 57 and 3.1% for retirement at age 55. So, by taking early retirement at age 57, the gap between the critical yield required and the likely growth rate meant Mr T would likely be worse off by transferring to a personal pension and taking early retirement.

And I think that at the point at which it gave its advice, NTM agreed because in the suitability report it said that in transferring to a personal pension, the relevant critical yields in order to match the benefits of the DB scheme could not be achieved. In other words NTM recognised that transferring would most likely mean Mr T would be worse off in retirement by doing so. I agree with NTM's analysis here.

I say that as well because Mr T's funds if he retired at age 57 would have been invested in a personal pension for a shorter time before he accessed them and so would have had less time to grow. Those funds would also then have needed to support Mr T for a longer period in retirement. That means the investments would have needed higher returns to match the guaranteed benefits from the DB scheme from an earlier age. So 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 the fact remains that Mr T said he wanted to take early retirement at age 57. So I consider the critical yields to match the benefits available through the PPF at age 55 more realistically reflect the annual investment growth Mr T's personal pension would need to achieve just to match – let alone exceed – the benefits that would have been available to him through the PPF.

So I think Mr T was likely to receive lower benefits than those offered by the PPF if he retired early at age 57 or even if he waited and retired at age 65. Transferring meant putting Mr T's funds at risk for only a small possibility that he could be better off by doing so (and only if he deferred any retirement to age 65). And should Mr T's funds not meet NTM's projected growth rates then Mr T 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 Mr T's best interests to transfer his DB scheme benefits to a personal pension. In any event, whatever age Mr T planned to retire at, I agree with NTM's assessment that he was likely to be financially worse off by transferring to a personal pension than he was from leaving his benefits in the DB scheme and letting them move into the PPF. For this reason alone I don't think a transfer was in Mr 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 Mr T could retire early at age 57. But having considered the evidence here I don't think Mr T had a genuine need to access his pension funds earlier than the scheme's normal retirement age of 65. I'll explain why.

I can fully appreciate Mr 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 Mr T would have reassessed his situation once he reached the age of 57. In fact Mr T is almost 57 now and told us he has no set 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 Mr 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 57.

And whilst it's true to say that Mr T couldn't have had the same level of flexible access to his DB funds as he could from a personal pension, and I can see that flexible access might have been an attractive prospect for him, I'm not persuaded that Mr T had any concrete need to vary his income throughout retirement. But, if he believed he did, there was no requirement for him to give up the safeguarded benefits from his DB scheme in order to have some flexible access to retirement funds. I say this because by the time he was advised by NTM, Mr T (and his employer) were also paying into his employer's DC scheme which, NTM has said, would have attained a fund value of around £53,000 by the time Mr T was aged 57. But should Mr T work beyond the age of 57 then that fund is likely to increase.

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

And while he could have chosen to take his pension from the PPF early, if he had wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow Mr T to draw down funds as he saw fit. But while I can see why the flexibility associated with a personal pension might have been an attractive prospect for Mr T, I'm not persuaded that he had any concrete need to take TFC at all. I've seen reference to Mr T needing £20,000 some three years after the advice to assist with the cost of a wedding, but Mr T would only have been aged 52 by that point and unable to access any tax-free cash in any event.

NTM also documented that Mr T wanted a retirement income of £1,500 per month. It said he couldn't achieve this by remaining in his DB scheme. I've already said above that I don't think the transfer was a financially viable one for Mr T. It is also significant though that at the time of the advice, Mr T had eight years to go before his stated preferred retirement date. I can accept that with all the discussion around employer's pension at the time, Mr T may have begun to think about his 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 Mr T had given any thought to his expenditure needs in retirement aside from citing a global figure of £1,500 per month and stating that he thought he would need more income in the early years of his retirement and less as he aged.

NTM appears to have recommended that Mr T transfer his DB scheme benefits because he couldn't achieve his income objective of £1,500 per month by transferring to the PPF. But I'm not persuaded that NTM did enough here to interrogate Mr 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 Mr T's potential expenditure in retirement to determine whether or not £1,500 per month was what he actually needed in order to achieve his retirement goals.

In the circumstances, and if it was having regard to Mr T's information needs, I think that part of the analysis could have included what income Mr T could expect to receive from the PPF at age 60 so that he could see what effect delaying his retirement to that age would have on the income he could expect to receive. The outstanding balance on the mortgage on Mr and Mrs T's second home was due to be cleared before Mr 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 Mr T's DC pension could have met his income needs at both ages 57 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 Mr T's best interests. As part of this I think it was necessary to carry out this analysis. If NTM didn't think Mr T's plans were realistic then it should have made that clear to him. That way he would have had the information he needed to make a fully informed decision and that includes the option to reconsider his target retirement income and his target retirement date. However, I'm not persuaded this was carried out clearly such that I can reasonably conclude that NTM acted in Mr T's best interests.

Death benefits

Mr T told NTM that he thought a lump sum for his wife, should he die before her, would be more beneficial that the spouse's benefit from the PPF (Mrs T had quite significant pension provision in her own right and Mr T was concerned that another pension would lead to her paying the higher rate of income tax).

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

But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. But in transferring out of his DB scheme, Mr T was essentially giving up a guaranteed, index linked, increasing income in retirement in exchange for a potential lump sum that his family may never receive. And if Mr T lived a long life, his 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 Mr T was prepared to accept a lower retirement income in exchange for higher death benefits. I also think the existing death benefits attached to the PPF were underplayed. In fact NTM's suitability report doesn't refer to the PPF death benefits at all, only quoting Mrs 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 Mr T had lost the entitlement to the DB scheme benefits by the time he 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 Mr T's DB scheme benefits to a personal pension.

Mr T was married, so the spouse's pension provided by the PPF scheme would've been useful to Mrs T in the event of his 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 Mr T lived a long life, or he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

And whilst I've noted Mr T's concern about any spouse's pension from the PPF leading to Mrs T becoming a higher rate taxpayer, I've seen no detailed analysis of her pension entitlement such that I can reasonably conclude that this was likely to be the case. And it appears from NTM's meeting notes from its meeting with Mr and Mrs T on 11 January 2018 that it *'did not have full details of [Mrs T's] WPP benefits to provide an accurate assessment of future income available to her at age 55'* either. So is unclear to me where the concern that any spouse's pension would tip Mrs T into the higher rate income tax band emanated from. There certainly is no analysis of Mrs T's potential retirement income that I've seen that indicates that such a situation was realistic possibility. All I can see from the suitability report was that Mrs T's BSPS pension was likely to provide her with an income in retirement from her preferred retirement age of 55 of just over £9,000 per year if she took the maximum tax free cash. I know also that she is a member of her current employer's DB scheme. But whether her own combined pension entitlement, coupled with a spouse's pension from the

PPF, would be sufficient to make her a higher rate taxpayer is not something I'm reasonably able to conclude was likely.

Furthermore, if Mr T's concern about wanting to leave a lump sum legacy was genuine one, then NTM should have reminded him that he had death in service cover from his employer of four times his salary which would be paid to his nominated beneficiary in the event he died whilst still in employment. And it knew Mr T was paying into a DC scheme where he would have been able to nominate beneficiaries for this plan too (if he hadn't already done so). Alternatively, if Mr T wanted to leave a legacy for Mrs T and his children, which didn't depend on investment returns or how much of his pension fund remained on his death then life insurance may have met his needs.

I've noted that NTM did look into the cost of life insurance which its suitability report said would cost Mr T £273 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 Mr T's DB scheme which essentially assumes that he will die on day one after the transfer which isn't, in my view, a realistic way to look at it. Ultimately, Mr T wanted to leave whatever remained of his pension to his wife or children which would be a lot less than the full transfer value if he lived a long life or if investment returns were poor. So, the starting point ought to have been to ask Mr T how much he would ideally like to leave to his wife and children, and how much he could afford to pay each month. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the risk attached to transferring Mr 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 him.

Control or concerns over financial stability of the DB scheme

I understand that Mr T, like many of his colleagues probably felt at the time, was concerned about his pension and specifically it ending up in the PPF. So it's possible Mr T was leaning towards the decision to transfer his DB scheme benefits to a personal pension because of the concerns he had. But it was NTM's responsibility to provide Mr T with an objective viewpoint and recommend what was in his 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 Mr 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 Mr T that his DB scheme moving to the PPF wasn't as concerning as he thought or had been led to believe. It would have still given him the option to take early retirement, if that was something he ultimately decided he wanted to do. I think the income available to Mr T through the PPF would have provided him with a solid base which his DC scheme, and ultimately his state-pension, could supplement to likely meet his overall income need in retirement. But I think, most significantly, Mr 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. Mr T would have course been unable to have transferred out of the PPF at a later date but, given what I have mentioned about him already having flexibility, I don't think that there was any need for him to do so.

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

I also think Mr T's desire for control over his pension benefits was overstated. Mr T was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr T – it was simply a consequence of transferring away from his DB scheme. It seems to me that Mr T'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. In any event, Mr T 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.

Summary

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

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

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

In light of the above, I think NTM should compensate Mr 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 Mr T compensation of £250 for the distress and inconvenience its unsuitable advice about his pension has caused him. Mr T has said that he has suffered stress and worry about his pension. 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 Mr T and I'm satisfied that an award of £250 is fair and reasonable in the circumstances of his 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 Mr T as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr 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 Mr 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, Mr T has not yet retired, and Mr 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 Mr T redress as a cash lump sum payment,
- explain to Mr T 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 DC pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr 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 Mr 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

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr 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 Mr T compensation of £250 for the distress and inconvenience its unsuitable advice caused him.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that NTM Financial Services Ltd pays Mr T the balance.

If Mr 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 Mr T can accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 November 2023.

Claire Woollerson
Ombudsman