DRN-3642592

The complaint

Mr B complains about the advice given by Bloomfield Financial Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme ('OPS') to his defined contribution ('DC') group personal pension ('GPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr B is represented in this complaint, but for ease I'll refer only to Mr B.

What happened

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

In April 2017 Mr B's employer set up a new DC GPP for him.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed – it said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr B'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 the options to either stay in the 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.

Mr B was concerned about the security of his preserved benefits in the BSPS. So in October 2017 he contacted independent financial adviser Bloomfield. Mr B told it this matter was time sensitive because of the 'Time to Choose' deadline. And that he'd thought hard and transferring out his BSPS DB scheme was his best option, and he'd be willing to proceed as an 'insistent client' due to his retirement plans. Bloomfield told Mr B it wouldn't start its advice process expecting him to be 'insistent', because that would be to presume what its advice would be.

Bloomfield gathered information about Mr B's circumstances and objectives. On 30 November 2017 it completed its terms of business with Mr B, as well as a fact find for him and his wife. The fact find said Mr B was almost age 55, in good health, married with no dependents, was employed and earned £32,000 gross each year, and had savings of £19,973. The home he shared with his wife was worth £115,000, and their repayment mortgage had a remaining term of 11 years and a remaining balance of £36,000, for which they repaid £368.64 each month. The fact find said their annual expenditure was £24,000, though there was no detailed breakdown of this. And that Mr B had three pensions – his BSPS DB scheme with a cash equivalent transfer value ('CETV') of £202,523.94, another DB scheme which Mr B later got a CETV of £33,439 for in March 2018, and his DC GPP with a current value of £3,780. It wasn't recorded whether Mr B's wife had any pensions.

The fact find said Mr B wanted to leave his current job at age 60, because he and his wife wanted to sell up and buy a small business abroad. They thought this business would cost £200,000 and give them an income, so they preferred taking Mr B's pension benefits as a lump sum rather than a retirement income. The fact find recorded Mr B had been watching his BSPS CETVs looking for jumps in value he could 'bank'. That he was very worried the BSPS would fall into the PPF, which would greatly restrict his options and benefits. And that life assurance wasn't important to Mr B. On 30 November 2017, Bloomfield also assessed Mr B's attitude to risk, which it deemed to be 'balanced', or medium.

Bloomfield carried out financial analyses on 9 January 2018. And on 12 January 2018, its suitability report advised Mr B to transfer his BSPS DB scheme benefits to his existing DC GPP, which had lower fees than other personal pensions. It said this transfer would allow him to access maximum tax free cash ('TFC') at age 60 to move and buy a business abroad – it noted Mr B could probably fund this through selling his UK home, but having additional capital would give him confidence to proceed. Bloomfield also said the transfer would address Mr B's fears that his DB benefits would move to the PPF (as he'd lost trust in the BSPS trustees and thought the BSPS2 would either fail to launch or would move to the PPF), and that he'd lose out on the increased CETV at that time. Mr B accepted this advice, so on 9 March 2018 £202,523.94 was transferred from the BSPS to Mr B's DC GPP.

In June 2022 Mr B complained to Bloomfield that this 2018 advice had been unsuitable, as it left him financially worse off and meant he'd lost guaranteed benefits.

Bloomfield said it told Mr B he'd likely be financially worse off by transferring his DB scheme benefits to his DC GPP. But the transfer was suitable for Mr B because it was the only way he could definitely buy a business abroad at age 60 as he wanted. Bloomfield said Mr B had insisted this was all that mattered, and the CETV was high enough for him. And that it was possible the BSPS2 might fail to launch and Mr B was convinced his DB scheme benefits would move to the PPF. Bloomfield said its recommendation to transfer, and the subsequent investment, was suitable given Mr B's particular objectives and attitude to risk.

Still unhappy, Mr B asked our Service to investigate. He said Bloomfield hadn't gathered enough information about his plan to move abroad, which hadn't been a certain plan. That he'd not known much about the BSPS2 and PPF, but was concerned about them and Bloomfield hadn't reassured him. He didn't have much financial knowledge and hadn't understood the risk Bloomfield encouraged him to take. He'd simply relied on its recommendation to transfer. Mr B said he was still working and his financial situation meant he planned to retire at age 65.

Ultimately, our Investigator thought Bloomfield's advice to transfer Mr B's BSPS DB scheme benefits was unsuitable. Because it meant he was giving up a guaranteed, risk-free and increasing income, and was likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this. He thought Bloomfield should compensate Mr B for its unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr B through the BSPS2 for comparison purposes. He also thought Bloomfield should pay Mr B £300 compensation for the unnecessary distress its unsuitable advice had caused him.

Mr B agreed with our Investigator. He clarified he'd accessed TFC in 2021 in reaction to falling markets and concerns about a recession, but wouldn't have accessed TFC as early as he did if Bloomfield's unsuitable advice hadn't left this option open to him. And he'd not spent any of the TFC. So, Mr B thought redress should be based on retirement at age 65.

Bloomfield disagreed with our Investigator's view and provided further comments. In summary, it said:

- It had complied with the regulator's requirements and guidance.
- The Investigator's view was based on hindsight. At that time, the UK steel industry was declining, and Mr B's employer expected to go out of business if the BSPS wasn't restructured. Mr B had insight of that industry. And BSPS2 wasn't certain to go ahead, as discussed in the media and online forums Mr B was part of. Mr B greatly distrusted the BSPS and wanted to transfer away. And the PPF would have left Mr B with greatly restricted options and benefits, and was rightly portrayed more negatively than the BSPS by members and the trustees. So, avoiding the PPF was another compelling reason for Mr B to transfer his DB benefits.
- It wouldn't have been reasonable for Bloomfield to try to persuade Mr B his fears were unfounded. But Bloomfield had told Mr B about BSPS2's positives and that he'd lose guaranteed benefits and wouldn't get better returns if he transferred. And it had told him he should opt for BSPS2 while it evaluated his options.
- The CETV was particularly high at that time and might have fallen if the BSPS2 failed to launch. The CETV gave Mr B more than he needed to meet his objective of moving abroad, while avoiding the risk of losing value.
- Mr B had considered and planned to move abroad at age 60. This made the transfer suitable, and it was wrong to say Bloomfield should have dismissed Mr B's plan. Since 'pension freedoms' were introduced, pensions were no longer strictly for providing retirement income, but also for funding retirement lifestyles. Mr B had watched his CETV until it was high enough for him to be confident in progressing his plan - he didn't want to rely on the sale of his UK home and it would be difficult to coordinate this with buying abroad. Taking TFC from his other pensions wouldn't give Mr B enough to move abroad, and the BSPS2 and PPF didn't allow flexible drawdown and easy access to TFC.
- Mr B would've insisted on a transfer anyway. He asked about the insistent client process at the very start, so he'd already decided to transfer and only came to Bloomfield because he was obliged to obtain advice.

Our Investigator didn't change their view. He thought an enhanced CETV wasn't enough reason to transfer, and moving abroad wasn't a certain plan for Mr B. That the primary purpose of a pension is to provide retirement income. And while Mr B may have had concerns about the BSPS, BSPS2 and PPF, it wasn't for Bloomfield to simply do what Mr B wanted – it should have given him an impartial view.

As agreement couldn't be reached, this complaint was referred for an Ombudsman's decision. Whilst that referral was underway, our Service contacted Mr B and Bloomfield to explain that Mr B could choose to have any redress calculated now in line with the regulator's current guidance in FG 17/9, or he could instead choose to wait for any new guidance/rules to be published by the regulator, as expected in early 2023.

Bloomfield said that, without admission of liability, it was prepared to settle the complaint in line with the regulator's current guidance in FG17/9. Using that, it calculated Mr B hadn't been caused any financial loss. But it offered Mr B £500 compensation for his distress and inconvenience, in full and final settlement of his complaint.

Our Service passed this offer to Mr B. He said he wanted to wait and have any redress calculated in line with any new guidance/rules to be published by the regulator.

This complaint then came to me to consider.

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 Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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

I appreciate Bloomfield says it complied with the regulator's requirements. But having considered all of this, and the evidence in this case, I'm upholding this complaint for largely the same reasons given by the Investigator.

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

Financial viability

Bloomfield carried out a transfer value analysis report 'TVAS' (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

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

Mr B was less than a month from turning age 55 at the time of the advice, and wanted to retire at age 60. Bloomfield argues the enhanced CETV at that time made the advice suitable. But even if the CETV was enhanced, the critical yield nonetheless required to match Mr B’s benefits under the BSPS2 at age 60 was still 14.25% if he took a full pension – Bloomfield didn’t record what critical yield would be required if Mr B took TFC and a reduced pension at age 60, despite its advice being predicated on this. The critical yield to match the benefits available through the PPF at age 60 was quoted as 9.68% per year if Mr B took a full pension and 8.87% per year if he took TFC and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.1% per year for five years to retirement. I’ve also kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr B’s ‘medium’ attitude to risk and also the term to retirement. There would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given all of the critical yields at age 60 were well above the discount rate and all of the regulator’s projection rates, I think Mr B was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF.

Bloomfield has provided various financial analyses which it may say shows the viability of the transfer despite the high critical yields. I’ve considered these. They say that if Mr B transferred his DB scheme benefits to his GPP and took his benefits at age 60, at a medium rate of return his fund would run out at age 102. But this is based on Mr B taking a full pension at age 60. And Bloomfield recorded that Mr B wanted to access maximum TFC at age 60, and it argues this is one the reasons its advice was suitable for Mr B. Other parts of Bloomfield’s analyses are based on Mr B accessing TFC, but at age 65 rather than at age 60 as he wanted. So Bloomfield’s modelling doesn’t clearly reflect what Bloomfield recorded Mr B wanted to do. And it doesn’t seem to show a direct comparison between the escalating income Mr B was entitled to take through his existing DB scheme, and the same income being instead taken through a GPP to his estimated death.

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

For this reason alone a transfer out of the DB scheme wasn't in Mr B's best interests; in pure financial terms he was likely to be worse off if he transferred out of the scheme and started accessing his pension at age 60. Of course financial viability isn't the only consideration when giving transfer advice, as Bloomfield has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

One of the key reasons Bloomfield recommended Mr B transfer to a personal pension was because Mr B wanted the flexibility to move abroad at age 60 and buy a small business which would give him and his wife an income.

I've considered this carefully, and I don't think Mr B needed to take any action to give him flexibility in retirement at the time of the advice. This is because based on the evidence I've seen, I don't think at that time that Mr B had any concrete need to take TFC at age 60 in order to move abroad and buy a business. In my view, this was something Mr B was thinking about but was not a genuine and concrete objective at that time – it was still some five years away, during which time Mr B's plans could've changed drastically. I'm not suggesting Bloomfield should simply have dismissed Mr B's plans, but I think it should have properly challenged them and given Mr B an impartial view. It ought to have fully explored the financial implications of Mr B's plan, particularly on his retirement income, and the risk it carried. And I don't think Bloomfield did that.

I say this because before making its recommendations, Bloomfield completed a fact find for Mr B. It recorded that Mr B thought buying a small business abroad would cost £200,000 and mentioned two types of business and various areas Mr B was thinking about. That Mr B wanted TFC in order to have the confidence to do this without worrying about timings or having enough capital. And that Mr B expected to have an income from this new business. But Bloomfield didn't record anything more detailed about Mr B's plans. In particular, it didn't record what his income needs would be from age 60 onwards, or what income he expected to get from his new business abroad. And taking maximum TFC reduces the sum available to provide retirement income. Given all this, I think it's fair to say that Bloomfield didn't consider whether a transfer would leave Mr B with enough to meet his income needs in retirement or whether he could afford to take the risk.

Mr B might have liked the idea of moving and buying a business abroad at age 60, and done some thinking about this. But that doesn't mean it was a plan set in stone for him at the time of the advice or one that he should've been encouraged to pursue without good reason. But even if I accepted that at the time of the 2018 advice, Mr B had a concrete need to move and buy a business abroad at age 60, which I don't, then I think there were other ways of achieving this without transferring his DB pension and losing guaranteed benefits.

Bloomfield itself had recorded that Mr B could probably fund the purchase through selling his UK home, but that having additional capital would give him confidence to proceed. So based on what Bloomfield recorded at the time of the advice, it seems that what Mr B was looking for was some additional cash as a cushion.

At the time of the advice, Mr B had £19,973 in savings. The fact find suggests he had about £250 of disposable income each month, however the suitability report says he in fact had £500 disposable income each month. So it's reasonable to think Mr B could have added another £15,000 to his savings over the next five years, so that they reached a total of about £35,000 by the time he reached age 60.

Mr B also had a DC GPP. This had started in April 2017 and had a value of £3,780 at the time of the advice. Mr B and his employer contributed a total of 16% per year to this. Given this and Mr B's salary, I think it's reasonable to conclude Mr B's DC GPP would be worth at least about £29,000 by the time he was aged 60. Mr B could take 25% of this as TFC, around £7,000, and could've drawn down further sums if he needed extra income.

If Bloomfield had advised Mr B to opt into the BSPS2, as I believe it should have, Mr B could've also taken TFC if he decided to retire and access his benefits at age 60. The suitability report said that Mr B could've taken TFC of £41,754.13 plus an income of £6,263.12.

So the information gathered at the time of the advice shows that Mr B could have almost £84,000 cash available to him at age 60 if he built his savings up, made use of the flexibility already available to him through his DC GPP and took TFC from his DB scheme. But in any event this discussion would've been premature. And I think Bloomfield should've advised Mr B to revisit the objective of taking TFC nearer to him reaching age 60, at which point he could assess whether his savings and the TFC available to him through his DB and DC schemes was sufficient.

As I say, Bloomfield recorded almost no details of the costs involved in Mr B's plan. But it did record that Mr B thought £200,000 was enough for the purchase, and I think the £84,000 it's fair to say Mr B could already have had available to him at age 60 through savings, the flexibility of his existing DC GPP and the BSPS2 would have been a reasonable financial cushion for a purchase of this size, since it was about 40% of the total amount Mr B thought he needed. And in these circumstances Mr B would've retained the guaranteed income the BSPS2 could provide him with, which would've almost certainly been of use to him whilst he was launching a new business. That's particularly the case given the income from his new business was far from guaranteed.

Bloomfield may argue that it was still a good idea for Mr B to transfer his BSPS DB scheme benefits to his DC GPP and access maximum TFC at age 60 to avoid the difficulty of coordinating a sale of his UK home with the purchase of a business abroad. But it's clear that the maximum TFC from Mr B's BSPS DB scheme benefits would not cover the whole £200,000 Mr B thought he needed to buy a business abroad. So Mr B was always going to need to sell his house and try to coordinate timings in order to buy a business abroad.

Mr B was almost age 55 and had more than five years before he thought he wanted access to TFC, so I think transferring his BSPS DB pension in 2018 was premature. Therefore, at the time of the 2018 advice, I'm not satisfied that taking TFC at age 60 was a concrete plan Mr B had made, but rather was an idea he was working towards. And as Mr B had more than five years before he thought he needed to access his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr B to give up his guaranteed benefits in 2018 when he wasn't sure what his needs in retirement would be.

Overall, I think it would've been in Mr B's best interest to join the BSPS2 – I know he had concerns about this, which I'll return to. Opting into the BSPS2 would have meant Mr B retained the option to transfer out of the scheme at a later date, should his circumstances dictate that this was in his best interests. And the escalation rates were generally better under BSPS2. Bloomfield says it told Mr B he should opt for BSPS2 while it evaluated his options. But I've not seen a clear reference to this in the documents from 2018 provided to me. Nonetheless, it's evident Bloomfield recommended Mr B transfer his BSPS DB scheme benefits into his GPP, not into the BSPS2.

So, I don't think Bloomfield should have advised Mr B to transfer out of the BSPS to have flexibility that he didn't yet need, when his retirement plans weren't concrete. Mr B's desire to access his pension didn't outweigh Bloomfield's responsibility to provide him with suitable advice and act in his best interest.

Control and concerns over the financial stability of the DB scheme

Bloomfield may argue that a transfer was suitable because it gave Mr B control over his pension. But I think this would be to overstate Mr B's desire for control over his pension benefits. Bloomfield says Mr B had monitored his CETV for some time, and had chosen the investments for his GPP so it might argue he was an experienced investor. But I disagree. Mr B was a retail client with no real investment experience, 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 control was a genuine objective for Mr B but was simply a consequence of transferring away from his DB scheme.

Bloomfield argues that financial security was a compelling reason for Mr B to transfer – it says hindsight shouldn't be used here and that there was a great deal of uncertainty and concern about the BSPS, BSPS2 and the PPF. And Mr B was very aware of this, given he was working in the steel industry, reading media coverage and active in related online forums. And Bloomfield says the BSPS had significant funding issues, and there were concerns BSPS2 might fail to launch since the letters the BSPS trustees sent to members were pessimistic about this. And that the PPF would have left Mr B with greatly restricted options and benefits and was rightly seen more negatively than the BSPS. So, avoiding the PPF was a compelling reason for Mr B to transfer his DB benefits to a personal pension. It added that Mr B had already introduced the idea of being an insistent client to force the transfer through.

I'm aware that many BSPS members like Mr B had serious concerns about their employer's future and the effect this would have on their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr B. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived ideas or concerns about the financial health of an employer or pension scheme. But Bloomfield was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr B should transfer out of his DB scheme, Bloomfield needed to be able to clearly demonstrate that doing so was in his best interests.

I don't dispute that when Mr B approached Bloomfield there was still the possibility that his pension could move to the PPF. And Bloomfield has argued it couldn't be sure – at the time of its advice – that the BSPS2 would go ahead. But I think Bloomfield overestimated the chance of the BSPS2 not happening. I note that Mr B sought advice just after he received his 'Time to Choose' pack. In May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr B's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently on 28 August 2017 the BSPS administrators provided scheme members, including Mr B, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr B's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr B, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr B's employer had made the payment referred to was announced on 11 September 2017. That was several months before Bloomfield made its recommendation.

Given that the whole purpose of the RAA was to prevent the entirety of the BSPS entering the PPF, I think that Bloomfield should have been aware that it was more likely than not that the BSPS2 would go ahead. In those circumstances, while entry into the PPF was still a possibility, I think Bloomfield should have explained to Mr B that this was unlikely to be the case. But it didn't do that.

Nevertheless, if Mr B transferred his DB scheme he wasn't likely to be able to match or improve on the benefits he'd be entitled to if the scheme entered the PPF. So, I think Bloomfield ought to have reassured Mr B that the possibility of his scheme moving to the PPF wasn't as concerning as he thought – it still would've provided him with a sizable sum in TFC and a guaranteed income, even if he retired early. And it's possible the benefits available to Mr B under the PPF at age 60 were better than those under the BSPS2 because of the more favourable early retirement and TFC commutation factors. So, Bloomfield should've reassured Mr B that he could meet his plan of moving and buying a business abroad in either scheme regardless.

Overall, I appreciate Mr B had very strong feelings about transferring out and the PPF when he sought advice from Bloomfield. But I think if Bloomfield had provided clear and objective information about Mr B's options and benefits whichever DB scheme he was in, and explained that Mr B could meet his objectives by opting into the BSPS2 or moving to the PPF, I think he would've been reassured by this and accepted the advice.

Summary

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

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits and in my view, there were no compelling reasons which would justify a transfer and outweigh this. Mr B shouldn't have been advised to transfer out of the scheme just to have flexibility he didn't yet need, and in any event having that flexibility wasn't worth giving up the guarantees associated with his DB scheme. Mr B could've met his objectives by remaining in the DB scheme. So, I think Bloomfield should've advised Mr B not to transfer to a personal pension.

Mr B couldn't remain in his existing scheme; he had until 22 December 2017 to choose whether to opt into the BSPS2. If Mr B didn't opt into the BSPS2 by this point, he would move with the existing scheme to the PPF. So, I've thought about what Bloomfield should've advised Mr B to do here.

I think that by 30 November 2017, Bloomfield had all the information it needed from Mr B to be able to give him its advice. This means it had just over three weeks to provide its recommendation to Mr B before the deadline for joining the BSPS2 passed. But ultimately, Bloomfield didn't give Mr B its advice until the suitability report dated 12 January 2018. And by this time, Mr B had lost the chance to opt into the BSPS2. I think it was incumbent on

Bloomfield to ensure it was able to provide the advice to Mr B before the deadline for opting into the BSPS2 passed. And I've not seen anything in the evidence provided to me to justify the delay. So I think Bloomfield should've been in a position to give its recommendation in good time to meet the deadline.

Of course, I have to consider whether Mr B would've gone ahead anyway, against Bloomfield's advice. Bloomfield argues that Mr B would always have transferred anyway, because when he first contacted Bloomfield he said he'd already considered his options and decided to transfer, and was asking about its insistent client process.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against Bloomfield's advice. I say this because while I acknowledge that at the start, Mr B thought his best option was to transfer out and was willing to go down the insistent client route, this was because of inexperience and misconceptions that Mr B had. It's still the case that he was a retail client with no real investment experience, that he had a 'medium' attitude to risk, and that this pension accounted for the majority of his retirement provision. And I think Bloomfield failed to address the misconceptions Mr B had. So, if Bloomfield had provided Mr B with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think Mr B would've accepted that advice.

I'm not persuaded that Mr B's concerns about the BSPS, BSPS2 or PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Bloomfield had explained that Mr B could meet all of his genuine objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would have insisted on transferring out of the DB scheme.

As I say, at the time of the advice, I think it was clear to all parties that BSPS2 was likely to be going ahead. And Bloomfield would have been aware that Mr B had received his 'Time to Choose' pack by this time, giving him details of the BSPS2 and the choice to opt into it or remain in the scheme and move to the PPF. Given Mr B's age at the time of the advice and the fact he didn't have concrete plans to retire before age 60, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't necessarily be offset by the more favourable reduction for very early retirement. Also, the annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Bloomfield should've advised Mr B to opt into the BSPS2.

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

I also accept Bloomfield's error here would have caused Mr B some distress. I note our Investigator suggested £300 was fair and reasonable compensation for that. And that Bloomfield itself then later chose to offer Mr B a total of £500 compensation for his distress and inconvenience, albeit as a goodwill gesture in an attempt to bring this matter to a close. So I think it's fair and reasonable that Bloomfield should pay Mr B the £500 compensation it has itself already offered him for his distress and inconvenience, if it hasn't done so already.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He would like his complaint to be settled in line with new guidance /rules. I consider it's fair that Bloomfield calculates Mr B's redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for Bloomfield to put Mr B, as far as possible, into the position he would now be in but for Bloomfield's unsuitable advice. I consider Mr B would have most likely opted to join the BSPS2, rather than transfer to the GPP if he'd been given suitable advice. So, Bloomfield should use the benefits offered by the BSPS2 for comparison purposes.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr B.

Bloomfield must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, I understand that Mr B has not yet retired and plans to do so at age 65. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr B within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and Bloomfield has received notification of Mr B's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes Bloomfield to pay Mr B.

Income tax may be payable on any interest paid. If Bloomfield deducts income tax from the interest, it should tell Mr B how much has been taken off. Bloomfield should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

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

I also require Bloomfield Financial Limited to pay Mr B the total of £500 compensation it has itself already offered him for the distress caused by its mistake, if it hasn't paid this already.

Where the compensation amount does not exceed £160,000, I additionally require Bloomfield Financial Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Bloomfield Financial Limited to pay Mr B any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Bloomfield Financial Limited pays Mr B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my final decision, the money award becomes binding on Bloomfield Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept any final decision.

Bloomfield Financial Limited should also provide details of its calculations to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2023.

Ailsa Wiltshire
Ombudsman