DRN-3655151

The complaint

Mr B complains about the advice given by KBFS Financial Limited ('KBFS') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') 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 B'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 August 2017 scheme members were told that, if the Regulated Apportionment Arrangement ('RAA') was approved (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) they would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

Mr B was concerned about what the recent announcements by his employer meant for the security of his pension, so around July/August 2017 he contacted his existing financial adviser for advice. Because they didn't hold the relevant regulatory permissions to advise on DB pension transfers, they referred Mr B to KBFS.

Mr B's existing financial adviser completed a fact-find to gather information about Mr B's circumstances and objectives. Amongst other things this recorded that Mr B was 51 years old; he was married; he had an outstanding mortgage on his property of around £56,000; he had around £60,000 in savings; his wife ran an on-line shop which earned around £15,000 a year; she had a DB pension with 23 years' service; Mr B had a cautious attitude towards investing; and he wanted to retire at 55 and use his tax-free cash to repay his mortgage and buy a property overseas – his expenditure need was £1,200 net a month.

KBFS also completed a fact-find. There are some differences – notably *'Nil'* is recorded against any mortgage liability and total savings amounted to around £7,500. There is no reference here to Mrs B's pension details. KBFS also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'balanced'.

On 6 September 2017 KBFS advised Mr B to transfer his pension benefits into a personal pension arrangement and invest the proceeds in a portfolio of investment funds, which KBFS deemed matched Mr B's 'balanced' attitude to risk. In summary, the suitability report said the reasons for the recommendation were: to provide Mr B with flexibility in how much income he took from his pension; to provide control – Mr B didn't trust his employer and wanted to ensure his pension didn't end up in the PPF; and to allow Mr B to retire at 55 because of his concerns over his long-term health working in his industry and to enable him to work alongside his wife with her online shop.

Mr B duly accepted the recommendation and in November 2017 around £562,000 was transferred to his new personal pension.

Mr B complained in 2021 to KBFS about the suitability of the transfer advice using the services of a representative. Mr B said he doesn't believe the advice was right for his circumstances at the time and believes he's lost out as a result.

KBFS didn't uphold Mr B's complaint. It said it was satisfied the pension transfer was suitable for Mr B. In summary it said:

- Mr B understood what guarantees his existing scheme offered as well as what the potential new scheme and the PPF offered – but Mr B didn't want these because of the lack of flexible benefits.
- Mr B wanted to retire early because of the length of his shifts on top of travelling.
- Mr B wanted to use his tax-free cash to repay his mortgage and buy a property abroad – staying in the scheme meant Mr B couldn't afford to commute some of his pension to do this at 55.
- Mr B wanted to ensure his family could inherit all residual funds in his pension upon his death.
- Mr B wanted to take advantage of the higher transfer value.
- Since transferring, Mr B's pension has gained allowing him to realise his goals.

Dissatisfied with its response, Mr B asked us to consider his complaint. An investigator upheld the complaint and required KBFS to pay compensation. In summary they said the transfer wasn't in Mr B's best interests. They said the transfer wasn't financially viable because of the high critical yield – they said there was limited opportunity for Mr B to improve on his DB scheme benefits by transferring. They said this was based on a retirement age of 65 – but no analysis was done at age 55. Based on retirement at age 55, they said the critical yield was likely to be higher.

They said Mr B wanted to retire early and he already had that option available to him. They said while he would've incurred a reduction in income, they thought this was still better for Mr B in the long-term. They said there's nothing to indicate KBFS told Mr B what income he could receive from the scheme at 55. And neither did KBFS carry out any analysis to show how his existing provision would meet his income need from age 55 or how the proposed transfer would meet his income needs after taking his full tax-free cash, in a simple and clear format.

In addition they said, Mr B already had flexibility through his DC scheme and they thought KBFS could've done more to reassure Mr B and allay his fears about the scheme and moving to the PPF. They said while Mr B wanted to use his tax-free cash to repay his mortgage and buy a property, KBFS didn't show how much he could take from either the new scheme or the PPF so he wasn't in an informed position.

They highlighted the apparent errors in the suitability report, which quoted a tax-free cash sum that was far greater than Mr B's pension could provide and which also referred to Mr B wanting to grow his buy-to-let portfolio. They concluded by saying that suitable advice ought to have been for Mr B to remain in the scheme and move to the PPF because he was looking to retire early and the benefits were more generous in these circumstances.

KBFS disagreed. In summary it said that the transfer to a personal pension met all of Mr B's objectives. It said that the difficult circumstances at the time surrounding the scheme and the significant financial difficulty Mr B's employer was in should not be dismissed out of hand –

more weight should be placed on them. They said Mr B was anxious about the uncertainty of both the old and any new scheme and so wanted to take control – he wanted to be able to make his own decisions. They said the investigator has overlooked the real possibility that Mr B would not be able to transfer out in the future – the fallback of the PPF would not have allowed the option. They said any advice can only be based on the facts at the time, not what might happen and that the advice was right.

They said the critical yield of 7.67% based on the existing scheme was irrelevant because remaining in the scheme wasn't an option. The more realistic comparison was with the PPF, where the critical yield was 4.03% which was well within the discount rate of 4.4%.
They said as Mr B wanted to retire early, there was no way of knowing what value his DC scheme would be. And given he wasn't sure about the security of his employment, he may not have been paying into this until his retirement. They added that the investigator had not properly considered causation, which they said was not straightforward and they asked the investigator what steps they'd taken to question Mr B and any evidence they'd obtained about his broader circumstances at the time.

Mr B's representative agreed with the investigator's conclusion to uphold the complaint. But it added that there were some errors noted about Mr B's circumstances at the time – it said Mr B didn't have a mortgage, he didn't have any savings and his wife did not have a pension with 23 years' service, only her state pension.

It also questioned the investigator's conclusions that suitable advice was to remain in the scheme and move with it to the PPF – it believed suitable advice was to opt into the BSPS2. It said, calculating Mr B's losses as though he would have accessed benefits from age 55 is basing the calculation on actions that he has in fact taken in reliance on negligent advice, rather than what he would have done had he been suitably advised. It said Mr B would not have retired early at 55 if he'd been suitably advised.

Mr B's representative also said that, in relation to the notional deduction of income tax for any redress paid to Mr B as a lump sum, this should only be applied to the redress once the part of the redress intended to compensate for the product/adviser charges has been disregarded, as otherwise Mr B would be undercompensated by 15% in respect of those charges he is now incurring.

The investigator wasn't persuaded to change their opinion. They added that they disagreed they'd used hindsight to formulate their view and in addressing KBFS' point about causation, they said they'd addressed this in their findings, but they repeated their view that, if Mr B had been given suitable advice to remain in the scheme, they thought Mr B would've moved with it to the PPF because of the more generous benefits for early retirement.

Because the matter couldn't be resolved informally, the complaint was passed to me for 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

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 KBFS' 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. My reasons are set out below.

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, KBFS 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

KBFS carried out a transfer value analysis report (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). I can see this was based on Mr B's existing BSPS scheme benefits. But at the time of the advice, Mr B didn't have the option to remain in the BSPS. So basing the analysis on the existing scheme was somewhat redundant and in my view wasn't helpful to Mr B.

I can see KBFS has acknowledged the existing scheme analysis was irrelevant for this reason and says the more realistic comparison was with the PPF. I think ultimately the PPF comparison was more relevant to Mr B in his circumstances and given he said he wanted to retire at 55. I'll talk more about this later on.

But I still think, given the announcement about the RAA in August 2017 and the timing of KBFS' interactions with Mr B, knowing Mr B wouldn't have the option to remain in the existing scheme and that a new scheme was under proposal, it was fair and reasonable for KBFS to have waited until details of the new scheme - the BSPS2 - were available so it could take this into account in its advice and analysis. I accept the scheme wasn't guaranteed to go ahead at this time, but I think this would've been more helpful to Mr B and would've put him in the position of being able to make an informed decision.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr B was 51 at the time of the advice and the paperwork records that he wanted to retire at 55. The critical yield required to match Mr B's existing benefits at age 65 was set out in the TVAS report of 18 August 2017 and was 7.67% assuming he took a full pension. No critical yield was produced assuming Mr B took his tax-free cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 4.03% per year if Mr B took a full pension and 3.58% per year if he took a lump sum and a reduced pension.

But not only as I've said above, was the analysis based on the benefits under the existing scheme, which wasn't helpful to Mr B, the analysis KBFS produced was only based on a retirement age of 65 – the scheme's normal retirement age. So while KBFS says the more realistic comparison was with the PPF, where the critical yield was 4.03% which was well within the discount rate of 4.4%, this was based on the benefits available to Mr B at 65. Mr B indicated that he wanted to retire at 55, so KBFS' analysis should've based on the benefits available to Mr B at 55 – both through the BSPS2 and the PPF – so it was relevant and meaningful to Mr B. Afterall, this was the advice Mr B was seeking.

The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. And while the early retirement reduction factors would've reduced the benefits available to Mr B through both the BSPS2 and the PPF, given the significantly shorter investment period to age 55, I think it's likely that the critical yields required to match Mr B's benefits through the BSPS2 and the PPF at 55 were greater than the 7.67% and 4.03% / 3.58% respectively based on a retirement age of 65 as above.

This compares with the discount rate of 2.8% per year for three years to retirement in this case (age 55.) For further comparison, 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 assessed 'balanced' attitude to risk (I'll talk more about this below) and also the term to retirement. In my view, 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 what I've said above, I think the lowest critical yield based on Mr B taking a reduced pension and cash lump sum through the PPF would've been in excess of 3.58%, so greater than the discount rate. And in my view likely closer to if not greater than the regulator's middle projection rate. Given this, I think it's clear that Mr B would, at best, be no better off and likely worse off at retirement as a result of investing in line with a balanced attitude to risk.
That said, I'd add here that I have some concerns about how KBFS arrived at the conclusion Mr B was prepared to take a 'balanced' risk approach. Mr B's existing financial adviser recorded that Mr B was a cautious risk investor and this information was available to KBFS. I accept it was reasonable for KBFS to carry out its own assessment. But the questions in the attitude to risk questionnaire do not, in my view, readily demonstrate how the resulting profile was arrived at and why it was a higher risk profile than his existing adviser's assessment. Mr B did not hold any investments at the time of the advice and I think it's clear he had little, if any prior investment experience. Mr B's pension accounted for all of his private pension provision at the time and he indicated that he only had a short period of time before he wanted to access his benefits. Taking all of this into account, together with his

answer to what I consider was a key question asked of him at question 10 in the attitude to risk questionnaire*: "I am willing to bear some risk and chance for loss in an effort to achieve higher returns, but prefer a significant portion of my portfolio to be invested in cautious assets."* I think a 'cautious' approach to risk was more suitable here.

In any event, based on financial viability alone a transfer out of the DB scheme wasn't in Mr B's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as KBFS 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, tax-free cash and income need

KBFS recommended the transfer so Mr B could have a flexible income – to enable him to take more from his pension at age 55 and then reduce the amount he took when his state pension became payable.

But I'm not persuaded that Mr B had a real need for flexibility in retirement – in my view the reference to flexibility was simply a consequence or a feature of transferring to a personal pension arrangement rather than a genuine objective of Mr B's.

Mr B was 51 at the time of the advice and the advice paperwork records that he wanted to retire at 55. I think it's clear from what's recorded about Mr B's objective – he wanted to work with his wife with her online shop and he had plans to use his tax-free cash – that he'd given his retirement some thought and that he had what could reasonably be described as a plan for his intended retirement. I think in his circumstances he was in a position to have formulated a plan and that it was a real objective.

Of course Mr B already had the option of taking early retirement through his DB scheme – he didn't have to transfer out to achieve things. Mr B couldn't take his benefits flexibly. And while he could commute some of his income for a cash lump sum, he had to take those benefits at the same time. But nothing suggests that Mr B needed to access his cash lump sum and leave his funds invested until a later date. I also can't see evidence that Mr B had a strong need for variable income throughout his retirement. KBFS recorded what Mr B's likely expenditure need was and this appears to have been fixed. And just because Mr B might have more income than he needed once his state pension became payable, does not in my view demonstrate in and of itself a genuine need for flexibility.

I can see that Mr B indicated he had plans to use his tax-free cash lump sum – he wanted to pay-off his mortgage and purchase a property abroad. It was recorded that Mr B would need £160,000 to achieve this. So perhaps a transfer to a personal pension arrangement would enable Mr B to achieve the sum he needed? But I'm not persuaded KBFS clearly demonstrated this was the case.
In the suitability report it recorded that Mr B could take some of his tax-free cash to achieve the repayment of his mortgage, his intended property purchase as well as using some of the cash with his pension income to enable him to take his benefits as tax efficiently as possible.

But KBFS didn't show how Mr B could achieve this at 55. Mr B's transfer value was around £562,000, which would support a maximum cash lump sum of around £140,000. And even accounting for the potential for growth over the next three or four years, the fund would be unlikely to generate enough to support the amount Mr B said he needed. The illustration KBFS produced was based on a retirement age of 65. And this shows that, after the effect of charges and assuming the medium growth rate of 5%, Mr B's fund could be worth around £619,000 – so some way short of being able to achieve what KBFS said in the suitability report. And while later on in the suitability report reference was made to the amount of the tax-free cash sum available to Mr B, I think this was an erroneous reference to a different client - it said: "*a personal pension would give you the opportunity to take 25% tax free cash, you want access to this from age 55 to further grow your Buy to Let Portfolio, 25% of your current fund is calculated at £312,500."* This bares no relation to Mr B's circumstances or fund value.

Because KBFS did not carry out any analysis based on Mr B's intended retirement age of 55, it didn't show Mr B what tax-free cash he could take from the scheme and/or the PPF and so how he might have been able to meet his lump sum objectives by retaining his DB scheme benefits. And without this I don't think KBFS clearly demonstrated it was in Mr B's best interests to transfer his pension benefits to meet his objective.

Based on KBFS' analysis, at 65 through the PPF Mr B was entitled to a tax-free lump sum of around £130,000. So at age 55 this would be lower. But it's recorded that Mr B had around £60,000 in savings (and it's likely he could continue to add to this from his surplus income) and he was also contributing to his workplace DC pension scheme, which at the rate of contribution recorded had the potential to be worth around £26,400 not accounting for growth or increases in the contribution rate. So it seems Mr B had other means he could access flexibly to help support his capital expenditure objective.

I can see Mr B's representative has said Mr B didn't have an outstanding mortgage at the time. It also says he didn't have any savings. As I set out in the background section, there is a discrepancy between what KBFS' fact-find recorded and Mr B's existing adviser recorded against these two things. On the one hand, given the information was recorded by Mr B's existing adviser it would seem unlikely it was wrong. I also think Mr B might've challenged the information KBFS recorded in the suitability report if it wasn't correct - KBFS did make reference to an outstanding mortgage and savings here. But on the other hand, because it's not clear when Mr B's existing adviser recorded the information, it's possible that given the balance KBFS recorded Mr B as having in cash / savings (£7,500) he'd used the bulk of his savings in the meantime to repay his mortgage.

But whatever the true position, I think it seems likely Mr B could meet his objective by retaining his DB scheme benefits.

Turning to Mr B's income need – while KBFS' income and expenditure analysis was not particularly granular or detailed, it was recorded that Mr B needed an income of £1,200 net a month. And based on Mr B not having any mortgage payment - his loan would've ended too - and a likely reduction in outgoings once he finished work, I think this figure appears reasonable.

Unfortunately, as I said earlier on, KBFS didn't produce analysis showing what income Mr B could expect from the BSPS2 or the PPF at 55 both on a full or reduced pension basis. KBFS has provided a one-page document, which shows under the existing scheme at 55 Mr B would be entitled to a full pension of around £19,100. Given the reduced revaluation factors, under the BSPS2 this figure would be lower, but in my view still close to it. Based on taking a cash lump sum and a reduced pension it would be lower, but through the PPF it's likely it would've been slightly higher than the BSPS2 due to the more favourable very early retirement reduction factors.

So given Mr B's recorded income need was £1,200 net a month, I think his objective could be met by remaining in the DB scheme. Mr B's income need appears to have been a household need, so given his wife's income from her online business was recorded as being £15,000 a year, it appears this together with Mr B's DB pension income would be more than sufficient for their needs. I'm mindful too that, because Mr B intended to work with his wife when he retired, this might have offered the potential for growth from the shop and so increased income. I think KBFS ought to have explored this possibility. Furthermore it was recorded that Mrs B intended to retire at the time same time as Mr B and she had a pension with 23 years' service. I think this too would've been available to supplement their household income. Mr B and his wife would also receive their state pensions later on.

I can see Mr B's representative has said Mr B's wife didn't have a pension as recorded – she was only entitled to her state pension. But again, it strikes me as odd that Mr B's existing adviser made a mistake or that Mr B hadn't challenged or corrected this sooner. But in any event, I'm not persuaded this makes a difference – I still think Mr B had a better chance of meeting his needs by retaining his DB scheme benefits and I'm not persuaded it was in Mr B's best interests to transfer out to achieve flexibility that I'm not persuaded he really needed.

Death benefits

While not a primary reason for recommending the transfer, the suitability report refers to the improved lump sum death benefits available through a personal pension arrangement.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B 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 B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool. And I'm not persuaded KBFS explored to what extent Mr B was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B's wife might have had her own private pension provision, but I still think the 50% spouse's pension would've been useful to his spouse if Mr B predeceased her. I don't think KBFS made the value of this benefit clear enough to Mr B. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. So if Mr B lived a long life and/or investment returns were poor, there might not be much if anything left to leave to his wife anyway. In any event, KBFS should not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Mr B already had lump sum death benefits available – he had death-in-service benefit, which would pay out prior to his retirement and he also had his DC scheme he could pass on to his family – albeit not likely to be a significant amount.

But if Mr B genuinely wanted to leave a legacy for his family which didn't depend on investment returns or how much of his pension fund remained on his death, I think KBFS should've instead explored additional life insurance. I appreciate KBFS has referred to a quote for a whole of life policy with a sum assured of £731,000 - this appears to be based on the monetary or capital value of the scheme's spouse's benefits produced in the TVAS report (the lowest quote was around £690 a month.) I assume this was discounted on cost.

But I don't think that this was a balanced way of presenting this option to Mr B. Ultimately, Mr B wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr B how much he would ideally like to leave to his wife after taking into account existing benefits and means, and this could've been explored on a whole of life or term assurance basis, which was likely to be more affordable to provide.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr B. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the BSPS

I understand that Mr B, like many of his colleagues no doubt, was concerned about his pension. His employer had recently made an announcement about it plans and Mr B was likely worried his pension would end up in the PPF. There were also lots of negative things circulating about the PPF. So it's quite possible that Mr B was leaning towards the decision to transfer because of the concerns he had.

But it was KBFS' obligation to give Mr B an objective picture and recommend what was in his best interests. I'm not persuaded KBFS did that. As I explained earlier on, I think given the timing of Mr B's request for advice, KBFS should've waited until details of the BPS2 were made available and properly taken the benefits available to Mr B through the BSPS2 into account in giving its advice. I think this would've alleviated some of Mr B's broader concerns about the scheme as a whole moving to the PPF and him ending up there by default.

But I think that KBFS should've done more to reassure Mr B that the scheme moving to the PPF wasn't as concerning as he thought or had been led to believe given Mr B's specific case and circumstances. Importantly, Mr B still had the option of taking early retirement at age 55 through the PPF. And while Mr B would've faced a reduction in benefits, there was a more favourable reduction for very early retirement (age 55 for example) and the tax-free cash available to Mr B was also likely more favourable than the BSPS2 at this age. I think the income Mr B would receive through the PPF at age 55 would've likely been sufficient to meet his needs when taking account of the other household income Mr B and his wife could likely generate, and crucially I don't think he was likely to be able to exceed this by transferring out. While the annual indexation in payment was lower, the income was still guaranteed and was not subject to any investment risk. Mr B might not have been able to later transfer out of the PPF – but given what I said earlier on, I don't think there was an apparent need for him to do so.

So I don't think that Mr B's concerns about the scheme was a compelling reason to recommend a transfer out of the BSPS altogether.

Suitability of investments

Because I'm not persuaded Mr B was a 'balanced' risk investor, I think the recommended investment funds were not suitable. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr B, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr B should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I accept that Mr B was likely motivated to transfer out of the BSPS and that his concerns about his employer and the scheme were real. And 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 B. But KBFS 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 likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr B shouldn't have been advised to transfer out of the scheme for flexibility that I'm not persuaded he really needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I don't think it was in Mr B's best interests for him to transfer his BSPS benefits to a personal pension arrangement.

So, I think in the circumstances and if things had happened as they should have, KBFS ought to have advised Mr B not to transfer out but to remain with the scheme and move with it to the PPF.

Because I think Mr B had an early retirement plan and he was intent on retiring at 55, while he would've faced a reduction in benefits by the scheme entering the PPF, I think that it would've been in his best interests to accept this reduction in benefits as it would be offset by the more favourable reduction for very early retirement.

Of course, I have to consider whether Mr B would've gone ahead anyway, against KBFS' advice.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the BSPS against KBFS' advice if things had happened as they should have and they'd recommended he not transfer out. I say this because, while as I've already said, Mr B was likely motivated to transfer when he approached KBFS given the broader circumstances at the time, on balance, I still think Mr B would've listened to and followed the advice. I say this because I've seen nothing to suggest Mr B was an experienced investor who possessed the requisite skill, knowledge or confidence to against the advice he was given, particularly in complex pension matters. Mr B's pension accounted for all of his private retirement provision at the time and in my view, his attitude to risk was low or cautious. So, if KBFS had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr B's concerns about his employer, the scheme or the 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.

So if KBFS had explained that Mr B could likely meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would've insisted on transferring out of the BSPS if KBFS had given suitable advice that he not do so and that he should remain with the scheme and move with it to the PPF.

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

I can see Mr B's representative has argued that Mr B would not have retired early at 55 if he'd been suitably advised. It says Mr B should've been advised to continue working and so suitable advice was to opt into the BSPS2. It says, calculating Mr B's losses as though he would have accessed benefits from age 55 is basing the calculation on actions that he has in fact taken in reliance on negligent advice, rather than what he would have done had he been suitably advised.

But for the reasons I've detailed above, I think Mr B had a clear intention to retire at 55 and so suitable advice should've been for him to remain with the existing scheme and move with it to the PPF. For this reason, and because Mr B did in fact retire at 55 and start to take his benefits, I think it is fair to base the redress, which I will detail below, on Mr B accessing benefits at age 55 and that the comparator should be the benefits available to Mr B through the PPF.

I've thought about Mr B's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr B would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr B back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr B for the impact of the unsuitable advice he received.

I can see the investigator also recommended an award of £200 for the distress and inconvenience the matter has caused Mr B. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish KBFS – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr B. Taking everything into account, including that I consider Mr B's retirement provision is of greater importance to him given its significance in his overall retirement income provision and because he has now retired and is taking his benefits, I think the unsuitable advice has caused him some distress. So I think an award of £200 is fair in all the circumstances.

Putting things right

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

KBFS 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.

KBFS 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 B and our Service upon completion of the calculation.

For clarity, Mr B retired in July 2022 at age 55 and started taking his pension benefits. So, compensation should be based on him taking benefits at this age.

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 B'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, KBFS should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts KBFS' offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

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

KBFS should also pay Mr B £200 for the distress and inconvenience the unsuitable advice has caused.

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 KBFS Financial Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that KBFS Financial Limited pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on KBFS 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 October 2023.
Paul Featherstone
Ombudsman