DRN-3661382

The complaint

Mr Z complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('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 Z's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, 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 October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in BSPS and move with it to the PPF, move to 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 Z approached NTM in late November 2017 to discuss his pension and retirement needs. NTM says he was referred to it by a work colleague. He was concerned about the future of his employer and the related DB scheme. He wanted to consider his options and was particularly concerned about his pension moving to the PPF.

NTM completed a fact-find to gather information about Mr Z's circumstances and objectives. This showed that he:

- Was 37 years old and single with no dependents. I understand he was in a new relationship, but they kept their finances separate at the time.
- Earned £50,000 and was living within his means.
- Had £7,000 in cash.
- Wanted to purchase a property in the near future.

Mr Z had deferred benefits in the BSPS scheme. The Cash Equivalent Transfer Value ('CETV') that he had already received showed that Mr Z had around eight and a half years' service in the BSPS. The transfer value was £87,415 and it would provide an annual pension at the date of leaving of £4,141.01.

Mr Z had also joined his employers defined contribution ('DC') pension scheme and he, and his employer, would be contributing a combined total of 16% of his income into this

NTM also carried out an assessment of Mr Z's attitude to risk, which it said was 'low'.
He didn't have any investment experience and the statement he said summarised his attitude to risk was that he would take a small degree of risk, but would be more concerned about the potential losses than the gains and would look to avoid larger falls in his investment value.

On 21 December 2017, NTM advised Mr Z to transfer his pension benefits into a personal pension and invest the proceeds in a third party personal pension using funds that met his attitude to risk.

The suitability report said the reasons for this recommendation were:

- To prevent Mr Z's pension moving to the PPF.
- Facilitate his early retirement at age 57 with a net income of £1,800 per month.
- He wanted to have control and flexibility over his income in retirement and maintain his income.
- He had no dependents and so the death benefits could be extended to his wider family.
- He could access a greater amount of tax-free cash to minimise the tax he would pay in retirement.

Mr Z complained in 2021 about the suitability of the advice he was given to transfer his DB scheme to a personal pension. He contacted the Financial Ombudsman Service initially and the complaint was forwarded to NTM to consider it.

Mr Z complained that NTM had said the BSPS2 was underfunded and would likely not survive. He was concerned about his pension moving to the PPF. He was also concerned that his pension is now subject to stock-market risk when it wasn't before, and he is now paying fees that he wouldn't be if he had joined the BSPS2.

NTM didn't uphold Mr Z's complaint. It said:

- The advice was suitable for him at the time and met his needs. The fact-finding process was robust.
- It was correct to note that the BSPS was underfunded, but the adviser said he didn't comment on the funding position of the BSPS2.
- But there was some uncertainty about the BSPS2, and this would have influenced Mr Z's decision to transfer.
- Mr Z was told that the personal pension wasn't guaranteed, he wasn't told that the pension would grow at 5% per year. Mr Z has since indicated his is pleased with the fund performance.
- Mr Z was provided with full information about the sale of the plan. He was made aware of the fees and charges payable, both at the time and on an ongoing basis

Mr Z referred his complaint to our service. An investigator upheld the complaint and recommended NTM pay compensation. He said that he didn't think the transfer was financially viable and Mr Z was now likely to have lower pension benefits. The transfer was also likely to have had too much risk for him. Mr Z's retirement aims seemed generic. The main driver was his perceived unhappiness about the situation with his employer and the BSPS.

NTM disagreed, saying:

- Whilst it appreciated there had been DB transfer mis-selling in the past it hadn't mis-sold the personal pension to Mr Z. The advice it gave to Mr Z shouldn't be pre-judged on past industry malpractice.
- Mr Z has only complained about the information he was given about the BSPS2's funding rather than the suitability of the advice given. As this complaint cannot be

proven it should be dismissed. The Financial Ombudsman shouldn't investigate issues that Mr Z has not complained about directly.
- When NTM had provided its finalised advice in January 2018, the deadline to join the BSPS2 had passed. Mr Z could only join the PPF.
- The appropriate comparator here was the PPF as this was the only alternative Mr Z had at the time of the finalised advice. This gave a lower critical yield than our Investigator quoted.
- Mr Z was not a cautious investor, he had other pension funds that were risk bearing.
- Our Investigator didn't give full and proper weight to Mr Z's objectives.
- The critical yield and discount rates are not appropriate comparators in any event.
- Staying in the BSPS would not have met any of his actual pension objectives.

The investigator wasn't persuaded to change their opinion, so 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.

NTM has said that Mr Z's complaint is very narrow and only concerns some of the information he was provided at the time of sale. But this isn't the case. Mr Z's first email to the Financial Ombudsman says '… I was probably wrongly advised about transferring my pension from BSPS …'. His complaint form, which has been provided to NTM defines the service he is complaining about as a defined benefit transfer and he explains why. I think it's clear his main concern is the advice he was given to transfer his BSPS benefits to a personal pension. The sections of the complaint that NTM now highlight are some of the reasons that Mr Z thinks the advice wasn't right. But they aren't the only issues I should consider.

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 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 Z'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 (as required by the regulator) showing how much Mr Z's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). However, this was based on his existing scheme benefits and Mr Z didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

NTM has said that it couldn't give advice about the BSPS2 as when the transfer process completed it was past Mr Z's deadline to join it. And there were serious doubts about its future in any event. So, the only meaningful comparisons it could provide were with the benefits available to Mr Z through the PPF and the BSPS. But I think NTM overestimated the chance of this not happening. Mr Z had received his 'time to choose' pack by the time the advice was given and it was likely that the scheme was going ahead, as it did. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower.

I don't think it's reasonable to say that NTM gave advice in January 2018. It did produce a full suitability report on 21 December 2017, which was before Mr Z's deadline to join the BSPS2. And NTM should have worked to the timeframes Mr Z needed to stick to, in order to give him enough time to decide what was the best course of action. I don't think it's reasonable to say that the PPF was his only option here, he clearly could have joined the BSPS2 and NTM had enough time to give him advice about this.

So, I still think the benefits available to Mr Z through the BSPS2 should've been factored in with the advice NTM gave so that he was able to make an informed decision.

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 Z was 37 at the time of the advice and wanted to retire at 57. The critical yield required to match Mr Z's benefits at age 65 was 6.8% if he took a full pension and 5.99% if he took tax-free cash and a reduced pension. The same figures at Mr Z's age 60 were 7.44% and 6.49% respectively.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 5.37% per year if Mr Z took a full pension and 5.13% per year if he took Tax-free cash and a reduced pension. Again, the same figures at his age 60 were 6.11% and 5.87%.

It's not clear why NTM didn't do an analysis to Mr Z's age 57 as this is when he wanted to retire. But given this was some time in the future anyway his age 60 is probably close enough.

As I've said above, Mr Z remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by NTM. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

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 4.5% per year for 22 years to retirement or his age 60. To his age 65 the discount rate was 4.6%. I've 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 Z's 'low' attitude to risk and also the term to retirement.

NTM says that Mr Z's attitude to risk was not low or cautious. But it was very clearly documented at the time of sale that his attitude to risk was low. The investor profile report that NTM produced, after considering the answers Mr Z gave to the questions he had been asked said, that his attitude to risk was 'low'. The suitability report also said his attitude to risk was 'low' and he had no experience of investments. The suitability report produced in December 2017 gave advice based on Mr Z having a low attitude to risk.

NTM now says that Mr Z had another pension that was invested in risk bearing assets. I'm assuming that this was his new employers DC scheme. But as far as I can see Mr Z had no input into the investments in this arrangement. And even he did, how this affected Mr Z's risk tolerance should have been fully documented at the time. This wasn't done.

It would seem to me to be speculation, and not based on any of the facts as they were recorded at the time of sale, to say that Mr Z's tolerance and capacity for risk were anything other than low.

There would be little point in Mr Z 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 the lowest critical yield was over 5%, I think Mr Z 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.

The suitability letter said that the critical yields at age 65 were achievable over the longer term when compared to his current attitude to risk. But that matching his return at age 60 would need Mr Z to take a higher risk. And so, they weren't achievable.

But I don't think any of these are achievable for Mr Z. All of the critical yields are above the regulators medium growth rates and some are nearer the high level. But Mr Z's tolerance for risk was much lower than this. He would have been looking at growth rates around the 2%

level rather than the 5% level. Which is the minimum he needed to replace his DB scheme benefits. So, I think it was misleading to say that any of the critical yields were achievable.

NTM has provided various cashflow models which it says show that Mr Z would've been able to meet his needs despite the high critical yields. But these are based on different parameters to the BSPS scheme and assume a 5% return before charges are taken from the fund. So, I don't think they are a genuine comparison with his BSPS or BSPS2 benefits.

Also, as NTM 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.

And NTM also provided an estimate of the fund values he would need to replicate the benefits he was giving up in the DC scheme. At age 65 this was between £285,456.81 and £351,562, the lower amount is where Mr Z took tax-free cash. And the same amounts for his age 60 were between £252,058.18 and £309,278.03.

These were significantly higher than the transfer value, and probably higher that what the transfer could reasonably be assumed to grow to, given Mr Z's lower attitude to risk. These give a revealing insight into the value of the benefits Mr Z gave up when he transferred out to a personal pension plan.

NTM says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings just on this, I think it a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr Z's attitude to risk, which leads me to believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

NTM also says that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. NTM says Mr Z didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required NTM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr Z could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 20 years. It's entirely possible that Mr Z would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

For this reason alone a transfer out of the DB scheme wasn't in Mr Z's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as NTM has said 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

It seems one of the main reasons that NTM recommended this transfer was for the flexibility and control it offered Mr Z. Having considered the evidence, I don't think Mr Z needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

It's evident that Mr Z could not take his DB scheme benefits flexibly in the same way as a personal pension. Although he could choose to take tax-free cash and a reduced annual pension, Mr Z had to take those benefits at the same time. But I'm not persuaded that Mr Z had any concrete need to take Tax-Free Cash and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.

It was recorded that Mr Z wanted £1,800 per month in today's terms, meaning that in reality his income at retirement would need to be a lot higher to produce this. This is around £22,000 a year. There wasn't a lot of detail about this but given his personal situation and the time he had left to retirement. Mr Z would have only been able to estimate his retirement needs at best. So, this isn't surprising.

NTM completed an analysis on 11 December 2017 of Mr Z's BSPS benefits, calculating that if Mr Z stayed in the BSPS, he would receive a pension of £8,107 or a reduced pension of £5,372 with a tax-free lump sum of £35,818. At age 60 these figures reduced to £5,889 or £4,043 with a lump sum of £26,956.

The benefits from the PPF at age 65 were shown to be an annual pension of £6,393.21 or a tax-free cash of £34,126.04 and a reduced pension of £5,111.90. And at age 60 the pension was £5,176.73. Or tax-free cash of £28,620.72 and a pension of £4,293.10.

As I've said above, the BSPS2 amounts would have been different to this. Depending on the retirement dates I would expect the amounts to be somewhere between the BSPS and PPF amounts. But nearer the BSPS mostly.

And Mr Z would receive his state pension at age 68 which would usually be around £9,000 a year.

So I think it's evident that Mr Z hadn't accrued enough pension benefits yet to be able to meet his early retirement aims or to draw the income he wanted at his age 65. This was because he still had some way to go before retiring.

But I think an important factor here is that at the time of sale Mr Z was a member of his employers new DC scheme and he would be building up a fund over the next 20 years or so (as a minimum), through this. As a very rough estimate, given his salary, the total amount going into the scheme each month would be about £666. Even without taking investment growth into account, it would be worth in the region of £176,000. And by assuming modest growth of 2% over 22 years, the funds could be worth in the region of £220,000 by the time Mr Z was 60.

This means that at age 60, if Mr Z opted into the BSPS2, he could take an annual increasing pension. Given that there wasn't any known need for the tax-free cash (Mr Z didn't have a mortgage or any debt) I think it's likely that Mr Z could've met his income needs until his state pension became payable at age 68. I think it's likely any shortfall could've been met by Mr Z accessing income or tax-free cash from his DC scheme. Mr Z would have likely had a significant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr Z would have had to sacrifice flexibility in retirement by opting into the BSPS2. I think his existing arrangements already had a significant degree of flexibility.

But even if this didn't entirely work out. As I've set out above, Mr Z was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So, as a starting point I think Mr Z had a better chance of achieving his target retirement income of £1,800 per month by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr Z had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr Z would've been entitled to a pension of £6,393.21 per year. This was probably lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr Z would've had his DC scheme to draw on until his state pension became payable. So, I still think Mr Z could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Overall, I'm satisfied Mr Z could have better met his income needs in retirement through the BSPS2 or the PPF. So, I don't think it was in Mr Z's best interests for him to transfer his pension just to have flexibility that he didn't need.

Death benefits

Mr Z wasn't married at the time and he had no dependents. That said death benefits are an emotive subject and of course when asked, most people would like their family to benefit when they die. Mr Z said the lump sum death benefits on offer through a personal pension were an attractive feature to him as he could nominate his wider family to benefit on his death.

But whilst I appreciate death benefits are important to consumers, and Mr Z 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 Z about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think NTM explored to what extent Mr Z was prepared to accept a lower retirement income in exchange for higher death benefits.

And Mr Z did already have significant death benefits with the DC scheme that he could use this in this way.

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 Z. I appreciate that death benefits weren't a critical part of the advice at the time.

Control or concerns over financial stability of the DB scheme

It's clear that Mr Z, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund.

The point of sale information shows that he was unhappy that his pension had been reduced and wanted to move. He was concerned if he moved into the BSPS2 then he would lose flexibility. NTM told Mr Z that the scheme trustees had not given a guarantee that the BSPS2 would remain viable and that he would not end up in the PPF.

So it's quite possible that Mr Z was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was NTM's obligation to give Mr Z an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. So, the advice should've properly taken the benefits available to Mr Z through the BSPS2 into account and I think this should've alleviated Mr Z's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that NTM should've reassured Mr Z that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr Z through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to NTM recommending Mr Z transfer out of the DB scheme altogether.

I think Mr Z's desire for control over his pension benefits was overstated. Mr Z 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 Z – it was simply a consequence of transferring away from their DB scheme.

And it seems to me that Mr Z'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.

It was recorded that Mr Z wanted to break all ties with this employer. But it ought to have been explained that Mr Z's employer and the trustees of the BSPS2 were not the same. And in any event, Mr Z 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. So had NTM explained that Mr Z's belief regarding the control Mr Z's employer had over his pension was misplaced, I think he would have been reassured by this.

I think it's reasonable to say that NTM did the opposite of this. The documentation seems to place a lot of emphasis on the uncertainties that surrounded this situation and that the BSPS2 itself could ultimately fail. It said that the trustees had not managed the scheme correctly so far and this may continue going forward. It even went so far as to say in the suitability letter that it was unclear if the scheme could move the PPF when it said *'I am usure how the PPF will react to this type of approach as they are there to protect members of a pension when an employer fails. The BS2 pension is no longer connected…'.* I think this misrepresented the situation to Mr Z.

Suitability of investments

NTM recommended that Mr Z invest in some risk based funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr Z, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr Z should have been advised to remain in the DB scheme and so the investments in the funds wouldn't have arisen if suitable advice had been given.

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 Z. But NTM wasn’t there to just transact what Mr Z might have thought he wanted. The adviser’s role was to really understand what Mr Z needed and recommend what was in their best interests.

Ultimately, I don’t think the advice given to Mr Z was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr Z 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. Mr Z shouldn’t have been advised to transfer out of the scheme largely due to the uncertainty surrounding his employer and the scheme. This wasn’t worth giving up the guarantees associated with his DB scheme.

I appreciate that the BSPS2 hadn’t been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr Z had over 20 years before he expected to retire, and he didn’t know what his needs in retirement would likely be. So, 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 be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr Z would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, if Mr Z married in the future his wife’s pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr Z chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think NTM should’ve advised Mr Z to opt into the BSPS2.

Of course, I have to consider whether Mr Z would've gone ahead anyway, against NTM's advice.

I accept that NTM disclosed the risks of transferring to Mr Z and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr Z to transfer out, and I think Mr Z relied on that advice. And even though the process wasn’t finalised on 21 December 2017, NTM provided full advice on this date. And it could have advised Mr Z differently.

I’m aware that in some communications with NTM Mr Z appeared motivated to get the transfer out completed and he particularly didn’t want his pension to end up in the PPF. But Mr Z had received advice from NTM that he should transfer out of the DB scheme. So, I think his words have to be considered in that context. It isn’t reasonable to assume that he’d have behaved the same way if he’d been advised to opt into the BSPS2. So, I don’t think this demonstrates he’d have gone against the advice.

I’ve considered this carefully, but I’m not persuaded that Mr Z would’ve insisted on transferring out of the DB scheme, against NTM’s advice. I say this because Mr Z was an inexperienced investor with a low attitude to risk and this pension accounted for the majority of Mr Z’s retirement provision. So, if NTM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in their best interests, I think he would’ve accepted that advice.

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

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

Our Investigator recommended that NTM also pay Mr Z £500 for the distress caused by the unsuitable advice. I don't doubt that Mr Z has been caused distress and concern in relation to his retirement planning. He says that he had been particularly concerned that his pension fund 'goes up and down' and this was made much worse by the recent pandemic. This would have been particularly worrying given his lower tolerance to risk. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr Z, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr Z would most likely have remained in the occupational pension scheme and opted to join the BSPS2 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 Z and our Service upon completion of the calculation.

For clarity, Mr Z has not yet retired, and he 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 Z's acceptance of my 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 Z redress as a cash lump sum payment,
- explain to Mr Z 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 Z receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr Z accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr Z 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 Z's end of year tax position.

Redress paid to Mr Z 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 Z'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.

NTM should also pay Mr Z £500 for the distress the unsuitable advice has caused him.

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

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr Z 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 NTM Financial Services Ltd pays Mr Z the balance.

If Mr Z 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 Z can accept my decision and go to court to ask for the balance. Mr Z 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 Z to accept or reject my decision before 14 September 2023.

Andy Burlinson
Ombudsman