DRN-3662151

The complaint

Mr B complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a personal pension plan.

AJH Financial Services Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "AJH".

What happened

In March 2016, Mr B'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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr B's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr B was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to AJH which is responsible for providing the pension advice.

Information was gathered by AJH, about Mr B's circumstances and objectives at the time of the recommendation. I've noted there were some errors in these documents. For example, the 'fact-find' got Mr B's age wrong, and there appears significant errors relating to either the dates of birth or ages of all his children. Also, the transfer analysis said he was married, rather than him being unmarried. In fact, his correct circumstances were broadly as follows:

- Mr B was 32 years old, unmarried but with a partner and three dependent children. He was in good health and at that point he had accrued over four years of pension benefits with the BSPS.
- Mr B and his partner jointly also owned a home together valued at around £240,000, with a mortgage of around £101,000 which had 23 years left to run.
- Mr B earned around £35,000 per year. AJH didn't record details of Mr B's partner.
- The cash equivalent transfer value (CETV) of Mr B's BSPS was described by AJH in the transfer analysis and suitability report as being £39,140 (this was later

reassessed to a slightly higher value) and the normal retirement age (NRA) was 65. AJH said Mr B wanted to retire early if possible, at the age of 60.

AJH set out its advice in a suitability letter and report on 10 November 2017. It advised him to transfer out of the BSPS and invest the funds in a personal pension arrangement. AJH said this would allow Mr B to achieve his objectives. Mr B accepted this advice and so transferred to a personal pension. In 2021 Mr B complained to AJH about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr B referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, AJH said it hadn't done anything wrong and was acting on the financial objectives Mr B had at the time.

As the complaint couldn't be resolved informally, it's come 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 also 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'). 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.

<u>*The applicable rules, regulations and requirements*</u>

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 AJH'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've also comprehensively considered AJH's responses to the complaint, outlined in a letter from AJH's representative, dated 20 May 2022. I've considered everything that's been said with great care, however, I've rightly focussed more on the issues which affect the outcome of the complaint.

I have further considered that 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, AJH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr B's best interests.

I don't think it was, so I'm upholding Mr B's complaint.

Circumstances of the time

Before I go into detail about what I think about this case, I'm going to deal with the timeline of events. AJH's representative has implied there was so little known about the future for BSPS at the time this advice was given – and that no-one could be sure BSPS2 was even going ahead.

But I don't agree with this. We've seen many similar complaints to this one and so we've learned a great deal about what was happening at the time. We know, for example, that on 11 August 2017, Mr B's employer confirmed the terms of an agreement with the pensions regulator about the next steps for separating the BSPS from the company. This included a lump sum payment into the pension fund and the announcement included confirmation that agreement had also been reached about the sponsorship, by Mr B's employer, of the BSPS2. Then in late August 2017, an important update was issued in respect of BSPS transfer values. This explained that the expected lump sum payment into the BSPS by the employer was likely to result in an improvement to transfer values. And for those with unexpired transfer valuations, as in this case, updated valuations would be issued around October 2017 and guaranteed until at least December 2017.

On 11 September 2017 there was a further announcement, confirming the agreed payment had been made into the BSPS by the employer and the separation of the BSPS from the company had been completed. This set out that members would have to make a choice between staying in the BSPS or moving to the BSPS2 and it explained that *personalised* information and illustrations would be provided in October 2017 to assist with that choice. Members would have until December 2017 to decide.

AJH was dealing with Mr B throughout all these events and I think it would have been monitoring events closely. I can see, for instance, its 'fact-find' was dated 24 August 2017, the transfer analysis was 14 September 2017, and the suitability report (with the eventual recommendation) was dated 10 November 2017.

Financial viability

AJH referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

However, before assessing the critical yields in Mr B's case, I think it's important to point out that AJH could have taken time to compare the benefits of the BSPS2 with transferring out, rather than just using the current BSPS for comparisons. AJH's representative said the analysis carried out at the time referred to the existing scheme, rather than BSPS2.

As the advice was dated 10 November 2017, we know that by then BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and many details of the BSPS2 had emerged by the time AJH produced its suitability report. So, as the existing scheme

(BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr B the best opportunity to make an informed decision about what to do.

Nevertheless, I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

AJH said the critical yields for retiring at the NRA of 65 were 5.7% if taking a full pension, without a tax-free lump sum and 5% if eventually taking a reduced pension together with a tax-free lump sum. And for early retirement, at the age of 60, the critical yields were 6.1% and 5.2% respectively.

These quotes were based on a 'single life' annuity, rather than a joint one. Mr B wasn't currently married, but I've noted he and his partner had three children together and they jointly owned their family home. A significant time after the complaint had been made, AJH's representative said Mr B was unsure if he'd ever marry. But I've not seen this reflected in documentation from the time of the sale. I've noted that a 'joint life' annuity in similar scenarios to those I've described above tended to push the critical yield higher, typically by around another ½%.

In any event, AJH implied reaching the critical yield levels of growth was achievable, but I haven't seen clear evidence to support this.

I say this because 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.

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 just before 1 October 2017 and was 4.7% per year for 32 years to retirement (age 65), which is below the critical yield figures I've referred to above. The discount rate for retiring at 60 was 4.6%.

So, the discount rates infer that reaching the yields above would be more unlikely than likely.

I've also kept in mind that the regulator's upper projection rate at the time of the advice was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. AJH categorised Mr B's attitude to risk (ATR) as "medium". The regulator's middle rate here was still not above any of the critical yields – and even small percentage points, year-on-year, can make meaningful differences to growth over time. I've also noted the personal pension provider's own mid-growth assumption was only 3.5%. So, again, this was below the critical yield rates.

With these things in mind, I don't think AJH should have recommended that Mr B ought to transfer away from a DB scheme to a personal pension arrangement. Nothing I've seen shows Mr B would be likely to enjoy better financial pension benefits upon retiring, if he transferred away from his DB scheme option. The discount rates, the regulator's projections and even the provider's own figures were all pointing to growth assumptions below the critical yield rates. In my view, there would be little point in transferring away only to achieve lower financial benefits overall.

Elsewhere in its transfer analysis, AJH also made mention of the PPF, a type of compensation scheme providing a 'safety net' for pension schemes when the sponsoring employer becomes insolvent. AJH said the critical yield to match the benefits available through the PPF at age 65 was 5.2% per year and 4.9% if taking tax-free cash. But these yields related to the *reduced* benefits available with the PPF and I don't think Mr B would have wanted to transfer to this scheme – AJH itself said this in the suitability report. It's also important to remember here that the effect of charges and fees associated with a personal pension would have further reduced the likely growth. So, the evidence isn't clear that the PPF critical yields could be exceeded either.

I've noted that AJH also presented Mr B with certain scenarios where transferring out his pension to a personal arrangement could apparently enable him to draw a pension well into his old age. However, I've looked at the examples given and I note that some of these amounts run out of funds before his average life expectancy age. And if remaining with a DB scheme such as BSPS2, the pension would last for all Mr B's life. But more so, these examples weren't comparing 'like with like' as they lacked a direct compatibility with the DB scheme Mr B would be giving up.

What I've seen therefore shows Mr B would most likely receive lower financial benefits at retirement if he transferred out. However, to be clear, AJH's recommendation that he should transfer out to a personal pension was not predicated on the financial comparisons with his current scheme alone. Rather, AJH said Mr B had different reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer *was* suitable for him, despite providing the overall lower benefits mentioned above.

I've considered these below.

<u>*Flexibility and other needs*</u>

AJH recommended a transfer to a personal pension based on what it said were Mr B's wider objectives. I've summarised the following themes, as supporting the recommendation to transfer away:

- The ability to retire early.
- In a personal pension he could take more tax-free cash. AJH said Mr B preferred *"the increased flexibility in relation to when and how your benefits are accessed, specifically receiving higher amounts of income in the earlier years of retirement."*
- AJH said Mr B wanted his partner and children to benefit in the event of his death.
- The future of the BSPS was a concern and Mr B didn't want to enter the PPF.

So, it seems the supporting reasons that AJH recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr B. I have therefore considered all these issues in turn.

- *Retiring early / taking tax-free cash*

AJH mentioned in various documents from the time of the advice that Mr B had said he wanted to retire early, potentially at the age of 60. I've also noted AJH's representative makes some assertions about why Mr B would be likely to *need* to retire early, basically because of the industry he worked in. However, in my view these are somewhat baseless comments, unsubstantiated by any analysis or data.

Nevertheless, I certainly don't doubt that Mr B might have genuinely hoped to retire early. But I've seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr B was only 32 years old at the time and he was in good health. And in these circumstances it's simply not credible that he had any concrete plans for retirement at that point.

AJH also promoted to Mr B that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But AJH should have been telling Mr B at the time that extra tax-free lump sums being removed from a personal pension, potentially from his late fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

Even if I were to consider the highly unlikely scenario that Mr B's retirement plans were more fixed than the mere aspirations set out by AJH - and he really did want to retire early - I think AJH should have assessed the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr B, although this would have meant Mr B's pension benefits would have been somewhat different due to him accessing the pension earlier and for longer. But I think this was discounted by AJH as I've seen no evidence it was realistically discussed with a view to assessing whether it was more in Mr B's best interests. The advice simply focussed on him transferring away completely.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other options Mr B faced, including opting for the BSPS2. I can't see that Mr B could yet be said to require flexibility in retirement in the way AJH suggested. AJH said that Mr B's estimated annual pension upon his NRA was £4,376 per year or £2,906 if taking a tax-free lump sum of £19,333**.** As a DB pension this was guaranteed and index linked (with certain restrictions).

However, as he was so young, it wasn't really possible to say what Mr B's financial and income needs were likely to be in retirement. And I haven't seen anything to persuade me that Mr B wouldn't have been able to meet his *likely* retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan. This is because, as well as retirement being a long time away, we know Mr B had already joined his employer's new defined contribution ('DC') scheme and could have been making contributions to it for up to thirty-two years more, until he retired. Mr B's contributions to this 'second' pension were being added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme (in BSPS2).

I think therefore, that by retirement, Mr B could have been in a good position if he'd transferred to the BSPS2. On one hand he'd have had a long-standing modest DB pension, but one with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial DC pension over many years, which, if he later found he did require flexibility, this pension could have provided it.

I have therefore considered what AJH said about retiring early and the potential flexibility brought about by transferring to a personal plan: it said this would include how funds were invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element.

However, I don't think recommending a transfer-out based on these reasons was suitable because so little was known about what his retirement would look like. I've also seen nothing which shows Mr B had either the desire or capacity to exercise personal control over his pension. Mr B's previous exposure to investing was not really known and he had no such investments at the time. And to grow the transferred funds in the way AJH implied he could, a higher degree of risk exposure would have been required.

So, I think Mr B's circumstances were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so, and then drawing a DB pension. Because he also had a 'second', DC pension, this supported that strategy, in my view.

I therefore think the much more suitable option was for Mr B to access his DB pension in the way it was originally intended.

- *Death benefits*

AJH says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr B died.

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 probably made to look like 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 the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think saying Mr B's death benefits would improve in a personal pension because he could pass over all his funds needed putting into context. Only in his early thirties and in good health, he and his partner had a family, a joint mortgage / home and joint life insurance. In my view, the likely death benefits attached to the new DB scheme were therefore still relevant to Mr B. Even though he wasn't married at that point in time, in his circumstances this benefit needed to be thoroughly explained and considered. And from what I've seen, the death benefits were substantially underplayed.

If he did get married to his children's mother, the spouse's pension provided by the BSPS2 would have been useful to her if Mr B predeceased her. As a father, I think the child specific benefits would also have been meaningful to Mr B because his children would be able to benefit from the DB scheme up until they left full-time education; and for them this was some time away. These were guaranteed benefits and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. I therefore don't think AJH made the value of this benefit clear enough.

In any event, there may not have been a large sum left in a personal pension upon Mr B's passing, particularly if he lived a long life. The main purpose of a pension is to provide retirement income. AJH should therefore not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

It also doesn't appear that AJH took into account the fact that Mr B could have nominated someone else close to him as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr B had already ensured part of his pension wouldn't 'die with him'.

I can't see the extent to which life insurance was discussed in this case although it was evidently mentioned at some point in the discussions. But at 32 years old, this would have been a reasonably affordable product if Mr B really did want to leave a legacy for someone such as a partner or children. A form of ‘term’ insurance could have been considered, as opposed to a ‘whole life’ policy which would be more expensive.

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. I think this objective was no more than a generic comment and not meaningful to Mr B’s situation.

- *Concerns over financial stability of the DB scheme*

It’s clear that Mr B, 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 AJH said he lacked trust in the company. He’d heard negative things about the PPF and AJH said he could have more control over his pension fund.

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

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated Mr B’s concerns about his scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn’t go ahead, I think that AJH should have reassured Mr B that the scheme moving to the PPF wasn’t as concerning as he thought. The income available to Mr B through the PPF would have still probably provided a reasonable portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees I’ve mentioned. 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 have led to AJH’s recommendation to Mr B to transfer out of the DB scheme altogether.

<u>Other issues</u>

I have already set out, at the beginning of this decision, what I think about the timeline of events. AJH strongly says that so little was known about the new scheme, which would of course mean that it advised Mr B to transfer out based on insufficient knowledge. However, I don’t agree with this and I’ve explained why AJH had the information it needed by 10 November 2017 to provide advice.

AJH also say it was Mr B himself who came to it with a fixed view about transferring out. In my view, this simply demonstrates the weaknesses in AJH’s approach. AJH was the regulated financial adviser here, and it was being paid to give advice. So, AJH’s job wasn’t just to transact what Mr B might have thought he wanted; its job was to really understand his circumstances and to provide advice that was in his best interests. I don’t think it did this.

<u>Summary</u>

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 AJH 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 within the BSPS2. By transferring to a personal pension, the evidence shows Mr B was likely to obtain lower retirement benefits. And I don’t think there were any other particular reasons which would justify the transfer and outweigh this. I think AJH ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he’d be worse off in retirement.

So, I don’t think it was in Mr B’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that BSPS2 was likely to be going ahead. Mr B still had many years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr B would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, if Mr B did eventually get married, then 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 B chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think AJH should have advised Mr B to continue to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr B would have transferred to a personal pension in any event. I accept that AJH disclosed some of the risks of transferring to Mr B, and provided him with a certain amount of information. But ultimately it advised Mr B to transfer out, and I think Mr B relied on that advice.

I’m not persuaded that Mr B would have insisted on transferring out of the DB scheme, against AJH’s advice. I say this because Mr B was an inexperienced investor and this pension accounted for almost all of his retirement provision at the time. So, if AJH had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests, I think he would have accepted that advice.

I’m also not persuaded that Mr B’s concerns about the PPF were so great that he would have insisted on transferring his pension, 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 AJH had explained Mr B was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

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

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 AJH’s unsuitable advice. I consider Mr B would have most likely remain as opted into joining the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, AJH should use the benefits offered by BSPS2 for comparison purposes, and retirement should be assumed as the NRA of 65 years.

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

AJH 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).

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 AJH 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 AJH to pay Mr B.

Income tax may be payable on any interest paid. If AJH deducts income tax from the interest, it should tell Mr B how much has been taken off. AJH 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.

I’ve considered the impact on Mr B of the unsuitable advice and transfer. Our investigator recommended that a sum of £300 should be paid to Mr B by AJH for what he referred to as the trouble and upset caused by this unsuitable transfer. I’ve taken into consideration Mr B’s age and circumstances and also that by retirement this DB pension would still have been a reasonable part of his overall pension entitlement, So I think the thought of losing benefits would have negatively impacted Mr B. I therefore agree that AJH should also pay Mr B £300 for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning

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’ve decided to uphold this complaint.

I now direct AJH Financial Services Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount does not exceed £160,000, I would additionally require AJH Financial Services 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 would only require AJH Financial Services Limited to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that AJH Financial Services Limited pays Mr B the balance. I would 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 AJH Financial Services 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 14 March 2023.

Michael Campbell
Ombudsman