DRN-3711020

The complaint

Mr W complains about the advice given by GM2 Ltd to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension plan. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr W'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 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 W says he chose to opt-into the BSPS2.

Nevertheless, Mr W was concerned about what the announcement by his employer meant for the security of his pension, so he sought advice. I understand that Mr W initially received advice from a different business, which couldn't be completed. So, following a referral from a colleague, on 21 December 2017 Mr W made contact with GM2 Ltd. Mr W was asked to complete a fact-find to enable GM2 Ltd to gather information about his circumstances and objectives. Amongst other things, this recorded that Mr W was aged 39; he was married with two dependent children; he and his wife jointly owned their home, which had an outstanding mortgage of around £50,000 with 12 years remaining; he had no savings or investments to speak of; and he wanted to stop working at 57 on an income of (minimum) £2,000 a month but with a target income of £2,500 - £3,000. Mr W also indicated here that he was a 'moderate' investor – GM2 Ltd's assessment was that he was a 'medium' risk investor.

On 12 January 2018, GM2 Ltd advised Mr W to transfer his pension benefits into a personal pension arrangement and invest the proceeds initially in cash with a view to moving the funds to a portfolio of appropriate investment funds after the completion of the transfer.

In summary, the suitability report said the reasons for this recommendation were: to provide Mr W with flexibility and the ability to draw a combination of income and lump sums from his pension to tailor his withdrawals, tax efficiently, alongside any other sources of income; and to provide better lump sum death benefits. The recommendation also referred to early retirement being an important consideration for Mr W and well as W's concerns about his existing scheme and his preference to have his pension under his own control.

Mr W accepted the recommendation and in April 2018 around £260,000 was transferred to his new personal pension plan. In May 2018 Mr W met with GM2 Ltd again to discuss and arrange the investment of his pension funds in line with his stated attitude to risk.

Mr W complained to GM2 Ltd in 2022 about the suitability of the transfer advice because he'd received a letter from the regulator, which said he might have received unsuitable advice to transfer out of the BSPS.

Because GM2 Ltd didn't complete its investigation of Mr W's complaint within the required timeframe, Mr W asked the Financial Ombudsman Service to consider his complaint. One of our investigators looked at things and they upheld the complaint and required GM2 Ltd to pay compensation. In summary they said the advice wasn't suitable. They said Mr W had no firm plans for retirement and GM2 Ltd failed to carry out a detailed analysis of his needs in retirement. They said Mr W could've opted into the BSPS2 and delayed any decision about transferring until much closer to his retirement when his needs would be clearer. As an example of how Mr W's plans might be different to those estimated at the time of the advice, they said Mr W had gone on to purchase a new property rather than extend his existing one recorded in the advice paperwork, which meant his mortgage now extended beyond age 70.

The investigator went on to say that Mr W could've met his income needs in part by retaining his DB scheme benefits and then drawing on his workplace pension flexibly to supplement things. They said it was important for Mr W to retain his guaranteed benefits as this was the only source of guaranteed income he had. They said GM2 Ltd's cashflow analysis showing how his DB scheme couldn't support his income need from age 67 did not factor in his wife's pension income.

They said death benefits shouldn't have been prioritised over providing an income in retirement and that life assurance could've met Mr W's objective of providing for his family. And they said Mr W's concerns about the BSPS should've been managed appropriately by GM2 Ltd. The investigator challenged GM2 Ltd's amended assessment of Mr W's risk profile from 'medium' risk to 'higher medium' – they didn't think this was appropriate in his circumstances and the long-term to retirement. The investigator concluded that the transfer wasn't financially viable based on the required growth rate to match Mr W's DB scheme benefits and that he'd have to take on significantly greater investment risk just to match his BSPS benefits. They said if suitable advice had been given, Mr W would've remained in the BSPS and subsequently moved to the BSPS2.

GM2 disagreed. Firstly in relation to any redress award it said any calculation must be made against the PPF and not the BSPS2 because it was not guaranteed to go ahead the time. And in relation to the investigator's key findings, in summary it said:

- At the time of the advice the FCA's view on DB transfer was neutral and so the investigator's assessment of the suitability of Mr W's transfer should be from a neutral stance.

- The key issue that has been ignored here are the timings and the likelihood that, if a transfer wasn't carried out the time, the opportunity would not be available in the future given that the PPF was the most likely outcome and the only option which was guaranteed to come into existence. To assume Mr W could transfer out of the BSPS2 in the future assumes the scheme would exist in the future.
- Any future transfer value from a 'potential' new scheme offering lower benefits would be lower.

- Mr W's BSPS benefits was not the only source of guaranteed income as his wife had a DB pension, which was the bedrock of their guaranteed income.
- It disagreed that Mr W's choice to subsequently extend his mortgage impacts the suitability of the advice.
- The transferred funds would've benefitted Mr W's children without an age limit, unlike Mr W's DB scheme.
- The cashflow / income projections did include Mr W's wife's pension income.
- It said it did provide reassurance about the PPF – it provided full details and highlighted the benefits available to Mr W through the PPF.
- The investigator's comment about risk and the long term to retirement runs counter to the commonly accepted risk practices and investment advice.
- Given the investigator's quoted discount rate of 4.6% versus the required critical yield of 4.77% does not suggest Mr W had to take investment risk significantly above the level he was prepared to take. The critical yield to match the PPF was 4.2%, which was lower than the discount rate and so supports the advice to transfer.

The investigator wasn't persuaded to change their opinion, so the matter 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 GM2 Ltd'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. My reasons are set out below.

I can see in the reply to GM2 Ltd's rejection of their findings, the investigator clarified the regulatory rules and the presumption of unsuitability when a business advises on DB transfers. And while these rules are for businesses, as I set out above, I take them into account in my consideration of what I think is fair and reasonable in the circumstances of the complaint. For the avoidance of doubt, 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, GM2 Ltd should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

GM2 Ltd carried out a transfer value analysis report (as required by the regulator) showing how much Mr W'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 that one of the pieces of analysis was based on the benefits available to Mr W through the BSPS2. GM2 Ltd's suitability report explained that Mr W now had a choice – either remain with the existing scheme and move with it to the PPF or choose to switch to the BSPS2. But at the time of the written advice the deadline for Mr W to be able to opt-into the BSPS2 had passed, so he no longer had that choice. Nevertheless, because Mr W has said he did choose to opt into the BSPS2 before the 22 December 2017 deadline, it was appropriate (whether by design or good fortune) for GM2 Ltd to consider the benefits available to Mr W through the BSPS2 in its analysis and advice.

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 W was 39 at the time of the advice and he indicated that he wanted to retire at 57. The TVAS dated 9 January 2018 set out the relevant critical yields: at age 57 it was 5.65% per year assuming Mr W took a full pension. No critical yield was calculated assuming Mr W took a cash lump sum and a reduced pension. The critical yields required to match the benefits provided by the PPF at age 57 were 5.22% a year assuming Mr W took a full pension and 4.94% a year assuming a cash lump sum and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.4% per year for 17 years to retirement. 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 W's 'medium' attitude to risk and also the term to retirement. In my view, there would be little point in Mr W 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, the critical yield was 5.65% based on the benefits available to Mr W through the BSPS2, which he'd chosen to opt into. I can see in GM2 Ltd's response to the investigator's assessment that it referred to a critical yield figure of 4.77% and a discount rate of 4.6% and argues that Mr W didn't need to take significant risk to achieve the required return. But crucially these figures are based on a retirement age of 65. But Mr W indicated his target retirement age was 57 and this is what the advice was predicated on. So it is the critical yields based on the benefits available to Mr W at age 57 which are relevant here.

So given the required return of 5.65% was over 1% higher than the discount rate and still above the regulator's middle projection rate, albeit by less than 1%, I think at best Mr W was likely to be in no better position at retirement, but more likely he would receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with a 'medium' attitude to risk. I'm mindful that the critical yield based on a reduced pension would likely be lower (if GM2 Ltd had produced analysis on this basis), but I don't think it would've been substantially lower such that it would've made a difference to my finding – I don't think there was much scope, if any to improve on the benefits available through the BSPS2. And I don't think the position was any different if the scheme moved to the PPF.

I can see the investigator referred to Mr W's risk assessment as 'highest medium'. But this appears to have been following a subsequent risk assessment later in 2018. At the time of the advice, I'm satisfied Mr W's risk profile was categorised as 'medium'.

GM2 has made several references to the fact that Mr W's wife had a DB pension scheme, so Mr W's BSPS benefits were not the only source of guaranteed income. It describes Mr W's wife's pension income as the 'bedrock' of their guaranteed income. I accept that Mr W's wife also had guaranteed pension benefits. But I don't think that automatically means Mr W was in a position to risk his own DB scheme pension. At the time Mr W's preserved benefits were greater than his wife's and while she had scope to gain more years' service and accrue a larger pension than she was currently entitled to at retirement, I'm mindful that not only was Mr W's wife several years younger than him, the normal retirement age for what would be the majority of her DB pension income was 68. So, Mr W would be well into his 70's before Mr W's wife's pension was payable – assuming she didn't take it early. So I think it would've been important for Mr W to have a guaranteed source of income in the earlier years of his retirement, which his BSPS could provide. Mr W already had a risk-based pension in the form of his current work place pension scheme, so I'm not persuaded it was necessary or appropriate for him to place all of his future retirement provision at risk. I think Mr W's willingness to adopt a 'medium' level of risk with his pension benefits could've been more appropriately focused on the investment choices within his DC pension scheme.

GM2 Ltd produced a number of cashflow models scenarios at the time of the advice to show that Mr W would've been able to meet his income need by transferring and that, while the DB scheme could meet his target income need assuming it remained static, if allowance was made for a 2% a year increase, a shortfall would occur. I've considered these carefully.

Firstly and perhaps most importantly, I'm not persuaded Mr W knew with any degree of certainty what his income need in retirement would be. Mr W still had a significant period of his working life in front of him and his needs would likely change over time. I think this likely explains why the word *"unsure"* is handwritten next to the estimated income in retirement section in the fact-find alongside the figures of minimum income £2,000 a month and target income £2,500 - £3,000 a month.
But in any event, it doesn't appear that GM2 Ltd attempted to carry out anything that could reasonably be described as a detailed assessment of Mr W's likely income and expenditure need to arrive at these figures. While I acknowledge it provided a checklist of possible expenditure items in this section of the fact find, it seems any calculation was left to Mr W to do.

Turning to the analysis itself – GM2 Ltd produced a scenario based on a monthly income need of £2,500 increasing by 2% a year, which showed that Mr W's DB scheme income couldn't support this need and that from age 67 to 74, once he'd used his DC scheme pension fund up, he'd face a significant income shortfall – in some years more than £29,000. I've already said I'm not persuaded how realistic this need was. In this scenario at age 65 Mr W's net income need is shown as over £50,000 a year, which on the face of it strikes me as being quite high.

But in the alternative scenario of transferring, this showed that Mr W could access the income he needed from his pension supplemented by his other income sources and that by age 95 he'd still have a fund value of over £120,000. However, I'm mindful that GM2 Ltd's analysis assumed a consistent annual growth rate (3%) and it did not include any stress testing of the model. For example it didn't show the impact on Mr W's fund in the event of a period of poor or lower than expected performance, or for example a sudden fall in the market in the early years of the investment. I think it's possible the position could've looked quite different and I think this would've been helpful to Mr W.

Looking at the scenario of a £2,000 a month income need (escalating) assuming Mr W retained his DB scheme benefits - I can see this shows he would have a shortfall in his income need from age 69 to 74. In this scenario, GM2 Ltd assumes that Mr W would start drawing his DB pension from age 58. But in doing so, taking into account the other sources of income – i.e. his wife would continue to work – this produces an annual surplus of just under £9,000. And this surplus continues for the next five years reaching a surplus of a little under £10,000 by the time Mr W is 63. So if Mr W saved this surplus income over this period, the total amount would be more than sufficient to plug the shortfall from age 69 to 74 – a total deficit requirement of around £51,000. Alternatively, given Mr W's wife could meet their joint income need from Mr W's target retirement age of 57 until 64, Mr W could possibly delay taking his DB scheme benefits until this time meaning his starting income would be substantially higher and closer to the £16,048 a year estimated full pension amount at age. Mr W could then use his workplace DC pension to supplement his income need and meet any shortfall to age 74, which would be a lot lower in this scenario.

Overall, based on financial viability alone, I don't think a transfer out of the DB scheme was in Mr W's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations, which mean a transfer is suitable, despite providing overall lower, or no improvement on the benefits available through the DB scheme. I've considered this below.

Flexibility and income needs

One of the main reasons GM2 Ltd recommended the transfer was to meet Mr W's objective for flexibility – to enable him to draw a flexible income and to tailor his withdrawals depending on other income, which it said wasn't available through the DB scheme.

But I'm not persuaded that Mr W knew with any certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, if that's what he ultimately required.

Mr W was 39 at the time of the advice. And while it's possible he had given his future retirement some thought, given it was at least 18 years away and he still had a significant period of his working life in front of him, I don't think he had anything that could reasonably be described as a firm retirement plan. Mr W's desire to want to retire early at 57, was, in my view, likely based on the current earliest age he would be entitled to access his benefits rather than being a firm objective of Mr W's.

I accept Mr W liked the idea of retiring early, but he already had this option available to him – he didn't have to transfer out to achieve this. I also accept Mr W couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr W had to take those benefits at the same time. But nothing here indicates that Mr W had a likely future need to take a cash lump sum and defer taking his income. I also haven't seen anything to indicate that Mr W had a strong need to vary his income throughout retirement. So it strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr W's at the time.

But crucially, Mr W was contributing to his workplace DC pension scheme. And the nature of a DC scheme means this already provided Mr W with flexibility – he wasn't committed to take these benefits in a set way. GM2 Ltd recorded that a total of 16% of Mr W's salary was being invested here – a combination of employer and employee contributions. So by age 57, based on current contributions alone and without accounting for growth, salary increases or increases in contribution rate, this could amount to around £92,000. And based on GM2 Ltd's own analysis, this showed it could be worth just under £124,000 at age 57 based on an assumed growth rate of 3%. And as the analysis also shows, Mr W could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr W retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early - *if* that's what he ultimately decided.

So in any event, Mr W didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. And he didn't have to sacrifice this by opting into the BSPS2. But if Mr W did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. GM2 Ltd ought reasonably to have known that Mr W had chosen to opt into the BSPS2, so he would've retained the ability to transfer out nearer to retirement, if his needs later demanded it. I think GM2 Ltd could've explained this more clearly to Mr W.

Turning to Mr W's income need – as I've already discussed, I don't think Mr W was in a position to say with any certainty what his income need would be in 18 years' time. Nevertheless, it was recorded that as a minimum he'd need £2,000 net a month, with a target of £2,500 - £3,000. I'm not persuaded that Mr W's need would require a consistent year-on-year increase of 2% - the evidence doesn't suggest Mr W was seeking a lavish lifestyle in retirement, which necessitated an ever-increasing income need at that rate. So, I still think Mr W could likely meet his income need either through the BSPS2 or the PPF (if the new scheme didn't go ahead.)

For example, at age 57 and according to GM2 Ltd's analysis, Mr W would be entitled to an annual pension of £10,672 through the BSPS2. But at this time Mr W's wife would likely continue to work for another five or six years and it's possible her income alone would meet their household need. As I said earlier on, this might give scope for Mr W to either delay taking his benefits to allow for a higher starting income or he could save any excess income for later use. Either way, when Mr W's wife stopped working, Mr W could supplement things by accessing his DC pension flexibly. I think this would likely have a not insignificant amount at this time, which Mr W could use as and when needed. Mr W's wife's pension would then later become payable and they'd both receive their state pensions at the appropriate age. I'm mindful too that, given it appears Mr W and his wife jointly had a not insignificant monthly disposable income at the time of the advice, I think this could've given Mr W capacity to save this excess income in the years to his retirement to provide a further source of supplementary income.

So, it seems likely that if Mr W did decide to retire at 57, which in my view was by no means certain, he could've met his income need by remaining in the DB scheme and using the other sources of income available to supplement things at the various required stages. I don't think Mr W needed to risk his guaranteed benefits at this stage to achieve things.

If the BSPS2 hadn't gone ahead, Mr W would've moved with the scheme to the PPF. And while the income Mr W would receive was lower than the pension he'd be entitled to under the BSPS2, it wasn't estimated to be substantially lower such that it would've made a difference to the recommendation - according to GM2 Ltd the difference was negligible at age 57. As I've said above, while Mr W's retirement plans and needs weren't in anyway formulated, there were other sources of income available as well as his DC scheme to draw on flexibly.

So, overall I think Mr W could've likely met his income needs in retirement through the BSPS2 or the PPF. And I don't think it was in Mr W's best interests for him to transfer his pension just to have flexibility that I'm not persuaded he really needed.

Death benefits

The suitability report recorded that providing for his family in the event of his death was one of his main priorities. And GM2 Ltd recommended the transfer to enable Mr W to be able to pass on all of his remaining funds within his pension to his family.

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 W. But whilst I appreciate death benefits are important to consumers, and Mr W 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 W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr W was married, so the 50% spouse's pension would've been useful to his wife if Mr W predeceased her. I don't think GM2 Ltd made the value of this benefit clear enough to Mr W. This was guaranteed and it escalated – under the BSPS2 the spouse's pension would also be calculated as if no cash lump sum had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, GM2 Ltd should not have encouraged Mr W to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful that Mr W already had lump sum death benefits available to him through his workplace DC scheme – he also had death-in-service benefit, which would've paid out in the event of Mr W's death before retirement. And Mr W could've nominated his wife and/or children as beneficiaries of these if he hadn't already done so. But if Mr W genuinely wanted to leave a legacy for his wife and/or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think GM2 Ltd should've instead explored and ultimately recommended additional life insurance. And the starting point here needn't have necessarily been to base the cover and the sum assured on the full transfer value – that would essentially assume Mr W would pass away on day one following the transfer, which isn't realistic.

Ultimately, Mr W wanted to leave whatever remained of his pension to his wife, 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 W how much he would ideally like to leave to his wife and/or children, taking into account his existing means and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide and affordable given Mr W's age and his apparent monthly disposable income.

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

Control or concerns over financial stability of the DB scheme

I understand that Mr W, like many of his colleagues no doubt, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was likely worried his pension would end up in the PPF. There were lots of negative things circulating about the PPF. So it's quite possible that Mr W was leaning towards the decision to transfer because of these concerns. But it was GM2 Ltd's obligation to give Mr W an objective picture and recommend what was in his best interests.

Mr W had already chosen to opt-into the BSPS2, so to a certain extent some of Mr W's concerns about moving to the PPF would have likely fallen away. But even if there was a chance the BSPS2 wouldn't go ahead, I think that GM2 Ltd should've reassured Mr W that the scheme moving to the PPF wasn't as concerning as he thought or had been led to believe.

Importantly Mr W still had the option of taking early retirement through the PPF. Mr W didn't have any firm retirement plans at this stage - but I think the income available to Mr W through the PPF would've still provided a solid base, which the other means available to him, including his DC scheme could supplement to meet his overall income need at retirement. Crucially I don't think he was likely 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. Mr W might not have been able to later transfer out of the PPF, which is something GM2 Ltd has argued. But given what I said earlier on about Mr W already having flexibility, I don't think there was an apparent need for him to do so.

So I don't think that Mr W's concerns about his DB scheme was a compelling or suitable reason to recommend a transfer out of the DB scheme altogether.

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 W. But GM2 Ltd wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF if the BSPS2 didn't go ahead). By transferring to a personal pension arrangement Mr W was, in my view, likely to obtain lower retirement benefits at his intended retirement age. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

Mr W didn't have any firm retirement plans given his age, so he shouldn't have been advised to transfer out of the BSPS just to have 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. And just because any future transfer value from the new scheme would likely be lower, this is not of itself a suitable reason for Mr W to have transferred at this time.

So, I don't think it was in Mr W's best interests for him to transfer his DB scheme to a personal pension at this time. And I think GM2 Ltd should've advised Mr W that, his decision to opt into the BSPS2 as a precautionary measure was a suitable one and in the circumstances in his best interests.

Of course, I have to consider whether Mr W would've gone ahead anyway, against GM2 Ltd's advice.

I've considered this carefully, but I'm not persuaded that Mr W would've insisted on transferring out of the BSPS, against GM2 Ltd's advice. I say this because, while as I've already said Mr W was likely motivated to transfer when he approached GM2 Ltd, and I'm mindful that he received advice to transfer from another business before he met with GM2 Ltd, I nevertheless still think Mr W would've listened to and followed GM2 Ltd's advice if things had happened as they should have and it recommended he not transfer out of the scheme. Mr W was not an experienced investor – so he was not, in my view, someone who possessed the requisite skill, knowledge or confidence to against the advice they were given, particularly in complex pension matters. Mr W's pension accounted for the majority of his own private retirement provision at the time and it was *his* only source of private guaranteed pension income. And in my view, it would continue to be an important and significance source of income at Mr W's retirement age. So, if GM2 Ltd had provided Mr W 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 W's concerns about the scheme were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If GM2 Ltd had explained that Mr W could likely meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, on balance, I don't think Mr W would've insisted on transferring out of the BSPS against GM2 Ltd's advice.

In light of the above, I think GM2 Ltd should compensate Mr W for the unsuitable advice, in line with the rules for calculating redress for non-compliant pension transfer advice. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see GM2 Ltd has argued that any redress should be based on the PPF and not the BSPS2 because it was only a proposal - it wasn't guaranteed to go ahead at the time. I think this argument is somewhat redundant now following the introduction of the FCA's BSPS-specific redress calculator to calculate the redress under the BSPS consumer redress scheme. This requires businesses to determine which scheme a consumer would've joined – either the BSPS2 or the PPF – and that the default scheme is the BSPS2. Because I have instructed GM2 Ltd to use this calculator to calculate Mr W's redress, and in this case the evidence is clear that Mr W chose to opt into the BSPS2, I'm satisfied the BSPS2 is the comparator scheme GM2 Ltd should use in its calculations. I think this is fair and reasonable in the circumstances.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr W.
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 GM2 Ltd – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr W. Taking everything into account, including that I consider Mr W's retirement provision is clearly of great importance to him, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr W would most likely have remained in the occupational pension scheme and then joined the BSPS2 if suitable advice had been given.

GM2 Ltd 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.

GM2 Ltd 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 W and our Service upon completion of the calculation together with supporting evidence of what GM2 Ltd based the inputs into the calculator on.

For clarity, Mr W 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 (65), 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 W'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, GM2 Ltd should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W 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 W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts GM2 Ltd's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes.

So, in line with DISP App 4, GM2 Ltd 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 W'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.

GM2 Ltd should also pay Mr W £300 for the distress and inconvenience 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

Determination and money award: I uphold this complaint and require GM2 Ltd to pay Mr W 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 GM2 Ltd pays Mr W the balance.

If Mr W accepts this decision, the money award becomes binding on GM2 Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 17 October 2023.
Paul Featherstone
Ombudsman