DRN-3713532

The complaint

Mr H complains about the advice given by Hunter Mills Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss. Mr H also says that he was advised to transfer another pension into his personal pension plan later on, which he believes he could have done himself without an adviser because the value was less than £30,000.

What happened

In March 2016, Mr H's ex-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 September 2017, the Regulated Apportionment Arrangement ('RAA') was approved by the Pensions Regulator (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme.) As a result, scheme members would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

Mr H was concerned about what the recent announcements by his employer meant for the security of his DB scheme, so he sought advice. In September 2017, following an introduction from another financial advice firm, Mr H met with Hunter Mills. It completed a financial planning questionnaire with him to gather information about his circumstances and objectives. Amongst other things this recorded that Mr H was aged 51; he was working full-time; he was married; he jointly owned his own home; he jointly owned two investment (buy-to-let) properties, which brought in an annual income of around £12,000; and he had no liabilities. Hunter Mills also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'low' – a score of 3 out of 10.

On 6 October 2017, Hunter Mills advised Mr H to transfer his BSPS benefits into a personal pension and invest the proceeds within an investment fund which it deemed matched Mr H's low attitude to risk approach. In summary, the suitability report said the reasons for this recommendation were:

- To provide Mr H with flexibility in how much and when he took his pension benefits.
- To provide access to benefits – tax-free cash and/or income – earlier than the BSPS' normal retirement age without penalty.
- To offer the ability to take tax-free cash and defer taking an income.
- To provide better lump sum death benefits.
- To provide control of the investment.
- To gain from the enhanced transfer value.
- To leave the "*precarious financial state of the scheme.*"

Also 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 H accepted the recommendation and sometime afterwards, around £529,000 was transferred into his new personal pension.

In 2021 Mr H complained to Hunter Mills about the suitability of the transfer advice as well as the point about the transfer of his other pension.

Hunter Mills didn’t uphold Mr H’s complaint. In summary it said that based on Mr H’s circumstances at the time, including his employment position, his assets and the ability to retire early it recommended the transfer. It said it pointed out the pros and cons of transferring. It set out the reasons why it believed the advice was suitable at the time as detailed in the recommendation report. It said it tried to help Mr H out in what was a difficult time and with a short window of time to make a decision. It said Mr H’s options were limited. In relation to Mr H’s point about the other pension he transferred later on in May 2018, they clarified that the £30,000 threshold did not apply to this pension because it did not contain safeguarded benefits. Overall it said it could not find evidence that Mr H has been disadvantaged.

Dissatisfied with its response, Mr H asked us to consider the matter. An investigator upheld the complaint and required Hunter Mills to pay compensation. In summary they thought the advice given to Mr H to transfer his BSPS benefits to a personal pension arrangement wasn’t suitable and Hunter Mills had not demonstrated it was in his best interests. They said given the critical yield required to match Mr H’s scheme benefits at age 65, he was likely to be worse off in retirement as a result of transferring and investing in line with his low attitude to risk. They said despite the fact find recording that Mr H was considering retiring earlier than the scheme’s normal retirement age of 65, no analysis was produced based on earlier retirement. They said this should’ve been done to show Mr H what income and lump sum benefits were available to him through the scheme before advising him to transfer out.

They said Hunter Mills told Mr H he couldn’t access his pension benefits before age 60 through the PPF. But they said this was incorrect and this was likely to have led to Mr H dismissing this option. They said any flexibility Mr H required could’ve likely been met from his rental income and his two other defined contribution pensions. And with regards to providing lump sum death benefits, they said a pension is designed to primarily provide an income in retirement – they didn’t think better death benefits was a reason for Mr H to give up guaranteed pension benefits. They said if things had happened as they should have, Mr H would’ve likely remained in the BSPS and moved with it to the PPF because of the more beneficial early retirement factors. They concluded by saying that they thought Mr H wouldn’t have gone on to transfer his GPP benefits to his new personal pension in May 2018 in light of their findings about the BSPS unsuitable advice.

Hunter Mills disagreed. In summary it said there were clear advantages to Mr H leaving a failing pension scheme. It said Mr H had concerns about the financial security of the scheme because it said early retirement might not have been possible and death benefits were also provided at the discretion of the trustees – these were not an absolute right. It said it didn’t carry out any earlier age analysis in the TVAS report because Mr H’s early retirement wasn’t 100% certain – there were many variables impacting on his planning, so his retirement age wasn’t fixed. But it said it did give an early retirement comparison from the scheme – it was mentioned to him that he’d get 70% of his expected pension at 55 and 82% at age 60.

It said it considered Mr H's rental income to meet his need but it said this isn't guaranteed, so with rental income being taxable using drawdown to supplement any shortfall is suitable advice. It said because Mr H's wife was younger and she intended to continue working, she would've been able to cover their household fixed expenses for a number of years. It said death benefits was a major factor – the BSPS would've only provided a 50% spouse's pension, so the potential for a lump sum was a significant advantage over remaining in the scheme. It said the critical yield referred to in the suitability report was realistically achievable and Mr H has seen good performance on his investment, so he hasn't suffered loss.

Hunter Mills also went on to explain why it believes it was appropriate that it portrayed the PPF more negatively than the scheme – it involved a material reduction in benefits, lacked flexibility and there was no option of transferring out. It said there was a lot of negative sentiment surrounding the PPF amongst scheme members and it said the significance of this should not be underestimated. It referred to two pieces of communication from the BSPS trustees in May 2016 and January 2017 in which it says the trustees themselves were negative about the PPF. In conclusion it said it has demonstrated the advice was suitable based on Mr H's circumstances, his risk profile and income need.

The investigator wasn't persuaded to change their opinion. They restated some of the key points they made in their initial finding including that they were satisfied the evidence indicates Mr H wanted to retire early at 55.

Because the complaint couldn't be resolved informally, it was referred to me for a final decision.

Before issuing my final decision, I clarified to both parties that I didn't agree with the investigator's final conclusion that because they didn't think the advice Mr H received to transfer his BSPS benefits to a personal pension was suitable, it automatically follows that the subsequent transfer of Mr H's Group Personal Pension wouldn't have taken place and so Hunter Mills should also compensate Mr H for any loss he has suffered as a result of transferring this pension too. I felt this wasn't a fair conclusion to have reached based on the complaint Mr H had made. I said the focus of my decision would be about the suitability of the BSPS transfer advice.

I also answered Mr H's complaint point about his GPP. I said that the £30,000 advice threshold limit did not apply to his GPP because it is not a DB pension. And I said that the evidence showed Mr H's GPP transfer was carried out on an 'execution only' basis without advice and that Mr H understood this and agreed to Hunter Mills' fee for doing so.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

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

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

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

Financial viability

Hunter Mills carried out a transfer value analysis report (as required by the regulator) showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits under the BSPS. But at the time of the advice, the RAA had been approved by the Pensions Regulator. And as a result, scheme members would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant - the existing scheme was no longer an option. So analysis of that scheme wasn't helpful to Mr H. I think it's reasonable to say that, in light of the announcement and knowing that Mr H would be receiving his 'Time to Choose' information in October 2017, Hunter Mills should've waited for the details of the new scheme and based its advice and analysis on the BSPS2 instead. That way Mr H would've had all the relevant information to make a properly informed decision.

I accept, as Hunter Mills has said, that BSPS2 was far from being a certainty at the time of the advice. But in my view the available information from the scheme trustees indicated that the new scheme would go ahead. So I still think Hunter Mills should've waited and taken the benefits available to Mr H through the new BSPS2 into account in formulating its advice, so that he was able to make a properly informed decision.

The written 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.

In my view, the advice paperwork paints a somewhat confusing picture about Mr H's target retirement date. In some sections of the paperwork reference is made to a target retirement age of 67, in other sections the target age is 65 and that Mr H had no retirement plans, while in other places it says Mr H wanted to retire early at 55 or 55/56. Hunter Mills says this is because Mr H's plans weren't fixed. But I can see that in an email from Mr H's wife during the early stages of the advice process, she told Hunter Mills that Mr H wanted to retire at 55 – she added that he wanted things to be "*as secure as possible so he doesn't get to 55 and think he has to work for another year or two."*

I think this is clear evidence that Mr H's intention was to retire at 55 and that ought reasonably to have been apparent to Hunter Mills. But whether Mr H's plans were set in stone or not, given Mr H's indication of his likely plans, I think this is what Hunter Mills' advice and analysis should've been based on. Yet despite that, Hunter Mills only produced analysis based on the scheme's normal retirement age of 65 – it didn't also include analysis at Mr H's target retirement age of 55 which I think is the advice Mr H appears to have been seeking. So not only was the analysis based on the existing scheme benefits, which was somewhat redundant as I said, it also wasn't based on the benefits available to Mr H at his intended or target retirement age. I don't think this was very helpful to Mr H.

I can see Hunter Mills says it did provide Mr H with an early retirement comparison from the scheme – but this was only to the extent of telling him what income he would likely receive. It was not a complete analysis showing how much Mr H's transferred pension fund would need to grow by each year in order to provide the same benefits as his DB scheme based on early retirement.

For this reason, there seems little point dwelling on Hunter Mills' analysis. But the critical yield required to match Mr H's benefits under the existing BSPS at age 65 was 7.69% assuming he took a full pension and 6.16% assuming he took a cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 3.7% and 3.14% per year respectively. 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 and closer to the existing scheme, 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 4.1% per year for 13 years to retirement (age 65.) It was 2.8% for three years to retirement (age 55.) 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 H's 'low' attitude to risk and also the term to retirement. In my view, there would be little point in Mr H 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, based on what I've said above about the likely BSPS2 critical yields, I think Mr H was likely to receive benefits of a substantially lower overall value than those provided by the

BSPS2 (if he were to opt into it) at retirement, as a result of transferring and investing in line with a low attitude to risk. In my view, the position would be no different even if the scheme moved to the PPF (or if the BSPS2 didn't go ahead and Mr H moved with the scheme to the PPF.)

Given the above, it seems likely to me that based on a retirement age of 55, while the benefits available under the BSPS2 and the PPF would be lower due to the reduction factors, because of the limited term to retirement the critical yields would be greater than those produced by Hunter Mills based on a retirement age of 65. So, I'm not persuaded the financial viability of the transfer would've been any different based on Mr H's target retirement age of 55 – I think he would more likely than not be worse off in retirement as a result of transferring.

For this reason alone, a transfer out of the BSPS wasn't in Mr H's best interests. But I accept that 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 benefits. I've considered this below.

Flexibility and income need

Hunter Mills recommended the transfer because it offered Mr H flexibility – the ability for him to choose how much and when he took income as well as the ability to take a lump sum and defer taking an income.

But I'm not persuaded Mr H truly required flexibility in retirement.

As I said above, I think Mr H wanted to retire early at 55. And Mr H already had the option to do so before the scheme's normal retirement age – he didn't have to transfer out to achieve this. Mr H might have had to accept a reduced pension in doing so – but I think Hunter Mills could've done more to explain that this wasn't a 'penalty' as it sometimes referred to it as in the advice paperwork. This was an actuarial reduction to reflect that Mr H couldn't expect to receive the same pension he'd be entitled to at 65 ten years earlier because it would potentially be paid for longer. And similarly by transferring, this didn't mean that Mr H could draw the income he was entitled to from the DB scheme at 65 at age 55 without potential consequences. A shorter investment period followed by a larger income withdrawal could mean Mr H's pension fund wouldn't be able to sustain this over his lifetime. I think Hunter Mills could've better explained this.

I accept Mr H couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr H had to take those benefits at the same time. But nothing here indicates that Mr H had a genuine need to access his tax-free cash at 55 and defer taking his income. I say this because Hunter Mills didn't for example record that Mr H needed to repay an outstanding liability that required repayment at this time and access to his pension benefits was the only means of repayment. It also didn't record that Mr H was planning any significant capital expenditure.

I also can't see evidence that Mr H had a strong need for variable income throughout his retirement. Mr H might have had rental income that as Hunter Mills acknowledges can't always be guaranteed, but I'm not persuaded this demonstrates a strong need for variable income. Hunter Mills also didn't record that Mr H's expenditure needs were likely to vary significantly throughout his 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 H's at the time. In any event, Mr H had two existing defined contribution pensions which he could access flexibly – so any need for flexibility could've likely been achieved with these.

Turning to Mr H's income need – while Hunter Mills didn't carry out a detailed income and expenditure in retirement analysis, it recorded that Mr H needed around £13,000 a year income. Unfortunately, as I said earlier on, Hunter Mills didn't produce analysis showing what income Mr H could expect from the BSPS2 or the PPF at 55. At 65, under the existing scheme, it was around £29,000 a year – given the reduced revaluation factors, under the BSPS2 this figure would be lower, but in my view still close to it - and through the PPF it was just under £24,000 a year. So at age 55, the income Mr H would receive from either the BSPS2 or the PPF(if the BSPS2 didn't go ahead or Mr H moved with the existing scheme to the PPF) would be lower. But given Mr H's recorded income need of £13,000, it appears his objective could be met by remaining in the DB scheme. Mr H could've supplemented his income with his rental income - he also had two other pensions he could access flexibly and his wife was also planning to continue to work for a few more years before she retired. It was recorded that Mr H's wife also had her own private pension provision in addition to the state pension.

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

Death benefits

Hunter Mills also recommended the transfer to enable Mr H to pass on his pension to his wife in the form of a lump sum death benefit. The suitability report recorded that the BSPS would provide a 50% spouse's pension and the only lump sum benefit was a return of Mr H's contributions. It was recorded that Mr H found this *"completely disagreeable."*

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 H. But whilst I appreciate death benefits are important to consumers, and Mr H 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 H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning or an inheritance planning tool. And I'm not persuaded Hunter Mills explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

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

Furthermore, if Mr H genuinely wanted to leave a legacy for his family which didn't depend on investment returns or how much of his pension fund remained on his death, I think Hunter Mills should've instead explored life insurance. But there is no evidence that it considered this. It needn't have been the case that the starting point for the sum assured had to be for the full transfer value. A more considered approach was appropriate here – i.e. asking Mr H how much he would ideally like to leave to his family taking account of existing provision. And this could've been explored on either a whole of life or term assurance basis, which was likely to be a more affordable option.

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 H. And I don't think that insurance was properly explored as a suitable alternative.

Control and concerns about financial stability of BSPS

I understand that Mr H, like many of his colleagues no doubt, was concerned about his pension. His ex-employer had recently made an announcement about it plans and Mr H was likely worried his pension would end up in the PPF. There were also lots of negative things circulating about the PPF. So it's quite possible that Mr H was leaning towards the decision to transfer because of the concerns he had. It also appears that Hunter Mills supported Mr H's concerns, which in part led to its recommendation to transfer.

But it was Hunter Mills' obligation to give Mr H an objective picture and recommend what was in his best interests. I'm not persuaded Hunter Mills did that. As I explained earlier on, at the time of the advice the RAA had been agreed and the plans for the scheme were set out – it seemed more likely at this stage that the BSPS2 would go ahead. So Hunter Mills should've waited for Mr H's forthcoming 'Time to Choose' information and the advice should've properly taken the benefits available to Mr H through the BSPS2 into account. I think this would've alleviated some of Mr H's broader concerns about the scheme as a whole moving to the PPF.

Hunter Mills has said that it was appropriate for it to have portrayed the PPF more negatively than the scheme and it has referred to the scheme's trustees communications from 2016 and early 2017 in which it says the trustees expressed similarly negative views about the PPF. But not only were the communications Hunter Mills refers to many months prior to its advice to Mr H and were crucially prior to the RAA being approved as I set out above, the negative sentiments about the PPF expressed in these communications were in my view in the context of the risk of the entire scheme and so all of its members regardless ending up in the PPF.

But in Mr H's specific case and circumstances, I think that Hunter Mills should've reassured Mr H that the scheme moving to the PPF wasn't as concerning as he thought or been led to believe. Importantly, Mr H still had the option of taking early retirement at age 55 through the PPF. I think Hunter Mills was wrong to say that Mr H couldn't take his benefits before age 60 through the PPF. I think it's likely this wrongly led to both Hunter Mills and Mr H discounting this as a suitable option. While I accept Mr H would've faced a reduction in benefits, there was a more favourable reduction for very early retirement (age 55 for example) and the tax-free cash available to Mr H was also more favourable than the BSPS2 as this age. The income Mr H would likely receive through the PPF at age 55 appears to have been sufficient to meet his needs and crucially I don't think he was likely to be able to exceed this by transferring out.

And while the annual indexation in payment was lower, the income was still guaranteed and was not subject to any investment risk. Mr H might not have been able to later transfer out of the PPF – but given what I said earlier on about him not having any flexibility needs beyond that which he already had, I don't think there was an apparent need for him to do so.

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

Summary

I accept that Mr H was likely motivated to transfer out of the BSPS and that his concerns about the scheme were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Hunter Mills wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF. By transferring to a personal arrangement Mr H was very likely to obtain lower retirement benefits at his intended retirement age. And in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think it was in Mr H's best interests for him to transfer his BSPS benefits to a personal pension at this time.

So, I think Hunter Mills should've advised Mr H not to transfer out and that in light of his intended retirement age, he should remain in the BSPS and move with it to the PPF.

As I said above, while the annual indexation in payment was lower, because Mr H's retirement plans were reasonably known i.e. he intended to retire early at 55, I think it was in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF because it would be offset by the more favourable reduction for very early retirement. The tax-free cash available to Mr H was also more favourable. Mr H might not have been able to later transfer out, but I don't think he had any real reason to do so.

Of course, I have to consider whether Mr H would've gone ahead anyway, against Hunter Mills' advice.

I've considered this carefully, but I'm not persuaded that Mr H would've insisted on transferring out of the BSPS, against Hunter Mills' advice. I say this because, while as I've already said Mr H was likely motivated to transfer when he approached Hunter Mills, I still think Mr H would've listened to and followed its advice if things had happened as they should have and it recommended he not transfer out of the scheme. Mr H was an inexperienced investor and 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 H's pension accounted for the majority of his private retirement provision and he had a low attitude to risk. So, if Hunter Mills had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr H'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 Hunter Mills had explained that Mr H could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr H would've insisted on transferring out of the BSPS against Hunter Mills' advice.
In light of the above, I think Hunter Mills should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the PPF that should be used for comparison purposes.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr H. 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

Hunter Mills – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr H. Taking everything into account, including that I consider Mr H is now at the age when his retirement provision is 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.

I can see Hunter Mills has, on several occasions, pointed to the fact that Mr H subsequently transferring a third pension into his personal pension and that he's now drawing an income higher than his annual salary was at the time of the advice. Hunter Mills says this demonstrates a drawdown arrangement suits Mr H and that its advice and recommended product was suitable. It has asked for this to be taken into consideration in determining this complaint. But my decision is concerned with the events and Mr H's circumstances at the time of the advice in 2017 – not what's happened subsequently. And it is based on Mr H's circumstances and objectives at the time which leads me to find that the advice given to him to transfer out of the BSPS to a personal pension arrangement was not suitable or in his best interests.

Putting things right

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

Hunter Mills Limited 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.

Hunter Mills Limited 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 H and our Service upon completion of the calculation.

For clarity, Mr H retired at 55 and he has started taking benefits. So, compensation should be based on him taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H'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, Hunter Mills Limited should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H 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 H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Hunter Mills Limited's offer to calculate how much of their redress

could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

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

Hunter Mills should pay Mr H £300 for the distress and inconvenience this matter has caused.

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

My final decision

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

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Hunter Mills Limited pays Mr H the balance.

If Mr H accepts this decision, the money award becomes binding on Hunter Mills Limited.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 27 September 2023.
Paul Featherstone
Ombudsman