

The complaint

Ms H complains about the advice NTM Financial Services Ltd ('NTM') gave to her to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice wasn't suitable for her and may have caused a financial loss.

What happened

In March 2016, Ms H'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')¹, or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the 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 Ms H's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017 the BSPS trustees gave Ms H details of her DB pension's enhanced cash equivalent transfer value, which was £245,184.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

In November 2017 Ms H approached NTM for advice about her pension. It conducted a fact-find with her. Amongst other things it noted she was 40 years old and was in the process of finalising a divorce. She and her former partner had a son. She was working and had relatively recently joined her employer's newly set up defined contribution pension scheme. Her preferred retirement age was between 57 and 60.

Later that same month, November 2017, NTM issued its suitability report setting out its advice and recommendations. It recommended Ms H should transfer her DB benefits to a named personal pension. On 4 December 2017, Ms H met with NTM again. She accepted its recommendation and signed the relevant documents to allow the transfer to go ahead.

In 2022 Ms H complained to NTM that she was concerned its advice may not have been suitable for her. NTM didn't uphold her complaint. It said its recommendation to transfer enabled her to better meet her personal objectives than remaining in the DB scheme.

¹ The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

Ms H asked the Financial Ombudsman Service to consider her complaint. One of our Investigators looked into it. He didn't think NTM's advice was in Ms H's best interests. So he recommended NTM establish if Ms H had suffered a financial loss as a result of its advice. Our Investigator also recommended NTM make a payment of £250 to address Ms H's distress and inconvenience arising from the unsuitable advice.

NTM replied. Without accepting that its advice was unsuitable it said it was prepared to carry out the necessary calculation to see if Ms H had suffered a financial loss.

While that process was ongoing we wrote to the parties. We said the regulator, the Financial Conduct Authority ('FCA') was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. We said that Ms H had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023.

Soon after NTM told us it had instructed an actuary who had performed a redress calculation, using the current methodology. NTM said the calculation showed Ms H hadn't suffered a loss. We put that to Ms H but she didn't accept it.

The matter was referred for an Ombudsman's review.

In October 2023, while the matter was still awaiting an Ombudsman's attention, we wrote to NTM. We noted that while it had previously carried out a redress calculation, since then, the FCA had developed a BPS specific calculator for establishing redress for BPS cases. We invited NTM to take the necessary steps to carry out an up-to-date redress calculation.

NTM gathered the required information and instructed an actuary to do the calculation using the FCA's BPS calculator. The calculation showed Ms H had not suffered a loss. The matter has since been referred to me to make a final determination.

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.

As far as I'm aware, NTM hasn't actually acknowledged that it gave Ms H unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Ms H in detail. Save to say that I agree the advice wasn't suitable for her for broadly similar reasons to those our Investigator gave.

In particular I don't think Ms H needed to make a decision to transfer when she did. That's because, if she'd opted to join the BPS2 then she would have kept the potential option of transferring out of the DB scheme nearer to her retirement age. Ms H was only 40 years old at the time of the advice. She was still around 17 years away from the earliest age she was considering retiring from and 25 years away from the DB scheme's normal retirement age of 65. A lot could happen in that time. And if she'd remained in the DB scheme, she would have kept the secured benefits the scheme offered and wouldn't have to put her pension funds at investment risk. So, I don't think a recommendation that she transfer her DB funds when she was so far from retirement was in her best interests.

Overall, I can't see persuasive reasons why it was in Ms H's best interest to give up her DB scheme guarantees when she did.

Putting things right

Given that NTM has already ran calculations to establish if Ms H has suffered a financial loss as a result of its advice, what remains at issue now is whether or not it's done enough to put things right.

I can understand that consumers like Ms H might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Ms H into a better position than they would have been had they not transferred. Instead, the aim is to put them back in the financial position they would have been in at retirement had they remained in the DB scheme.

In Ms H's case NTM carried out its recent calculations using the specific BPS calculator provided by the FCA, which is what I would expect it to do in the circumstances.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs that NTM entered which are specific to Ms H. These include her personal details, her individual benefits from the BPS at the date she left the scheme and the value of her personal pension. The calculation also assumes that if she hadn't been advised to transfer her benefits from the BPS, she would have moved to the BPS2 and taken her DB benefits at age 65.

Overall, based on what I've seen, NTM has carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Ms H's case shows that there is no shortfall to her pension and she has more than enough funds to be able to replicate her DB benefits in retirement. So, I'm satisfied she has not suffered a financial loss by transferring her pension.

However, while the recent calculation shows Ms H hasn't lost out financially, I accept that the uncertainty she's experienced as a result of NTM's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for NTM's advice. So, in the circumstances, I think our Investigator's recommendation of a £250 payment to address that distress is fair and reasonable.

My final decision

I uphold this complaint and require NTM Financial Services Ltd to pay Ms H a sum of £250 to address the worry this matter has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 13 February 2024.

Joe Scott
Ombudsman