DRN-3765059

The complaint

Mr W complains about the advice given by AMG Wealth Solutions LLP ('AMG Wealth') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr 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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying 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. Alternatively, members of the BSPS 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W'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 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. Mr W chose to opt into the BSPS2.

Mr W's scheme benefits had a cash equivalent transfer value ('CETV') of £352,332.

Mr W was concerned about what the recent announcements by his employer meant for the security of his pension, so while he chose to opt into the BSPS2, he nevertheless sought advice. Mr W originally met with another advice firm, but they couldn't complete things in time. Mr W then met with AMG Wealth in January 2018 following an introduction from a financial adviser Mr W had previously used.

AMG Wealth recorded some information about Mr W's circumstances in a fact-find.
It noted that he was 50, married and he worked full-time earning approximately £35,000.
His wife was also employed and she earned around £12,000.
They had a mortgage on their home of approximately £50,000, which had a remaining term of 10 years. They had no other liabilities. Mr W had an existing personal pension worth around £42,000 and he was contributing to his new workplace pension. Mr W's wife also had a DB pension. Mr and Mrs W's household expenditure was £1,100 a month. AMG Wealth also carried out an assessment of Mr W's attitude to risk, which it deemed to be 'medium' – a rating of five on a scale of one to ten.

AMG Wealth issued a suitability report detailing its recommendation on 26 January 2018. This said that Mr W had tried to transfer his BSPS benefits before but had been let down by the other firm. It said Mr W wanted to access his pension as and when he wanted and the flexibility to vary his income - including when his state pension was paid. It said he wanted to ensure his wife inherited his funds when he died with the ability to include other family members should anything happen to them both. AMG Wealth also said here that Mr W wanted to retire at age 60, but it would depend on having the ability to do so if the situation arose. It also said Mr W might want to access his funds prior to age 60 if his employment situation changed in the future.

AMG Wealth recommended that Mr W transfer his pension to provide him with control of his pension, certainty of where the funds were, to provide flexibility in how he accessed his pension, to nominate beneficiaries of his plan and to provide separation of his pension funds from his employer. AMG Wealth recommended a pension provider and fund that it said was in line with his attitude to risk.

Mr W complained to AMG Wealth in 2021 about the suitability of the transfer advice. He said he was worried he might have been given bad advice and that he would've been better off staying in the DB scheme.

AMG Wealth didn't uphold Mr W's complaint. In summary it said it exercised reasonable care and skill when it advised Mr W and discharged all of its regulatory duties. It said it provided detailed information about the existing scheme's benefits, provided clear risk warnings about the transfer, the transfer was consistent with his needs and objectives and he was able to make an informed decision. It said it was required to take reasonable steps to ensure the advice it gave was suitable and it was satisfied it had done so.

Dissatisfied with its response, Mr W referred his complaint to us. One of our Investigators looked into the complaint and they upheld it. They thought the advice was unsuitable. They said Mr W wasn't likely to improve on his DB scheme benefits at age 65 by transferring. They said given Mr W indicated he wanted to retire at 60, it would've been helpful to him if AMG Wealth had produced analysis based on him retiring at this age. They said there was nothing to indicate Mr W needed flexibility – but it appears he could already achieve this with his existing personal pension and his workplace pension, which was being funded at 17% of his salary. They said death benefits wasn't a suitable reason to transfer and they thought AMG Wealth should've appropriately managed Mr W's concerns he had about the scheme and moving to either the BSPS2 or the PPF. They said if suitable advice had been given, Mr W would've moved to the BSPS2 as it would allow the potential for flexibility in the future.

AMG Wealth disagreed and it asked for an Ombudsman to consider the complaint. But it said it had, in any event, calculated that there would be no redress to pay as Mr W's fund was in surplus – there was no loss.

Because things couldn't be resolved informally, it is necessary for me to consider the matter and issue 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 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 AMG Wealth'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.

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, AMG Wealth should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests.

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 transfer value analysis ('TVAS') report, that AMG Wealth was required to carry out by the regulator, said that the critical yield - 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 – was 7.13% to match the full pension he'd have been entitled to under the scheme at age 65. No figure was produced to match the maximum tax-free cash and reduced pension the scheme would provide at that age. To match the full pension the PPF would've paid from 65 the critical yield was 4.11% and to match the tax-free cash and reduced pension the PPF would've offered, it was 3.79%.

- Despite AMG Wealth recording in the suitability report that Mr W currently wanted to retire at 60, it did not produce critical yields based on the benefits available to Mr W under the scheme at this age. It strikes me this would've been helpful to him and more in line with the advice he was presumably seeking.

- Furthermore, despite the fact it was known by the point AMG Wealth instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr W, and it knew that Mr W had chosen to opt into the BSPS2 prior to the 22 December 2017 deadline, the analysis was based on the BSPS benefits. AMG Wealth didn't undertake any analysis of the benefits Mr W would've been due under the BSPS2. I think it should've done – the information was readily available from his 'time to choose' information. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- So, given Mr W's recorded 'medium' attitude to risk, the discount rate of 4.2% for 14 years to retirement (age 65) and the regulator's middle projection rate, I think Mr W was always likely to receive pension benefits, from age 65, of a lower value than those he'd have been entitled to under the BSPS2 by transferring and investing in line with that attitude to risk. And given the shorter term to a retirement age of 60, I think it's likely the critical yields, had they been produced, would've been higher than those at age 65. So I think he was even more likely to receive lower benefits than the BSPS2 if he retired early. And while there might have been some scope to improve on the benefits available to Mr W under the PPF at age 65 – again at age 60 I think the position would've been different due to the critical yields likely being higher – I don't think there were other compelling reasons to support the transfer as being clearly in Mr W's best interests as I will explain below.

- AMG Wealth recorded that Mr W wanted to retire at 60 and have the flexibility to determine how and when he accessed his pension benefits and to be able to vary his income. But I don't think Mr W's retirement plan was in anyway set or thought through. Retirement at 60 was documented as a possibility – it was dependent on whether the situation arose. I'm sure he liked the idea of retiring early – but he already had this option available to him. He didn't need to transfer to achieve things.

- As for flexibility, while Mr W couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement. In fact Mr W didn't know what his income need in retirement was. There is nothing to indicate Mr W had an apparent need to take a lump sum and defer taking an income. Or a need to access a cash lump sum greater than his DB scheme would provide. Mr W might have been attracted to the flexibility a personal pension provided – but I think this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of his.

- In any event, Mr W already had flexibility. He was contributing to his workplace pension scheme – a defined-contribution ('DC') scheme which already provided flexibility in how and when he could access his benefits. Given the 17% contribution being made to this, I think this along with Mr W's DB scheme benefits could've given him the flexibility to retire early - *if* that's what he ultimately decided. Mr W also had an existing paid up personal pension he could access flexibly to support things. So I don't think transferring to obtain flexibility was in his best interests.

- AMG Wealth recorded that Mr W didn't know what income he needed or wanted in retirement. And AMG Wealth didn't attempt to carry out a detailed income and expenditure analysis with him to try and determine it. All it said was that, once Mr W's mortgage was paid off, he didn't currently need a large pension income provided he didn't dramatically change his lifestyle.

- Mr W's 'time to choose' information estimated that at age 65 he'd be entitled to a full pension of just under £20,000 a year under the BSPS2 or a reduced pension of around £13,600 and a lump sum of a little under £91,000. Given Mr W's current expenditure was recorded as being £1,100 a month, it appears his DB scheme income would likely be enough to meet his future needs. If he did choose to retire early his DB scheme income would be lower. But he also had his workplace pension and his paid-up personal pension he could access flexibly to supplement this - at least until his state pension became payable. This ignores the fact Mr W's wife also had a DB pension.

- Overall, Mr W's DB scheme income provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. AMG Wealth didn't know what Mr W's income needs were in retirement – so it had nothing to show that his DB scheme income along with his other means couldn't adequately meet his retirement needs. Given this, I don't think it was in his best interests to transfer out. In the circumstances, I think retaining his DB pension was a more appropriate way for him to meet his future retirement needs rather than risking his guaranteed benefits to attempt to do so.

- AMG Wealth recommended the transfer to ensure Mr W adequately provided for his wife in the form of a potential lump sum benefit upon his death. But the priority here was to advise Mr W about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death. I think AMG Wealth underplayed the value of this benefit.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr W drew in his lifetime. And so it may not have provided the legacy that Mr W may have thought it would.

- If Mr W had wanted to leave a legacy for his family, AMG Wealth could've explored life insurance as an alternative. It recorded that he had significant disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence AMG Wealth did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr W. I don't think that insurance was properly explored as an alternative. And ultimately AMG Wealth should not have encouraged Mr W to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr W may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was AMG Wealth's role to objectively address those concerns. At the time of the advice, Mr W had chosen to opt into the BSPS2 and in my view all signs pointed toward it being established. But even if not, the PPF still provided Mr W with guaranteed income and the option of accessing tax-free cash. Mr W was unlikely to meaningfully improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr W's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr W would've insisted on transferring, against advice to remain in the DB scheme. I'm mindful that Mr W had already sought advice from another firm before he met with AMG Wealth. AMG Wealth says Mr W had made up his mind that he wanted to transfer It also recorded that Mr W had *"...considerable knowledge of the process required due to the fact that you had gone along with it already...."*.

But while I accept Mr W was likely motivated to transfer when he met AMG Wealth, on balance, I'm not persuaded he would've insisted on transferring against advice. Just because Mr W had been through the advice process before he met with AMG Wealth, I'm not persuaded this means he possessed the requisite knowledge, confidence or skill to go against the advice he was given in what is a complex area of advice. Mr W's investment knowledge and experience was, in my view, limited based on the available evidence. I think he placed significant weight on the advice he was given. So, I'm not persuaded Mr W had made up his mind to transfer to the extent that, if things had happened as they should have, he would've put aside AMG Wealth's professional advice to remain in the DB scheme - advice he had after all sought out and was paying for.

So, I'm upholding the complaint as I think the advice Mr W received from AMG Wealth was unsuitable for him.

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 AMG Wealth – 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 Mr W's age and what he's said about worrying about whether he'll be worse off in retirement as a result of the advice he received, 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 that because Mr W chose to opt into the BSPS2 prior to the advice, if suitable advice had been given AMG Wealth would've confirmed that Mr W's choice was suitable in the circumstances.

AMG Wealth 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.

AMG Wealth 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 the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what AMG Wealth 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, 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 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, AMG Wealth 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 AMG Wealth'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, AMG Wealth 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.

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 AMG Wealth Solutions LLP to pay Mr W 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 AMG Wealth Solutions LLP pays Mr W the balance.

AMG Wealth Solutions LLP should also pay Mr W £300 for the distress and inconvenience this matter has caused.

If Mr W accepts this decision, the money award becomes binding on AMG Wealth Solutions LLP.

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 29 November 2023.
Paul Featherstone
Ombudsman