

## The complaint

Mr J complains about the advice NTM Financial Services Ltd ('NTM') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

A law firm responded to our Investigator's assessment of the complaint on NTM's behalf. But, for ease of reading, I will refer to the law firm's comments as being NTM's.

## What happened

In March 2016, Mr J'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')<sup>1</sup>, 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 Mr J's employer would be set up – the BSPS2.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. I haven't been provided with a copy of the pack sent to Mr J. But I'm aware that those gave scheme members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

The DB scheme administrators gave scheme members, including Mr J, until 11 December 2017 – which was later extended to 22 December 2017 – to make a choice between the PPF and BSPS2. If Mr J didn't make a choice the default position was that his pension benefits would move to the PPF. The BSPS trustees had previously provided him with a cash equivalent transfer value ('CETV') which expired in February 2018 so he had until that date to decide to transfer out of the DB scheme altogether.

Mr J approached NTM for pension transfer advice and he met with it on 7 December 2017. NTM told him it might struggle to provide advice before the time to choose deadline of 22 December 2017. It said he should carefully consider opting for either the BSPS2 or the

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<sup>1</sup> 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.

PPF. It completed a fact-find with him and an assessment of his risk appetite. It also obtained a transfer value analysis ('TVAS') report. Amongst other things, NTM recorded that:

- Mr J was 33 years old, in good health and married to Mrs J. They had two children under 11 with a third on the way.
- They owned their own home worth around £103,000 with an outstanding mortgage of £83,000.
- They owed £6,000 associated with buying a car.
- Mr J earned around £30,000 a year and Mrs J £22,000 a year.
- They were saving between £400 and £500 each month.
- Mr J and his employer were contributing towards his employer's defined contribution ('DC') pension scheme.
- Mr J believed he would need an income of around £1,500 a month in retirement.
- He had a balanced attitude to risk.
- His BPS pension had a CETV of £89,993.
- The BPS would pay Mr J a pension of £9,101 a year at the normal scheme retirement age of 65 if he took a full pension. Alternatively, he could take a tax free cash ('TFC') lump sum of £40,212 and a reduced income of £6,031 a year.
- The growth rates required (the critical yields) to match the benefits from the BPS in an alternative pension arrangement at 65 were 5.76% for a full pension and 5.05% if he took TFC and a reduced pension.
- The PPF would pay Mr J a full pension of around £7,074 at age 65. If he wanted to take TFC he could take a lump sum of £37,763 together with a reduced pension of £5,664 a year.
- The critical yields to match the PPF benefits at 65 were 4.48% and 4.27% respectively.
- If Mr J retired at age 60 the BPS would pay him a full pension of £6,611. Alternatively, he could take a TFC lump sum of £30,261 and a reduced income of £4,539 a year.
- The critical yields to match the benefits from the BPS at 60 were 6.22% for a full pension and 5.4% if he took TFC and a reduced pension.
- The PPF would pay Mr J a full pension of £5,728 at age 60. Or he could take TFC of £36,671 together with a reduced pension of £4,750 a year.
- The critical yields to match the PPF at age 60 were 5.05% and 4.85% respectively.

On 22 December 2017 NTM sent Mr J its suitability report setting out its analysis. It recommended Mr J should transfer his DB funds to a named personal pension. Amongst other things it said that Mr J's objectives were:

- To retire at age 57
- To have flexible access to his pension to enable him to take higher levels of income earlier and have higher TFC.
- To pass on a lump sum to his wife and children in the event of his premature death.
- He wanted to take control of his pension away from his employer and the scheme trustees.
- An increase in pension benefits would be a bonus but Mr J didn't expect that to happen.

The suitability report said that transferring would allow Mr J to meet his objectives. It said that by taking an income equivalent to his DB scheme by draw down the funds would last beyond his life expectancy.

Mr J met with NTM in early January 2018 to discuss its recommendations. NTM said it had hoped to engage with Mr J before the deadline for opting for BPS2 had passed. Mr J said he hadn't opted for BPS2 as there was no certainty it would go ahead and it wasn't his best option for early retirement and TFC. On the same day NTM received an illustration from the named personal pension provider, which showed what a personal pension could be worth to Mr J at his preferred retirement age of 57. Mr J accepted NTM's recommendation to transfer. He paid an initial fee to it of £2,500 for its advice and arranging the transfer. He also agreed to pay it fees for ongoing investment advice of 0.65% of the value of his fund. Additionally, the personal pension provider would charge him 0.7% in total of the fund value for providing its services.

In 2021 Mr J complained that he believed NTM had misadvised him. He said NTM had told him the BPS2 wasn't financially viable in the long term; that he felt rushed and pressured and that he had to pay fees for transferring. NTM didn't uphold his complaint. In a detailed response it said it hadn't commented on the funding of the BPS2, hadn't put any pressure on Mr J and that he'd agreed to the fees prior to NTM giving its advice.

Mr J brought his complaint to our Service. One of our Investigators looked into it. He didn't think NTM had dealt with Mr J fairly. In brief he felt that NTM's advice hadn't been suitable for Mr J. Our Investigator thought that NTM should have advised Mr J to opt into the BPS2. The investigator recommended that NTM should compensate Mr J for any loss he suffered because of its unsuitable advice. He also said it should pay Mr J £300 to address his distress and inconvenience arising from the unsuitable advice.

NTM didn't agree with our Investigator's assessment of the complaint. In brief it said Mr J hadn't complained about the suitability of its advice. It added that by the time it produced its suitability report the deadline for Mr J to opt into the BPS2 had passed so his only option, other than transferring, was to allow his funds to move to the PPF. It also said that transferring had enabled Mr J to meet his objectives.

The investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision.

After my initial file review, I noted that BPS2 wasn't an option for Mr J by the time NTM sent him its suitability report. So I asked a colleague to explain to NTM and Mr J that if I did uphold the complaint, then I would award redress in comparison with Mr J taking benefits from the PPF rather than the BPS2. Mr J replied. He said NTM had initially advised him to transfer on 27 November 2017. He added it had given him its suitability report on 8 December 2017, which was before the BPS2 deadline date.

### **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.

In responding to this complaint NTM has made a number of detailed points. But, in this decision, I don't intend to address each and every matter raised. Instead I will focus on the issues I see as being at the heart of Mr J's complaint and the reasons for my decision.

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 NTM'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 broadly similar reasons to those our investigator gave. However, my recommendation for redress will be different.

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, NTM should have only considered recommending a transfer if it could clearly demonstrate that it was in Mr J's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

### *The essence of Mr J's complaint*

In response to our Investigator's assessment of the complaint, NTM said Mr J hadn't complained about the suitability of its advice. While I agree that Mr J didn't explicitly refer to 'suitability' when he complained, he did say he believed NTM had "*misadvised*" him. That is he complained that its advice was not appropriate for his situation. Put another way he was concerned its advice was unsuitable. It follows that I'm satisfied that it's reasonable to examine the suitability of NTM's advice when considering Mr J's complaint.

### *Financial viability*

The regulator required NTM to obtain a TVAS showing how much Mr J's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). NTM's TVAS showed two such comparisons, the first was with Mr J's benefits from the BPS and the second with Mr J's benefits if he allowed his pension to move to the PPF.

In recent correspondence Mr J has said that NTM initially gave him advice orally on 27 November 2017. But there's no evidence beyond Mr J's comments to support that statement. All the evidence on file is that Mr J first met with NTM on 7 December 2017. That is the day he completed and signed the fact find document, risk and pension transfer attitude questionnaires, and is also the date he signed NTM's letter of engagement to say that he agreed to pay its fees. And I don't think NTM would give Mr J advice before he'd agreed to pay its fees. So, I'm satisfied the advice process began on 7 December 2017 and not 27 November 2017 as Mr J says.

At that time he had until 22 December 2017 to tell the BPS trustees whether he wanted to opt for the BPS2. He still had until February 2018 to decide if he wanted to transfer out of the DB environment altogether. NTM recorded in its meeting note of 7 December 2017 that it told Mr J it couldn't guarantee it would provide its advice before the 22 December deadline for opting into the BPS2 expired. And, as things transpired, NTM didn't send Mr J its suitability report until that day, 22 December 2017.

I'm aware the suitability report is actually dated 8 December 2017, the day after Mr J met with NTM. But NTM said the delay between drafting the report and issuing it was because it had to run the report past its compliance team.

It might help if I explain that giving DB pension transfer advice is a heavily regulated process. So it's usual practice for a suitability report to require checking. Accordingly, firms like NTM usually use compliance teams or individuals to check suitability reports before they're issued to try to prevent them from breaching regulations. NTM said it wasn't in a position to issue the report until 22 December 2017. That was only 15 days after Mr J first approached NTM and, given the complexity of the matter, was a perfectly reasonable time-frame for producing such a report and putting it through compliance checking.

Also when NTM met with Mr J in January 2018 NTM's noted that he told it he hadn't opted for the BPS2. He said that was because there was no certainty it would go ahead and he didn't think it was his best option for early retirement and to maximise TFC. As this was a one-time only process, Mr J couldn't, at a later date, have changed his mind and opted for the BPS2. That meant, as NTM has clearly documented in its note at the time, that Mr J was only left with two options:

- Allowing his pension to default to the PPF.
- Transferring to an alternative arrangement.

As such the only comparison within NTM's TVAS of any real value was looking at the benefits of transfer to a personal pension against those provided by the PPF. So that's what I've focused on below.

NTM gave Mr J advice after the regulator issued 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. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable. Prior to October 2017 this Service published similar rates on our website. I acknowledge that NTM was under no obligation to refer to discount rates when giving advice. But it was free to do so. And under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

Mr J was 33 years old at the time of the advice and he told NTM that his preferred retirement age was 57. However, NTM didn't provide any figures for Mr J taking retirement at age 57. For reasons it hasn't explained it instead gave critical yields and cashflow models based on Mr J retiring at age 60. Those yields and models are likely to paint a more favourable picture to Mr J of taking early retirement at 60 than they would at age 57. That's because the funds would have three years longer to grow and also meant Mr J wouldn't need to draw an

income from them between ages 57 to 60. If NTM had given figures at age 57 then the critical yields would likely have been higher and so require a better return on the investment in order to be matched. But as NTM didn't provide those figures I don't know for certain what those would have been. So I've focused on the figures at age 60 below.

The critical yields required to match Mr J's PPF benefits at age 60 was 5.05% if he took a full pension and 4.85% if he took TFC and a reduced pension. If he retired at age 65, the critical yields reduced to 4.48% if he took a full pension and 4.27% if he took TFC and a reduced pension.

The relevant discount rates closest to when NTM gave its advice, which I can refer to was published by this Service for the period before 1 October 2017, and was 4.6% a year for 26 full years to retirement at age 60 or 4.7% for 31 full years to retirement at age 65. I've kept in mind that the regulator's projection rates had 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, which consider investments on a moderate risk level similar to Mr J's balanced attitude to risk, and also the term to retirement. In this instance the relevant discount rate is below the critical yield at age 60, which indicate that Mr J was likely to be worse off by transferring and retiring at age 60. The gap would most likely have been more if Mr J retired at age 57. The critical yields at age 65 are more favourable. Those would indicate a potential for Mr J to be marginally better off by transferring, particularly if he took TFC.

But there would be little point in Mr J giving up the guarantees available to him through his DB scheme – once it had transferred to the PPF – only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the PPF benefits, he would need to put his pension funds at risk. But here, given the discount rates were broadly equivalent to the critical yields, then the scope for gains was small. And, if there was an extended period of poor performance or his investments suffered losses, that could result in him being worse off in retirement.

Further, by transferring out of the DB scheme Mr J would have to pay the fees and charges that are required in order to invest in a personal pension. And those would reduce any gains the funds made. Those are not charges he would have had to pay if his pension moved to the PPF.

NTM said the critical yield is of limited relevance because it's based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. NTM said Mr J didn't want an annuity, so the critical yields don't provide a comparison with the benefits Mr J was looking to secure based on his objectives. But the regulator required NTM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here. That's particularly the case as I don't think Mr J could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 23 full years. So, it's entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the PPF). But by transferring out Mr J lost all the guarantees that the PPF would have given to him.

NTM also said that we needed to consider the "hurdle rate". The hurdle rate is another measure of predicting future investment returns. But I don't find it an appropriate comparator. That's because the hurdle rate is a particularly blunt tool when comparing benefits from an

alternative investment arrangement against a DB scheme (or PPF). That's because hurdle rates don't factor in spouse's or dependents' benefits, the effects of charges and don't allow for the guaranteed and escalating income from a DB scheme. So, they will usually be lower than critical yields and the regulator hasn't ever required advising firms to calculate them. Consequently, I don't find hurdle rates to be an appropriate comparator when considering what a scheme member would be giving up by transferring.

NTM also suggested that the critical yields aren't appropriate as they factor in NTM's ongoing charge for advice of 0.65% of the fund value each year. It said that was an optional service and is not something offered by the PPF. However, while NTM's ongoing advice service might have been optional, its suitability report said it was "*essential*" for Mr J to keep his circumstances under review, in order to ensure his investments met his needs. So it clearly sold that ongoing service as something Mr J must do.

Further, I find NTM's comment that a critical yield wasn't relevant because the PPF didn't offer an ongoing review service somewhat puzzling. As NTM is well aware the reason the PPF (or any other DB scheme) doesn't offer an ongoing review service is because no such service is needed. In a DB scheme environment the risk is borne entirely by the scheme sponsor and not by the individual member. So the member has no need or requirement for any ongoing advice as investment decisions are all usually taken by the employer and/or scheme trustees. Nor do DB scheme members pay any other ongoing fees for the administration of the scheme. And the reason the critical yield might factor in such charges is because this is something that consumers will most likely have to pay once they've transferred and is those fees will affect the ability of an alternative arrangement to match the benefits from the DB scheme. So, I remain satisfied that comparison between critical yields and discount rates is appropriate.

But, critical yields are not the only measure we use to compare pension benefits. In this case I've also looked at the regulator's projection rates and NTM's own expectation that Mr J's fund would grow at a level of 5% a year. NTM has referred to figures within its TVAS report, which it says, show that Mr J's funds could last beyond his life expectancy after transferring. For example it says that if Mr J transferred and took benefits equal to the BSPS and a reduced pension at age 60 by way of draw down, then, by age 99, Mr J's fund would still have a surplus of £159,941. But I can't find the figures it refers to in its suitability report within its TVAS. As far as I can tell the TVAS doesn't show any of the calculations for its "Cash Flow Modelling" which appear in the suitability report. And it only shows the outcome of its cashflow models not its actual calculations. So it's not clear exactly what its factored in or what it's omitted, when making those calculations.

For example, I don't know if its models have factored in the effects of product and adviser charges. And it's anything but clear if its calculations are accurate. For instance at one point the suitability report refers to Mr J taking an equivalent income from his DB scheme of £17,713 a year. But the most Mr J was entitled to under his DB scheme was £9,101 a year. So it seems the reference to £17,713 was a mistake and most likely a cut and paste error.

Further, NTM's calculations are based on a return of 5% a year every year. This is in line with the regulator's projected return for an investor with Mr J's attitude to risk. But adviser and product charges would reduce that return to 3.65% a year. Also, NTM's projections and models are based on a steady return each and every year. However, given the volatility of the markets, consistent growth at that level seems unlikely over such a long period of time.

Also if there was a sustained period of poor performance or market crashes then there was a very real chance that Mr J's fund would grow at a much slower rate or could suffer losses. In those circumstances Mr J's fund could be significantly less than NTM's models show.

Similarly NTM said Mr J wanted to transfer his funds in order to be able to take higher sums at an early age. But taking higher sums sooner would have the effect of reducing the funds remaining, which could see those being depleted sooner than expected. But NTM's models don't appear to reflect that.

It's also notable that the personal pension provider produced an illustration of what it calculated Mr J's pension might be worth at age 57. It didn't provide figures for ages 60 or 65 so I can't make a direct comparison between the pension provider's illustration and NTM's projections. However, NTM's TVAS shows that, at age 60, Mr J's fund would be around £273,000. But that is without factoring in the effects of inflation. In contrast the pension provider's illustration showed what Mr J's fund would likely be worth, after allowing for a growth rate of 5% but being reduced by inflation of 2.5% and product and adviser charges. That showed that the fund would be worth £110,000 at age 57, which, according to my calculations would increase to £113,838 by age 60. That amount is £159,162 less than NTM's advice was based upon.

It follows that I don't think NTM's cashflow models are likely to be representative of Mr J's situation in retirement.

In response to our Investigator's assessment of the complaint, NTM's said that, since he invested in it, Mr J's personal pension has performed higher than it had predicted. But, as NTM acknowledged in its suitability report, past performance is no guarantee for future performance. And given that Mr J had a minimum of 23 years to retirement at the time of NTM's advice, the scope for a market crash or periods of poor performance increases. So I consider the discount rates to be more realistic in regard to the long-term likely growth, rather than projecting recent returns forward. In other words, the fact that the personal pension has performed well doesn't mean it will continue to do so in the future.

That said, given his balanced attitude to risk there was scope for Mr J's investments to make him slightly better off in retirement if he retired at age 65 compared to taking a pension from the PPF at that age. But that was anything but guaranteed. Transferring meant putting his funds at risk for only the marginal possibility that he could be better off by doing so. And, if his funds didn't meet NTM's projected growth rates, then he would likely be worse off in retirement. I don't think that "*clearly demonstrates*", as the regulator required, that it was in his best interests to transfer.

Of course financial viability isn't the only consideration when giving transfer advice, as NTM has argued in this case. It said its recommendation allowed Mr J to achieve his other objectives. So I've gone on to consider whether NTM has clearly demonstrated that its advice was in Mr J's best interests. When doing so I've been mindful that NTM's role was to find out what Mr J's wants and needs were and why. Its role wasn't simply to do what Mr J wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

#### *Flexibility, income needs and PPF benefits*

It seems a principal reason NTM recommended Mr J transfer was for the opportunity to retire early, and to take his pension flexibly. Having considered the evidence, I don't think achieving these goals at the expense of the guaranteed benefits from a DB scheme, albeit one that has gone into the PPF, was in his best interests.

Mr J told NTM he wished to retire at 57. But at the time of the advice Mr J was still over 23 years away from turning 57 and more than 31 years away from his DB scheme's normal retirement age of 65. He wouldn't receive his state pension until 68. A lot could happen in the intervening period. So Mr J's plans to retire early, made when he was still only 33, could

have changed significantly by the time he neared 57. NTM's taken issue with our Investigator's comments that, given the timeframe until retirement, Mr J couldn't have had a concrete plan for early retirement. It said that when making retirement plans individuals should think about what age they plan to retire. I agree that's the case, but for most people, while early retirement might be something to aspire to, it isn't necessarily essential for them.

I think, when asked, most people would say they would like to retire early. But, for the majority, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, the majority choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. That seems to be a more likely prospect for Mr J. But there's no evidence that NTM seriously challenged Mr J's objective of retirement at age 57 and questioned how realistic that was for him. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Also, Mr J had options other than transferring to a personal pension in order to retire early. For example Mr J and his employer had recently started paying into his employer's DC scheme. And, in response to the Investigator's assessment of the complaint, NTM estimated that by the time he turned 60 (it didn't give a figure for age 57) Mr J's DC fund could be worth in excess of £364,000. So an option for Mr J could have been to take early retirement and use the TFC and income from his DC pension to fund the early years of his retirement until age 65. Mr J could then have taken money from the PPF (including TFC) and that should have given him sufficient income to cover his outgoings until he could claim his state pension at age 68. But it doesn't appear that NTM put that option to him. It follows that I don't think the only prospect of Mr J taking early retirement relied on him transferring his benefits into a personal pension.

That said, it's true to say that Mr J couldn't have had flexible access to his DB funds from the PPF. While he could have chosen to take those early, if he'd wanted to take TFC then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr J had any concrete need to take TFC at all or to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see that Mr J had any genuine need for that flexibility that would be worth giving up guaranteed benefits for.

Similarly, I've noted Mr J's desire to take TFC and access his funds flexibly. But those are things he could plan to do from his DC scheme. So he had no need to give up the guaranteed benefits from the PPF in order to have flexible access to funds or to take TFC.

In any event there would be little point in Mr J giving up the almost entirely risk-free benefits available to him through the PPF only to achieve a similar level of benefits outside the scheme. I appreciate Mr J was a considerable time away from retirement; so he did have a reasonable period to allow his investments to grow. But unless his personal pension performed consistently at around the regulator's mid-level projection or higher, in real terms he was likely to be worse off by transferring out of his DB scheme.

Further, if Mr J's investments suffered significant losses or a period of sustained poor performance, there was the possibility that he would deplete his funds earlier than anticipated. In contrast the PPF benefits would last him for the rest of his life.

Mr J was clearly concerned about the prospect of his pension moving into the PPF. But it's not clear how NTM addressed that concern. For example, a move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous

yearly indexed pension increases. But the 10% reduction didn't apply across the board, and in some ways the PPF could actually be beneficial for scheme members. For example, NTM's TVAS showed that the PPF benefits could have been more beneficial to Mr J, in the short term at least, that's because the PPF benefits at age 60, when taking TFC, were higher than those from the BPS.

I'm aware that many BPS members like Mr J had serious concerns about their employer's attitude towards their pension pots. The situation was evolving after the BPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr J. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the requirement for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. It's clear that Mr J's concerns of that nature were a motivating factor in considering transferring his pension away from the influence of his employer. So he might well have been leaning towards transferring his pension when he sought advice. But NTM was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And, if Mr J had allowed his pension to move to the PPF then it would be administered by the PPF itself, his employer would no longer have an involvement in his pension decisions. So, this would have met Mr J's wish to remove the employer from the control of his pension. And in order to recommend that Mr J should transfer out of his DB scheme, even if that were to move to the PPF, NTM needed to be able to clearly demonstrate that doing so was in his best interests. But I don't think it did so.

Overall, I'm satisfied Mr J could have met his income needs in retirement through the PPF, whilst also taking income from his DC scheme and his state pension. So, I don't think it was in Mr J's best interests for him to transfer his pension just to have flexibility that he could have achieved while remaining in the PPF.

### *Death benefits*

Mr J told NTM that he thought the potential for a lump sum for his wife, should he die before her, would be more beneficial than the spouse's benefit from the DB scheme. 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 J. That's because whatever was left within it at the date of his death would be passed on to Mrs J. If that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the PPF would pay Mrs J half of Mr J's yearly PPF pension entitlement after he died. But that pension would die with her. So Mrs J couldn't leave it as a legacy for their children after she died.

But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer his DB funds to a personal pension because of this, the priority here was for NTM to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr J was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr J's withdrawals from it in the meantime.

I also think the existing death benefits attached to the PPF were underplayed. In fact NTM's suitability report doesn't refer to the PPF death benefits at all, it only quotes Mr J's entitlement from the DB scheme. I think it's worth noting that death benefits from the PPF

were not as generous as from the DB scheme. For example the PPF wouldn't provide any form of capital sum on Mr J's death. But by the time NTM gave Mr J its suitability report, he'd lost entitlement to the DB scheme benefits as the deadline to opt into the BSPS2 had passed. I appreciate NTM was, most likely, hoping to issue its report before that deadline, but it was clearly aware from the outset that its prospects of doing so were slim. So I think it should have also covered off what the death benefits from the PPF were, and how those differed from the DB scheme benefits in its suitability report, but it didn't do so.

Further, regardless that the PPF death benefits were less generous than those from the BSPS, I don't think that justified a recommendation to transfer to a personal pension.

Mr J was married. The PPF would have paid Mrs J 50% of Mr J's yearly pension entitlement on his death. This was guaranteed and escalated it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mr J lived a long life, he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mr J to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Also, if Mr J was unfortunate enough to die while his children were still in full-time education the PPF would also pay them a dependents pension. Depending on the circumstances the PPF could pay up to half of his pension entitlement to his children if they were still in full time education and under 23 years of age. In other words the PPF had the potential to still pay 100% of Mr J's pension entitlement on his death: 50% to Mrs J and 50% to his children. But I don't think NTM did enough to bring this to Mr J's attention.

I've noted that NTM's suitability report said the DB scheme would pay a dependents' pension for Mr J's children in the event of his death. But it then went in to say that his children were "*no longer dependent on [Mr J] financially*". That was clearly wrong. Mr J's two children were both under 11 with a third on the way. So, he could have had children dependent on him financially, and eligible for death benefits from the PPF, for another 23 years.

Further, I'm aware that Mr J had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, then life insurance may have met his needs.

I've noted that NTM did look into the cost of life insurance. And its suitability report said that would cost Mr J around £50 a month; so it didn't think that was viable on grounds of cost. But it's not clear how it arrived at that conclusion. On NTM's file are quotes for 18 different life policies. The premiums are between £14.42 and £89 a month. So it's not clear how NTM concluded that it would cost Mr J £50 a month when there was a policy for over £35 a month less. But, in any event, even if it had only received one quote for £50 a month that wouldn't appear unaffordable. Mr J said he had disposable income of around £400 to £500 a month. Therefore, if he was serious about leaving an additional legacy for his family, he could have spared £50 of his disposable income in order to provide that legacy without giving up the guaranteed benefits from the PPF.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the possible decrease of retirement benefits for Mr J.

### *Did NTM rush Mr J or put him under pressure?*

When he raised his complaint Mr J referred to feeling rushed and pressured. But I've seen no evidence of any undue pressure by NTM. At the time he approached it, the deadline for opting into the BSPS2 was only 15 days away. That was outside of NTM's control and at that point NTM hadn't given Mr J any advice. Although it did tell him he should think carefully about his options. I think that was reasonable in the circumstances.

Also, I've noted that in his first meeting with NTM Mr J commented that he felt his employer and the scheme trustees were rushing him into making a decision. So, it's apparent that he felt rushed and pressured before he'd sought NTM's advice. And I've noted that NTM gave Mr J at least two weeks to consider its suitability report before meeting with him again to discuss the next steps. I think that was fair. It follows that I haven't seen any evidence that NTM unreasonably rushed or pressured Mr J.

### *NTM's comments about the BSPS2*

Mr J said NTM told him it couldn't see the BSPS2 fund being financially viable and it would move into the PPF. NTM said that it did discuss the underfunding position of the BSPS. But it said it didn't comment on the funding viability of the BSPS2 as it didn't exist at that time. Of course I wasn't there when Mr J first met with NTM. So I can't know exactly what was discussed or what gave Mr J the impression that NTM didn't think the BSPS2 was viable. But NTM kept a reasonably comprehensive note of their meeting, which indicates that it urged Mr J to "*seriously consider*" opting into the BSPS2 before the deadline expired.

So the evidence available from the time of Mr J's first meeting with NTM doesn't give any indication it advised Mr J that the BSPS2 wasn't viable. Indeed the contemporaneous evidence is that NTM did just the opposite. I find the evidence on file, written as it was at the time of their meeting, more persuasive than Mr J's recollection of their discussion given some years later. It follows that I don't think NTM misled Mr J about the BSPS2 funding position prior to the deadline passing.

### *Fees*

Mr J also said he had to pay an initial fee for transferring and an ongoing fee for NTM's advice service. I've commented above on how fees could affect Mr J's future fund performance. But I've also seen that NTM was quite clear about its fees from the outset. And Mr J signed to say that he agreed to those. It's usual, and reasonable, for advising firms like NTM to charge for their services and arranging pension transfers, and that's what it did in this case. Further, it only charged Mr J the fees he agreed to pay. So in that respect I don't think it did anything wrong.

### *Summary*

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr J. But NTM wasn't there to just transact what Mr J might have thought he wanted. The adviser's role was to really understand what Mr J needed and recommend what was in his best interests.

NTM was in a good position to have analysed, tested, challenged and advised Mr J about what was in his best interests for retirement planning. It knows valuable pension pots like Mr J's DB scheme were paid into with the intention of providing for retirement. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme funds to a personal pension.

I appreciate that, by the time NTM gave its advice, Mr J could no longer opt for the BPS2 so his only option other than a transfer was the PPF. Something he'd said he didn't want. But by allowing his pension to move to the PPF, he would have retained a guaranteed, risk-free and increasing income. And by transferring to a personal pension Mr J was unnecessarily putting his pension funds at risk. I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension when he could retain safeguarded benefits within the PPF.

Of course, I have to consider whether Mr J would have gone ahead with the transfer anyway if it wasn't for NTM's advice. I accept that Mr J is an adult and plainly capable of making his own decisions. But, after thinking about this carefully, I'm not persuaded he would have transferred if it wasn't for NTM's recommendation that he should do so. That's because, at the time of its advice, Mr J's BPS pension accounted for a significant portion of his retirement provision. He was an inexperienced investor who had no need to put his pension funds at risk and he was paying NTM for its expertise. So, if NTM had given clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted the expert professional advice he was paying for.

It follows that I don't think NTM's advice to Mr J to transfer out of his DB scheme was suitable for him. Instead, as opting into the BPS2 was no longer open to him, I think NTM should have advised him to allow his DB funds to move to the PPF. But it didn't do that. So, I think it's fair for NTM to compensate Mr J for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Also, as this matter has been a source of distress and inconvenience for Mr J, as he's been concerned that his security in retirement might have been compromised as a result of NTM's unsuitable advice, I think it should pay him £300 to address that.

### **Putting things right**

A fair and reasonable outcome would be for NTM to put Mr J, as far as possible, into the position he would now be in but for the unsuitable advice. As I've said above, I think Mr J would have remained in the DB scheme which would then have moved into the PPF.

NTM 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>.

When making the calculation NTM (or providers acting for it) should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr J's representative and our Service upon completion of the calculation.

For clarity, Mr J 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 of 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 PS22/13 and 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 J'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, NTM should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J before starting the redress calculation that:
  - his 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 his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr J receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr J accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr J for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr J's end of year tax position.

Redress paid to Mr J as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, NTM 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 J'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.

NTM should also pay Mr J £300 compensation to address his distress and inconvenience arising from its unsuitable advice.

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 will require NTM Financial Services Ltd to pay Mr J 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 NTM Financial Services Ltd pays Mr J the balance.

If Mr J accepts my final decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 13 September 2023.

Joe Scott  
**Ombudsman**