DRN-3785932

The complaint

Mr B complains about the advice AEON Financial Services Ltd gave 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.

What happened

In March 2016, Mr B's employer announced that it would be examining options to restructure its business, including decoupling its DB pension scheme (known as the BSPS) from the company. The employer and scheme trustees consulted with the scheme members about the possible outcomes regarding their preserved benefits. The options presented included transferring the scheme to the Pension Protection Fund ('PPF')[1], or a new defined-benefit scheme known as BSPS2. Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr B was concerned about what his employer's announcement meant for the security of his pension. He contacted AEON for advice. He met with it in August 2017 and it completed a fact-find and an assessment of his attitude to risk. AEON recorded that:

- Mr B was 45, married, in good health with one dependent child.
- He was employed and earning £38,500 a year. His wife, Mrs B, was also employed and earning £12,500 a year. After covering their regular outgoings there was around £13,000 left over each year.
- Mr B's preferred retirement age was 58.
- His attitude to risk was 'very cautious'.
- He owned his home with an outstanding mortgage of around £54,000. The mortgage was due to be cleared in September 2024.
- He and his employer made contributions to a money purchase pension plan of 12% of his salary. It was currently valued at £6,160.
- He had another DB pension with his former employer. That was expected to pay a yearly pension of £1,503 at age 60 together with tax-free cash ('TFC') of £3,116.
- Mrs B was a member of her current employer's DB scheme
- Mr and Mrs B had savings of around £2,000.
- They would both claim their full state pensions at age 67.
- Mr B's BSPS pension had a cash equivalent transfer value ('CETV) of around £305,500. That would pay him a yearly pension of £14,402 at age 60 if he didn't take TFC or a pension of £9,887 with a tax free cash payment of £65,917. If he took his pension at age 65 the scheme would pay him £19,956 a year, without taking TFC or £13,226 a year after taking TFC of £88,171.

[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.

AEON obtained a transfer value analysis report. The report showed the following critical yields (the growth rate required to match the benefits provided by the DB scheme and the PPF from an alternative pension):

Age	Full pension	TFC and pension	PPF – full pension	PPF pension and TFC
65	7%	5.9%	4.9%	4.5%
60	8%	6.5%	6.1%	5.5%

In October 2017, members of the BSPS were sent a “Time to Choose” letter which gave them the options to:

- stay in the BSPS and move with it to the PPF
- move to the BSPS2
- transfer their BSPS benefits elsewhere.

The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Around the same time AEON met with Mr B on three more occasions, producing interim and provisional recommendation reports before producing its final recommendation letter in October 2017. AEON recommended that Mr B should transfer his BSPS benefits into two funds contained within one named flexi access drawdown personal pension. It said that doing so would:

- Allow Mr B to retire at age 60.
- Have flexibility and control of his pension.
- Enjoy better death benefits, including enabling him to pass on his pension to his daughter upon his death.
- Avoid the likelihood that his pension would move into the PPF.

Mr B accepted AEON’s recommendation, and his pension transferred to the named personal pension in December 2017. Mr B paid AEON a fee of £6,563 for its advice and arranging the transfer. It would also charge him 0.5% of the fund value for ongoing advice.

In January 2019 Mr B told AEON that he no longer wanted its ongoing advice service.

In April 2021 Mr B complained to AEON about the suitability of its advice. Amongst other things he said:

- AEON didn’t ask him how much he would need to support his family or what his spending plans were in retirement.
- It didn’t ask him to what extent he was prepared to accept a lower income if his investments performed poorly.
- He had few other assets to support his retirement income.
- AEON didn’t explain how his DB benefits could support his needs in retirement and focused on helping him achieve early retirement.
- It didn’t tell him that he could lose all his pension funds.
- He wasn’t happy with AEON’s charges, which had increased.
- He also wasn’t happy with its advice. He said that wasn't focused on retirement and also covered other subjects like income protection etc.

AEON didn't initially reply within the time-limits allowed to do so. Mr B brought his complaint to our service. After he'd done so AEON replied to Mr B's complaint. It didn't uphold it. Amongst other things it said:

- It had calculated that Mr and Mrs B would require an income of around £34,800 a year in retirement.
- Mr B said he wanted to retire at age 58 but they agreed that age 60 was more realistic.
- It had provided cashflow models which showed how Mr B could meet his income needs at retirement both from staying in BSPS and also from transferring to the named personal pension.
- Mr B had provided a handwritten statement which said he understood that he was giving up a guaranteed income and that if investments fell in value his drawdown plan might not provide enough income.
- The BSPS scheme would have provided "barely sufficient" income to meet his needs if retiring at age 60 and gave him very little flexibility.
- The BSPS2 was inferior to the BSPS.
- By transferring Mr B avoided his benefits going into the PPF and allowed him to meet his other objectives, which could not be met by either DB scheme.
- Mr B had acknowledged the risk of a reduced income in his handwritten note.
- Life insurance had been considered but dismissed as Mr B could better meet his early retirement needs by transferring out of the BSPS.
- Mr B had other income sources at retirement including his state pension, his money purchase pension scheme and his former employer's DB scheme.
- Owing to ongoing health issues and the physical demands of his job, early retirement was important to Mr B.
- AEON considered the feasibility of Mr B remaining in the BSPS and retiring at age 60 but that did not meet his needs.
- It had made Mr B aware of the risks of investment losses but that it was very unlikely that he would lose all of his funds.
- Before providing advice Mr B had agreed to pay AEON's fees in August 2017.
- Mr B had accepted AEON's "holistic" advice service.
- AEON's charges had increased in the second year as it had given Mr B a discount in the first year.

While AEON didn't uphold Mr B's complaint, given that he was dissatisfied with its service, it offered an "ex gratia" resolution to the complaint. It said it would repay Mr B all the fees he had paid to AEON plus 3% interest coming to a total of almost £9,800.

We put AEON's offer to Mr B but he didn't accept it. So one of our investigator's looked into his complaint. Our investigator upheld the complaint. In short he thought the opportunity to improve on the benefits available through the DB scheme was low. So, he didn't think that transferring to a personal pension was in Mr B's best interests. He also thought any need for flexibility could be addressed nearer to retirement. And he didn't think potential better death benefits from a personal pension was worth giving up DB benefits for. Overall, he thought AEON should have advised Mr B to opt into the BSPS2. The investigator recommended that AEON should compensate Mr B for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2. He also said that AEON should pay Mr B a sum of £350 to address his distress and inconvenience arising from AEON's unsuitable advice.

Mr B accepted our investigator's findings but AEON didn't agree. Amongst other things it said:

- Our investigator hadn't factored in the problems the BSPS was facing and the distrust its members felt.
- Mr B was concerned his DB benefits might be transferred to the PPF so deferring action wasn't an option. And at that time there were no guarantees about the benefits from the BSPS2.
- The CETV was likely to reduce in future and AEON's research indicated that transferring was a better option.
- The early retirement factors of the BSPS and the PPF would significantly reduce Mr B's income in retirement impacting his objective of retiring early.
- Similarly death benefits would be reduced by moving benefits to the PPF.
- The benefits from the BSPS2 weren't known at the time so it had done its analysis based on the more generous benefits from the BSPS. This showed that Mr B should still have income left over beyond his life expectancy by transferring to a personal pension.
- Improved death benefits for Mr B's wife and daughter were important to him.
- Mr B didn't say he wanted a guaranteed income. And its report said that if he wanted to buy an annuity then the growth rates were likely unachievable.
- The growth rates required to match the DB scheme benefits was achievable in drawdown as a rate of 3.2% was required to age 90 and 3.5% to 95.
- Owing to the capping of the indexation with the DB scheme, in times of high inflation the DB benefits can lose real value.
- The critical yield was not the appropriate measure when comparing benefits with a drawdown arrangement.
- It believed its advice to transfer away from the DB scheme was suitable and it met the regulatory requirements.

Our investigator wasn't persuaded to change his decision. Amongst other things he said:

- He was aware of the BSPS scheme members concerns. But on 11 August 2017 the regulator had given approval for the restructuring of the scheme.
- The information in the time to choose letter sent around the time of AEON's advice confirmed that transfers would be allowed for the BSPS2 and the effect on future CETVs was unknown.
- If Mr B wanted to retire early he could have used the funds from his money purchase scheme to do so and accessed his DB benefits closer to age 65 to avoid the early retirement factors.

As AEON didn't agree with our investigator the complaint was referred to me to make 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.

In bringing this complaint and in responding to it both Mr B and AEON have made a number of detailed points. I've considered everything on file carefully. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being at the heart of Mr B'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 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 AEON'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 given by our investigator.

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

Financial viability

AEON obtained a transfer value analysis report (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). But, this was based on the BSPS benefits and Mr B didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move his benefits with the scheme to the PPF.

AEON said that the benefits from the BSPS2 weren't known at that time. And the benefits of the BSPS were known to be better than those proposed in BSPS2 – because the indexation was greater. So it said it was reasonable to use a comparison with the BSPS when comparing benefits and growth rates as those would most likely be higher than those required to match the benefits from the BSPS2. And as the BSPS2 was thought to be of greater benefit than the funds going into the PPF then, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. So, while I think AEON should've tried to ensure its analysis was based on the benefits available through the BSPS2, if it couldn't be certain of the BSPS2 benefits, I think using the higher growth rate of the BSPS as a comparison was reasonable as that should have been more difficult to achieve.

However, I think that even if AEON had made comparisons between the personal pension and the growth rate require to match the BSPS if it had moved into the PPF, that still would have demonstrated that the transfer was not financially viable.

AEON gave its advice 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. 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.

The closest discount rate to this time I'm able to refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and is 4.2% per year for 14 years to retirement if Mr B retired at 60 and 4.4% if he retired at 65. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr B's very cautious attitude to risk and also the term to retirement. There would be little point in Mr B giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 5.9%, based on Mr B's BSPS benefits. However, had the BSPS moved into the PPF, then that would have reduced to 4.5% if Mr B had also taken TFC at age 65 and to 5.5% at age 60. Given the discount rate of 4.2% and the regulator's middle projection rate of 5%, I think Mr B was most likely to receive benefits of a lower overall value than those provided by the PPF and the BSPS2 if he transferred to a personal pension, as a result of investing in line with his attitude to risk.

AEON's said that the critical yield isn't a useful measure as Mr B hadn't intended to buy an annuity. The critical yield is a useful tool as it is a reasonable comparison of the growth required in order to replace DB benefits with something of a similar nature, that is a product that would provide a guaranteed income for life including provision for a spouse. And, at that time, the regulator required AEON 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 B 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 13 and more likely 15 years. It's entirely possible that Mr B would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

But, critical yields are not the only measure we use to compare pension benefits. And, in this case I've also looked at the regulator's projection rates and AEON's own expectation that Mr B's fund would grow at a level of 3.88% a year. But those figures don't, in my view, support a transfer away from Mr B's scheme as being in his best interests on financial grounds That's because the personal pension fund value at retirement wouldn't be sufficient to replace even the benefits available to Mr B through the PPF.

It's notable that AEON's cashflow analysis projected a yearly growth rate of 3.88% before charges of 1.5% are taken into account. And once those are factored in they would reduce the growth further. So those charges would further reduce the actual growth rate achievable from the fund. In reality that meant that, using AEON's own cashflow models the fund was only likely to grow at a net rate by 2.38% a year. Also the cashflow models show the income growing at a steady rate. But given the volatility of the markets, consistent growth at that level, seems unlikely over such a long period of time.

Further, if there was a sustained period of poor performance then there was a very real chance that Mr B's fund would grow at a much slower rate or could suffer losses. And while Mr B did give AEON a handwritten note to say that he understood the risks he was taking, that doesn't mean it was in his best interests to put those funds at risk. And I believe AEON should have advised Mr B that opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs and his attitude to risk. So, I don't think it was in Mr B's best interests for him to transfer his pension just to have flexibility that he didn't need

Also, the cashflow analysis shows Mr B substantially reducing the income he takes from a personal pension at age 67, once his state pension becomes payable. So, in AEON's cashflow model the funds are only made to last by virtue of Mr B taking a minimal income from his pension from age 67. Whereas the transfer value analysis report demonstrates that the fund would be depleted at age 87 if Mr B withdrew the same income he was entitled to under the scheme if he achieved net returns of 2%. This leads me to believe Mr B would likely be substantially worse off in retirement if he transferred out of the DB scheme. That's particularly the case if returns were low.

So, given Mr B was likely to receive lower overall retirement benefits by transferring to a personal pension, I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as AEON has argued in this case. There might be other considerations which mean a transfer is suitable and in Mr B's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility

It seems the main reason AEON recommended Mr B 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 was in his best interests.

Mr B initially told AEON that he wished to retire at 58. But AEON told him that wasn't achievable and that age 60 seemed a more reasonable prospect. AEON's said that Mr B had a recurring injury which had previously required surgery and which was being made worse by the physical demands of his work. And for that reason he wanted to retire early. But at the time of the advice Mr B was still 15 years away from turning 60 and 20 years away from his normal retirement age of 65. And he wouldn't receive his state pension until 67. A lot could happen in the intervening period. So Mr B's plans to retire early, made when he was still only 45, could have changed significantly by the time he neared 60. And Mr B had options other than transferring to a personal pension in order to retire early.

For example Mr B and his employer had recently started paying 12% of Mr B's salary, at that time equivalent to £4,620 a year, into a money purchase pension pot. So, assuming the yearly contribution stayed at 12% each year, and his salary grew at 2.5% a year (in line with AEON's cashflow model) the fund would have received around £82,800 when Mr B was 60. And if that fund had grown at the regulator's lowest projected rate of 2% each year then it could be worth around £96,500 at age 60. So an option for Mr B could have been to take early retirement at age 60 and use the TFC and income from his money purchase scheme; the income from his former DB scheme; and his wife's employment income - assuming she continued to work a further three years until she reached her scheme retirement pension age of 60; to fund the early years of his retirement until age 65. Mr B could then have taken money from his DB scheme (including TFC) and that should have given Mr and Mrs B sufficient income to cover their outgoings until they could claim their state retirement pensions when they respectively reached age 67.

Alternatively, if Mr B had felt that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 45 years old. But it doesn't appear that AEON put that option to him.

It follows that I don't think the only prospect of Mr B taking early retirement relied on him transferring his benefits into a personal pension.

That said, it's true to say that Mr B couldn't have had *flexible* access to his DB funds. 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 B 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 B had any genuine *need* for that flexibility that would be worth giving up guaranteed benefits for.

I accept that at the time of the advice, the BSPS2 hadn't been formally established. Although I think the information the scheme trustees had issued made it clear that it was most likely that its operating conditions would be met, but it wasn't certain. I note that Mr B was clearly concerned about the prospect of his pension moving into the PPF. But it's not clear how AEON 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, as I've shown in the table below, AEON's transfer value analysis report showed that the PPF benefits could have been more beneficial to Mr B, in the short term at least, had he chosen to take TFC at age 60 than from his entitlement under BSPS. But I can't see that AEON ever brought this to his attention.

Age 60	TFC	Yearly pension
BSPS (taking TFC)	£65,914	£9,887
PPF (taking TFC)	£98,890	£10,261
BSPS (without TFC)	N/A	£14,402
PPF (without TFC)	N/A	£13,681

So, while I understand that the prospect of pension benefits moving to the PPF was for some people a rather daunting prospect, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And I think Mr B could have met his needs in retirement, and retained guaranteed benefits, if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

But, I think a more likely prospect for Mr B was a recommendation that he transfer his funds in the BSPS2. So I've looked at whether or not it was viable for Mr B to retire at age 60 and take his benefits from BSPS2 then. The exact income from the BSPS2 wasn't known when AEON gave its advice. So when looking at probable income I've assumed it would be slightly less than the BSPS projected income at £9,000 a year. I've also assumed that Mrs B also retired and drew her occupational pension at the same time (rather than continuing to work until she turned 60). Using the figures from AEON's cashflow model shows that Mr and Mrs B could have been in the following position:

Approximate income requirement	£34,800
Estimated BSPS2 yearly income	£9,000
Income from Mr B's former employer's pension	£1,503
Mrs B's occupational pension income	£9,052
Income shortfall	£15,245

So by Mr B taking benefits from BSPS2 at age 60 (and Mrs B retiring at the same time) could have had a shortfall in income of around £15,245 a year. But the above table doesn't allow for any income from Mr B's money purchase scheme, or from his TFC entitlement from BSPS2. And given that Mr B's money purchase scheme would most likely have been worth in the region of £96,500 (from which he could take TFC of around £24,125) and he had a TFC entitlement somewhere in the region of £65,000 from his DB scheme. Then that would have given him a total additional fund, on top of the income shown above, of around £160,000. And he could have used those funds to comfortably meet any income shortfall until he and Mrs B began claiming their full state pensions when they reached age 67.

So, I'm satisfied that Mr B didn't need to transfer away from the DB scheme in order to benefit from early retirement. And I don't think it was in his best interests for AEON to make that recommendation.

Death benefits

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 B. I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his DB scheme to a personal pension because of this. However, the priority here was to advise Mr B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. And I don't think AEON explored to what extent Mr B was prepared to accept a potentially lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to Mrs B if Mr B died before her. There was also provision for a children's pension up to age 23 if Mr B's daughter remained in full-time education. I don't think AEON made the value of these benefits clear enough to Mr B. They were guaranteed and escalated – the spouse's pension would also be calculated as if no TFC had been taken. Further, it wasn't dependent on investment performance, whereas the sum remaining on death in a personal pension was. And, if the personal pension had underperformed, suffered losses, or Mr B had drawn down higher sums from his pension than anticipated, then the amount left over for death benefits could have been significantly reduced. In any event, AEON shouldn't have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

If Mr B genuinely wanted to leave a legacy for Mrs B and their daughter, which didn't depend on investment returns or how much of his pension fund remained on his death, I think AEON could have explored life insurance further. I've seen that Mr B had a significant death in service benefit through his employer. But if he wanted an extra sum to cover him after he stopped working he could have taken additional cover out on a whole of life basis. AEON recorded that it had considered this but dismissed it because the early retirement option was better achieved by transferring away from BSPS and that would also provide the required death benefits. But, as I've said above Mr B could still have retired early while remaining in a DB scheme. And death benefits weren't guaranteed by moving into a personal pension. So I think AEON should have explored the option of life insurance more fully, particularly if this was genuinely a key objective for Mr B.

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

Control or concerns over financial stability of the DB scheme

It's clear that Mr B, like many employees of his company, was concerned about his pension. His employer had recently announced its plans for the BSPS and he was worried his pension would end up in the PPF. He'd no doubt heard negative things about the PPF so it's quite possible that Mr B was leaning towards the decision to transfer because of the concerns he had about his employer's solvency and his negative perception of the PPF. But, it was AEON's obligation to give Mr B an objective picture and recommend what was in his best interests.

As I've explained, at the time of AEON's advice, the BSPS trustees had sent its members information about the BSPS2 which indicated it was going ahead. So, AEON's advice should have properly taken the benefits available to Mr B through the BSPS2 into account. Indeed the options being put to the scheme members at the time was a choice between moving to the BSPS2 and the PPF. So that should have been a clear indication that Mr B's pension wasn't destined to end up in the PPF. And I think AEON should have made this clear to Mr B in order to reduce any concerns he might have had about that.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that AEON should have reassured Mr B that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr B through the PPF would have still provided a significant portion of the income he thought he needed at retirement. And, as explained above, unless his investments consistently performed particularly well he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower than in the BSPS, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to AEON recommending Mr B to transfer out of the DB scheme altogether.

AEON's fees and ongoing advice

Mr B also complained about AEON's fee structure and that its fees had increased in its second year of advising him. But I've seen that Mr B had agreed to those fees before AEON began its advice process. And the reason for the increase in the second year was because it had given Mr B a discount in his first year. So I think AEON applied its fees fairly and in line with what Mr B had agreed to before engaging its service.

Also Mr B complained that AEON's ongoing advice service went beyond his pension and went into other matter such as other forms of insurance. But, when agreeing to AEON's fees, Mr B had also agreed to AEON providing advice that went beyond his pension investments. So in providing the advice that it did, I think AEON was only giving Mr B advice on the areas that he had agreed to.

Further Mr B was under no obligation to act on AEON's advice. And ultimately it was his decision alone to end that relationship with AEON. I don't think AEON did anything to force him to make that decision. So any losses Mr B might have suffered because he no longer had an adviser wasn't AEON's responsibility.

Summary

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

Ultimately, I don't think AEON's advice was suitable for Mr B. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a personal pension Mr B was, in my view, likely to obtain lower benefits in retirement. And 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 B's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when AEON gave its advice, but I think it was clear to all parties that it was likely to be going ahead. Mr B had between 15 and 20 years to retirement, depending on when he actually decides to retire. So he couldn't have known for certain what his needs in retirement would likely be. And I think it's unlikely that it would have been in his best interests to have stayed with the BSPS when it went into the PPF, as its indexation increases were less favourable. And by opting into the BSPS2, Mr B would have kept the option to transfer out of the scheme nearer to his retirement age if that was what he decided to do at that point. That is, at a time when he would have had a greater knowledge of what his retirement needs actually were. Also, Mr B was married, and the BSPS2 would have paid Mrs B 50% of his full pension, whether or not he'd taken TFC, from the date of his death. So, I think AEON should've advised Mr B to opt into the BSPS2.

Of course, I have to consider whether Mr B would've gone ahead anyway, against AEON's advice if it had recommended he move his benefits to the BSPS2. I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of a DB scheme, against AEON's advice. I say this because Mr B was an inexperienced investor with a very cautious attitude to risk and this pension accounted for a significant part of his retirement provision. So, if AEON had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think AEON should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Also as I think AEON's unsuitable advice has been a source of distress and inconvenience for Mr B, to address that I think it should pay him a further £350 compensation.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. But, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published. He would like to wait for the outcome of the consultation before his complaint is settled. I consider it's fair that AEON waits for the outcome of the consultation to settle this complaint.

A fair and reasonable outcome would be for AEON to put Mr B**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme.

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and its proposed updates to the DB transfer redress methodology, I'm satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Mr B**.**

I therefore don't consider it necessary for me to wait for any new guidance/rules to come into effect to determine this complaint.

AEON must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, while Mr B agreed with AEON that his preferred early retirement age was 60, I understand he has no definite retirement plans at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr B within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and AEON has received notification of Mr B's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes AEON to pay Mr B.

Income tax may be payable on any interest paid. If AEON deducts income tax from the interest, it should tell Mr B how much has been taken off. AEON should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

Determination and money award: I uphold this complaint and require AEON Financial Services Ltd to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require AEON Financial Services Ltd to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require AEON to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that AEON Financial Services Ltd pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts this decision, the money award becomes binding on AEON Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 30 November 2022.

Joe Scott
Ombudsman