

## **The complaint**

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

## **What happened**

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr R's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

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

Around the same time, Mr R sought advice. He was introduced to NTM by another adviser. NTM completed a financial planning questionnaire with Mr R to gather information about his circumstances and objectives. Amongst other things, this recorded that he was 47; he was divorced with one non-dependent children; he worked full-time and earned around £32,000; he owned his own home outright; he had one small loan; he had around £26,000 in cash assets; he had an outstanding mortgage on his home of around £49,000 and his income broadly matched his expenditure, so there was no surplus to speak of. NTM also carried out an assessment of Mr R's attitude to risk, which after further discussion was deemed to be 'balanced'.

On 13 October 2017, NTM issued a suitability letter setting out its recommendation. NTM summarised Mr R's objectives of wanting to retire at 57 and that he was unhappy about the prospect of moving to the PPF, which would result in reduced benefits and a loss of choice and flexibility. It said Mr R felt let down and so he wanted to take control of his pension.

In summary, NTM recommended that Mr R transfer his pension to provide him with the

control he desired, to provide flexibility in retirement so he could fashion his income to meet his target, to provide a higher level of tax-free cash, to provide better lump sum death benefits and to meet Mr R's objective of wanting to break ties with his employer.

Mr R accepted the recommendation and some time afterwards around £327,000 was transferred to his new personal pension.

Mr R complained to NTM in 2021 about the suitability of the transfer advice. He said a transfer to a personal pension arrangement should not have been recommended as it was highly unlikely the benefits available to him through the BPS2 would be matched through a personal pension.

NTM didn't uphold Mr R's complaint. In addition to setting out a timeline of the events leading up to the 'time to choose' exercise, Mr R's interactions with NTM and his objectives at the time, in summary it said, the advice it gave to Mr R gave him the best opportunity to meet his objectives. It said it wasn't possible to provide the security of a guaranteed pension and meet his objectives. It said the BPS2 offered less attractive benefits than the PPF based on his objectives, so this excluded it as a suitable approach. It said because a transfer could achieve what Mr R wanted, it concluded the advice was suitable.

Dissatisfied with its response, using the services of a representative Mr R referred his complaint to us. Mr R said he now believes the advice he received was flawed and as a result he believes he's suffered a loss.

An investigator upheld the complaint and required NTM to pay compensation. In summary they said the advice wasn't suitable. They said the growth rate required to match Mr R's DB benefits wasn't reasonably achievable based on his balanced attitude to risk, so the transfer wasn't financially viable. They said there was nothing to indicate Mr R needed flexibility; death benefits wasn't a suitable reason to transfer; and they didn't think NTM had given a balanced view of the BPS2 or the PPF. They said if suitable advice had been given, Mr R would've chosen to transfer his benefits to the BPS2.

Mr R's representative accepted the investigator's conclusions, but clarified that the retirement age for the loss calculation should be 65. And they didn't think the proposed 15% deduction from any redress payable to take into account the tax Mr R would've paid had this been taken as income, was fair. They said it doesn't account for the charges that would've been deducted from the fund value over that time.

NTM replied and indicated that, while it wasn't an admission of liability, it was prepared to try and carry out a redress calculation to determine any loss. But it said it needed some information from Mr R to carry this out. The investigator said NTM should approach Mr R direct for this information.

Because no offer has been forthcoming, the complaint was referred to me for a final decision.

### **What I've decided – and why**

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at

the time. This includes the Principles for 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.

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 a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests.

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

- The transfer value analysis ('TVAS') report that NTM was required to carry out by the regulator, said that the critical yield - how much Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 12.97% to match the full pension he'd have been entitled to under the scheme at age 55. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 10.02%. To match the full pension the PPF would've paid from 55 the critical yield was 8.37% and to match the tax-free cash and reduced pension the PPF would've offered, it was 7.59%.
- Despite the fact it was known by the point NTM instructed the TVAS that continuing in the BPS in its existing form wasn't an option for Mr R, the analysis was based on the BPS benefits. And NTM didn't undertake any analysis of the benefits he'd have been due under the BPS2, even though it knew the details would shortly be available. I think it should've waited for this and carried out the appropriate analysis at this point.

In any event, given what we know about the BPS2, I think the critical yields to match the benefits the BPS2 would've provided from age 55 were likely to be between those of the BPS and the PPF.

- Given Mr R indicated that he wanted to retire "about 57" and so this is what the advice was predicated on, I also think NTM should've produced critical yield figures based on a retirement age of 57. I think this would've been more meaningful and

relevant to Mr R. NTM says the early retirement factor information wasn't available – but if it had waited for the BPS2 details as I think it ought to have done, it would've been possible for NTM to produce this analysis at this time.

- Given Mr R's recorded 'balanced' attitude to risk, the discount rate of 3.4% for seven years to retirement and the regulator's middle projection rate, I think Mr R was always likely to receive pension benefits, from age 55, of a lower value than those he'd have been entitled to under the BPS2 or the PPF by transferring and investing in line with that attitude to risk. And I don't think the position would've been any different based on a retirement age of 57 – I think the critical yields would've still been above the regulator's middle projection rate. To have come anywhere close to achieving the kind of returns needed, it would've required Mr R to take on more investment risk than he was prepared to take.
- For this reason alone, I don't think a transfer to a personal pension arrangement was in Mr R's best interests.
- NTM recorded that Mr R wanted to retire at about 57 and that a personal pension would provide flexibility in retirement so he could fashion his income to meet his need. While at 47, Mr R might have given some thought to his future retirement, NTM recorded that the target age of 57 was based on the earliest age legislation allowed. The advice paperwork also says Mr R would likely retire at the best time for him and the value of his benefits. And a meeting file note records that, when NTM asked Mr R why it was important to retire early, he couldn't give a specific reason. So there's nothing to indicate Mr R had anything that could be described as a firm retirement plan.
- Mr R didn't have to transfer his pension to retire early - he already had this option available to him. While he couldn't take his DB scheme benefits flexibly, nothing indicates he had a need to vary his income throughout retirement. And while Mr R indicated that being able to take a lump sum and delay an income would be important if he needed to support his daughter and he wanted to continue working, he didn't know this for certain at the time. So I don't think there was a strong need for him to access a lump sum and defer taking an income.
- NTM also recommended the transfer to provide a higher level of tax-free cash. But Mr R said that it was too early to be specific about his wishes – so there's nothing to suggest that the lump sum available through the DB scheme wouldn't have met Mr R's future needs.
- Mr R might have been attracted to the flexibility a personal pension provided – but given he had no apparent need for it, I think NTM's reference to this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr R's.
- Mr R already had a degree of flexibility in any event. He was contributing to his workplace pension scheme – a defined-contribution scheme which provided flexibility in how and when he could access his benefits. While Mr R's contribution level to this wasn't recorded, I think this could've given him the flexibility to retire earlier than his scheme's normal retirement age - *if* that's what he ultimately decided.
- Mr R said he would like an income of £1,900 a month (net) and that he wouldn't want to go below £1,600 a month. But I don't think Mr R reasonably knew what his income

need in retirement would be at this time. It strikes me he gave this figure because this was broadly the amount he was currently spending each month. NTM doesn't appear to have helped Mr R by carrying out a detailed income and expenditure in retirement analysis or challenged this amount– it just appears to have accepted what Mr R said. I don't think this was a realistic target income based on a retirement age of 57 – Mr R's DB scheme full pension at 65 was around £20,000 a year and less if he chose to take a cash lump sum. I think NTM should've managed Mr R's expectations and been honest with him that this wasn't going to be achievable. And just because his DB scheme couldn't meet this target amount, I don't think it was in his best interests to transfer out, particularly when NTM didn't demonstrate to Mr R that he could sustainably meet his target income from age 57 by transferring to a personal pension.

- NTM recorded that, due to a change in his personal circumstances, Mr R no longer required any spousal benefit from his pension benefits and that the death benefits offered by a personal pension offered his family a much higher degree of protection and choice concerning how the benefits will be paid. But the priority here was to advise Mr R about what was best for his retirement. And while I can see the adviser said as much based on what's recorded in their follow up meeting note, they recommended the transfer anyway citing better death benefits as a reason.
- I accept the existing scheme didn't provide death benefits to unmarried partners – but it's possible that Mr R might get married again in the future, in which case the spouse's pension could've been valuable to his family in the event of his death.
- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by the income Mr R drew in his lifetime. And so may not have provided the legacy that Mr R may have thought it would.
- If Mr R had wanted to leave a legacy for his family, NTM could've explored life insurance as an alternative. Reference was made to a whole of life policy for a sum assured for the amount of the transfer value, which was discounted on cost. But I don't think this was a fair and balanced way to present this option to Mr R – it should've been based on what amount he wanted to leave to his family instead. After all Mr R wanted to leave whatever remained of his pension upon his death, which was likely to be a lot lower than the original transfer value amount, particularly if he lived a long life and/or investment returns were lower than expected. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence NTM did so.
- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr R. I don't think that insurance was properly explored as an alternative.

And ultimately NTM should not have encouraged Mr R to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr R may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF and that he wanted to break all ties with them. But it was NTM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BPS2 being established. But even if not, the PPF still provided Mr R with guaranteed income and the option of accessing tax-free

cash. Mr R was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought. Also, Mr R wasn't going to break ties with his employer by transferring because he was connected to them in other ways – he intended to continue his employment and he was contributing to the new workplace pension scheme for example. So I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr R's best interest to give up his DB benefits and transfer them to a personal pension at this time, particularly when he had the option of opting into the BPS2. And I also haven't seen anything to persuade me that Mr R would've insisted on transferring, against advice to remain in the DB scheme – he had little investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr R received from NTM was unsuitable for him.

I've thought about Mr R's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr R would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr R back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr R for the impact of the unsuitable advice he received.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr R. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish NTM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr R. Taking everything into account, including that I consider Mr R is now at the age when his retirement provision is of greater importance to him and he's concerned that he'll lose out in retirement, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

### **Putting things right**

A fair and reasonable outcome would be for the NTM to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would most likely have remained in the occupational pension scheme and opted to join the BPS2 if suitable advice had been given.

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>.

NTM 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 R and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

For clarity, Mr R 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 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 R'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, Mr R should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr R for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr R's end of year tax position.

Redress paid to Mr R as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that Mr Rs 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 R's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

### **My final decision**

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr R 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 R the balance.

NTM Financial Services Ltd should also pay Mr R £300 for the distress and inconvenience this matter has caused.

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

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

Paul Featherstone

**Ombudsman**