DRN-3834083

The complaint

Mr C complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Esteem Money Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Esteem".

What happened

In March 2016, Mr C's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (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 C's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr C was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Esteem which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr C was 48 years old and married with no dependents. He was described as being in good health. He had accrued over 30 years' worth of service with BSPS.

- The cash equivalent transfer value (CETV) of Mr C's BSPS was approximately £443,047. The normal retirement age (NRA) was 65.

- Mr C had joined the new TATA define contribution (DC) pension scheme as a consequence of the BSPS closing to further contributions in the months before this advice was given.

- Mr C lived in a home valued at around £550,000 with a mortgage outstanding of around £180,000.

- Mr C earned £40,000 still in the steel industry. Mrs C also worked and earned a significant salary. She had her own pension provision. They had substantial joint savings said to be in mainly cash deposits, totaling around £210,000. They had a modest loan but no other liabilities.

Esteem set out its advice in a suitability report on 22 November 2017. In this it advised Mr C to transfer out of the BSPS and invest the funds in a type of personal pension plan managed for him by a discretionary fund manager (DFM). Esteem said this would allow Mr C to achieve his objectives. Mr C accepted this advice and so transferred out. In 2022 Mr C complained to Esteem about its advice, saying he shouldn't have been advised to transfer out to a personal pension, but his complaint wasn't upheld.

Mr C referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Esteem said it hadn't done anything wrong and was acting on the financial objectives Mr C had at the time.

As this complaint can't be resolved informally, it's therefore come 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 also 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'). 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 Esteem'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.

I have further considered that 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, Esteem should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr C's best interests. In particular, I have also carefully considered the final response letter from Esteem. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr C's complaint.

Financial viability

Esteem referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

Esteem says now that the use of the critical yield as a comparator isn't relevant. It also told Mr C at the time that critical yields *"could be ignored"*. But I don't think this is right. The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr C was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

Esteem also appears to have used critical yields and analysis figures based on the 'old' BSPS scheme rather than the emerging 'new' BSPS2. We know a great deal about the timeline involved here because we've seen a great many similar BSPS complaints. And I know that at the time this advice was given, Mr C would have had his "Time to Choose" pack delivered and that details of the BSPS2 were known. So, Esteem should have provided the most up to date comparisons when it was advising him, not least because BSPS was no longer an option going forward. Nevertheless, the BSPS2 yields would have been similar, if a little lower than, the BSPS figures.

Esteem said that the critical yield required to match the benefits of the BSPS at the age of 65 was 8.81% if retiring with a full pension. If deciding to take a tax-free lump sum and a reduced pension at the age of 65, the critical yield was 7.38%. However, as well as downplaying the value of using critical yields as a comparative metric, I think Esteem also failed to emphasise the critical yields involved of retiring early. I explain more about early retirement later, but Esteem is adamant that Mr C wanted to retire at 55, so it should have clearly explained that the critical yields were even higher. To match the benefits of the BSPS at the age of 55 they were 15.81% (full pension). And if deciding to take a tax-free lump sum and a reduced pension at the age of 55, the yield was 12.02%.

Retirement was a relatively long way off for Mr C and so I very much doubt whether retiring at 55 was anything more than something he just aspired to, rather than being part of a real plan. But I think there was more than enough evidence at the time showing that achieving enough growth outside the DB scheme, to make transferring financially viable, was going to be unachievable and I think this should have been very clearly brought to Mr C's attention, rather than being brushed aside, which is what happened here. I say this with the following in mind.

The advice was given 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. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. 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 relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 was only 4.6% per year for 16 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. But for a retirement at 55, the discount rate was only 3.3%. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

At the time, Esteem assessed Mr C's attitude to risk (ATR) as "moderately cautious". And the evidence I've seen shows Mr C was not a risk taker and he didn't like the idea of his capital, if transferred to a fund, going down as well as up. I don't think Mr C himself had any experience of wider 'money market' investments more commonly found in personally managed pensions and so he probably had no past experience to draw upon. I've also noted that despite having around £210,000 in joint savings, there was no direct exposure to the stock market.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's lower projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 3-to-4½% were much more realistic. These were well below the critical yield figures for the BSPS, so I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was unlikely.

I've also noted that using the NRA of 65, Esteem's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was £923,815. For the age of 55 it was £753,678. To reiterate, these figures are found in Esteem's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are well above Mr C's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr C could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, Esteem also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. Esteem said the critical yield to match the benefits available through the PPF at age 65 was 5.54%. But these yields related to the reduced benefits available with the PPF. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr C, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, Esteem's own figures, shown partially in its suitability report and more fully in the transfer analysis documents, showed that transferring to a personal pension plan would mean Mr C would likely receive lower pension benefits in the longer term, when compared against the available DB scheme.

I've also considered some projections Esteem used to help show that if he transferred out to a personal plan, the funds could last Mr C well into retirement. I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What Esteem was showing Mr C were comparisons with plans which lacked the guarantees and benefits of a DB scheme. And some of the scenarios showed him running out of funds at certain ages in his late 70s, whereas his DB pension was guaranteed for life.

Of course, according to Esteem, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Esteem said Mr C also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other reasons to transfer

Esteem recommended a transfer to a personal pension arrangement based on what it said were Mr C's wider objectives. The suitability report mentioned several times that retiring early was something Mr C was wanting. So, I've considered all the other reasons Esteem gave for transferring away from Mr C's DB scheme. I summarise these below:

- *Esteem said the transfer analysis had confirmed that comparable pension benefits could be achieved on transfer to a money purchase scheme, and that the investment growth required to match the ceding scheme benefits was achievable.*
- *It said the sponsoring employer was in a precarious position regarding its finances. If a qualifying insolvency event occurred, the PPF would help compensate but some valuable benefits would be lost or reduced.*
- *Esteem said he expected to retire at 55 and was not solely reliant on the DB pension.*
- *His circumstances would benefit from the flexibility provided by a personal pension.*
- *The tax-free lump sum in personal pension was greater.*
- *He wanted personal control of his retirement planning and did not trust his employers.*
- *The death benefits were more suited to his circumstances in a personal pension.*
- *The pension scheme trustees had offered a competitive CETV.*

So, broadly it seems the supporting reasons that Esteem recommended the transfer out to a personal pension was for the general flexibility and control it offered to Mr C. I have considered the transfer rationale set out by Esteem below.

- *Comparable benefits etc*

I think what Esteem said about these areas was somewhat misleading. As I mentioned earlier, it was clear that the adviser discounted the use of critical yields even though this was a requirement from the regulator at the time. The adviser also said that comparable pension benefits could be achieved by transferring away, and that the investment growth required to match the ceding scheme benefits was achievable. However, what the adviser was referring to here was the "hurdle rate". This rate was much lower, but it was only lower because it was measuring against a much inferior type of pension, most likely one assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement.

Portraying the ceding scheme as being in a poorly financed position also needed carefully explaining. At the time, it was a fact that a great many DB schemes were considered 'underfunded'. But there were options available to Mr C which included the protection afforded by the PPF. The evidence shows that even in this scheme, Mr C would probably be better off in financial terms in his retirement than transferring and this was supported in the transfer analysis.

In my view, by saying the PPF would help compensate, but that some valuable benefits would be lost or reduced, Esteem was portraying the PPF in a negative light. But the safety net of the PPF was not present at all if Mr C transferred away – he was effectively at the mercy of the markets. If he'd been advised to transfer to the BSPS2, this was underpinned by the PPF.

- *Retiring early and 'flexibility'*

Mr C evidently told the adviser he would like to retire at 55 years old. However, he was at the time still relatively young in pension / retirement terms. And whilst I'm sure, like most people, Mr C probably liked the thought of stopping working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part. In reality, there was no plan to retire early specifically at 55. So I think Mr C was merely assessing, generally, what his options might be. He was still only 48 years old and his wife still worked and seems to have had an important career. They also still had a sizeable mortgage and I think a lot could have changed before his realistic retirement age came into focus. He had over 16 years still left to when he'd be actually contemplating retiring if using his NRA. Even if using an aspirational age of 55, this was still over six years away.

But even if I were to consider that Mr C's retirement hopes were more fixed than aspirational - and he really did plan to retire early - I think Esteem should have assessed the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr C. Retiring early from a DB scheme, such as BSPS2 would simply have meant Mr C's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer.

Mr C's "Time to Choose" pack said that if retiring at the NRA, he could expect an estimated pension of £26,158 per year with the BSPS2. Using a retirement age of 55 instead his benefits were around £15,908 per year. The suitability report said Mr and Mrs C could live off around £2,000 per month in their joint retirement.

This means I've seen nothing explaining why Mr C wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. If all he needed was around £2,000 per month I think the adviser should have pointed out that this seemed achievable given the above income and the other income they could call upon.

We know they had substantial amounts of cash savings and Mrs C had her own pension (both a DB and DC schemes). She was slightly younger than Mr C and so if taking Esteems view that his retirement at 55 was non-negotiable, Mrs C would be continuing to earn her very significant salary of over £100,000 per year.

It also certainly isn't unreasonable to say that by his eventual retirement age, Mr C could have built up a reasonable sum in the DC fund he had recently started. I think it's easy to discount this second pension by saying it had only recently started and therefore didn't have much in it. But even if taking the relatively young retirement age of 55, one could say Mr C would by then have been a member of this scheme for over 6 years. This DC pension was being significantly contributed towards by both Mr C and his employer - 6% and 10% respectively and he seemed to have the capacity to increase contributions if he wished in the years ahead. It's therefore reasonable to say that this pension could have accrued reasonable sums of money by his mid-to-late fifties.

So, I don't think there's anything showing Mr C's pension entitlements in both his own DB and DC schemes, their joint cash savings, and anything else Mrs C individually earned (whether retired or not) wouldn't have very easily met their anticipated future income requirements as had been recorded by the adviser. In my view, this could be comfortably achieved without any need for Mr C to transfer away from a DB scheme. In fact, I think that by retirement, whenever it eventually came, Mr C could have been in a very agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a reasonable DC scheme over a number of years. And if Mr C ever found he needed flexibility, then he'd be able to use the latter, rather than transferring away from the former.

Esteem also promoted to Mr C that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But Esteem should have been telling Mr C at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

I think 'flexibility' would have sounded positive to Mr C. However, I can't see that Mr C required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Esteem. For example, I've seen nothing that showed Mr C required changing how his retirement benefits ought to be paid. Retirement for him was still a fair way off and he already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions.

So, whilst I accept the notion of retiring early, flexibility and / or accessing tax-free cash might have been appealing, all this needed to be considered against the other options Mr C had; in my view this included opting for the BSPS2.

- *Control of the funds*

I've also seen no evidence that Mr C had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr C was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees.

I accept that Mr C may have had a basic understanding of pensions but as I've said, there's no evidence he was an experienced investor. He had his new DC pension with TATA. But I've seen nothing showing the investment strategy for this pension was anything other than an 'off the shelf' mix of investments commonly found in most company DC schemes. And I think he would have found the complexity, scale and responsibility of managing over £443,000 of his own transferred funds from his DB scheme to be onerous in the years ahead. What I've seen tends to show Mr C would have required ongoing financial advice and support over the long term, all of which would cost him money which his DB scheme didn't require from him. He simply didn't have the experience to personally manage the funds and had been recommended to a DFM at significant cost.

- *Death benefits*

Death benefits are an emotive subject. When asked, I think most people would like their loved ones to be taken care of when they die. However, the adviser implied that DB-type spouse pension benefits were too restrictive in their circumstances. The adviser also promoted that money in a private pension could be passed on to Mr and Mrs C's

Godchildren, if he passed away. I understand the point being made but I consider it to have been exaggerated.

The BSPS2 contained certain benefits payable to a spouse if Mr C died. The benefits related to both pre-retirement and post-retirement. Mr C was married so I think the value of these benefits were most likely underplayed in his case. I say this because there's simply no evidence that if he passed away, Mrs C would specifically need a cash lump sum rather than a pension. She already had a lot of cash and at the time interest rates had been very low for around 9 years. Also, the evidence I've seen is that Mrs C had a good job and was very well paid. However, her pension provision, as recorded at time, was more modest. In reality, whilst Mrs C earned much more than Mr C, her total pension entitlements were less than his.

So, I think the spouse's pension found in the BSPS2 would have been useful to Mrs C if he predeceased her – much more useful than cash because she already had plenty of that available. Overall, I don't therefore think Esteem made the real value of this death benefit area clear enough. In a DB scheme (or even the PPF) this was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I also think the adviser discussed with Mr C that he'd be able to pass on the value of a personal pension, potentially tax-free, to *anyone* he nominated. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to him. But there was no real credibility if saying his Godchildren should be a reason to transfer away. There is simply no evidence that he wanted to pass on so much to them as to make them part of this particular decision. And both he and Mrs C clearly had enough money elsewhere to bequeath to others if they really wanted to without making Mr C's pension an integrated part of this. Whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Esteem explored to what extent Mr C was prepared to accept a different retirement income in exchange for different death benefits.

Mr C was only 48 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr C had lived a long life there could be very little left in his personal pension plan.

I can't be sure whether, or the extent to which, life insurance was discussed in this case. But at 48 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr C really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that Esteem took into account the fact that he could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr C already had some options ensuring part of his pension wouldn't just 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr C. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr C's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr C, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and

Esteem said he lacked trust in the company. He'd heard negative things about the PPF and Esteem said he could have more control over his pension fund.

So, it's quite possible that Mr C was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Esteem's obligation to give Mr C an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Esteem should have reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr C through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, 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 Esteem's recommendation to Mr C to transfer out of the DB scheme altogether.

- *Other issues*

Esteem says that another factor here was the high CETV. I accept that £443,047 would have seemed like a lot of money, particularly when Mr C's contributions over 30 years were only a small proportion of this. But in 2017 we were in a sustained period of low bond yields which was the cause of pushing up CETV's. There was no real evidence at the time that this would necessarily reduce. But in my view, no case was made out for transferring and if considering the CETV alone, one has to look at what was being given up to achieve this.

I've explained above why I don't think Mr C needed any flexibility and his interests were better served by him drawing a regular pension just as the scheme was built for. He was an inexperienced investor and would incur substantial costs in managing his pension going forward. And as I've shown, the evidence tends to strongly show that in any case, he'd receive less benefits in his retirement as a result of transferring away.

Suitability of investments and use of DFM

Esteem recommended that Mr C invest his funds in a personal pension and use a DFM to manage this on his behalf. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in a DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr C was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr C was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Esteem ought to have advised him against transferring out of his DB scheme for this reason.

I think Mr C's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. We can't accurately say when this would have been, for the reasons I've given; he'd made no irredeemable decision to retire at any given age. But all the evidence pointed to him still being able to potentially retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, and other income streams, this supported that strategy in my view.

I don't think it was in Mr C's best interests for him to irreversibly transfer his DB scheme to a personal pension at the age of only 48 when he had the opportunity of opting into the BSPS2. I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr C still had several years before he could realistically retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr C would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. On this basis, I think Esteem should have advised Mr C to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr C would have transferred to a personal pension in any event. I accept that Esteem disclosed some of the risks of transferring to Mr C, and provided him with a certain amount of information. But ultimately it advised Mr C to transfer out, and I think Mr C relied on that advice.

I'm not persuaded that Mr C would have insisted on transferring out of the DB scheme, against Esteem's advice. I say this because Mr C was likely an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Esteem 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.

I'm also not persuaded that Mr C's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if Esteem had explained Mr C was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for Esteem's unsuitable advice. Mr C was still too young to accurately predict his retirement plans and he is still working as I write, with no concrete plans to retire.

I therefore consider Mr C would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Esteem should use the benefits offered by BSPS2 for comparison purposes.

Esteem must 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.

Esteem should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation together with supporting evidence of what Esteem based the inputs into the calculator on.

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 C'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, Esteem should:

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

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Esteem 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 C'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

Our investigator recommended that Esteem should pay Mr C for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr C in his particular circumstances. This pension at the time represented the vast majority of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr C. So I agree the recommended payment of £250 for distress and inconvenience. Esteem should pay Mr C this amount *in addition* to the redress I've set out above.

My final decision

Determination and money award: I am upholding this complaint and I now direct Esteem Money Ltd to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Esteem Money Ltd pays Mr C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C accepts my final decision, the money award becomes binding on Esteem Money Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 20 December 2023.

Michael Campbell
Ombudsman