DRN-3835210

The complaint

Mr K has complained about the advice that Bury Financial Advisers Limited (BFAL) – an appointed representative of Pi Financial Ltd - gave him to transfer his defined benefits from his occupational pension scheme (OPS), the British Steel Pension Scheme (BSPS), to a Personal Pension Policy (PPP).

Mr K has expressed concern that BFAL hadn't met the regulatory requirements regarding such transfers and that he's incurred a financial loss as a result.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd 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, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

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 K's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the PPF or into a private arrangement, such as a PPP.

Mr K was 51 when he met with BFAL on 12 October 2017 to complete a "Financial Review" fact find. Mr K, like many of his colleagues at the time, was recorded as being concerned about the financial position of the BSPS and the possibility of his future pension benefits being provided by the PPF or BSPS 2.

The fact find records that Mr K was in good health, married, and had two non-dependent children.

Mr K was employed, earning around £40,000 per annum and didn't anticipate changing his employment. His wife was also employed, earning approximately £20,000 per annum. Their combined net monthly income was in the region of £3,500 which was almost entirely used to cover their monthly expenditures. They held cash savings of £2,000, but no other investments.

They owned their home which was valued at £120,000, and had an outstanding mortgage of £4,500 due to be repaid over the following year.

With regard to his retirement planning, it was recorded that Mr K wanted to retire at age 58, without financial penalty. He was concerned that when he passed this age he may not be able to continue working in his very physical role. Apart from his BSPS pension benefits, he and his employer were paying 6% and 10% respectively of his monthly earnings to the Tata Steel Group Personal Pension plan.

As part of the financial review, an attitude towards investment risk questionnaire was completed and Mr K was assessed to have a risk profile of "5 out of 10" on a scale where "1" was lowest risk and "10" was highest risk.

Attached to the fact find was a file note dated 13 October 2017. This said that Mr K wished to access his pension from age 55 to take tax free cash to pay for his daughters' weddings, up to £20,000 in total. He would then defer taking further withdrawals until he retired.

To fulfil Mr K's objectives, BFAL recommended that Mr K transfer his BSPS CETV of £553,150 to an Aviva PPP.

Mr K accepted the recommendation and the transfer completed.

Mr K then complained to BFAL in February 2022, but BFAL (Pi Financial Ltd) declined to uphold his complaint. Dissatisfied with the response, Mr K referred the matter to this service.

Having considered the complaint, the investigator thought that it should be upheld. He said the following in summary:

- He was satisfied that BFAL had carried out the correct procedures in advising Mr K, but he didn't think the ultimate recommendation to transfer had been suitable.

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- Mr K had been a member of the BSPS for just under 31 years. His estimated full pension at age 65 was quoted as being £30,535 pa and at age 58, this was estimated to be £19,550 pa.

- The critical yields to match the scheme benefits were 7.6% pa to age 65 and 12.01% pa to age 58.

- The advice had been given during the period in which this service was publishing information with which businesses could calculate future "discount" rates for complaints about transfers which were being upheld.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rates for the number of years left to age 65 and 58 were 4.1% and 3.3% respectively. Given the critical yields, the possibility of improving on Mr K's benefits from the BSPS was doubtful.

- BFAL said that, if Mr K took a pension commencement lump sum of £134,913 with a reduced pension of £20,237 pa, this would have a critical yield of 5.51% pa, and this was achievable. But it concluded that the critical yield to match the scheme benefits at age 58 wasn't achievable.

- Mr K was still seven years away from his preferred retirement age of 58, and was recorded as wanting to transfer to a PPP for the flexibility of access and due to concerns about his pension benefits being transferred to either the BSPS 2 or the PPF, and the reduced revaluation rates which might apply compared to the BSPS.

- Mr K had a retirement income figure of £34,800 pa in mind, and BFAL should have explained that this was unrealistic. His BSPS benefits couldn't be improved upon by transferring due to the high critical yields, and if a higher income than that quoted by BFAL was drawn down, this would have depleted the pension fund which needed to last his lifetime.

- Although Mr K may have wished to access his tax free cash at age 55 to pay for his daughters' weddings, the advice should have been given with Mr K's best interests in retirement primarily in mind.

- Mr K didn't have a clear retirement plan which could be sufficiently detailed to demonstrate that a transfer to a PPP was in his best interests. He may have liked the idea of accessing tax free cash at 55, but he was eight years away from possible retirement at age 58. There was therefore no urgent need to transfer at that point.

- In terms of Mr K's capacity for financial loss, he had 30 years' BSPS benefits, but his only other asset, other than his home, was £2,000 in savings. So he didn't have any ability to make up losses due to the transfer.

- Mr K may have been concerned about the prospects of the BSPS, and may have been inclined towards transferring, but it was up to BFAL to make a suitable recommendation – and it didn't so.

- If properly discussed, Mr K's concerns around the BSPS and the PPF could have been managed, along with reassurances around the guaranteed benefits and the provision for Mrs K in the event of his death.

- Mr K was relinquishing the guarantees for the sake of control and flexibility which he didn't anticipate needing for a further seven years. There were also no exceptional circumstances which warranted a transfer. Mr K was a balanced investor, with little experience of investments. By transferring, the entirety of his pension would be based upon investment returns and future annuity rates.

- If Mr K had been advised not to transfer, the investigator was confident that he would have followed that advice.

The investigator recommended that Pi Financial Ltd undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that he would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr K's pension plan, but if this wasn't possible, it should be paid directly to Mr K, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He further recommended that Pi Financial Ltd pay Mr K £300 in respect of the trouble and upset that the matter had caused him. He said that Mr K had trusted the advice he'd been given and would have been caused concern when realising that the transfer may not have been in his best interests.

Mr K made no further comment upon investigator's findings. Pi Financial Ltd disagreed, however, saying the following in summary:

- Mr K had a separate workplace pension, and so did have other investments beyond his savings.

- The complaint from Mr K had been as to whether BFAL had followed the correct procedures. And on the basis that the investigator had concluded that it had undertaken the correct procedures, the complaint couldn't be upheld. The case was also reviewed by two pension transfer specialists, both of whom concluded that the recommendation was suitable and the proper processes had been followed.

- It agreed that the starting point should be that the transfer would be unsuitable unless it could be demonstrated otherwise. This was the starting point for its analysis.

- The critical yield could only be used to determine whether the transfer was financially viable if Mr K was planning to buy an annuity. Mr K didn't want to match the benefits the BSPS was offering as he didn't want to incur the financial penalty for taking benefits early. The reduced relevance of a critical yield when an individual wasn't planning to buy guaranteed benefits had been recognised by the FCA, which had changed the requirement from a TVAS to a TVC and APTA.

- Mr K had achieved all of his stated objectives, as follows:

  "1. Retire at age 58
  2. Achieve expenditure of £34,800 net per year at the point of retirement
  3. Death benefits to be greater for [Mrs K] as the spouse benefit of 50% (with other assets) would not (and still do not) support her in retirement.
  4. Increased capital value of transfer had made it possible to retire at 55 – capitalise value on offer
  5. Concerns on changing basis of the scheme – wanted to transfer to avoid going into the PPF or transfer to a new scheme where the increases will not be as high."

- Mr K had now fully retired on the income he desired and with the satisfaction that, should he die prematurely, Mrs K would enjoy the same benefits.

- It agreed that there would be no financial advantage from a guaranteed income perspective if Mr K was looking to buy an annuity. But he did gain a financial advantage by meeting his objectives of providing a bridging pension from age 58 to state pension age. The scheme benefits couldn't provide this.

- It didn't understand the relevance of the discount rates quoted by the investigator, but notwithstanding this, the FCA has made it quite clear that the growth rates appropriate to a client's attitude to risk should be used when assessing a transfer – which the investigator had himself acknowledged.

- It didn't understand the point being made when the investigator said that the critical yield to age 58 was unachievable, but then said that BFAL in any case deemed the transfer to be suitable.

- Mr K's objective had been to capitalise his deferred BSPS benefits. Had Mr K taken his CETV now, it would have been reduced by around 30-40%.

- The pension income from the transfer had enabled Mr K to bridge the gap between 58 and state pension age, at which point he could reduce his withdrawals – and then further once Mrs K's state pension began. The transfer wasn't designed to sustain a £34,000 pa withdrawal for life. Mr K could achieve his objectives whilst maintaining a guaranteed essential income.

- Whilst the investigator's opinion on Mr K wishing to pay for his daughters' wedding was noted, this was subjective, and Mr K was entitled to his own objective. If that objective could be met and Mr K could still have met his income and death lump sum benefit objectives, then this would have been in his best interests.

- It disagreed that Mr K didn't have a clear retirement plan – this was to retire at age 58. The income which would be provided by the BSPS 2 at age 65 would have been around £20,000 pa (approximately £18,500 net), leaving a shortfall of around £15,500 pa. Mr K would have needed to work until age 67 to receive the desired income and this prospect was inflicting mental and physical stress.

- If Mr K didn't transfer then and the BSPS benefits entered the PPF, he wouldn't have been able to transfer later. There was also no guarantee of the value of the BSPS 2 CETV at age 55. The recommendation was based upon the available information at the time.

- The decrease in interest rates had shown that that decision had been correct. If Mr K had deferred his decision to transfer, he would then have been in a detrimental position.

- In determining Mr K's capacity for loss, although he only had £2,000 in savings, his greatest asset was the approximately £500,000 pension fund. He only had £4,500 outstanding on his mortgage and he and Mrs K could expect two guaranteed state pensions. His capacity for loss was high, and a loss of 50% in the first three years wouldn't have had a detrimental effect on Mr K's plans.

- It didn't understand the investigator's conclusions relating to the unsuitability of the transfer or, as retirement wasn't imminent, that he should have been advised to transfer into the BSPS 2. It queried as to how a transfer to the BSPS 2 would have met Mr K's needs.

As agreement couldn’t be reached on the matter, the investigator said that it would be referred to an ombudsman for review.

The investigator then informed Pi Financial Ltd that he’d enquired of Mr K as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Mr K confirmed that he’d like any redress calculation to be conducted on the basis of the existing guidance.

The investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Pi Financial Ltd to use the FCA’s BSPS-specific calculator to determine any redress due to Mr K.

The investigator said that, if either party didn’t think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr K’s complaint, they should let him know by 5 June 2023.

Neither party has submitted further comments in respect of this.

The complaint has now been referred to me for review.

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.

And having done so, I’ve reached similar conclusions to those set out by the investigator, and for broadly the same reasons.

When considering what’s fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators’ rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn’t a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA’s handbook, COBS 2.1.1R required a regulated business *to “act honestly, fairly and professionally in accordance with the best interests of its client”.*

The FCA’s suitability rules and guidance that applied at the time BFAL advised Mr K were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like BFAL, take reasonable steps to provide advice that is suitable for their clients’ needs and to ensure they’re not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, BFAL needed to gather the necessary information for it to be confident that its advice met Mr K's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) *take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I’ve therefore considered the suitability of BFAL’s advice to Mr K in the context of the above requirements and guidance.

BFAL’s rationale for transferring

Mr K wasn’t categorised as an “execution only” or insistent client, and BFAL was taking him through the advice process. Therefore, BFAL could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr K and his circumstances and objectives were recorded – as noted above. But although I’ve noted BFAL’s comment that, as it followed the required procedures, the complaint shouldn’t be upheld, I’d make the observation that it would of course be possible to gather the required information, assess suitability, and still provide an unsuitable recommendation.

As with the investigator, I’ve noted above that the FCA’s guidance was that the starting assumption for an assessment of Mr K’s options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I’ll therefore explore these objectives further below. But initially, I’ll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr K would be better off financially as a result of the transfer.

The financial case to transfer

BFAL obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr K’s objectives from a financial perspective.

The suitability report was issued before the FCA’s revised guidance which was released in late October 2017, and which provided “discount rates” for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. I’ve noted what Pi Financial Ltd has said about the discount rates. And as noted by the investigator, businesses weren’t required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.1% pa. And that to age 58 was 3.3%.

The critical yields to age 65, at 7.6%, and then 12.01% at age 58 therefore comfortably exceeded the discount (or growth) rate deemed achievable over the same period, but also, bearing mind Pi Financial Ltd’s comment that the regulator’s growth rates were the more relevant comparator, the mid band growth rate of 5% – which I think would be a reasonable assumption for a “medium” risk investor.

BFAL itself said it considered the critical yields to likely be unachievable, and I agree - I think it’s more likely than not that the critical yields were in fact unachievable, year on year, for the number of years that Mr K had until he reached either early or normal retirement age.

And as a reminder, these growth rates were required to just match the scheme benefits.

From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr K’s best interests. As such, my view is that the transfer couldn't be justified from a financial perspective, especially given the valuable guarantees which Mr K would be relinquishing.

But I'd also note that the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

The requirement for control and flexibility - and early retirement

It's Pi Financial Ltd's position that replacing one source of guaranteed income with another wasn't the objective here – rather, it was the facility for Mr K to withdraw income flexibly. And so it has argued that the recommendation shouldn't be judged on the basis of the critical yields required to match the scheme benefits. I'll therefore address these objectives further below.

Before I do so, I think it's firstly fair to say that BFAL did provide warnings on the guarantees which would be relinquished, but as Pi Financial Ltd will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. BFAL needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr K.

As I've said above, BFAL's reasoning for the recommended transfer, despite the likely inability of the transferred benefits to match those which would have been produced by the scheme, was that Mr K required flexibility of income due to his particular circumstances, objectives, and concerns about his employer and the pension scheme. And so I've given this argument careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr K may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

But I also don't think Mr K in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr K would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy changing income needs.

However, my view is that there was another way of achieving his and his wife's income objective without needing to relinquish his scheme benefits. And I don't think it would have involved particularly complicated financial planning.

The plan was to seemingly take more income until Mr K's state pension began at age 67, and then take a lower income. But Mr K would still have been receiving an overall lower level of pension benefits through his retirement. If he'd retained the scheme benefits, these would have continued to escalate beyond the state pension age, rather than reducing.

Mr and Mrs K were recorded as wanting a joint income of £34,800 pa at age 58, although I can't see any particularly detailed analysis as to how this figure had been reached. Mrs K was expecting a pension of £5,950 pa at age 65, and if this was taken at age 57, this would be £3,576 pa.

Mr K would apparently need to access his tax free lump sum at age 55 to pay for his daughters' weddings, estimated at around £10,000 each. But my understanding is that neither had plans to marry at that point, and so the objective to access the tax free cash at that age was quite hypothetical rather than a fixed objective.

As it turned out, Mr K hasn't yet needed to withdraw funds for that objective, although he has made other withdrawals to fund a holiday, car loan clearance and buying another car.

So on the basis that Mr K may not in fact have needed to access the tax free cash until his daughters were actually planning to marry, rather than an arbitrary age of taking tax free cash, Mr K could have delayed taking any pension benefits until age 58.

By that point, even at a modest 2% pa rate of growth over seven years, he would have accumulated a fund value by age 58 of around £49,000 in his defined contributions scheme. BFAL also projected that, once the mortgage was repaid, Mr and Mrs K could have accumulated a further £21,000 in savings.

If Mr K withdrew his tax free cash entitlement from the scheme at age 58, this would have provided £90,232. There would have been a reduced pension payable, due to early retirement factors and the tax free cash, of £13,534 pa. Adding Mrs K's pension to this, £3,576, this would have provided around £17,000 pa. There was therefore a prospective shortfall of £17,800 pa.

But the total cash which Mr and Mrs K would have had by then, even stripping out £20,000 for their daughters' weddings if indeed this was required by then, would have made up that shortfall for around eight years – so to around age 65. And with any fund growth on the cash amounts, and escalation in Mr and Mrs K's scheme pensions, I think it was possible that it would have lasted for longer.

I can't see that tax free cash was earmarked for any purpose other than paying for their daughters' weddings. And they'd have repaid their mortgage by then.

Mr and Mrs K would then have begun receiving their state pensions, *in addition* to the guaranteed escalating benefits they were continuing to receive from their respective schemes. They wouldn't have needed to reduce the income Mr K was drawing from his transferred pension fund to ensure that he didn't run out of funds.

And even if Mr K then found himself in the fortunate position of receiving more income than he required, which might otherwise add to an IHT bill upon his death, then he could have gifted this immediately to avoid it being subject to IHT.

I think, had Mr K been presented with this option to meet his income requirement (or likely thereabouts), the prospect of drawing down his defined contributions fund and using tax free cash, whilst maintaining the valuable guaranteed scheme benefits, would have been appealing. If presented with this further option, I can't see why Mr K would reasonably have wanted or needed flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his likely attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

The very likely incapacity of the transferred fund to match the scheme benefits is representative of the overall financial loss. And that would read across into the performance required of a flexi-drawdown fund to do the same. The only way of Mr K maintaining his pension funds to a reasonable age would be to withdraw less than he could have received as guaranteed income from the scheme. And if he simply didn't need to transfer, for the reasons set out above, I don't think he would readily have accepted this prospect.

And even if the income produced by the alternative above fell slightly short, on the basis of the prospect of a significant cash equivalent loss as a result of the transfer, as demonstrated by the transfer report, I think Mr K would more likely than not have "cut his cloth" accordingly for the sake of retaining those important guarantees. As Pi Financial Ltd will be aware, financial advice isn't simply a matter of wish fulfilment. It's about bringing to life realities and alternatives which might, in the medium to long term, prove more advantageous to a client – or in other words, and as required by the regulator, acting in their best interests.

And so, without even needing to further consider whether Mr K was in a position, from a capacity for loss perspective, to take the investment risks associated with the transfer and subsequent reinvestment, I just can't see sufficient justification for him needing to do so in the first place, given the available alternative. Even a high level of investment risk, for example primarily in equities, would be unlikely to produce the returns required, year on year, to match the overall benefit which he'd receive from the scheme. Quite apart from which, combining a guaranteed source of income with a measure of risk/reward investment through his defined contribution pension funds would seem to me to represent just the type of well diversified means of retirement provision which would be suitable for a "medium" risk investor like Mr K.

As with others in his position, I think it's fair to say that Mr K would have been concerned about the future of the BSPS and his associated benefits. But Mr K's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I'm not persuaded that this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr K distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the time of the "time to choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative. Conditions still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

The prospect of Mr K's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

And so I think that, had Mr K's concerns been better managed, a further seeming key driver for having control over his pension benefits would also have diminished.

I've further noted Pi Financial Ltd's comments relating to the CETV which would have been lower had Mr K transferred at a later date. But I think this is a moot point – on the basis of the facts as they were known at the time of the advice, and suitably advised, I don't think Mr K would have needed to transfer his pension benefits – and shouldn't in my view have been advised to do so.

Death benefits

It was recorded in the suitability report that Mr K had very little life assurance and that his dependants would certainly benefit from extra sums if they could be made available. And following the transfer, a lump sum would be payable to his beneficiaries, rather than in the form of spouse's/dependants' pensions from the scheme.

But I have several concerns about this as a reason for transferring Mr K's benefits. Firstly, as far as I'm aware he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point, especially if he was to retire at age 58.

The second is that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for extended family members. The recommendation needed to be given in the context of Mr K's best interests, rather than those of his surviving family – he (along with Mrs K) was the one who would require the income in retirement.

And unless the financial needs of the individual concerned are given prominence over the surviving family, I don't think this can be said to be acting in that individual's best interests. This desire to leave a larger lump sum legacy to his family cannot reasonably have subjugated Mr K's own personal requirement to benefit from his accrued pension benefits. The wish to leave a legacy should have been properly weighed against the guaranteed benefits Mr K was relinquishing, and BFAL should have advised him that his own financial benefit took priority here.

There also didn't seem to be any particular need for Mr K to leave a lump sum to his family. The mortgage had been repaid and his daughters were financially independent. Further, Mrs K would have her own pension provision, both from her OPS and the state, and would also have benefitted from the 50% spouse's pension which would have been payable from the scheme. BFAL had itself compared the capitalised death benefits between the scheme and a recipient PPP, and the scheme produced just under a £200,000 overall greater benefit.

It's difficult therefore to understand how the transfer would have achieved greater security for Mrs K. I think the "headline" transfer sum was viewed as being that which Mrs K might receive in the event of Mr K's death, which might have seemed beneficial immediately after the transfer. But the reality was somewhat different – Mr K would be drawing down from that sum of money every year, thereby (notwithstanding fund performance) decreasing its value by £34,800 pa for the first nine years. And in the event of Mr K's death after this, Mrs K would need to have managed on the remainder.

By contrast, Mrs K could expect around £7,000 pa from Mr K's 58th birthday onwards, escalating each year. And she would also have received whatever was left of the tax free cash and Mr K's defined contribution plan as a lump sum.

I therefore think that the lump sum death benefit was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr K compromising the security of his own financial future.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr K's family by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr K personally.

What should BFAL have done – and would it have made a difference to Mr K's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr K. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

There was no imminent prospect of Mr K's scheme benefits needing to enter the PPF. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr K was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr K, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, which clearly fed into his views on having control over his own pension funds, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, one of the key recorded objectives - early retirement –was in any case achievable within the BSPS 2, and would have remained so even in the scenario of entry into the PPF.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr K to relinquish valuable benefit guarantees if an alternative method of broadly achieving his objectives was available.

My further view is that, if properly discussed, Mr K's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need, given the other options available, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP. And if a lump sum shortfall was still envisaged for Mrs K, relatively inexpensive life assurance could be put in place.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, the critical yields were higher than the discount rate and both the mid and higher band growth rates set out by the pension provider. And as also noted by BFAL, I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits, given Mr K's risk attitude.

Taking account of Mr K's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that BFAL should have advised against the transfer.

And I think that, had this happened, Mr K would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to the conclusion that the recommendation to transfer wasn't suitable for Mr K, nor was it in his best interests. The key contributing factors here are: Mr K's medium attitude to risk and its incompatibility with the type of investment risk which would have been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr K's options – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least one of the key benefits sought by Mr K was available without needing to transfer – early retirement.

My view is that, taking account of the critical yields, Mr K's medium attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely (as also indicated by BFAL), albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out in COBS 2.1.1R and COBS 19.1.6, BFAL would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr K's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr K, as far as possible, into the position he would now be in but for the unsuitable advice.

In terms of the option Mr K would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr K's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement.

But the reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

One of Mr K's recorded objectives was the ability to retire early. And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF.

Mr K did in fact retire in March 2022. He did so on the basis of what he'd been told by BFAL about its feasibility. As he's retired, and most likely would have been planning to on the basis of the advice from BFAL, I think that, suitably advised, Mr K would opted to enter the PPF.

Pi Financial Ltd must therefore undertake a redress calculation on this basis 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.

Pi Financial Ltd 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 K and our Service upon completion of the calculation.

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 K'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, Pi Financial Ltd should:

- calculate and offer Mr K redress as a cash lump sum payment,

- explain to Mr K before starting the redress calculation that:

  - its 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 defined contribution pension

- offer to calculate how much of any redress Mr K receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr K accepts Pi Financial Ltd's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr K for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr K's end of year tax position.

Redress paid to Mr K as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses 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 K'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.

Determination and money award: I require Pi Financial Ltd to pay Mr K the compensation amount as set out above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I would also recommend that Pi Financial Ltd pays Mr K the balance.

If Mr K accepts this final decision, the award will be binding on Pi Financial Ltd.

My recommendation wouldn't be binding on Pi Financial Ltd. Further, it's unlikely that Mr K could accept my decision and go to court to ask for the balance. Mr K may want to consider getting independent legal advice before deciding whether to accept my final decision.

As also set out by the investigator, my view is that Mr K will have been caused some considerable concern over the impact that this may have had on his retirement planning. As such, I agree that Pi Financial Ltd should also pay him £300 in respect of this.

My final decision

My final decision is that I uphold the complaint and direct Pi Financial Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 December 2023.

Philip Miller
Ombudsman