DRN-3835341

The complaint

Mr T complains about the advice NTM Financial Services Ltd (NTM) gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

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

What happened

In March 2016, Mr T'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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T's employer would be set up – the BSPS2.

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

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

Mr T was concerned about what the scheme developments meant for the security of his pension. He contacted NTM for advice. He met with it in November 2017. The BSPS trustees had previously given him a quote for a cash equivalent transfer value ('CETV') for his BSPS pension of £51,997, which expired in January 2018. NTM obtained a transfer value analysis ('TVAS') report. It also completed a fact-find with him and an assessment of his risk appetite. Amongst other things, it recorded that:

- Mr T was 45 years old, married to Mrs T, they were both in good health.
- They had one child under five and another due the following year.
- Mr T earned around £33,000 a year.
- Mrs T was also working and had her own DB pension.

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- Mr T said that he and his wife are largely financially independent from each other.
- They had two rental properties, at that time the rental income was being used to pay the mortgages.
- Their home was valued at £180,000 with £110,000 mortgage outstanding.
- After meeting regular outgoings Mr T had around £300 a month in disposable income.
- Mr T and his employer had recently begun contributing towards the employer's defined contribution ('DC') pension scheme.
- Mr T thought he would need a personal income of around £1,500 a month in retirement.
- He wanted to retire at age 60.
- At age 65 Mr T's entitlement from the DB scheme was a full yearly pension of £4,235. Or, if he wanted to take tax free cash ('TFC') it would pay him a lump sum of £18,712 and a reduced pension of £2,806 a year.
- The growth rates required (the critical yields) to match the DB benefits at age 65 from an alternative arrangement were 8.4% for a full pension and 7.25% for TFC and a reduced pension.
- The PPF would pay Mr T a full pension at age 65 of £3,445 a year or TFC of £18,390 and a reduced pension of £2,758. The applicable critical yields were 6.25% and 5.94% respectively.
- At age 60 the DB scheme would pay Mr T a full yearly pension of £3,069 or TFC of £14,049 and a reduced yearly pension of £2,107. The critical yields to match those benefits were 10.07% and 8.53% respectively.
- The PPF would pay Mr T £2,789 a year at age 60 or TFC of £15,423 and a reduced yearly pension of £2,313. The critical yields to match those benefits were 7.76% and 7.41% respectively.
- NTM assessed Mr T's attitude to risk as *average*.

On 17 November 2017 NTM sent Mr T its suitability report setting out its analysis, advice and recommendation. It recommended that Mr T should transfer his DB funds to a named personal pension. Amongst other things the key reasons for its recommendation were:

- It would give Mr T control of his retirement affairs.
- He could access his pension benefits flexibly with the ability to vary his income during the early years of retirement
- The death benefits on offer from a personal pension gave a higher degree of protection for Mr T's family.

Mr T met with NTM on 11 December 2017 to discuss its advice and recommendations. In brief NTM confirmed that transferring would allow Mr T to retire early, although it also pointed out that early retirement from the PPF was more generous than the BSPS.

Mr T signed the relevant forms to go ahead with the transfer. NTM charged him £2,500 for its advice and arranging the transfer. It also charged him 0.65% of the fund value for ongoing advice. The named personal pension provider would also take 0.56% of the fund value for its service.

In 2019 Mr T ended NTM's advice service.

In 2021 Mr T complained, via our Service, that NTM might have misadvised him. He said NTM had told him it couldn't see the BSPS2 surviving and it would go into the PPF. He also said he was required to pay an ongoing fee.

On 21 December 2021 NTM replied to Mr T's complaint. It said it didn't believe it had mis-sold the personal pension. It added that it hadn't commented on the funding position of the BSPS2 and that Mr T had agreed to pay its fees.

One of our Investigators looked into Mr T's complaint. In June 2022 he recommended the complaint be upheld. In short he thought the opportunity to improve on the benefits available through the DB scheme was low and Mr T would need to take a more aggressive risk strategy than his own attitude to risk in order to achieve that. The Investigator said Mr T had no need to transfer when he did and could have deferred a decision to transfer until nearer to retirement. He said NTM should have advised Mr T to opt into the BSPS2 and recommended NTM should compensate Mr T for any losses he incurred by transferring his DB pension. The Investigator added that NTM should pay Mr T £200 to address his distress and inconvenience arising from the unsuitable advice.

NTM didn't agree with our Investigator's assessment of the complaint. It asked for more time to respond to the assessment as it wished to seek legal advice. It then asked for additional time to respond. It said it had received its legal representative's draft response but it wanted time to approve it. Having done so, it sent its reply on 10 August 2022. Amongst other things it said:

- Our Investigator hadn't addressed Mr T's actual complaint.
- The Investigator had misunderstood the pension benefits payable and Mr T could be better off by transferring out of the scheme.
- As Mr T didn't want his DB funds to move to the PPF his only other option was to transfer to a personal pension.
- The critical yields our Investigator referred to were only a useful comparator of pension benefits if Mr T had wanted to buy an annuity, which he didn't want to do.
- The Investigator didn't give appropriate weight to Mr T's objective, which NTM's advice allowed him to achieve.

As NTM didn't agree with our Investigator's assessment of the complaint it was referred to me to make a final decision.

What I've decided – and why

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

In responding to this complaint NTM's made a number of detailed points. I've considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key points at the heart of Mr T's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of NTM's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

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

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 T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

The essence of Mr T's complaint

In response to our Investigator's assessment of the complaint, on 10 August 2022, NTM said the Investigator "*adjudicates on a complaint which has not been made*".

Our Investigator's assessment focused on the suitability of NTM's advice for Mr T. That was because Mr T's complaint to us was that NTM had misadvised him. In other words, Mr T said its advice was not appropriate for his situation. Put another way he complained that its advice was unsuitable.

Further, NTM's response to Mr T's complaint in December 2021 also focused on the suitability of its advice and whether that was appropriate for Mr T's circumstances. So, at the time of its response, NTM was clearly aware that Mr T's principal concern was that its advice was unsuitable for him. It follows that I'm satisfied it's reasonable to examine the suitability of NTM's advice when considering Mr T's complaint.

NTM also said, concerning the future of BSPS2, that Mr T:

"*did not appear to suggest that NTM made the alleged comments about the alleged failure of BSPS2, which is rejected by NTM if that had been his intention, but Mr [T's] complaint appears to be that any fees for any advice would be unnecessary…*"

NTM's argument is somewhat difficult. But it seems to be arguing that Mr T did not make any complaint about NTM's comments about the future of BSPS2, instead he focused his complaint on NTM's professional fees. However, the evidence plainly contradicts that. When Mr T put his complaint to our Service, under a heading of "*tell us about your complain*t" he said, in writing, that NTM's adviser:

"*said he couldn't see the BSPS2 surviving and it would ultimately go to a PPF.*"

I note that when NTM replied to Mr T's complaint in December 2021 it interpreted this point to be about whether it made comments on the funding position of the BSPS2 in so far as it would fail and fall into the PPF. So, it clearly accepted, at that time, that Mr T had complained about its opinion concerning the future of the BSPS2. It's not clear therefore why it felt, in response to our Investigator's complaint assessment that Mr T "*did not appear to suggest that NTM made the alleged comments*", when he clearly had. In any event I will deal with that complaint and Mr T's concerns about charges below.

Financial viability and the prospects of BSPS2

NTM carried out a transfer value analysis report (TVAS - as required by the regulator) showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). NTM's TVAS showed two such comparisons, one was with Mr T's benefits if he allowed his pension to move to the PPF, the other was with Mr T's benefits from the BSPS. However, Mr T didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move his benefits with the scheme to the PPF.

NTM said in its suitability report that the BSPS2 still wasn't guaranteed. I agree that's the case, and there was still the possibility that his pension could move to the PPF. But I think NTM underestimated the chance of the BSPS2 coming into existence. Some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr T's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently on 28 August 2017 the BSPS administrators provided scheme members, including Mr T, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr T's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. The confirmation that Mr T's employer had made the payment referred to was announced on 11 September 2017.

I note Mr T sought advice after he'd received his "time to choose" pack in October 2017 That pack would have set out what his entitlement under BSPS2 was and given a comparison against the benefits from the PPF.

In those circumstances, while there was still a possibility the BSPS2 wouldn't have gone ahead, I think NTM should have explained to Mr T that the PPF was unlikely to be Mr T's only option. So, while I think it was appropriate to caution that the BSP2 wasn't yet a done deal, in order to give Mr T complete advice, it should have included appropriate references to the benefits from the BSPS2 when it gave its advice. That would have enabled him to make a fully informed decision. NTM's told us that it couldn't have given an analysis of the BSPS2 benefits as the scheme didn't provide a breakdown of GMP[2]. But Mr T's scheme membership only began in 2011 and as such he had no entitlement to GMP. So there was nothing to show a breakdown of. It follows that the absence of a GMP breakdown should not have prevented NTM from setting out his BSPS2 entitlements.

I've noted Mr T didn't give NTM his "time to choose" pack. Similarly NTM didn't ask him to produce it. But I'm aware the BSPS2 would have offered the same income benefits as the

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[2] A Guaranteed Minimum Pension (GMP) is a minimum pension normally provided through a DB scheme to people who contracted-out of the additional state pension between 6 April 1978 and 5 April 1997

BSPS. However, because of changes in indexation, the annual increases would have been lower. So we can assume the lower annual increases under the BSPS2 would have likely decreased the critical yields compared to the BSPS. And as the BSPS2 was thought to be of greater benefit than the funds going into the PPF then, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. So, while I think NTM should've tried to ensure its analysis was based on the benefits available through the BSPS2, given the higher growth rate of the BSPS, using the BSPS as a comparison was not unreasonable as that should have been more difficult to achieve.

NTM gave Mr T advice after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable.

Prior to October 2017 this Service published similar discount rates on our website. I acknowledge that NTM was under no obligation to refer to discount rates when giving advice. But it was free to do so. And under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

Mr T was 45 years old at the time of the advice and he told NTM that his preferred retirement age was 60, although the scheme's normal retirement age was 65. I've set out the relevant critical yields in the table below:

	Age 60		Age 65	
Scheme	Full pension	TFC and reduced pension	Full pension	TFC and reduced pension
BSPS	10.07%	8.53%	8.40%	7.25%
PPF	7.76%	7.41%	6.25%	4.94%

The relevant discount rates closest to when the advice was given which I can refer to were published by this Service for the period before 1 October 2017, and was 4.2% a year for 14 full years to retirement at age 60 or 4.4% for 19 full years to retirement at age 65. I've kept in mind that the regulator's projection rates had remained unchanged since 2014: the regulator's upper projection rate was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, which consider investments on a moderate risk level similar to Mr T's *average* attitude to risk, and also the term to retirement. There would be little point in Mr T giving up the guarantees available to him through a DB scheme, only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 4.94% and climbed as high as 10.07% if retiring at age 60, I think Mr T was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his attitude to risk.

It’s notable that NTM recognised in its suitability report that Mr T was unlikely to match the critical yields in retirement by transferring. On two occasions it said that Mr T would need to take a “*more aggressive*” investment approach than his attitude to risk in order to achieve that. Put another way NTM knew that Mr T had little prospect of matching the critical yields by investing in line with his attitude to risk. His only prospect of doing so would be to invest at a level of risk he could not tolerate. So he would most likely have to take an approach he wasn’t comfortable with in order to do so.

In its letter of 10 August 2022 NTM seems to have changed its tune and argued that the cashflow models in its suitability report demonstrate that Mr T would be better off by transferring. But, unless there’s another suitability report (and TVAS) that I haven't seen, its response doesn't appear to be based on any of the actual figures anywhere on file.

I’ve demonstrated this in the table below comparing the figures NTM’s given in its 10 August 2022 letter for Mr T’s yearly pension entitlement at age 60 – with those given in both the suitability report and TVAS (where the figures are the same).

Scheme	NTM’s 10/08/22 letter	Suitability report and TVAS
BSPS	£5,984	£3.069
PPF	£5,290	£2,789

So NTMs’ figures in its August 2022 letter are almost double the figures it gave to Mr T when it advised him. Similarly, most of the other figures given in NTM’s 10 August 2022 letter aren’t supported anywhere else on the file. For example it says that, if Mr T took his income by drawdown from a personal pension at age 60, based on a growth rate of 5%, by age 100, his fund would still have £147,807 left in it. Other than its August 2022 letter, I can’t find those figures anywhere on file. They certainly don’t appear in the suitability report or TVAS I've seen. So I can only assume NTM was looking at the wrong file or the wrong suitability report when it drafted its response. Accordingly, I don’t intend to refer to those figures further in this decision as I don't think they’re reliable. Instead I will respond to NTM’s points more generally.

NTM said the critical yield is of limited relevance because it’s based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. NTM says Mr T didn’t want an annuity, so the critical yields don’t provide a comparison with the benefits Mr T was looking to secure based on his objectives. But the regulator required NTM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don’t think Mr T could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn’t expecting to retire for at least another 14 full years. So, it’s entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the BSPS2 or PPF). But by transferring out Mr T lost all the guarantees that the DB environment would have given to him.

NTM also said that we needed to consider the “hurdle rate”. The hurdle rate is another measure of predicting future investment returns. But I don't find it an appropriate comparator. That’s because the hurdle rate is a particularly blunt tool when comparing benefits from an alternative investment arrangement against a DB scheme (or PPF). That’s because hurdle rates don't factor in spouse’s or dependents’ benefits, the effects of charges and don’t allow for the guaranteed and escalating income from a DB scheme. So, they will usually be lower than critical yields and the regulator hasn't ever required advising firms to calculate them. Consequently, I don't find hurdle rates to be an appropriate comparator when considering what a scheme member would be giving up by transferring.

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

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

But, critical yields are not the only measure we use to compare pension benefits. And, in this case I've also looked at the regulator's projection rates and NTM's own expectation that Mr T's fund would grow at a level of 5% a year. NTM has referred to figures within its TVAS report, which it says, show that Mr T's funds could last beyond his life expectancy after transferring. For example it says that if Mr T transferred and took benefits equal to the BSPS and a reduced pension at age 60 by way of draw down, then, by age 99, Mr T's fund would still have a surplus of £9,125. But I can't find these figures within its TVAS. As far as I can tell the TVAS doesn't show any of the calculations for its "Cash Flow Modelling" which appear in the suitability report. And the suitability report only shows the outcome of its cashflow models and not the inputs its used in the models. So it's not clear exactly what its factored in or what it's omitted, when making those calculations.

For example, I don't know if its models have factored in the effects of product and adviser charges. So I can't tell if its calculations are likely to be accurate or if they're based on relevant assumptions.

Further, NTM's calculations are based on a return of 5% a year every year. This is in line with the regulator's projected return for an investor with Mr T's attitude to risk. But adviser and product charges would reduce that return to 3.79% a year. Also, NTM's projections and models are based on a steady return each and every year. However, given the volatility of the markets, consistent growth at that level seems unlikely over such a long period of time.

Also if there was a sustained period of poor performance then there was a very real chance that Mr T's fund would grow at a much slower rate or could suffer losses. In those circumstances Mr T's fund could be significantly less than NTM's models show. Similarly NTM said Mr T wanted to transfer his funds in order to be able to take higher sums at an early age. But taking higher sums sooner would have the effect of reducing the funds remaining, which would in turn lower the investment returns and which could see those funds being depleted sooner than expected. But NTM's models don't appear to reflect that.

It's also notable that the personal pension provider produced an illustration of what it calculated Mr T's pension might be worth at age 60. That is in stark contrast to NTM's figures. NTM's TVAS shows that, at age 60, Mr T's fund could be around £88,800. But that would appear to be without factoring in the effects of inflation. In contrast the pension provider's illustration showed what Mr T's fund would likely be worth, after allowing for a growth rate of 5% and being reduced by inflation of 2.5% and product and adviser charges. That showed that, at age 60, the fund would be worth £54,400. That is significantly less than NTM's advice was based upon.

It follows that I don't think NTM's cashflow models are likely to be representative of Mr T's situation in retirement. And I don't agree that he would most likely be better off by transferring.

In its August 2022 letter NTM's said that, since he invested in it, Mr T's personal pension has performed higher than it had predicted. But, as NTM acknowledged in its suitability report, past performance is no guarantee for future performance. And given that Mr T had a minimum of 14 full years to retirement at the time of NTM's advice, the scope for a market crash or periods of poor performance increases. So I consider the discount rates to be more realistic in regard to the long-term likely growth, rather than projecting recent returns forward. In other words, the fact that the personal pension has performed well doesn't mean it will continue to do so in the future.

Further, transferring meant putting all of Mr T's funds at risk when it seemed very unlikely he would be better off by doing so. And, even if his funds did meet NTM's projected growth rates, he would likely be worse off in retirement. I don't think that "*clearly demonstrates*", as the regulator required, that it was in his best interests to transfer.

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

Flexibility and income needs

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

Mr T told NTM that he wished to retire at 60. But at the time of the advice Mr T was still over 14 years away from turning 60 and more than 19 years away from his DB scheme's normal retirement age of 65. He wouldn't receive his state pension until 67. A lot could happen in the intervening period. And it's notable that his wife was pregnant with their second child, who will still only be 14 years old at Mr T's preferred retirement age of 60. So Mr T's plans to retire early, made when he was still only 45, could have changed significantly by the time he neared 60.

I think, when asked, most people would say they would like to retire early. But, for the majority, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. As a result, when faced with that prospect at an early retirement age, the majority choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. That seems to be a more likely prospect for Mr T. But there's no evidence that NTM seriously challenged Mr T's objective of retirement at age 60 and questioned how realistic that was for him. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Also, Mr T had options other than transferring to a personal pension in order to retire early. For example Mr T and his employer had recently started paying into his employer's DC scheme. I haven't been given figures for how much Mr T was contributing, but I'm aware that many of his colleagues, along with their employer, were making contributions of around 16% of their salary each year. And, if that was the case for Mr T, then his DC scheme would, at the time of the advice, been accruing around £5,280 a year. He could have anticipated continuing to contribute to that policy (or a similar one if he were to change jobs in the future) for the remainder of his working life.

So I think it's reasonable to assume that, by the time he reached 60, his personal pension should have amassed a sizeable pot. Indeed without allowing for Mr T increasing his contributions, his salary growing, or any return on the investment, by 60 he could have a pot in the DC pension of around £76,500. And that sum would increase to around £103,000 by the time he reached 65. So Mr T could have accessed those funds in a flexible manner if he felt the need to do so. That would have allowed him to leave his safeguarded DB funds untouched until he turned 65. So he didn't need to transfer out of the DB scheme in order to have some flexible access to funds in retirement.

Mr T also had income from rental properties. I note he said he felt his income from rent and his state pension (once he reached qualifying age), would be sufficient income to take care of his daily living costs. And that was a supporting reason for taking the risk of giving up his guaranteed income from his DB scheme. So an option for Mr T could have been to take early retirement and use the TFC and income from his DC pension, together with his rental income, to fund the early years of his retirement until age 65. Mr T could then have taken money from his DB scheme (including TFC) and that should have given him sufficient income to cover his outgoings until he could claim his state pension at age 67. But it doesn't appear that NTM put that option to Mr T.

NTM's said that rental income can't be guaranteed but can be considered reliable and likely to increase over time. I agree that is reasonable. It's suggested its cashflow models reflected this. But as I've said above, NTM hasn't shown the inputs from its cashflow models. And in its fact-find it simply says that rental income could be disregarded as the rent received was being offset against the properties' mortgages. In my opinion the income and expenditure recorded in the fact-find can reasonably be described as sparse. There's very little in the way of determining exactly how Mr T would achieve his desired income of £1,500 a month in retirement. Also, as I've said above, I'm not persuaded NTM's shown that Mr T would be better off in retirement by transferring. And it's worth repeating that he had flexible access to income from his DC scheme. It follows that I don't think the only prospect of Mr T taking early retirement relied on him transferring his DB funds into a personal pension.

Also, at that time, apart from his state pension, Mr T's DB scheme would be the only source of guaranteed and indexed income for him in retirement. The income from his DC scheme and from his rental properties, might have formed the majority of his income by retirement age. But those would be subject to investment risk and other market forces and couldn't be guaranteed. So, by transferring Mr T would be giving up a valuable guaranteed income for the prospect of some flexible access to funds, which he could achieve from other sources.

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

In any event there would be little point in Mr T giving up the almost entirely risk-free benefits available to him through the DB scheme only to achieve a similar level of benefits outside the scheme. But unless Mr T's personal pension performed consistently above the regulator's mid-level projection, in real terms he was likely to be worse off by transferring. So I don't think it was in his best interests to do so.

I'm aware that many BSPS members like Mr T had serious concerns about their employer's attitude towards their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr T. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the requirement for suitable advice.

I understand 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. It's clear that Mr T's concerns of that nature were a motivating factor in considering transferring his pension away from the influence of his employer. So he might well have been leaning towards transferring his pension when he sought advice. But NTM was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. So I think NTM should have reassured Mr T that, while not guaranteed, it was likely that the BSPS 2 would be going ahead and opting for that would be in his best interests.

Further, even if Mr T remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think NTM could have addressed that concern.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't apply across the board, and in some ways the PPF could actually be beneficial for scheme members. For example, NTM pointed out to Mr T that its TVAS showed that the PPF benefits could have been more beneficial if he took those benefits at age 60. That's because at that age the PPF paid a larger TFC and pension than the BSPS. And the critical yields show that those benefits were unlikely to be matched by a transfer to a personal pension. So, had Mr T been serious about taking early retirement at 60 then this would most likely have been the best option for him. But I note that while NTM pointed this out it appears to have discarded the notion because Mr T had reservations about the PPF. It seems NTM accepted this without appropriate challenge.

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

Death benefits

Mr T told NTM he thought the potential for a lump sum for his wife, should he die before her, would be more beneficial than the spouse's benefit from the DB scheme. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr T. That's because whatever was left within it at the date of his death would be passed on to Mrs T. If that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the BSPS2 or PPF would pay Mrs T half of Mr T's yearly PPF pension entitlement after he died. But that pension would die with her. So Mrs T couldn't leave it as a legacy for their children after she died.

I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer his DB funds to a personal pension because of this. But the primary purpose of a pension is to provide income for the member when they cease to receive earned income. So NTM should have considered Mr T's own income requirements throughout retirement as an absolute priority, before it brought other objectives like death benefits into consideration.

A pension is principally designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr T was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr T's withdrawals from it in the meantime.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr T was married. Both the BSPS2 and the PPF would have paid Mr T 50% of Mr T's yearly pension on his death. Although the BSPS2 was more generous as it didn't make a spouse's benefit deduction for any TFC taken. This was guaranteed and escalated it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mr T lived a long life or if his investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Further, I'm aware that Mr T had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for Mrs T, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, I think NTM should have fully explored life insurance. I've noted that NTM did look into the cost of life insurance. Its suitability report said that would cost Mr T around £49 a month, so it didn't think that was viable on grounds of cost. But it's not clear how it arrived at that conclusion.

On NTM's file are quotes for 17 different life policies. The premiums are between £16.01 and £107 a month. So it's not clear how NTM concluded that it would cost Mr T £49 a month when there was a policy for over £33 a month less. But, in any event, even if it had only received one quote for £49 a month that wouldn't appear unaffordable. Mr T said he had disposable income of around £300 each month. Therefore, if he was serious about leaving an additional legacy for his family, he could have spared £49 of his disposable income in order to provide that legacy without giving up the guaranteed benefits from the DB scheme.

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

Fees

When he complained Mr T said he had to pay ongoing fee for NTM's advice service. I've commented above on how fees could affect Mr T's future fund performance. But I've also seen that NTM was quite clear about its fees from the outset. And Mr T signed to say that he agreed to those. It’s usual, and reasonable, for advising firms like NTM to charge for their services, and that’s what it did in this case. Further, it only charged Mr T the fees he agreed to pay. Also the ongoing advice service was optional and Mr T disengaged with it in 2019. So in respect of its fees I don't think NTM did anything wrong.

Summary

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

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

I appreciate the BSPS2 hadn’t been established when NTM gave its advice. But I think it was clear to all parties that it was likely to be going ahead. I think it would have been in Mr T’s best interests to have opted into BSPS2 as that had more generous benefits than the PPF. By opting into the BSPS2, Mr T would have kept the option to transfer out of the scheme nearer to his retirement age if that was what he decided to do at that point. So, I think NTM should have advised Mr T to opt into the BSPS2. Ultimately, I don’t think the advice NTM gave to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension Mr T was unnecessarily putting his pension funds at risk. And I don’t think there were any other particular reasons which would justify the transfer and outweigh this. So, I don’t think it was in Mr T’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

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

It follows that I don't think NTM’s advice to Mr T to transfer out of his DB scheme was suitable for him. Instead I think it should have advised him to opt into the BSPS2. So, I think it's fair for NTM to compensate Mr T for the unsuitable advice, in line with the regulator’s rules for calculating redress for non-compliant pension transfer advice. And, as this matter has been a source of distress and inconvenience for Mr T, as he’s been concerned that his security in retirement might have been compromised as a result of NTM’s unsuitable advice, I think it should pay him £200 to address that.

Putting things right

A fair and reasonable outcome would be for NTM to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. As I've said above, I think Mr T would have remained in the DB scheme and opted into the BSPS2.

NTM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

When making the calculation NTM (or providers acting for it) should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr T's representative and our Service upon completion of the calculation. For clarity, Mr T has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, NTM should:

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

Redress paid to Mr T as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr T's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

NTM should also pay Mr T £200 compensation to address his distress and inconvenience arising from its unsuitable advice.

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

My final decision

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

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 11 September 2023.

Joe Scott
Ombudsman