The complaint

Mr D complains about the advice given by Cambrian Associates Limited ('CAL') to transfer the benefits from both his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') and an existing personal pension plan to a new personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

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

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

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

Mr D was concerned about what the recent announcements by his ex-employer meant for the security of his pension, so he sought advice. Mr D was introduced to CAL by an ex-colleague and he met with them in November 2017. CAL completed a financial planning questionnaire with him to gather information about his circumstances and objectives.

Amongst other things, this recorded that Mr D was aged 44; he was married with two dependent children; he worked full-time and earned around £38,000; his wife also worked and earned around £40,000; they had an outstanding mortgage on their home of around £60,000 with a remaining term of five years; they had around £80,000 in cash / savings, £60,000 of which was in a mortgage offset account meaning they paid no interest on the mortgage balance; they had no other liabilities; and their joint income exceeded their expenditure by around £1,670 a month. CAL also carried out an assessment of Mr L's attitude to risk, which it deemed to be 'balanced'.

On 19 December 2017, CAL issued a suitability letter setting out its recommendation. This said that Mr L's main needs and priorities were to retire at age 60 and for his wife to retire two years later at 55; to achieve a combined income of £30,000; to have flexibility and adjust pension withdrawals when other sources of income commenced; and to leave any unused pension fund to his wife.

CAL recommended that Mr L transfer his DB pension to a personal pension because it wasn't feasible for Mr D to retire early by remaining in the BSPS; flexibility was only possible by transferring; transferring met Mr D's priority to leave a lump sum to his family; and to address his concerns about his employer and to provide him with control of his pension. CAL also recommended Mr D transfer his existing personal pension to consolidate things and provide ease of monitoring; to broaden the available investment fund range; and because it believed the fund Mr D was currently invested in was of a higher level of risk than his assessed attitude to risk. CAL recommended a pension provider and fund that it said was in line with Mr D's attitude to risk.

Mr D accepted the recommendation and some time afterwards around £280,000 was transferred to his new personal pension – the combined value of his two pensions.

Mr D complained to CAL in 2022, using the services of a representative about the suitability of the transfer advice. He raised a number of points, but in summary he said that he should not have received transfer advice based on a proposed retirement income strategy that was 16 years away, instead the advice should've been based on his existing provision and if this was likely to provide what he required in retirement.

CAL didn't uphold Mr D's complaint. In summary it said the advice was suitable and Mr D hasn't been disadvantaged. It said Mr D's specific objectives could not be met by his current pensions. It said it wasn't possible for Mr D to generate the income he needed at age 60 and he would've faced a significant income shortfall and would've had to delay his retirement by two years until his wife retired and drew her pension. It said without a transfer Mr D's objective of leaving unused funds to his family wouldn't have been possible – the DB scheme only paid an income upon death. Mr D's desire to have flexibility and reduce his income at age 70 would also not have been possible without the advice given. And in relation to the advice to transfer Mr D's existing personal pension plan, it said there was only one fund with the existing provider which matched Mr D's attitude to risk and when compared against the performance of the recommended fund, Mr D hasn't lost out.

Dissatisfied with its response, Mr D referred his complaint to us. One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr D wasn't likely to improve on the benefits he was already guaranteed by transferring – something CAL itself noted in the suitability report. And they didn't think there were compelling reasons to transfer, which would outweigh this. They said Mr D could've met his income need by remaining in the DB scheme because his need for an income of £30,000 was a combined income with that of his wife, so there wasn't a significant shortfall as CAL had argued in its final response letter. They said death benefits shouldn't have been prioritised over providing an income in retirement.
And they said, because Mr D's retirement was many years away, he didn't reasonably know that his spending would reduce once he reached 70 and so whether he needed flexibility to reduce his income. They said while the main purpose of the advice meeting was to seek advice on Mr D's BSPS benefits, they thought if he'd been advised not to transfer, he wouldn't have gone ahead with the single transfer of his other personal pension plan. They said they didn't think the costs involved were justified, so this would've stayed as it was.

They said if suitable advice had been given, Mr D would've most likely transferred to the BSPS2 - Mr D had no need for a significant lump sum on retirement and they thought the higher starting income of the BSPS2 would have appealed more.

CAL disagreed. It said the Investigator's finding that no income shortfall would've occurred if Mr D had remained in the DB scheme failed to take into account that he might take a lump sum and a reduced pension. It said this would leave Mr D and his wife short of their desired income. It said flexibility was also not possible if Mr D remained in the DB scheme, so he wouldn't have been able to reduce his income at age 70. It said Mr D's priority for better death benefits wasn't taken into consideration by the investigator. It said Mr D wouldn't have been able to transfer in the future if he'd entered the PPF. And it disagreed that Mr D would've chosen the BSPS2 – his distrust of his ex-employer meant this was unlikely. It also challenged the basis of the redress calculation – it said this should be against the PPF because the BSPS2 was guaranteed to go ahead at the time of the advice.

In relation to the personal pension transfer, it said the investigator focused solely on cost, but the limited range of funds didn't give the flexibility to change strategy when required. And it repeated its claim that the performance of the recommended fund means Mr D hasn't lost out. It said overall its advice was suitable and met Mr D's objectives.

The investigator wasn't persuaded to change their opinion. They added that because Mr D didn't say he had a need for a lump sum, he'd have likely chosen the highest possible income and this would've meant he'd have enough income without transferring. And they repeated their view that Mr D would've likely opted for the BSPS2.

Because things couldn't be resolved informally, the complaint was referred for a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

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

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

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

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

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CAL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests.

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

- The transfer value analysis ('TVAS') report, that CAL was required to carry out by the regulator, said that the critical yield - how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 8.98% to match the full pension he'd have been entitled to under the scheme at age 60. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 7.57%. To match the full pension the PPF would've paid from 60 the critical yield was 4.26% and to match the tax-free cash and reduced pension the PPF would've offered, it was 3.92%.

- Despite the fact it was known by the point CAL instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr D, the analysis was based on the BSPS benefits. And CAL didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available. I think it should've done. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 60 were likely to be between those of the BSPS and the PPF.

- Given Mr D's recorded 'balanced' attitude to risk, the discount rate of 4.3% for 15 years to retirement and the regulator's middle projection rate, I think Mr D was always likely to receive pension benefits, from age 60, of a lower value that those he'd have been entitled to under the BSPS2 by transferring and investing in line with that attitude to risk. And indeed the suitability report said this level of return wasn't achievable year on year.

- While on a reduced pension basis through the PPF the critical yield was lower than both the discount rate and the regulator's middle projection rate, I still think the opportunity to improve on the benefits available through the PPF at age 60 by transferring and investing in line with a balanced attitude to risk was limited.

- For this reason alone, I don't think a transfer to a personal pension arrangement was in Mr D's best interests.

- CAL recorded that Mr D wanted to retire at 60 and that a personal pension would provide flexibility in retirement so he could adjust his income withdrawals when other income commenced – specific reference was made to age 70 when Mr D expected his income need to reduce. While at age 44 Mr D might have given some thought to his future retirement, there's nothing to indicate he had anything that could be reasonably described as a firm retirement plan.

- Mr D, no doubt, liked the idea of retiring early. And he already had this option available to him – he didn't need to transfer to achieve this. While he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to access a lump sum and defer taking an income. Indeed a lump sum was recorded as not being a priority. And I'm not persuaded Mr D knew with any degree of certainty that he'd have a need to vary his income throughout retirement. I don't think Mr D was in any position at this stage to know for example that his income need would likely reduce once he was age 70. This was still 25 years away.

- Mr D might have been attracted to the flexibility a personal pension provided – but given he had no apparent need for it, I think CAL's reference to this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr D's. So I don't think transferring to obtain flexibility was in his best interests.

- CAL recorded that Mr D needed £30,000 a year (combined) as a target income from age 60. But CAL didn't carry out any detailed expenditure in retirement analysis to arrive at this figure. I think it was too soon anyway for Mr D to reasonably know what his needs would be in 15 or so years' time. That said, the figure doesn't look unreasonable. And despite CAL's argument to the contrary, I think Mr D could've met his stated income needs by remaining in the DB scheme.

- £30,000 was a combined or joint need with his wife. When Mr D reached 60 his wife would continue to work for at least two more years based on her target retirement age of 55. And given her income was £40,000 a year, with no mortgage to pay (recorded as being £1,000 a month) it seems likely that this would meet all of their expenditure needs. CAL noted in the suitability report in relation to income protection that Mr D and his wife each earned £2,300 net per month and therefore *"you could manage on just one salary once your mortgage is repaid."* It's possible therefore that Mr D wouldn't need to access his pension until age 62 when his wife stopped working. And this would mean less of an actuarial reduction and so a higher starting income from his DB pension.

- But if Mr D chose to take his BSPS benefits at age 60, CAL's analysis showed that, under the existing scheme Mr D would be entitled to a full pension of £12,660 a year. When Mr D's wife retired, her pension was forecast to be just over £13,100 a year leaving an income deficit of around £4,200. But this could've been met by Mr D accessing his savings until his current occupational pension of around £7,600 a year became payable at 65 (he and his wife had around £80,000 with the capacity to increase this in the years to retirement.) Mr D's state pension would then supplement things further. Alternatively Mr D might also have been able to access his current workplace pension early if he didn't want to use his savings at this time. He was contributing to the defined-contribution element of this hybrid scheme, which would allow him to 'buy' more benefits, so it's possible that taking account of any actuarial reduction, this would've also given him what he needed.

- That said, as CAL recorded in the suitability letter, in 2028 the earliest age benefits can be taken increases from 55 to 57. So, unless Mr D's wife had a protected retirement age of 55, it's likely she'd have to continue working for a further two years than indicated. This would likely mean Mr D could wait even longer to access his pension benefits, which in my view strengthens the case that Mr D's retirement income needs could likely be met by retaining his DB scheme benefits.

- CAL said that Mr D couldn't achieve things if he took a lump sum and a reduced pension from the BSPS. But accessing a lump sum wasn't a priority for Mr D. He already had significant cash savings, which he would likely add to in the years to retirement, so any lump sum need could've been satisfied using this. Furthermore he had his existing personal pension plan valued at around £33,000 he could access flexibly and CAL recorded that his wife would receive a lump sum of around £40,000 with her pension. So I don't think CAL's argument demonstrates a transfer was in Mr D's best interests and that he couldn't achieve things by remaining in his DB scheme.

- CAL says the transfer provided significant death benefits for Mr D's family, which was one of his key priorities. But the priority here was to advise Mr D about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr D drew in his lifetime. And so may not have provided the legacy that Mr D may have thought it would.

- If Mr D had wanted to leave a legacy for his family, CAL could've explored life insurance as an alternative. Reference was made in the suitability report to a whole of life policy for a sum assured for the amount of the transfer value, which was discounted on cost – around £200 a month – and because Mr D didn't want to have to commit to paying this for the rest of his life. But I don't think this was a fair and balanced way to present this option to him – it should've been based on what amount he wanted to leave to his family instead. Afterall, Mr D wanted to leave whatever remained of his pension upon his death, which was likely to be a lot lower than the original transfer value amount. It was recorded that he had significant disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence CAL did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr D. I don't think that insurance was properly explored as an alternative. And ultimately CAL should not have encouraged Mr D to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- I think Mr D's desire to move his pension to an individual plan that was under his control was overstated. I can't see that he an interest in or the knowledge to be able to manage his pension funds on his own for example. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr D – it was, again, simply a consequence of transferring away from his DB scheme.

- Mr D may have legitimately held concerns about how his ex-employer had handled his pension and the prospect of entering the PPF. But it was CAL's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. And this should've been the stance it took with Mr D. But even if not, the PPF still provided Mr D with guaranteed income and the option of accessing tax-free cash. Mr D was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and

I don't think any concerns he held about this meant that transferring was in his best interest.

- Like the Investigator, I'm not persuaded Mr D would've gone ahead with the transfer of his existing personal pension if suitable advice had been given for Mr D to retain his BSPS benefits. One of the key reasons for the recommendation was consolidation and ease of monitoring – but this would've fallen away if he'd retained his DB scheme. I don't think the increased charges -1% instead of the current 0.5% - of the recommended plan justified the transfer. And if CAL believed that the risk profile of the investment fund Mr D was currently invested in was too high, despite what it described as a limited choice of funds, it could've recommended he switch to an alternative fund which it deemed better matched his attitude to risk. I don't think the value of this pension justified a transfer to support CAL's argument that it provided a greater range of funds and so flexibility to change investment strategy as required.

- So I think Mr D would've likely left this plan as it was if suitable advice had been given and he retained his DB pension.

Overall, I can't see persuasive reasons why it was clearly in Mr D's best interest to give up his DB benefits along with his existing personal pension and transfer them to a personal pension arrangement at this time - particularly when he had the option of opting into the BSPS2. And I also haven't seen anything to persuade me that Mr D would've insisted on transferring, against advice to remain in the DB scheme – he had little investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr D received from CAL was unsuitable for him.

Putting things right

My aim in awarding redress is to put Mr D as far as possible in the position he would be in now if CAL had given him suitable advice. I consider Mr D would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given. I also think he would've retained his existing personal pension arrangements.

What should CAL do?

To compensate Mr D fairly, CAL must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

Actual value

This means the actual amount payable from the personal pension plan at the date of the calculation.

Fair value – step one

As I said above, I consider Mr D would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

CAL 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.

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

For clarity, Mr D has not yet retired, and he has no firm plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr D's acceptance of my final decision.

Fair value – step two

CAL must use the notional value to determine the fair value of Mr D's personal pension transferred if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of (the personal pension transferred)	Still exists but illiquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Notional value

This is the value of Mr D's investment had it remained with the previous provider until the end date. CAL should request that the previous provider calculate this value.

Any withdrawal from the transferred personal pension should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if CAL totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, CAL will need to determine a fair value for Mr D's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr D wanted capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr D's circumstances and risk attitude.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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

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

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

The payment resulting from all the steps above is the 'compensation amount'.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Cambrian Associates Limited to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Cambrian Associates Limited pays Mr D the balance.

If Mr D accepts this decision, the money award becomes binding on Cambrian Associates Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 16 November 2023.
Paul Featherstone
Ombudsman