

## **The complaint**

Mr R 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 might not have been suitable for him and may have caused a financial loss.

## **What happened**

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company.

The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')<sup>1</sup>, 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 R's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017 the BSPS trustees gave Mr R details of his DB pension's cash equivalent transfer value, which was £446,919.

Mr R approached NTM for advice about his pension. It conducted a fact-find with him. Amongst other things it noted that Mr R was 54, married to Mrs R. They owned their own home subject to a mortgage. They also owned a buy-to-let property that was also mortgaged. They owed £37,000 in unsecured debts, with £20,000 of that sum still held but intended for home improvements. Mr R's preferred retirement age was 57.

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.

Later that month, October 2017, NTM produced a suitability report setting out its analysis and recommendations. It recommended Mr R should transfer the benefits from his DB scheme to a named personal pension. It then met with Mr R twice in November 2017 to discuss the reasons for its advice. Mr R accepted NTM's advice and the transfer concluded in 2018.

In 2022 Mr R complained to NTM that its advice might not have been suitable for him. As NTM didn't reply within the timeframe set by the regulator to answer his complaint he asked

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<sup>1</sup> 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.

the Financial Ombudsman Service to consider his concerns. NTM then responded to the complaint. It said it thought its advice was suitable for Mr R. However, it said it had instructed an actuarial company to see if Mr R had lost out financially as a result of its advice. It said the calculations showed that Mr R hadn't lost out.

Mr R initially accepted that he wasn't worse off but later asked one of our Investigators to look into his concerns about the suitability of NTM's advice. Our Investigator said he didn't think NTM's advice was suitable for Mr R and that it should take appropriate steps to put things right. The Investigator noted that the regulator the Financial Conduct Authority ('FCA') was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. The Investigator said that Mr R had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023. The Investigator also recommended that NTM should pay Mr R £300 to address his distress and inconvenience arising from the unsuitable advice.

The matter was referred for an Ombudsman's review.

While the complaint was awaiting an Ombudsman's attention we wrote to the parties. We pointed out that the FCA had developed a BSPS specific calculator for establishing redress for BSPS cases. We advised NTM that if an Ombudsman were to later uphold the complaint they would instruct NTM to carry out another redress calculation using the FCA's BSPS calculator. In an attempt to resolve the complaint we invited NTM to take the necessary steps to carry out an up-to-date redress calculation.

NTM agreed to do so. It gathered the required information and in January 2024 it performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr R had not suffered a loss.

Mr R still wasn't happy that his complaint had been resolved. So it's been referred to me to make a final determination.

### **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.

As far as I'm aware NTM hasn't accepted that it gave Mr R unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr R in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable. And they should only recommend one where they can clearly show on contemporary evidence it was in the consumer's best interests. I don't think that was the case for Mr R.

When NTM met with Mr R in November 2017 it explained to him that he had no real prospect of retiring at age 57 while meeting his income requirements. At that point, it appears that Mr R's focus for a transfer shifted to releasing a tax free cash ('TFC') lump sum in order to be able to pay off his debts. But there's little evidence on file of exactly how pressing repaying those debts were. There is a note that Mr R told NTM that he didn't want to restructure his debts as that would end up costing him more. But I don't know how he arrived at that conclusion and I can't see that NTM challenged it.

As far as I can tell while NTM has recorded how much Mr and Mrs R were repaying the debts at, there's little to show who the debts were owed to, the repayment arrangements or when those would end. And I can't see that NTM gave Mr R any costings for how he could restructure those debts in an attempt to make the repayments more acceptable. So I don't think NTM did all it could to make Mr R aware of his options. Before deciding to make the irrevocable decision to transfer out of his DB scheme.

Overall, I can't see persuasive reasons why it was in Mr R's best interest to give up his DB scheme guarantees.

### **Putting things right**

Given that NTM has already ran calculations to establish if Mr R has suffered a financial loss as a result of its advice, what remains at issue now is whether or not it's done enough to put things right.

I can understand that consumers like Mr R might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr R into a better position than they would have been had they not transferred. Also compensation isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back in the financial position they would have been in at retirement had they remained in the DB scheme.

In Mr R's case NTM carried out its recent calculations using the specific BPS calculator provided by the FCA. That is what I would expect it to do in the circumstances.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs that NTM entered which are specific to Mr R. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and taken his DB benefits at age 65.

Overall, based on what I've seen, NTM has carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr R's case shows that there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied he has not suffered a financial loss by transferring his pension.

However, while the recent calculation shows Mr R hasn't lost out financially, I accept that the uncertainty he's experienced as a result of NTM's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for NTM's advice. So, in the circumstances, I think our Investigator's recommendation of a £300 payment for that distress is fair and reasonable.

### **My final decision**

I uphold this complaint and – unless it has already done so – require NTM Financial Services Ltd to pay Mr R a sum of £300 to address the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 February 2024.

Joe Scott  
**Ombudsman**