DRN-3850255

The complaint

Mr B complains about the advice given by Pace Financial Management ('PFM') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Our investigator did not uphold Mr B's complaint. Mr B disagreed with the investigator's opinion, so the complaint was passed to me.

I issued my provisional decision in which I said I was likely to reach a substantially different conclusion to the investigator and uphold the complaint. A copy of the background to the complaint and my provisional findings are set out below, in italics, and form part of this final decision.

What I said in my provisional decision

In March 2016, Mr B'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'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In October 2017 Mr B's now ex-employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in BSPS which would then move to the PPF, join the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017.)

Mr B was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr B first met with PFM in November 2017 and it completed a fact-find to gather information about his circumstances and objectives. PFM also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'low medium'.

Towards mid to late November 2017 Mr B said he met with another advice firm and in January 2018 he received its advice not to transfer out of his DB scheme.

Mr B met with PFM at the end of January 2018 whereupon it advised him to transfer his BSPS benefits into a personal pension and invest the proceeds in a lifestyle tracker fund, which FPM deemed matched Mr B's attitude to risk.

The suitability report said the reasons for this recommendation were: the growth required to match Mr B's DB scheme benefits was realistic; a transfer would provide Mr B with flexibility *in how and when he took his benefits; Mr B was concerned about the future status of his DB scheme even with the PPF to fall back on; and the recommended plan offered a wide range of investment funds.*

Mr B accepted the advice and in June 2018 around £227,000 was transferred to his new personal pension.

In 2020 Mr B complained to PFM about the suitability of the transfer advice. PFM didn't uphold Mr B's complaint. In summary it said:

- *It denied Mr B's assertion that he was told at the outset that transferring was a 'no brainer.' the options available to Mr B – whether to retain his benefits within the scheme or transfer out - were set out clearly in its suitability letter.*

- *Risk warnings were given in the suitability report, which demonstrate that it gave a balanced view of things.*

- *It denied telling Mr B that he could take his tax-free cash lump sum at 55 along with a £1,000 a month and his fund wouldn't diminish, which it says is evidenced by the fact that a retirement age of 65 was used in its modelling. But it said the suitability report did make reference to Mr B possibly taking benefits at 55 to clear some of his outstanding debts.*

- *Overall it said the recommendation was suitable.*

Dissatisfied with its response Mr B asked this service to consider his complaint. And an

investigator did not uphold it. In summary they said their reasons for this were:

- *Overall they considered the recommendation was suitable as it met Mr B's needs and objectives.*

- *While the critical yield or growth rate of 7.62% - 7.72% needed to match Mr B's scheme benefits would suggest there was limited opportunity to improve on his benefits, they considered the lower 'Hurdle' rate was a more appropriate measure for Mr B – for example he was single and wouldn't benefit from the scheme's spouse's pension.*

- *Because this rate was lower than the expected growth rate, they thought Mr B could improve on his retirement benefits by transferring. They also considered this was also the case if the scheme moved to the PPF.*

- *Mr B had other pension provision he could rely on to support his income in retirement, including another deferred DB scheme.*

- *A transfer to a personal pension arrangement provided Mr B with flexibility in how he took his benefits, which was something he said he was attracted to.*

- *They considered Mr B's options for his pension – whether to remain in the scheme and move to the PFF or transfer - were considered by PFM.*

- *A personal pension allowed Mr B to provide a legacy for his son, which remaining in the scheme wouldn't have allowed him to do*

- *But they said, the evidence didn't support Mr B's assertion that PFM told him he* *could take £1,000 a month from his pension at 55 and his fund wouldn't diminish – everything pointed to this being a target income at 65.*

Mr B disagreed. In summary he said:

- *He maintained that PFM told him a transfer was a 'no brainer' at their first meeting and that he could take an income at 55 whilst maintaining his fund value, which he said sounded attractive.*
- *He acknowledges it was highlighted what he was giving up by transferring, but says he was led by what the adviser told him.*
- *While it was a priority to leave something to his son and his DB scheme couldn't provide this, he suggests there are other ways or doing this such as life assurance.*
- *Mr B also explained that he did see another advice firm around the same time because some of his other colleagues were using their services to transfer their pensions. He said towards the end of January 2018 they told him they wouldn't transfer his BSPS pension because it wasn't in his best interests. He said he hadn't heard anything from PFM since mid-November 2017 and he felt he was left 'high and dry' - so with the deadline looming he contacted PFM again telling him he wanted to proceed. But he said he doesn't want to appear as someone who wanted to transfer at any costs. He said he was led by what the adviser told him at their first meeting – it was a stressful period of time and he was making decisions he had no real idea about.*

The investigator wasn't persuaded to change their mind, so the complaint was referred to me to make a final decision.

In submitting further evidence for my consideration, PFM provided a chain of emails, which show correspondence between it and Mr B during December 2017. It says this shows Mr B was not left 'high and dry' as he says. Mr B broadly repeated what he'd said before.

What I've provisionally 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 Business ('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 PFM'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 intend to uphold the complaint for the following reasons.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, PFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not currently persuaded that it was in his best interests.

I firstly want to address what I consider is the important matter of the timing of the advice in this case. As I said above, in October 2017 Mr B received his 'Time to Choose' information asking him what he wanted to do with his preserved DB scheme benefits. And the deadline to make his choice was 11 December 2017, later extended to 22 December 2017. Mr B met with PFM in November 2017, which was during this period. And despite what Mr B remembers, he was corresponding with them during late November 2017 (after the initial fact-find meeting) and throughout December 2017, during which a further meeting was scheduled for early January 2018.

But none of PFM's communication with Mr B during this period refer to him having to make this decision about his preserved benefits - there was no reference to the 'Time to Choose' period, no mention of the deadline or any sense of urgency about things when I consider there should have been. Mr B sought advice because of the decision he was being asked to make by the December deadline. And while I accept that when Mr B approached PFM time was running out, I've not seen anything to persuade me that PFM couldn't have hurried things and prioritised its advice to Mr B to ensure it was completed prior to the deadline (PFM had Mr B's CETV for example) rather than waiting until the deadline had passed and so removing Mr B's choice to opt into the BSPS2.

As it transpires, and as I'll explain in my decision, I think it was in Mr B's best interests to remain in the BSPS and move with it to the PPF rather than opt in to the BSPS2. This is because if Mr B took a reduced pension and the tax-free cash benefit available under the PPF at his intended retirement age of 65, which is what I think he would likely do, both were greater than was likely available under the BSPS2 at 65. Unfortunately Mr B's 'Time to Choose' leaflet which contained the information about the benefits he could receive under the BSPS2 isn't available - so I can't say for certain this was the case.

But based on the analysis PFM did of Mr B's benefits had the existing scheme stayed in place, it appears to me that if Mr B took tax-free cash, the benefits available to him through the PPF were marginally better than those provided by the existing scheme.

The analysis shows Mr B could take £63,235.78 tax-free cash and a pension of £9,488.12 through the PPF and £62,153 tax-free cash and a pension of £9,323 through the existing scheme. And given that the BSPS2 wouldn't provide Mr B with as generous benefits as the existing scheme (because of the lower revaluations and escalations), I think it's likely the BSPS2 benefits would've been lower than those provided by the PPF. So I think it is more likely than not the PPF would provide Mr B with greater benefits in the circumstances I've described.

And of course at the time of the actual advice in January 2018, Mr B's choice to join the BSPS2 had expired – so his only option at this stage was to remain in the scheme and move with it to the PPF or transfer out. So this is what I've considered here.

Financial viability

PFM carried out a transfer value analysis report (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). But this was based on his existing scheme benefits and Mr B didn't have the option to remain in the BSPS – at this stage he would move with the scheme to the PPF. So I've only considered the critical yields based on the benefits available to Mr B under the PPF as I discussed above.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr B was 51 at the time of the advice, and the paperwork records that while he was unsure when he would retire, it would probably be around 65. Mr B had two deferred scheme benefits, so PFM produced two critical yield or growth rates. And these show that the growth rates required to match the benefits through the PPF if Mr B transferred to a personal pension were 4.75% and 5.06% assuming he took a full pension, and 4.36% and 4.63% if he took tax-free cash and a reduced pension.

The relevant discount rate closest to when the advice was given, which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.1% per year for 13 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr B's 'low medium' attitude to risk and also the term to retirement. In my view there would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, assuming the most likely option of Mr B electing to take tax-free cash and a reduced pension, the critical yields were above the discount rate. And while they were lower than the middle projection rate, I think it was clear that Mr B was unlikely to match let alone exceed the benefits available to him through his DB scheme at retirement, as a result of investing in line with his low medium attitude to risk.

Because of the required sustained growth rate, I think it is clear the transfer was not compatible with Mr B's attitude to risk. To have come close to achieving the level of growth needed, in my view it would have required Mr B to take a higher level of risk than his recorded appetite. And even then I think it's likely Mr B would have been no better off financially at retirement if he transferred out.

I can see the investigator considered the 'Hurdle Rate' was a more appropriate measure – a significantly lower rate of around 2.5% assuming Mr B took a full pension – because it better *reflected Mr B's circumstances given he was single and the spouses pension provided by the DB scheme wouldn't have been important to him.*

But I disagree. While Mr B was single and the spouses pension wouldn't have been important to him, it's possible that it would've been in the future if Mr B did get married later in life. Also the 'Hurdle Rate' did not account for the guaranteed and escalating income in retirement the DB scheme provided. So I still consider the critical yield figure gives an important indication of the value of the benefits Mr B was considering giving up. It's also the case that the regulator requires it to be provided and so deems it a necessary and important part of the decision-making process.

For these reasons and based on financial viability alone, I don't think it was in Mr B's best interests to transfer out of the DB scheme. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations, which mean a transfer is nevertheless suitable. I've considered below whether such other reasons applied here.

Flexibility and income needs

Mr B says he was told by PFM at their first meeting that he could take a lump sum at 55 and then supplement his income by withdrawing £1,000 a month, and this wouldn't reduce his pension fund. I've not seen anything to support this. But what I have seen is that PFM's suitability report said Mr B wanted as much flexibility as possible as to how and when he took his benefits. It also said Mr B might want to access his tax-free entitlement at 55 to clear some of his outstanding debts.

But I'm not persuaded Mr B required flexibility in retirement. I also can't see evidence that Mr B had a strong need for variable income throughout his retirement, or that he needed to access his tax-free cash earlier than his DB scheme's normal retirement age and leave his funds invested until a later date.

I say this because firstly Mr B didn't have any firm plans to retire. The suitability report said that it would probably be around 65, which was Mr B's DB scheme's normal retirement age anyway. The report said Mr B would like the option of taking a higher income when he retired until his state pension became payable, but it didn't really provide justification for why. It said that Mr B wanted to take a higher income whilst he was fit and healthy reducing it later on when he was less active. But Mr B's target income was a £1,000 a month. And this doesn't strike me as being particularly high indicating there was scope to reduce it later on when, for example Mr B could no longer do the things he wanted to do.

In my view this this was a relatively modest income target, which Mr B would most likely need in retirement regardless. So I think this 'flexibility' as it was described wasn't a real objective of Mr B's – I think it was simply a consequence of transferring out to a different arrangement.

The suitability report also said that Mr B wanted flexibility because he might want to access his tax-free cash at age 55 to clear some of his outstanding debt. And I accept that repayment of debt might have seemed like a good idea. But just because Mr B might have thought it was a good idea, it doesn't mean that PFM had to execute what he thought he needed – it was PFM's role to decide what was in his best interests.

Mr B's mortgage was on an interest-only basis, and it appears he didn't have a specific repayment vehicle in place for its ultimate repayment. But it doesn't appear that Mr B needed *to repay his mortgage at age 55. For example it appears that it was affordable based on PFM's income and expenditure analysis it carried out during the fact-find meeting. And given Mr B intended to carry on working he could've continued to service the debt from his earned income until he retired at age 65.*

While PFM didn't ascertain Mr B's mortgage term, evidence provided by Mr B indicates that, at the time it still had around 17 years to run – so in my view there was no pressing need to repay it. Given this, I'm not persuaded there was a need for Mr B to repay the debt at age 55 and certainly no pressing need to access his tax-free cash earlier than his scheme's normal retirement age to achieve it. I see no reason why Mr B couldn't have been advised to either save some of his excess income to use towards its ultimate repayment or make overpayments to reduce its balance over time. He could then wait and use his tax-free cash from his DB scheme at his normal retirement age - documented as being just over £63,000 through the PPF – which would've gone most, if not all of the way to clearing it. I'm mindful too that Mr B had his current workplace pension and another deferred pension, which he could've used his tax-free cash entitlement for if needed.

I can see that PFM's analysis shows that assuming a fund growth rate of 5% Mr B's entitlement to tax-free cash could've been around £12,000 more than the DB scheme offered. But this wasn't guaranteed. And the growth rate needed, in my view would've required a higher risk appetite than Mr B indicated he was prepared to take. Furthermore, even by risking his pension benefits, this wouldn't have likely provided Mr B with a lump sum big enough to clear his outstanding debts in full – he would've still needed to take the other action I set out above.

For these reasons I'm not persuaded that Mr B's desire to pay down some of his debts was a good enough reason for him to give up a secure, guaranteed, escalating pension income in retirement.

Turning to Mr B's income need. As I said above, Mr B's income need was recorded as being around £1,000 a month based on his expenditure being less than it currently was while he was working. As I said above, it's likely Mr B would need to take the maximum tax-free cash at retirement to repay his mortgage. On this basis he would've been entitled to an income of around £9,500 through the PPF – and this would not have met his need.

But I still think Mr B could've met his retirement income needs by remaining in the DB scheme until the state pension became payable. This could be achieved because Mr B had two other sources of retirement income as I referred to above to supplement this income. PFM didn't record what this income was - but it should have so that it could advise Mr B fully on his retirement needs. And while neither would likely provide a substantial income – his DB scheme was the primary source of his retirement income – I think these would've provided enough to meet Mr B's income need - at least to fund the two-year period until Mr B's state pension became payable.

Overall I still think Mr B could've met his retirement income needs by remaining in the DB scheme and moving with it to the PPF.

Death benefits

The suitability report said that Mr B wanted to ensure that his family could benefit from any available funds in the event of his death, particularly as Mr B wasn't married but he had a son. That said, I note it also said that it wasn't a major reason for the transfer.

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 B given the circumstances. But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr B about what was best for his retirement provisions.*

A pension is primarily designed to provide income in retirement and not a legacy provision tool. So I don't think the potential for greater, or different death benefits should have been prioritised over this and Mr B's security in retirement. And I say potential, because the sum left on Mr B's death was dependent on investment returns and if he lived a long life, and/or investment returns were lower than expected, there may not have been a large sum to pass on anyway.

The PPF could've provided Mr B's son with a benefit if he died before retirement. And there also remained the possibility that the spouse's benefit would be beneficial if Mr B met and married someone later in life. I think PFM could've made this clearer to Mr B.

I can see that PFM's suitability report said it discussed a protection plan to provide a lump sum in the event of Mr B's death, but it appears to have been discounted because it wasn't a major reason for wanting to transfer and Mr B didn't want to increase his monthly outgoings.

But if Mr B genuinely wanted to leave a legacy for his son, which is what the original fact-find said was the case, I think PFM ought to have explored in more detail how he could've gone about this using life assurance, without risking his retirement income. And the starting point for this ought to have been to ask how much Mr B would ideally like to leave to his son and how much he could afford. While the suitability report said Mr D didn't want to increase his outgoings, given Mr D's disposable income at the time, I think it's likely this would've shown to be affordable had PFM properly explored costings with Mr B at the time.

In my view, this was the way forward and what PFM ought to have explored in more detail and ultimately recommended – I consider this would've met Mr B's objective.

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

Concerns about financial stability of BSPS

PFM's suitability report said that Mr B's main reason for considering a transfer of his BSPS benefits was because of his concerns about the alterations being made to the pension scheme and the future status of the scheme if he remained in it even with the PPF to fall back on. I have no doubt that Mr B was concerned about his pension. He said that many of his colleagues were transferring, which is why he also sought advice from another firm.

There was also lots of negative sentiment about the PPF. So it's possible that Mr B was also considering transferring because of these concerns about his employer and what might happen. But it was PFM's duty to give Mr B an objective picture and recommend what was in his best interests.

At the time of the advice, the 'Time to Choose' period had ended - so any concerns Mr B had about the new BSPS2 were no longer relevant. And in terms of Mr B's concerns about the scheme moving to the PPF, based on what I've seen and discussed earlier on, Mr B's income needs would've still been broadly met through the PPF despite the 10% reduction in starting benefits. And in fact, based on the advice paperwork, Mr B's benefits would've been almost the same if he opted to take his tax-free cash lump sum, which is what I think he would've most likely done.

While the increases in payment in the PPF were lower, importantly the income was still guaranteed. Although it was true that Mr B wouldn't have been able to transfer out of the PPF at a later date, I don't think he needed to do so to meet his retirement objectives. So I think PFM ought to have reassured Mr B that, moving to the PPF was not as concerning as he thought or was led to believe.

Summary

I accept that Mr B was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr B. But PFM wasn't there to just facilitate what Mr B might have thought he wanted or what he thought was the right thing to do based on what his other colleagues were doing. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

But ultimately I currently think PFM failed to do so – I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income, which along with his other retirement provision, including his state pension would likely meet his retirement income need. I don't think Mr B had a real need to access his tax-free cash early to repay his debts – I think he could've waited and used his entitlement at his normal retirement age to help achieve this. By transferring, Mr B was unlikely to match let alone improve upon his retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

So I think PFM should've advised Mr B to remain in the DB scheme and move with it to the PPF.

Of course, I have to consider whether Mr B would've gone ahead anyway, against PFM's advice.

I've considered this carefully, but I'm currently not persuaded that Mr B would've insisted on transferring out of the BSPS against PFM's advice - on balance, I still think he would've listened to and followed PFM's advice if things had happened as they should have and it recommended he stay in the scheme and move with it to the PPF.

I accept that Mr B was motivated to transfer - he'd also been told by another firm that he shouldn't transfer out of the BSPS, which is why he returned to PFM. So on the one hand, this might suggest Mr B was committed to transferring regardless. But I'm not persuaded that it does. Mr B says it was a difficult period of time during which he was struggling to make decisions about things he didn't really know much about. And I've not seen anything to persuade me that Mr B's pensions knowledge was extensive. So with lots of other colleagues transferring, I think in returning to PFM Mr B was seeking reassurance from another professional and impartial adviser what was in his best interests for his deferred pension.

Mr B's pension accounted for the majority of his retirement provision and I don't think he had any real capacity for loss. So, if PFM had provided Mr B with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, on balance and on hearing this same advice for the second time, I think he would've accepted that advice.

While Mr B has said lots of his colleagues were transferring their pensions given the concerns about the scheme, I'm not persuaded that Mr B's concerns about his employer *were so great that he would've insisted on the transfer and placed more weight on discussions he'd had with his colleagues and their actions, knowing that two professional advisers, whose expertise he had sought out and importantly was paying for, didn't think it was suitable for him or in his best interests.*

If PFM had clearly explained that Mr B could meet his objectives without risking his guaranteed pension, and that this could be achieved through the PPF despite his concerns about it, I think that would've carried significant weight.

For these reasons, I'm not currently persuaded that Mr B would have insisted on transferring out of his scheme against PFM's advice.

So in light of the above, I think PFM should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the PPF that should be used for comparison purposes.

PFM and Mr B received my provisional decision. Mr B said he had nothing further to add, but said he wanted the redress to be carried out in line with the current FG17/9 guidance.

PFM disagreed with my provisional decision. In doing so it commented against many of the sections of my provisional decision repeating that it disagreed with my findings and that it believes the advice was suitable and in Mr B's best interests. And while I have read everything, I think PFM's key comments can be summarised as follows:

- It highlighted the paragraph in my decision where I set out the things I said I'd taken into account in reaching my provisional decision and said that it expects the case to be determined on the evidence and Mr B's needs, wants and objectives at the time.

- Mr B did not want a rigid guaranteed income but wanted total flexibility, which is supported by the suitability report, the conversations with the investigator and his complaint form. It says it is surprised the ombudsman is not persuaded that Mr B wanted flexibility and says the evidence has been disregarded.

- The critical yield accounted for a spouse's pension, which was irrelevant to Mr B. The rate would reduce to somewhere between the critical yield quoted and the hurdle rate to account for a single life.

- The justification for Mr B wanting a higher income whilst he was fit and healthy reducing later on, came directly from Mr B. And regarding Mr B's target income - Mr B said, as documented at the time, that he estimates £1,000 a month would cover his expenditure, however this is obviously for basic expenditure only.

- The advice paperwork says Mr B was 'getting by' so it believes it is unrealistic that he could save his excess income to overpay his mortgage.

- Mr B's pension fund has increased by approximately 23.1% over the invested period, so it disagrees with my comment about fund growth and that Mr B would've needed to take a higher risk appetite than he was prepared to take.

- Overall, despite its belief that the advice was suitable for the reasons it's given, it has carried out two redress calculations for the BSPS2 and the PPF, which it says shows no redress is payable and Mr B is in a better position following the advice.

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.

Having done so, I've reached the same conclusions I reached before and for the same reasons.

It's clear that PFM disagrees with my findings. But I don't think it has raised anything new in response to my provisional decision, so I don't think there is much more I can usefully add to what I've already said in my provisional decision. I will nevertheless comment on a couple of the key comments PFM has made.

To PFM's point about how I've arrived at my decision – as I set out clearly in my provisional decision and again at the start of this section of this decision, I have considered all of the available evidence and arguments in deciding what I think is fair and reasonable in the circumstances of this complaint. My reference to deciding things on the balance of probabilities was in relation to where the evidence is missing, incomplete or contradictory.

It seems to me that PFM's fundamental argument is that Mr B did want flexibility in how and when he took his pension benefits. It says he didn't want a rigid / guaranteed income and points to the various pieces of evidence to support this, including the suitability report, Mr B's complaint form and the investigator's noted comments from Mr B.

But I'm still not persuaded Mr B had a genuine need for flexibility. PFM has referred to the investigator's assessment which relayed comments Mr B made in a phone call they had about the things he was attracted to, which included the ability to take tax-free cash without taking an income and taking income as and when needed, for example working part-time and topping up his earned income with his pension income. But Mr B said these things were what he was attracted to following the conversation with the adviser – not what he planned to do or that these were his objectives. As I said in my provisional decision, I don't doubt that the flexibility on offer through a personal pension arrangement would've sounded attractive to Mr B. But PFM's role wasn't simply to give Mr B what he thought he wanted or what sounded attractive – it's role was to really understand Mr B's needs and act in his best interests.

I don't think the evidence supports that Mr B had a real need for flexibility. For example, there's nothing in the advice paperwork at the time that says Mr B intended for example to work part-time and use his pension to top up his income or that he needed to take income as and when he needed. In fact the adviser's notes accompanying the fact-find say that Mr B...*'is not sure when he will retire at this stage, but anticipates this being around 65 or state pension age, but will basically play it by ear...'*

And in terms of Mr B's income need, I've not seen anything to indicate Mr B needed variable income throughout his retirement. In fact I'm not persuaded Mr B really knew what his income needs would be.

Again, the adviser's note to the fact-find says: *'We discussed possible income needs in retirement and [Mr B] was not sure how much he would need but felt that his expenditure would be less than it is currently due to mortgage having gone and less travelling costs, so estimate that £1,000 p/m may well do the trick.'*

PFM has referred to its suitability letter as evidence of Mr B's need for flexibility where it said he wanted a higher income whilst he was fit and healthy reducing later on. It says the justification for Mr B wanting this came directly from him.

But as I've shown above, the information about Mr B's circumstances gathered by PFM during its advice process, in my view, clearly shows that Mr B had no firm retirement plans or any deep understanding of what his income needs in retirement would be. Given the advice paperwork records that Mr B intended to continue working until 65 – despite what PFM has argued in response to my provisional decision – it's not surprising to me that Mr B had not thought that far ahead. So I think the ability to take a variable income was simply a feature or a consequence of transferring out to a different arrangement rather than a real objective of Mr B's.

Furthermore, if Mr B did have a genuine need for variable income, I think PFM's retirement modelling would've reflected a scenario where Mr B took an initial higher income – and what that income amount was – reducing later on to show how his pension fund could or could not support this. But from what I can see it was simply based on Mr B drawing the same fixed income as he would've been entitled to through the DB scheme.

In terms of PFM's comment that Mr B's financial position meant it wasn't realistic that he could save his excess income to overpay his mortgage – I can see the adviser's note that Mr B was 'getting by.' But I can also see the adviser recorded that Mr B had a surplus income of £250 a month. So it seems there was potential for Mr B to direct some or all of this towards savings and/or repayment of his outstanding mortgage. But even if this wasn't possible, as I said in my provisional decision, I don't think it was likely to be the case that transferring out to a personal pension arrangement was going to provide Mr B with a sufficiently larger tax-free cash lump sum than was available through the PPF to allow Mr B to repay his debts in full without taking some other action.

I'm mindful that PFM has said Mr B's pension fund has increased in value by over 20% and no doubt with that in mind it says it has produced two redress calculations that show Mr B is not due any compensation. But I'm also mindful that PFM has not shared these calculations. And I think in the circumstances, to provide finality to this matter and certainty for both PFM and Mr B, it is appropriate for me to continue to issue my final decision. It may well be the case that despite the unsuitable advice Mr B has not lost out – but if this is the case, this will be borne out in the updated redress calculations PFM will carry out if Mr B accepts this final decision. And PFM should note that, as I've set out below, in this particular case it will need to carry out an additional calculation once the process of the buy-out from the PPF is completed, which is due in April 2023.

So for the reasons in my provisional decision, which form part of this final decision, together with those above, I uphold this complaint and I think PFM should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as I have previously explained, it is the benefits available to him through the PPF that should be used for comparison purposes.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being.

But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

Mr B has chosen not to wait for any new rules / guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr B.

A fair and reasonable outcome would be for PFM to put Mr B as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would have remained a member of BSPS and subsequently moved with it to the PPF. So calculations should be undertaken on this assumption. PFM must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of any final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

PFM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his 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 compensation amount must where possible be paid to Mr B within 90 days of the date PFM receives notification of his acceptance of my final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes PFM to pay Mr B.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

<u>Additional compensation</u>

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by April 2023.

It's been announced that:

'*When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'*

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

The amounts of possible increases are yet unknown. The scheme now expects to be able to have information on this by April 2023. Mr B would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. I think it's fair any such increases are taken into account when compensating Mr B.

I don't think it's reasonable for PFM to delay the compensation calculation in its entirety until the buy-out is completed. It had previously been expected to happen in late summer 2022, but this has since been updated to April 2023 and so I'm conscious that this could be delayed further due to its complexity.

To give some certainty to the parties, I think it's fair PFM calculates and pays Mr B compensation now as set out above comparing his existing benefits with the PPF. Once the buy-out is completed and more detailed information is available how exactly PPF benefits will increase, PFM should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time. They should base their calculations on the benefits Mr B would have been entitled to after the buy-out.

This calculation should be done as soon as possible after the new buy-out benefits are known. PFM should keep up to date with developments on this matter, for example any information published on www.oldbritishsteelpension.co.uk. Equally, if Mr B becomes aware further information is available, he should let PFM know. If the second calculation results in a higher redress amount than the first calculation, PFM must pay Mr B the difference. If the second calculation results in the same or a lower redress amount than the first calculation, no further action should be taken.

The compensation amount of the second calculation must where possible be paid to Mr B within 90 days of the date a public announcement is made that the buy-out has completed. Further interest must be added to the compensation amount at the rate of 8% per year simple from the announcement date of settlement for any time, in excess of 90 days, that it takes PFM to pay Mr B.

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 Pace Financial Management to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Pace Financial Management to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Pace Financial Management to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Pace Financial Management pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts this decision, the money award becomes binding on Pace Financial Management.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 12 January 2023.
Paul Featherstone
Ombudsman