The complaint

Mr R complains about the advice given by Hunter Mills Limited 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.

What happened

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the employer DB scheme ('the BSPS') 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 ('the BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in BSPS and move with it to the PPF, move to 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 R was concerned about the security of his preserved benefits in the BSPS. And he wasn't sure what to do. So, based on what he'd heard from colleagues, he contacted independent financial adviser Hunter Mills. In November 2017 Hunter Mills gathered information about Mr R's circumstances and objectives. Hunter Mills also carried out an assessment of Mr R's attitude to risk, which it deemed to be 'low to medium'.

On 11 December 2017 Hunter Mills provided Mr R with its suitability report, which advised Mr R to transfer his BSPS to a personal pension. It said this would allow Mr R to achieve his objectives of better death benefits for his partner and adult children, clearing or reducing his joint mortgage, and having control and flexibility over his retirement income. Mr R accepted this advice, so £821,841.97 was transferred from the BSPS to his new personal pension.

In June 2022 Mr R complained to our Service that Hunter Mills' advice was unsuitable and it hadn't acted in his best interests. He also said the ongoing advice he'd paid Hunter Mills for only consisted of an annual letter with no face to face contact. Our Service passed Mr R's complaint to Hunter Mills.

Hunter Mills responded to Mr R's complaint. It said that at the time of the advice, it fully considered Mr R's circumstances and available options, and explained to him the risks and benefits. And that at that time, the BSPS2 wasn't guaranteed and the BSPS2 retirement income projections hadn't been available.

Hunter Mills' response also said Mr R's new personal pension gave him many benefits, including flexibility and control, the option to clear or reduce his mortgage at age 55, mitigation of his tax liabilities, the potential for capital growth, removing his concerns about the BSPS, and giving Mr R the option to transfer other pensions in as well to make things simpler and cheaper for him. But in particular, it said Mr R's new personal pension provided Mr R's partner with death benefits she wasn't entitled to under the BSPS since they weren't married and provided Mr R's adult children with death benefits which they wouldn't receive under the BSPS either.

In addition, Hunter Mills said it hadn't exposed Mr R to anything risky and his personal pension had increased significantly in value. That it had given Mr R the ongoing service he'd agreed to pay for, and Mr R could've contacted it at any time for advice. Hunter Mills thought its agent had acted in Mr R's best interests, and said Mr R hadn't raised concerns before.

Mr R remained unhappy and asked our Service to investigate. He told us he'd always hoped to retire early because his work caused him physical difficulties which meant he wouldn't have been able to carry on long term. And that he in fact retired in 2021 at age 58. Mr R said Hunter Mills had emphasised that a personal pension would provide his partner with better death benefits, and confirmed he and his partner had since married. Mr R also thought he'd been a low risk investor and that the PPF might have been better for him.

Hunter Mills provided our Service with documents from the time of the advice.

This complaint came to me for consideration. On 18 November 2022, I issued my provisional decision. In summary, I said I appreciated Mr R was motivated to transfer out of the BSPS, and that having better death benefits for his partner and adult children, clearing or reducing his mortgage, and having control and flexibility over his retirement income through a personal pension would have sounded attractive to Mr R. But Hunter Mills wasn't there to simply arrange what Mr R might've thought he wanted – it was instead obliged to give him an objective picture and to recommend what was in his best interests.

I said Hunter Mills' advice to transfer was unsuitable. Because it meant Mr R was giving up a guaranteed, risk-free and increasing income, and he was likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this - Mr R shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to clear or reduce his mortgage and have control and flexibility of income. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

I said Hunter Mills should have advised Mr R to opt into the BSPS2, given his particular circumstances and lack of certain retirement plans, and the more advantageous annual indexation of his pension when in payment under the BSPS2. I thought Hunter Mills should compensate Mr R for its unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr R through the BSPS2 at age 58 for comparison purposes.

Mr R accepted my provisional decision without providing any further comments or evidence for me to consider.

In its response to my provisional decision, Hunter Mills disagreed its advice was unsuitable and provided further comments. In summary, it said:

- Financial security was a compelling reason for Mr R to transfer. Hunter Mills had assessed the BSPS's financial solvency - it had significant funding issues and received a cash injection by the employer, and there was no reason to think BSPS2 would be different. And only very limited information was known about the BSPS2 at the time of the advice.
- At the time, Mr R wasn't married and didn't tell Hunter Mills he planned to marry, so it could only give advice based on what it knew. His partner and adult children would only receive death benefits if he transferred to a personal pension. And death benefits

for spouses and dependents were given at the discretion of the BSPS trustees, which was risky given the BSPS difficulties. Mr R's then-partner wouldn't have received a lump sum death benefit anyway. So a personal pension gave Mr R certainty that his partner would be left with something rather than nothing. And Mr R hadn't wanted to pay for life insurance into his retirement.
- Mr R wouldn't have opted for BSPS2. He retired due to physical health issues he'd not told Hunter Mills about, and likely wouldn't have been eligible for ill health retirement under BSPS and BSPS2 and would've incurred 'early retirement' penalties. But under his personal pension, Mr R had flexible access to his pension benefits and could've applied for an enhanced annuity.
- A PPF comparison was pointless, as Mr R didn't opt for it and it would only become relevant if the BSPS failed. The PPF would have left Mr R with greatly restricted options and benefits, and was rightly portrayed more negatively than the BSPS by members and the trustees. So avoiding the PPF was another compelling reason for Mr R to transfer his DB benefits to a personal pension.
- Mr R had only wanted yearly retirement income of £18,000. If he'd taken the full pension of £42,227 at age 65 provided by his existing scheme, he would've had greater tax exposure. Whereas the flexibility of Mr R's new personal pension offered him tax efficiencies. And Mr R in fact had two other pensions, and his new personal pension gave him the flexibility to transfer these in to increase the funds available to Mr R whenever he chose to take them.
- Hunter Mills didn't agree a personal pension would give Mr R benefits of a substantially lower value than his DB scheme. Because the critical yields it had recorded had been achievable. Mr R's personal pension had performed well, so Mr R hadn't suffered a financial loss here. Given recent interest rate rises, it was right for Mr R to clear or reduce his mortgage. And Mr R's pension funds weren't likely to run out before he passed away, given the mortality rates for his industry and location.
- Hunter Mills disagreed Mr R wasn't an experienced investor, as he'd selected funds and signed forms while transferring other pensions in November 2017, just before Hunter Mills advised him to transfer his DB benefits to a personal pension. Mr R chose to transfer his DB benefits to a personal pension despite warnings from Hunter Mills and other parties involved. And Mr R very much wanted to transfer, as shown by his willingness to travel to another part of the country to meet Hunter Mills.

As I've received responses to my provisional decision, I'm now in a position to make my 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 acknowledge Hunter Mills says Mr R hasn't previously raised concerns about its 2017 advice. But regardless, Mr R is still entitled to raise a complaint about it.

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 Hunter Mills' 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, the evidence in this case and Hunter Mills' response to my provisional decision I'm upholding this complaint for largely the same reasons as my provisional decision.

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, Hunter Mills should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked again at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

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 R was 54 at the time of the advice. I know Mr R recently told our Service he'd wanted to retire early due to the effect his work had on his physical health. And Hunter Mills argues this supported that a personal pension was more suitable for him. But I need to consider what was discussed at the time of the advice. And I don't think Mr R told Hunter Mills about any health issues, because the documents Hunter Mills have provided me with repeatedly record that Mr R's health was good and that his planned retirement age was 65, with no plans to retire earlier than this.

In particular, the fact find that Mr R signed on 30 November 2017 to declare it was correct states his target retirement age was 65. And the suitability report Hunter Mills prepared for Mr R on 11 December 2017 said *'State retirement age for you is now officially age 67 which is 13 years away. As far as we are aware, you have no immediate plans to retire. You intend to remain working and have no immediate plans to retire.'* And the advice the suitability report went on to give was clearly based on Mr R retiring at age 65. So if Hunter Mills hadn't correctly understood Mr R's intended retirement age, it's reasonable to think Mr R would have raised this with Hunter Mills at the time. But I've seen nothing to make me think he did.

Hunter Mills may argue its advice was suitable at the time due to Mr R taking advantage of an enhanced CETV. But even if the CETV was enhanced at that time, the critical yield nonetheless required to match Mr R's existing benefits at age 65 was 9.43% if he took a full pension and 6.58% if he took tax free cash (TFC) and a reduced pension. And the critical yield to match the benefits available through the PPF at age 65 was quoted as 4.03% per year if Mr R took a full pension and 3.53% per year if he took TFC and a reduced pension.

Hunter Mills argues that a PPF comparison is pointless, but I don't agree. I should highlight here that the critical yield figures I've referred to above are based on the existing scheme benefits. But this wasn't helpful because remaining in the scheme wasn't an option; Mr R had to choose to opt into the BSPS2, move with the existing scheme to the PPF or transfer to a personal arrangement.

Hunter Mills says only very limited information was known about the BSPS at the time of the advice. But Mr R had by then received his 'Time to Choose' pack, which would've explained the benefits he'd be entitled to through the BSPS2, and given him the choice to opt into it or remain in the scheme and move to the PPF. And Hunter Mills would have been aware of this. So, I think the critical yields applicable to the BSPS2 benefits should have formed the basis of the advice so Mr R was able to make an informed choice. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65 because Mr R's benefits wouldn't have been reduced by 10%.

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 3.8% per year for 10 years to retirement. I've also kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time 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, Mr R's 'low to medium' attitude to risk and also the term to retirement. To be clear, I consider Hunter Mills assessment of Mr R's attitude to risk as 'low to medium' was reasonable, because at that time it was expected he had more than 10 years until retirement, so he had the capacity to take an element of risk to build his pension funds in between and tolerate some short-term losses. However, I maintain that he wasn't an experienced investor – I don't think having other pension contracts means he had a level of understanding and experience such that he was able to take a higher risk.

There would be little point in Mr R giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 3.53% which was based on Mr R taking TFC and a reduced pension at age 65 through the PPF. The critical yield if Mr R took the same benefits through his existing scheme at age 65 was 6.58%. So, if Mr R were to opt into the BSPS2 and take the same benefits at age 65 the critical yield would've been somewhere between those figures, and likely closer to 6.58%. Hunter Mills argues critical yields of 9.43% and 6.58% were achievable. But past performance of funds is not a guarantee future performance. And given the discount rate of 3.8%, the regulator's lower projection rate of 2% and middle projection rate of 5%, I still think Mr R was most likely to receive benefits of a lower overall value than those provided by the PPF and the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk.

Hunter Mills argues Mr R's personal pension has performed well so he's not suffered a financial loss. That may be the case, but this wasn't something Hunter Mills or Mr R could have known in 2017, and I need to base my decision on whether the advice was suitable at the time. In any case, that's a matter for the redress calculation – it's possible that because of the performance achieved this may not show a loss. But this doesn't mean Hunter Mills' advice was suitable or that this complaint shouldn't be upheld.

The documents provided by Hunter Mills include various financial analyses, and I've considered these. I've noted that after charges and inflation are taken into account, if the fund achieved growth in line with the lower projected growth rate, Mr R would be entitled to a lower TFC and annuity income than he'd get through the PPF, and if he withdrew that same level of income his fund would be depleted by age 82. Even at the mid growth rate, which I'm not persuaded would've been achievable, Mr R could obtain a bit more annuity income and TFC than he could achieve under the PPF. But if he withdrew that same sum consistently, his fund would be depleted by age 89. Hunter Mills argues Mr R's fund wasn't likely to run out before he passed away, given the mortality rates for his industry and location. But given that I think the benefits would've been higher at age 65 through the BSPS2, I think this demonstrates further that Mr R would nonetheless be worse off in retirement if he wanted to try and replicate the benefits he was entitled to through the DB scheme. And there remained a real risk his funds would run out before he died, particularly if returns were lower than expected.

However, I recognise that Hunter Mills said Mr R, *"Doesn't require a very high income… Prepared to sacrifice a high [guaranteed] income for easy access, flexibility and to pass [death] benefits] on'* and that he *'…wants to decide each year what income is needed.*" That said, the fact find does go on to record that Mr R requires £18,000 of retirement income each year. It's evident that Mr R's income needs would be met by either the PPF or the BSPS2, and he would likely receive lower overall retirement benefits by transferring out. So, for this reason alone a transfer out of the DB scheme wasn't in Mr R's best interests.

Of course, financial viability isn't the only consideration when giving transfer advice, as Hunter Mills has argued in this case. So, the issue for me to decide here is whether it was reasonable for Hunter Mills to advise Mr R to give up the higher benefits the PPF or the BSPS2 would provide him with to meet his other objectives. I've considered this below.

Flexibility and income needs

One of the reasons Hunter Mills recommended Mr R transfer to a personal pension was to meet his objective of having flexibility, including the option to draw funds from age 55 in order to clear or reduce the mortgage he held jointly with his partner. I've considered this carefully, and I know Hunter Mills argues that the recent interest rate rises support this. But again, this wasn't something Hunter Mills or Mr R could've known in 2017, and I need to base my decision on whether the advice was suitable at the time.

And at the time of the advice, I don't think Mr R required flexibility in retirement. Because based on the evidence I've seen, I'm not persuaded that Mr R had any concrete need to take TFC to repay his mortgage and defer taking his income, or to vary his income throughout retirement. In my view, this was more of a 'nice to have' rather than a genuine objective at that particular time.

I say this because before making its recommendations, Hunter Mills completed a fact find for Mr R and his partner, to understand their circumstances. It was recorded that Mr R's annual income was £31,000, that he had cash and other personal assets totalling £9,000, and other pensions worth £37,000 (paid up) and £3,500 (with Mr R and his employer contributing a total of 13% each year) at that time. Mr R didn't have any life or other insurance protection.

It was recorded that the property owned by Mr R and his partner was worth £180,000 with an outstanding joint mortgage of £80,000, but no detailed information was recorded about the mortgage term or monthly repayment amount, or about any other debts. The fact find recorded that Mr R had monthly net income of £2,000 and monthly expenditure of £1,400, leaving him with £600 disposable income each month. Therefore, there's nothing to suggest financial difficulties here or that the mortgage, the only recorded debt, was unaffordable at that time or was at risk of not being repaid.

Mr R may have liked the idea of paying off the mortgage at age 55, and I note he said he wanted to do this before interest rates rose. But I don't think there was any pressing financial need for him to do so. And Mr R had sufficient disposable income available to him to absorb any interest rate rise, if and when it happened. Alternatively, he could've made overpayments to the mortgage to help repay it sooner. Overall, I don't think the idea of paying off the mortgage was a good enough reason for Mr R to give up a secure, guaranteed, escalating pension income in retirement because, as I say, Mr R was easily able to meet his outgoings without touching his pension and the mortgage wasn't at risk of not being repaid.

It's evident that at age 65, Mr R would be entitled to take TFC far in excess of his mortgage balance from either the PPF or the BSPS2. And I think that also would've been the case if he decided to retire earlier than this. Either way, I'm satisfied that when Mr R chose to retire, he would've been able to repay his mortgage and have sufficient income to meet his needs.

I also can't see evidence that Mr R had a strong need for variable income throughout his retirement. Hunter Mills recorded that Mr R wanted to decide each year what retirement income he needed, but that he also required income of £18,000 per year in retirement. As I've said above, I'm satisfied Mr R could have met this recorded retirement income need through the DB scheme at age 65. Because Hunter Mills recorded that under his existing scheme, at age 65 Mr R was entitled to an annual income of £42,227 if he took a full pension, or £27,985 if he took TFC and a reduced pension. And that under the PPF, at age 65 Mr R was entitled to an annual income of £35,302.75 if he took a full pension, or £27,374.65 if he took TFC and a reduced pension. As I've said, retirement income information should've been based on the BSPS2 benefits so that Mr R was able to make an informed choice. And I think the retirement income available through the BSPS2 would've likely been higher than that in the PPF.

So, I don't think Hunter Mills should have advised Mr R to transfer out of the BSPS to repay affordable debts or to have flexibility that he didn't really need. Mr R's desire to access his pension doesn't outweigh Hunter Mills' responsibility to provide him with suitable advice and act in his best interest.

Death benefits

At the time of the advice, Hunter Mills recorded that a key reason it was advising Mr R to transfer to a personal pension was so that the remaining value of his pension could be passed to his partner, and then to his adult children. It said that because Mr R and his partner weren't married, his partner wasn't likely to be entitled to the spouse's pension under Mr R's DB scheme or the PPF in the event of Mr R's death. And that neither the DB scheme or the PPF would provide Mr R's children with any worthwhile children's pension benefits in the event of his death, because his children were age 22 and 24 at the time of the advice, and the children's pension provision only went up to age 23 in any case. The suitability report recorded this aspect was "*completely dis-agreeable*" to Mr R.

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 R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. I don't think Hunter Mills properly explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

My understanding is that neither the BSPS2 nor the PPF will pay a spouse's pension to an unmarried partner. So I accept Hunter Mills argument that it's not likely that Mr R's partner would have been able to receive a spouse's pension under the BSPS2 or the PPF at the time of the advice. But if Mr R died before retirement then his partner would be entitled to a death in service benefit – assuming she was nominated as his beneficiary.

Given his retirement was expected to be around 10 years away, I don't think Mr R's marital status was as relevant at the time the advice was given. Hunter Mills argues Mr R didn't tell it he and his partner intended to marry in the near future. I wouldn't expect Hunter Mills to recommend that Mr R and his partner should marry simply to allow her to access Mr R's death benefits under his existing DB scheme. But given the very valuable spouse's benefits offered under the DB scheme and the PPF, I think it's reasonable to expect Hunter Mills to have explored with Mr R and his partner whether they planned to marry in the future in any case. But there's nothing in the documents provided by Hunter Mills to suggest it did. It transpires that Mr R has since married his partner. So, I think it's likely at the time of the advice that this was envisaged in the near future and likely before retirement. So, I don't think the death benefits attached to the DB scheme should've been dismissed as they were by Hunter Mills.

If Mr R was married, the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr R predeceased her. I don't think Hunter Mills made the value of this benefit clear enough to Mr R. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. Hunter Mills' modelling shows that if Mr R took TFC and a reduced pension, and achieved a mid growth rate of 2.44%, then his personal pension fund would be depleted by age 89. So while Hunter Mills argues Mr R's fund wasn't likely to run out before he passed away, there still may not have been a large sum left, if any at all, to pass on when Mr R died. In any event, Hunter Mills should not have encouraged Mr R to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr R genuinely wanted to leave a legacy for his partner and his children, which didn't depend on his existing DB scheme, investment returns or how much of his pension fund remained on his death, I think Hunter Mills should've instead explored life insurance.

Hunter Mills recorded that Mr R's health was good so I don't think there was any reason why life insurance couldn't have been considered for Mr R, and he had disposable income. Hunter Mills argues Mr R hadn't wanted life insurance because he didn't want to pay for it into his retirement. But the suitability report doesn't record any discussion about life insurance. And I've not seen that Hunter Mills obtained any quotes for life cover for Mr R, so I don't think it gave Mr R enough information on which to base a decision about whether or not this was something he wanted or could afford. The starting point here should have been for Hunter Mills to ask Mr R how much he would ideally like to leave to his partner or any other beneficiary, and how much he could afford to contribute. Insurance on this basis was likely to be available to Mr R and would have enabled him to leave a legacy without risking his retirement income.

Alternatively, if life insurance was discounted, then Mr R could've looked to save any excess retirement income for the benefit of his children. Hunter Mills argues that it was recorded Mr R only needed retirement income of £18,000 per year, and he would have had greater tax exposure under his DB scheme if he took a full pension of £42,227. But I don't think that was a good enough reason to recommend Mr R transfer out of the BSPS, because I don't think it is reasonable to advise someone to give up the prospect of extra income just because a personal pension gives them enough to cover their necessary retirement income. It seems Mr R would've been able to save a significant sum, and given Mr R's wish to leave something for his children, this could've been placed in trust which would also have reduced Mr R's tax exposure. Or Mr R could've made use of the annual gift allowances.

I'm also mindful that Mr R had another personal pension he was likely to be paying into for another 10 years until he retired. This fund could've been passed on to a beneficiary of his choice at retirement.

Overall, I don't think the death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr R. And I don't think that the alternative means of providing a legacy for his partner and children were properly explored.

Control and concerns over the financial stability of the DB scheme

The suitability report said the one of the reasons Hunter Mills recommended the transfer to a personal pension was to meet Mr R's objective of having control over his pension.

But I think Mr R's desire for control over his pension benefits was overstated. Hunter Mills has argued that Mr R was an experienced investor, given his involvement in transferring other pensions shortly before the advice in question here, but I disagree. Mr R was a retail client with no real investment experience, and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. This is supported by Mr R choosing to pay Hunter Mills 0.5% of the value of his new personal pension each year for ongoing advice – I note Mr R is unhappy about the annual reviews it provided, and I'll return to this.

So, I don't think control was a genuine objective for Mr R but was simply a consequence of transferring away from his DB scheme. Similarly, I don't think the benefits of tax mitigation and the potential to make Mr R's pension arrangements simpler and cheaper mentioned by Hunter Mills were genuine objectives for Mr R either. Because they are not explored in any detail in the documents Hunter Mills has provided from the time of the advice. Instead, I think they were also simply a consequence of Mr R transferring away from his DB scheme. And it is difficult to argue that Hunter Mills has provided Mr R with a cheaper way of managing his pension given there were no charges in the DB scheme.

Hunter Mills argues that financial security was a compelling reason for Mr R to transfer - the BSPS had significant funding issues, and there was no reason to think BSPS2 would be different, with only limited information known about the BSPS2. And that the PPF would have left Mr R with greatly restricted options and benefits, and was rightly seen more negatively than the BSPS. So avoiding the PPF was another compelling reason for Mr R to transfer his DB benefits to a personal pension.

I accept that when Mr R met with Hunter Mills, he was concerned about the security of his pension and it's possible Mr R was inclined to transfer out of the BSPS because of these concerns. However, it was Hunter Mills' obligation to give Mr R an objective picture and recommend what was in his best interest. Mr R was concerned about the BSPS moving to the PPF. But as I've said above, if Mr R transferred his DB scheme he wasn't likely to be able to match or improve on the benefits he'd be entitled to if the scheme entered the PPF.

So, I think Hunter Mills ought to have reassured Mr R that the possibility of his scheme moving to the PPF wasn't as concerning as he thought. Furthermore, the scheme moving to the PPF was only one of the outcomes; by the time Mr R sought advice – as I say, the details of the BSPS2 would've been known and he had been given the choice to opt into the scheme. So, Mr R being able to join the BSPS2 should've allayed his fears about the PPF. And Hunter Mills should've reassured him that he could meet his retirement objectives in either scheme regardless.

Hunter Mills may say that the BSPS2 wasn't certain to be established at the time of the advice, so it couldn't advise Mr R to opt-in. But I think that it was clear to all parties that the BSPS2 was likely to be going ahead. And in any event, if it didn't go ahead Mr R would move with the scheme to the PPF and I think he could've met his genuine retirement objectives in this scheme.

As I say, Mr R thinks the annual reviews Hunter Mills' provided him with as part of its ongoing service were inadequate, because each year it only sent him a letter and didn't talk to him face to face. But I don't think Hunter Mills did anything wrong on this point. There's nothing in the documents I've been provided with that specifies what format ongoing advice will take, and Mr R doesn't dispute that Hunter Mills provided him with an annual review, albeit by letter rather than face to face as he preferred. I also think Hunter Mills made its services available to Mr R in the event he wanted to contact it for advice.

Summary

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

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr R was very likely to obtain lower retirement benefits and in my view, there were no compelling reasons which would justify a transfer and outweigh this. Mr R shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I think Hunter Mills should've advised Mr R not to transfer to a personal pension.

Of course, I have to consider whether Mr R would've gone ahead anyway, against Hunter Mills' advice. Hunter Mills has argued that Mr R was experienced investor, and that he still wanted to transfer his DB benefits to a personal pension despite warnings from Hunter Mills and the other parties involved, as shown by him travelling to meet Hunter Mills.

I've considered this carefully, but I'm not persuaded that Mr R would've insisted on transferring out of the DB scheme, against Hunter Mills' advice. I say this because while Mr R might have recently transferred other pensions, it's still the case that Mr R was a retail client with no real investment experience, that he had a 'low to medium' attitude to risk, and that this pension accounted for the majority of his retirement provision. So, if Hunter Mills had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think Mr R would've accepted that advice.

I'm not persuaded that Mr R's concerns about his mortgage, death benefits, or the BSPS were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Hunter Mills had explained that Mr R could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr R would have insisted on transferring out of the DB scheme.

At the time of the advice, I think it was clear to all parties that BSPS2 was likely to be going ahead. As I say, Hunter Mills would have been aware that Mr R had received his ‘Time to Choose’ pack by this time, giving him details of the BSPS2 and the choice to opt into it or remain in the scheme and move to the PPF. Given Mr R’s age at the time of the advice and the fact he didn’t have concrete plans to retire before age 65, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Also, the annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Hunter Mills should’ve advised Mr R to opt into the BSPS2.

In light of the above, I think Hunter Mills should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for Hunter Mills to put Mr R, as far as possible, into the position he would now be in but for Hunter Mills’ unsuitable advice. I consider Mr R would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, Hunter Mills should use the benefits offered by the BSPS2 for comparison purposes.

Hunter Mills must therefore undertake a redress calculation in line with the regulator’s pension review guidance as updated by the Financial Conduct Authority (FCA) in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr R retired and started accessing his benefits at age 58, so this should be the basis for the calculations.

This calculation should be carried out as at the date of my 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 R’s acceptance of the decision.

Hunter Mills may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R’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 R’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R’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 R 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 payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Mr R within 90 days of the date Hunter Mills 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 Hunter Mills to pay Mr R.

Income tax may be payable on any interest paid. If Hunter Mills deducts income tax from the interest, it should tell Mr R how much has been taken off. Hunter Mills should give Mr R a tax deduction certificate in respect of interest if Mr R asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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 R 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.

He didn’t make a choice, so as set out previously I’ve assumed in this case he doesn’t want to wait for the new guidance to come into effect.

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 R.

If the complaint hasn’t been settled in full and final settlement by the time any new guidance or rules come into effect, I’d expect Hunter Mills to carry out a calculation in line with the updated rules and/or guidance in any event.

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 Hunter Mills Limited to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £170,000.

Where the compensation amount does not exceed £170,000, I additionally require Hunter Mills Limited to pay Mr R any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £170,000, I only require Hunter Mills Limited to pay Mr R any interest as set out above on the sum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Hunter Mills Limited pays Mr R the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts my final decision, the money award becomes binding on Hunter Mills Limited.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Hunter Mills Limited should provide details of its calculations to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 January 2023.

Ailsa Wiltshire
Ombudsman