DRN-3864764

The complaint

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

What happened

In March 2016, Mr L'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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

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

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

Mr L was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. NTM says Mr L was referred to them by a third-party, although it doesn't have any more details. But in any event, Mr L met with NTM in November 2017 and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. Amongst other things, this recorded that he was 50; he was single with one non-dependent child; he worked full-time and earned around £32,500; he owned his own home with an outstanding mortgage of around £50,000 on a remaining term of 10 years; he had no other assets or liabilities; and while he had a surplus income each month this was used to support his family, so he didn't save any money. NTM also carried out an assessment of Mr L's attitude to risk, which was deemed to be 'balanced'.

On 28 November 2017, NTM issued a suitability letter setting out its recommendation. One of the key things it set out here was the result of a discussion about Mr L's desire to retire at age 60 on an income of £1,000 a month. NTM said that this wasn't practical. It said this was because Mr L didn't join the BSPS pension for 20 years, so this left a significant income shortfall to close. It said it was agreed to consider 65 as a suitable alternative to 60.

NTM then summarised Mr L's objectives of wanting to take action to maintain the income from the DB scheme at age 65, maintain access to flexible benefits and avoid the restrictions imposed by the PPF. It said Mr L had accepted that retirement at 65 is more likely than at age 60, but he wanted the ability to access then although he expected it was unlikely. It also said access to the highest level of tax-free cash at age 55 was a priority, although the exact use wasn't set.

NTM recommended that Mr L transfer his pension because: he was being moved to the PPF; moving to the PPF would result in a reduced income, while transferring would allow him to maintain his income, there was the potential to provide higher benefits; the BSPS2 had the lowest benefits of all three options available; it would provide better lump sum death benefits for his daughter; and it would offer higher tax-free cash and the flexibility to delay taking an income.

Mr L accepted the recommendation and some time afterwards around £54,500 was transferred to his new personal pension.

Mr L complained to NTM in 2022 about the suitability of the transfer advice. Mr L said he was deeply concerned that he'd received unsuitable advice and because he'd lost financial stability and security, he was concerned about what the future held.

NTM didn't uphold Mr L's complaint. In addition to setting out a timeline of the events leading up to the 'time to choose' exercise, in summary it said that Mr L wanted to retire at age 60, or as close to this age as possible, on an income of £12,000 a year. It said Mr L had the best opportunity to achieve this due to the recommendation made. It said the transfer offered the ability to use flexible benefits to allow Mr L to close the income shortfall between receiving his state pension. It said Mr L's principal priority was for the welfare of his family over his own income need and to ensure his family received death benefits. And while this conflicted with the adviser's duty to ensure Mr L had the best opportunity to retire on a suitable income, it said it believed the advice best met these conflicting objectives – better than the alternative of moving to the BSPS2 or the PPF.

Mr L referred his complaint to the Financial Ombudsman Service. One of our investigators looked into this complaint and upheld it. They said the advice wasn't suitable. They said the growth rates required to match Mr L's DB scheme benefits meant he was likely to receive lower benefits overall at retirement as a result of investing in line with a balanced attitude to risk. And they said there wasn't anything about Mr L's wider objectives to justify a transfer. They said Mr L wanted to access his tax-free cash at the earliest opportunity, but they didn't think using them to repay his mortgage early and pay for his daughter's wedding could be deemed essential. They said NTM's cashflow modelling wasn't based on him accessing a lump sum at 55, so it was possible his fund would be depleted much sooner meaning his primary objective of wanting to leave funds to his daughter might not be met anyway. They said while it was clear Mr L had strong feelings about what he wanted from his pension and NTM challenged some of them, it nevertheless still recommended the transfer. They said if things had happened as they should have, Mr L would've likely opted to join the BSPS2.

While NTM indicated it would issue a response to the investigator's findings, nothing was received. So, because it is assumed that NTM disagrees, the complaint was referred to me for a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

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

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

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

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

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

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

- The transfer value analysis ('TVAS') report, that NTM was required to carry out by the regulator, said that the critical yield - how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.38% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 7.82%. To match the full pension the PPF would've paid from 65 the critical yield was 6.74% and to match the tax-free cash and reduced pension the PPF would've offered, it was 6.35%.

- Despite the fact it was known by the point NTM instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr L, the analysis was based on the BSPS benefits. And NTM didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available – Mr L would've received his 'time to choose' information by this time. I think it should've done.

  In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Given Mr L's recorded 'balanced' attitude to risk, the discount rate of 4.3% for 16 years to retirement and the regulator's middle projection rate, I think Mr L was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And given what the TVAS noted about the critical yields for retirement at age 60 – these were significantly higher at 10.18% and 8.93% based on a reduced pension through the BSPS2 and PPF respectively – I think Mr L was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early.

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

- NTM recorded in the suitability report that Mr L wanted access to the highest possible tax-free cash at age 55 and this was a priority for several reasons, including paying down his mortgage, supporting his family and making home improvements. It also said the exact use wasn't set, but Mr L would access the funds and continue to work.

- While NTM noted that in accessing funds early this would impact Mr L's income and its sustainability, it nevertheless still went ahead with the recommendation to transfer. But it wasn't NTM's role just to put in place what Mr L might've thought he wanted or sounded like a good idea. Its role was to advise him on what was in his best interests. But I don't think this meant a transfer was in his best interests.

- The information recorded at the time of the advice indicated Mr L's mortgage was affordable – nothing suggests that Mr L was either behind or struggling to meet the repayments. In fact, NTM recorded he had a surplus monthly income. Also Mr L's mortgage term was 10 years, which meant it would be repaid by the time Mr L came to retire. So I don't think giving up his guaranteed pension benefits to reduce a debt that he could afford, was in his best interests.

- Mr L might have wanted to access his pension benefits early to pay for his daughter's wedding and make some home improvements. But I don't think these were essential or compelling reasons for NTM to have recommended the transfer. NTM didn't record how much Mr L wanted to spend on these things. But, given Mr L was working and he would likely do so for at least another 10 to 15 years, NTM should've explored the reasonable alternative option of Mr L borrowing the money instead. I don't think it should've encouraged Mr L to transfer his guaranteed pension to achieve things.

- Overall, as Mr L had no immediate plans to stop working (indeed the advice was that Mr L should wait until 65 to retire) and he didn't have a pressing need to clear his mortgage because it appears it was affordable, and his other potential plans can't reasonably be deemed essential, I don't think transferring to obtain flexibility and the ability to access a lump sum and defer taking an income, was in his best interests.

- Mr L's original desire to retire early at 60 on an income of £12,000 a year was rightly deemed not practical by NTM because his income need simply couldn't be met - so it was agreed that 65 was a more suitable alternative.

  For this reason I don't think it's necessary for me to engage with the arguments NTM put forward in its final response letter as to how the transfer could better meet Mr L's objective to retire at 60 when this wasn't the advice Mr L was ultimately given.

- NTM said the transfer would provide Mr L with the ability to take a higher income from age 65 to 67 and cover his income shortfall over this two-year period. But I think Mr L could've likely met his income need by retaining his DB scheme benefits. At age 65 Mr L was entitled to a pension under the existing BSPS of around £3,600. This wouldn't have met Mr L's need of £12,000 in full. But Mr L was contributing to his workplace defined contribution ('DC') scheme. And while the contribution rate wasn't recorded by NTM, based on my experience, they were typically between 10-20%. NTM documented that it believed at age 60 Mr L's DC scheme could be worth just under £73,000 – so by age 65 likely more. I think Mr L could accessed these benefits flexibly to supplement his DB scheme income to meet his retirement income need, at least until his state pension became payable. I think this was a more appropriate way for Mr L to meet his income needs in retirement rather than risking his guaranteed and escalating pension to do so.

- NTM recorded that Mr L's priority was to look after his family over his own needs and that he wanted his daughter to benefit from the lump sum death benefits available through a personal pension – any action to deny his pension being paid to his daughter was recorded as being unacceptable to him. But again, NTM's role wasn't simply to facilitate what Mr L wanted. The priority here was to advise Mr L about what was best for his retirement. And while I can see the adviser said as much in the advice paperwork, they recommended the transfer anyway to meet Mr L's objective.

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

- If Mr L had wanted to leave a legacy for his family, NTM could've explored life insurance as an alternative. Reference was made to a whole of life policy for a sum assured for the amount of the transfer value, which appears to have been discounted on the basis that a transfer would better achieve things. But I disagree. Mr L had surplus income, so I don't think affordability was an issue. But it could also have considered cover on a term assurance basis, which was likely to be cheaper. But there's little evidence NTM did so.

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

- Mr L may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was NTM's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr L with guaranteed income and the option of accessing tax-free cash. Mr L was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

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

I can see the investigator also recommended an award of £200 for the distress and inconvenience the matter has caused Mr L. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish NTM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr L. Taking everything into account, including what Mr L has said about the concern he now feels about the future and that I consider Mr L is now at the age when his retirement provision is of greater importance to him, I think the unsuitable advice has caused him distress. So I think an award of £200 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the NTM to put Mr L**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr L would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

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

NTM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr L and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

For clarity, while Mr L accessed his tax-free cash in 2021, he has not yet retired. And while I'm mindful he did access this early and before the DB scheme's normal retirement age, I don't think this is persuasive evidence that he would've done so had suitable advice been given and he'd remained in the DB scheme. My understanding is that Mr L is still working and he has no immediate plans to retire at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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

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

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr L for the

calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

Redress paid to Mr L as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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 NTM Financial Services Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that NTM Financial Services Ltd pays Mr L the balance.

NTM Financial Services Ltd should also pay Mr L £200 for the distress and inconvenience this matter has caused.

If Mr L accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 15 November 2023.
Paul Featherstone
Ombudsman