DRN-3864765

The complaint

Mr M complains about the advice given by Pi Financial Ltd 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 M'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 August 2017, scheme members were told that terms had been agreed for a Regulated Apportionment Arrangement ('RAA') (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) and that when it took affect they would have a choice - either move into the new scheme - BSPS2 - or remain in the existing scheme and move with it to the PPF.

Mr M was concerned about what the recent announcements by his employer meant for the security of his pension so he sought advice. Mr M met with Pi Financial in August 2017 and it completed a fact-find to gather information about Mr M's circumstances and objectives. Amongst other things, this recorded that Mr M was 51 years old; he was married; he'd recently sold his home but was still living in the property (rent free) with the consent of the new owner; he was looking to buy a new property the following year; he had around £100,000 in savings from the net proceeds of the house sale as well as around £50,000 in shares; and he wanted to be able to retire at 55 with an annual income of £25,500. Pi Financial also carried out an assessment of Mr M's attitude to risk which it deemed to be 'low.'

On 12 September 2017 Pi Financial advised Mr M to transfer the benefits from his BSPS into a personal pension arrangement and invest the proceeds in a portfolio of funds, which it deemed matched Mr M's attitude to risk. The suitability report said the reasons for the recommendation were based on Mr M's current circumstances and the result of the TVAS report.

Mr M duly accepted the recommendation and sometime later around £506,000 was transferred to his new personal pension.

Mr M complained to Pi Financial in 2022 about the suitability of the transfer advice. Mr M said that a transfer should not have been recommended in his circumstances and the benefits available to him through the BSPS2 are unlikely to be matched through the recommended personal pension arrangement.

Pi Financial didn't uphold Mr M's complaint. In summary it said the advice to transfer was suitable. It said Mr M would not have been able to meet his objective of wanting to retire early at 55 if he remained in the DB scheme – going into the PPF would've resulted in a 10% reduction in benefits and Mr M wouldn't have been able to retire until 65, while the BSPS2's benefit increases were at a reduced rate, which meant Mr M ran the risk of inflation reducing the purchasing power of his money. It said while it didn't know what the revaluation and escalation rates were for the BSPS2 at the time, based on the existing scheme income Mr M couldn't afford to retire at 55 – even taking into account his wife's income he would've been left with an income shortfall of around £141 based on his expenditure need of £25,500 a year. And this assumed Mr M didn't have a mortgage in place. It said the scheme's lump sum offering of around £71,000 may not have met Mr M's objective of clearing any mortgage he needed to buy a property. It said Mr M had health conditions and he was concerned about the potential for a shortened life expectancy and wanted to provide for his family upon his death – the spouse's pension provided by the scheme was not suitable as it wouldn't support her in retirement. It said it was highly unlikely that Mr M would've obtained affordable life cover to provide additional death benefits for his family.

Dissatisfied with its response Mr M asked the Financial Ombudsman Service to consider his complaint. One of our investigator's upheld the complaint and required Pi Financial to pay compensation. In summary they said they didn't think the advice was suitable. They said given the critical yield required to match Mr M's scheme benefits, his attitude to risk and the term to retirement, he was likely to be worse of in retirement as a result of transferring and investing in line with his low attitude to risk. And they said there were no other particular reasons to justify the transfer to outweigh this – the potential for different death benefits wasn't a valid reason to transfer and his concerns about the scheme should've been addressed subjectively by Pi Financial including waiting for details of the BSPS2. They said while Mr M likely had a fair understanding of his retirement plans given his age, his circumstances were in a state of change – he was looking to buy a property and it wasn't clear how much he needed for this, how much if any mortgage might be required and so how this might impact him financially including his income needs. They said with these uncertainties, it wasn't in Mr M's best interests to transfer out of the scheme. They said if suitable advice had been given, Mr M would've likely chosen to opt-into the BSPS2.

Mr M's representative accepted the investigator's findings. They clarified that Mr M was still employed and does not expect to retire until 65.They also said that the notional reduction for income tax should only be applied to the redress once the part of the redress intended to compensate Mr M for the product and adviser charges has been disregarded, as otherwise Mr M would be undercompensated by 15% in respect of those adviser and product charges he is now incurring.

Pi Financial disagreed. In summary it said the investigator had missed very important details about Mr M's health conditions all of which played a major part on Mr M's life expectancy. It said these were contributory factors it took into account in its advice. It repeated the points it made in its final response letter that it was not realistic for Mr M to retire at 55 if he remained in the DB scheme, neither the PPF nor the BSPS2 provided flexibility of income and the scheme's death benefits could not offer the income Mr M's wife required to ensure she had a comfortable lifestyle.

It said Mr M needed £25,000 a year to retire at 55 and he required the maximum tax-free cash to put with the proceeds from his house sale to be able to buy another property the following year. It said its advice was based on the information available at the time and analysis of Mr M's overall position – his main aim was to retire at 55 on the income he needed to do so, which the transfer provided.

The investigator wasn't persuaded to change their opinion. They said they had noted Mr M's health concerns; they weren't persuaded there was any real attempt to consider the alternative of life assurance to provide additional death benefits; the potential for a personal pension to provide a considerable legacy for Mr M's family was based on him drawing the same level of income as his DB scheme would provide and assumed investment growth of 5% a year; and they repeated that because of Mr M's circumstances at the time, it was difficult to assess what his exact income needs were.

Because things couldn't be resolved informally, the complaint was passed 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 Pi Financial'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've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

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, Pi Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Pi Financial carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits. But at the time of the advice Mr M didn't have the option to remain in the existing scheme.

In light of the agreed terms for the RAA, Pi Financial ought to have known that Mr M would soon have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF. This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant and so wasn't helpful to Mr M. I think it's reasonable to say that, in light of the recent announcement Pi Financial should've waited for the details of the new scheme and based its analysis and advice on the benefits available to Mr M through the BSPS2 instead. That way Mr M would've had all the relevant information to make a properly informed decision.

I accept that BSPS2 was far from being a certainty at the time of the advice. But the RAA had been formally approved by the time of the written advice and in my view the available information from the scheme trustees indicated that the new scheme would likely go ahead. So I still think Pi Financial should've waited and taken the benefits available to Mr M through the new BSPS2 into account in formulating its advice.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr M was 51 at the time of the advice and it's recorded that he wanted to retire at 55.The critical yields required to match Mr M's benefits under the existing BSPS at age 55 (the retirement age the advice was predicated on) were set out in the TVAS report of 8 September 2017 and were 17.89% a year based on Mr M taking a full pension and 10.71% a year assuming he took a cash lump sum and a reduced pension. For some reason, Pi Financial only produced critical yield figures to match the benefits available to Mr M through the PPF at age 65 and not 55. These were 3.7% and 3.25% a year respectively.

But as I've said above, Mr M remaining in the BSPS wasn't an option. So, Pi Financial should've waited and provided the critical yields applicable to the BSPS2 benefits instead. 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 at 55 (had Pi Financial produced them.)

This compares with the discount rate of 2.8% per year for three years to retirement in this case (age 55). 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%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's 'low' attitude to risk and also the term to retirement. In my view there would be little point in Mr M 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, the lowest critical yield figure produced was 10.71% assuming Mr M took a lump sum and a reduced pension through the existing BSPS. If Mr M were to opt into the BSPS2 and take the same benefits at 55, I think the critical yield would've still been close to the existing scheme of 10.71%. Given this rate was significantly above the discount rate and more than 2% higher than the regulator's upper projection rate, I think it was clear that Mr M was most likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with a low attitude to risk.

If the BSPS2 hadn't gone ahead, Mr M would've moved with the scheme to the PPF. As I said above, no critical yield was produced based on the benefits available to Mr M through the PPF at age 55. But at 65, the lowest critical yield was 3.25%. So at age 55 I think it was likely to be higher, and more likely than not closer to, if not above, the regulator's middle projection rate given the shorter term to retirement. This means I don't think the position was any different in this scenario - I think Mr M was most likely to receive benefits of a lower overall value than those provided by the PPF if he transferred to a personal pension, as a result of investing in line with a low attitude to risk.

I've considered the drawdown analysis in the TVAS report which showed that Mr M's pension fund would last well beyond his expected retirement age and beyond age 100. But firstly this assumes Mr M took the same level of income as he was entitled to through the existing BSPS. And as I said above, in my view there would be little point in Mr M taking on investment risk only to achieve the same level of benefits he would receive through his guaranteed DB scheme. And Pi Financial has argued that the scheme income wasn't sufficient for Mr M's needs. Secondly it assumes a medium rate of return, which given Mr M's low attitude to risk, I'm not persuaded was likely sustainable. Furthermore it assumes it was suitable for Mr M to enter into a drawdown arrangement. But given Mr M's low risk attitude towards investing, coupled with the fact that this pension accounted for almost all of his private retirement provision and so his capacity for loss was in my view low, I'm not persuaded a drawdown arrangement was appropriate.

I can also see in the suitability report, Pi Financial set out how Mr M could take the required level of income to meet his needs over time and that his fund would last. But this doesn't appear to have been based on a proper analysis or modelling of how Mr M could meet his objectives by transferring and accessing his benefits via drawdown. It appears it was a simple calculation deducting from the transfer value what income Mr M needed at various points – for example initially when his wife was still working and then once his state pension was payable. But this does not appear to have been based on Mr M accessing a lump sum. And importantly, there was no stress testing to show how Mr M's pension fund might be impacted and so its sustainability by a sudden fall in value for example. Without this, I'm not persuaded Pi Financial has demonstrated a transfer was in Mr M's best interests and was financially viable despite the high critical yield.

So based on financial viability alone, I don't think a transfer out of the BSPS was in Mr M's best interests. Of course financial viability isn't the only consideration when giving transfer advice as Pi Financial has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income need

One of the reasons for the transfer was to meet Mr M's objective of wanting the financial flexibility to retire at age 55. But in light of Mr M's circumstances at the time, I don't think he knew with any degree of certainty whether he required flexibility or that it was certain he'd be in a position to retire at 55.

Mr M was 51 at the time of the advice and I accept that given his age and his concerns about his health, he'd given some thought to his retirement and that he probably liked the idea of retiring early at 55. But I think Mr M's circumstances were such that he wasn't in a position to formulate a plan at this time (I think this is likely the reason why the advice paperwork isn't particularly clear about this) or that it was in his best interests to transfer his DB scheme benefits now to help him achieve things.

Mr M had recently sold his property, which had netted him an amount of around £100,000. Mr M was in the fortunate position of being able to continue to reside in the property in the short-term – but it was his intention to purchase another property to live in the following year. But crucially how much Mr M wanted or needed to spend was unknown. Reference in the advice paperwork was made to Mr M needing to raise a short-term mortgage for the balance. It also said he planned to use some or all of his share portfolio to support the purchase. It then went on to say that Mr M wanted access to his pension at 55 to support the purchase and that he needed a greater tax-free cash lump sum than his BSPS would provide to do so; albeit somewhat contradictory, I note the suitability report recorded that accessing a cash lump sum wasn't a priority for Mr M. But without an understanding of how much Mr M intended to spend on a property, it wasn't possible to know what his needs for a mortgage and/or a cash lump sum were. So Mr M's financial position was uncertain and his needs could not be quantified at this time. For this reason I don't think Pi Financial was in a position to demonstrate that a transfer was in Mr M's best interests.

I think this uncertainty about Mr M's financial position going forward also played into Mr M's income need. Pi Financial recorded that Mr M needed an annual income of £25,500 from age 55. But firstly this was based on Mr M not having a mortgage at this time. The suitability report said that if Mr M maintained his repayment plans then post 55 his expected mortgage would be repaid. But there's no reference to what that 'repayment plan' was – Pi Financial didn't know how much Mr M might need to borrow by way of a mortgage (or what other assets / means Mr M might need to use to support the purchase) because as I said earlier on, it didn't know how much Mr M intended to spend on a property. I think it was entirely possible that Mr M might still have a mortgage and so not only would his income/ expenditure needs be different, but it could also mean his entire retirement plans would need to change and he might need to continue working to service the mortgage.

Notwithstanding this, I'm mindful that Mr M's recorded income need of £25,500 a year in retirement was more than his combined necessary and discretionary spending while he was working, based on the income and expenditure analysis Pi Financial carried out. And this was predicated on him having no liabilities to service. I think Pi Financial should've done more to interrogate this and understand why Mr M's spending would, or needed to increase in retirement. In my view it is typically the case that a consumer's expected expenditure is lower in retirement than when they were working.

Pi Financial's analysis showed that the pension income Mr M would receive from the existing scheme at 55 was £15,120 based on a full pension and £10,695 on a reduced pension, so slightly lower under the BSPS2 because of the reduction factors. Mr M was also contributing to his workplace defined contribution pension scheme (12% of his salary was being invested here), so he would've had flexible access to benefits here, albeit not likely significant. Nevertheless I accept this might not have been enough to meet Mr M's income need at 55 depending on his financial position at the time. And I can see Pi Financial said that it appeared Mr M would need to continue working to realise his objectives. Mr M might not have wanted to do that, but I don't think that demonstrates it was in Mr M's best interests to transfer to a personal pension. As I've set out earlier on, Mr M was likely to obtain benefits of a lower overall value at 55 if he transferred his funds to a personal pension.

And because his financial position and needs weren't yet certain, I don't think it was a suitable recommendation for him to transfer his pension for flexibility that I'm not persuaded it was clear he really needed. I'm mindful that Mr M's health was recorded as being ‘reasonable’ and that he had some concerns about his longevity. But I don’t think this justified a transfer out Mr M’s DB scheme at this time.

I think suitable advice was for Mr M to retain his DB benefits - even if that meant he might have to continue working for a while longer to achieve things. I still think Mr M had a better chance of meeting his objectives whether through the BSPS2 or the PPF - the benefits under which were guaranteed and escalated - rather than relying on investment growth in a personal pension. But, if once Mr M’s financial circumstances and needs were clearer and it transpired he did in fact have a greater need for flexibility beyond that which he already had, I think this could’ve been explored closer to his intended retirement age. By choosing to opt into the BSPS2, Mr M would’ve retained the ability to transfer out, if his needs later demanded it. I think Pi Financial could’ve explained this more clearly to Mr M.

Death benefits

Pi Financial also recommended the transfer to provide the ability for Mr M to pass on what remained of his pension fund to his family in the event of his death. It was recorded that Mr M was concerned about the possibility of a reduced life expectancy and that the spouse’s pension wouldn’t support his wife’s needs.

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 M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool. And I don’t think Pi Financial clearly explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and so the spouse’s pension provided by the DB scheme would’ve been useful to his spouse if Mr M predeceased her. I don’t think Pi Financial made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated – under the BSPS2 the spouse’s pension would also be calculated as if no cash lump sum had been taken, which might have addressed Mr M’s concerns about the spouse’s pension being insufficient. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. So, if investment returns were lower than expected or Mr M lived a long life, there might not have been a large sum left, if any at all, to pass on when he died. In any event, Pi Financial should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

But if Mr M genuinely wanted to leave a legacy for his family, which didn’t depend on investment returns or how much of his pension fund remained on his death, I think Pi Financial should’ve instead explored life insurance. I can see that Mr M had some health conditions and Pi Financial says it was highly unlikely Mr M would find life cover at an affordable cost. But I can’t see that it explored this any further and considered this as an alternative. It needn’t have been the case that the sum assured had to be for the full transfer value. Ultimately Mr M wanted to leave whatever remained of his pension to his family. So the starting point ought to have been to ask Mr M how much he would ideally like to leave to his family, and this could’ve been explored on a whole of life or term assurance basis.

I acknowledge that Mr M had health conditions and so appears to have had concerns about his life expectancy. But Mr M not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr M would need his pension to last longer. If Mr M transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's pension was guaranteed and escalated.

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 M. And I don't think that insurance was properly explored as an alternative.

Control and concerns about BSPS

I have no doubt that Mr M was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF. So it's quite possible that Mr M was leaning towards the decision to transfer because of the concerns he had and what might happen. But it was Pi Financial's obligation to give Mr M an objective picture and recommend what was in his best interests.

As I've already explained, I think Pi Financial should've waited for the details of the BSPS2 so it could properly take the benefits available to Mr M through the BSPS2 into account. And I think this would've alleviated some of Mr M's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, and the scheme moved to the PPF, I think that Pi Financial should've reassured Mr M that this wasn't as concerning as he thought or had been led to believe. Despite what Pi Financial said in its suitability report, Mr M did still have the option of taking early retirement through the PPF. Importantly Mr M was also unlikely to be able to exceed the income provided through the PPF by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. Mr M might not have been able to later transfer out of the PPF – but for the reasons I set out earlier, there was no real apparent need for him to do so.

So I don't think that Mr M's concerns should've led to Pi Financial recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr M was likely motivated to transfer out of the BSPS and that his concerns about the scheme were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But Pi Financial wasn't there to just transact what Mr M might have thought he wanted or what sounded attractive. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF at a time when I don't think it was clear enough what his retirement and income needs were. By transferring to a personal arrangement Mr M was very likely to obtain lower retirement benefits at his target retirement age. And in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think it was in Mr M's best interests for him to transfer his BSPS benefits to a personal pension at this time.

So, I think Pi Financial should've advised Mr M that he should not transfer the benefits of his BSPS to a personal pension arrangement. And if things had happened as they should have and Pi Financial had waited until the details of the BSPS2 were known before formulating its advice, which was in the offing at the time of its written advice, I think it should've recommended that Mr M opt into the BSPS2. Because of the uncertainty around Mr M's financial position and whether his desire to retire at 55 was realistic and achievable, 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. And by opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme later on - if his needs later demanded it. Also, because Mr M was married, his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against Pi Financial's advice.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the BSPS, against Pi Financial's advice. I say this because, while as I've already said Mr M was likely motivated to transfer when he approached Pi Financial, I still think Mr M would've listened to and followed Pi Financial's advice if things had happened as they should have and it recommended he not transfer out of the scheme. While Mr M had experience of investing in shares, the evidence does not indicate he someone who possessed the requisite skill, knowledge or confidence to against the advice they were given, particularly in complex pension matters. Mr M's pension accounted for the majority of his private retirement provision and both his attitude to risk and capacity for loss were low. So, if Pi Financial had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M's concerns about the scheme 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 Pi Financial had explained that Mr M should wait until his plans were clearer and that he could still likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr M would've insisted on transferring out of the BSPS against Pi Financial's advice.

In light of the above, I think Pi Financial should compensate Mr M 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 BSPS2 that should be used for comparison purposes.

I've thought about Mr M's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr M would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr M back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr M for the impact of the unsuitable advice he received.

I can see the investigator also recommended an award of £150 for the distress and inconvenience the matter has caused Mr M.

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 Pi Financial – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on

Mr M. Taking everything into account, including that I consider Mr M's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him some distress. So I think an award of £150 is fair in all the circumstances.

Putting things right

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

Pi Financial 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.

Pi Financial 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 M and our Service upon completion of the calculation together with supporting evidence of what Pi Financial based the inputs into the calculator on.

For clarity, my understanding is that Mr M has not yet retired, and he has no firm plans to do so at present. So, compensation should be based on the scheme's normal retirement age, 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 M'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, Pi Financial should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Pi Financial's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Pi Financial 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 M'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 £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 Pi Financial Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Pi Financial Ltd pays Mr M the balance.

Pi Financial Ltd should also pay Mr M £150 for the distress and inconvenience the unsuitable advice has caused.

If Mr M accepts this decision, the money award becomes binding on Pi Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 31 October 2023.
Paul Featherstone
Ombudsman