DRN-3898457

The complaint

Mr J complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Atomos Financial Planning Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Atomos".

What happened

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

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr J's former employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr J was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Atomos which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr J was 38 years old, married and with three young dependent children. He was described as being in good health and at the time.
- The cash equivalent transfer value (CETV) of Mr J's deferred BSPS was approximately £169,987. The normal retirement age (NRA) of the scheme was 65. Atomos said Mr J's aspirations were to retire earlier than this.
- Mr J had by then left British Steel to work elsewhere and he earned around £45,000 per year. He had also started a defined contribution (DC) pension with his new employer. Mr J also had a small, deferred DB pension from a previous career. These pensions aren't the subject of any complaint here.
- Mr J lived in a home valued at around £150,000 with an 18-year mortgage outstanding of around £105,000. Mrs J also worked. After expenses they had some disposable income left over. Mr and Mrs J had £10,000 in a combination of joint savings and some work-related shares.

Atomos set out its advice in a suitability report on 14 August 2017. In this it advised Mr J to transfer out of the BSPS and invest the funds in a type of personal pension plan. Atomos said this would allow Mr J to achieve his objectives. Mr J accepted this advice and so transferred out. In 2022 Mr J complained to Atomos about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr J also referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Atomos said it hadn't done anything wrong and was acting on the financial objectives Mr J had at the time.

As this complaint can't evidently be resolved informally, it's come 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 also 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'). 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 Atomos'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.

I have further considered that 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, Atomos should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr J's best interests. I have also carefully considered the final response letter from Atomos. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr J's complaint.

Financial viability

Atomos referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, Atomos used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2. The BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr J was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

Having said all that, Atomos said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 7.19%. It also calculated the critical yield rates for an earlier retirement, at the age of 55. It did this because Mr J had apparently expressed a desire to retire early. However, as I'll explain more about later, retirement was still a very long way off for Mr J and so I very much doubt whether retiring at 55 was anything more than something he just aspired to, rather than being part of a real plan. For the age of 55, the critical yield came out at 8.68%. But I don't think there was credible evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be achievable. I say this with the following in mind.

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.

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 was only 4.6% per year for 26 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. The discount rate for a retirement at 55 (16 years to retirement) was only 4.3%. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

At the time, Atomos assessed Mr J's attitude to risk (ATR) as "adventurous" or a rating of 6/7. However, there is no real evidence that Mr J himself had any experience of these types of 'money market' investments or investing in a wider sense. For example, he had £5,000 in joint savings invested in what looks like a normal cash deposit account and the company shares mentioned in the documentation from the time appear to relate to a share scheme operated by Mrs J's then employer. So, there is no evidence whatsoever that Mr J had any investment experience to draw upon and so I don't think that such a high ATR categorisation was appropriate here; I think any reasonable assessment of Mr J's situation would have moderated this down considerably. I accept that Mr J may have considered himself a risk taker, but in an investment context I'd have expected the adviser to use common sense and their professional experience when assessing Mr J's ATR and also his capacity to absorb losses. Investing in higher risk assets – in this case individual shares (as opposed to funds) was mentioned and also investments in commercial property – is not a 'one way street' and in my view these were investments which required a full understanding of the risks. Because he had no relevant experience, I think placing Mr J in this category was wrong.

In the event, however, this didn't really matter. That's because I don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. In fact, the adviser themselves said that achieving the critical yield was unlikely. An in my view, growth assumptions close to the regulator's mid projections and also to the discount rate were most relevant here. So, I think growth assumptions of around 4½-to-5% were much more realistic. These were substantially below the critical yield figures for the BSPS, so I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was unlikely.

I've also noted that using the NRA of 65, Atomos's own transfer analysis said that even in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £295,684. For the age of 55 the amount required was £203,648.

To reiterate, these figures are found in Atomos's own analysis based on data the regulator required businesses to refer to at the time and they are for buying a much less valuable pension. And because these figures are far above Mr J's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr J could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, Atomos also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. Atomos said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and Atomos itself says Mr J wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr J, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, Atomos's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr J would likely receive lower pension benefits in the longer term, when compared against the BSPS.

I've also considered some projections Atomos used to help show that if he transferred out to a personal plan, the funds could last Mr J well into retirement. Again, I think most of these were based on growth projections which were based on past performance and some of the projections ran out at certain ages whereas Mr J's DB scheme lasted for the whole of his life. It's also fair to say these were not comparing like-with-like. What Atomos was showing Mr J were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to Atomos, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Atomos said Mr J also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

Atomos recommended a transfer to a type of personal pension plan based on what it said were Mr J's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away:

- Transferring would increase his chances of being able to retire early, at the age 55.
- There would be greater flexibility in a personal pension arrangement. Mr J was also told the personal pension arrangement would provide access to all investment options including direct equities and commercial property should he decide to utilise these in the future.
- The death benefits were more suitable in a personal pension.
- He would reduce the risk of his BSPS benefits being reduced as a result of the current action being taken by his former employer.
- Mr J would benefit from ongoing advice and support from a discretionary fund manager (DFM) and the charges he paid included this service.

I have therefore considered all these issues in turn.

- <u>*Overview*</u>

In my view, the adviser portrayed the DB scheme opportunity Mr J had with the proposed BSPS2 in a negative dimension. The implication was that transferring to the BSPS2 was somehow too restrictive for Mr J and unsuitable for him. In fact, Atomos says now that there was so little known about the BSPS2 that recommending it to Mr J simply wasn't an option. But I don't agree with this.

I do accept there were some considerable uncertainties at the time. But in the suitability report, Atomos told Mr J that if he *"moved into a new scheme …. the benefits* [were] *not as good as they are at present"*. So, Atomos was evidently telling Mr J here that it *did have* enough knowledge to arrive at the conclusion that transferring was clearly the right thing for him to do - even though now it is saying it didn't. In any event, if Atomos is saying there was so little known about BSPS2, then of course, this would mean it advised him to irreversibly transfer away from his existing DB scheme on incomplete information.

We know a great deal about the timeline of events with these types of cases and I myself have seen a great many similar complaints. I can therefore confidently say that whilst Atomos was gathering information at a somewhat uncertain time in August 2017, there were nevertheless, various updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice.

It was also explained that the expected payment into the BSPS by Mr J's former employer was likely to result in an improvement to transfer values and that members with unexpired transfer values would be sent updated valuations – probably improved ones – which would be guaranteed until at least December 2017. A strategic lump sum payment to the BSPS was also confirmed just before Atomos gave Mr J advice.

However, Atomos proceeded with the advice to Mr J without really accounting for any of this. It didn't delay providing the advice so there were no direct comparisons carried out of the benefits the BSPS2 would potentially provide. And the advice was based on the CETV Mr J had received in June 2017, which was due to expire in September 2017.

All the ongoing announcements indicated there would be forthcoming information available. In my view this meant that in order to give Mr J enough information to make a fully informed decision about what was in his best interests, I think Atomos should have told him to defer making a final decision on possibly transferring away until further details of the BSPS2 were known and revised transfer values were received. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever.

The announcements indicated thus far were that Mr J would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. Waiting would have allowed Atomos to carry out an analysis of the BSPS2 benefits, and to properly compare these to the alternatives, and base its advice on this. Without doing this, Atomos was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr J's best interests.

- *Retiring early*

I think it's important to focus for a moment here on Mr J's comparatively young age by pension standards. As I've mentioned above, Mr J was still only 38 years old and in good health. Mrs J was only 33. In this context, I think Atomos's adviser saying Mr J had specific uses for his retirement funds lacked credibility. The evidence I've seen here is that Mr J – understandably - had no concrete plans whatsoever for his retirement. With over 26 years still left to when he'd be actually contemplating retiring if using his NRA, there's simply no way that how much he'd need in retirement should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement.

Whilst I'm sure, like most people, Mr J probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part. In reality, there was no plan to retire at 55. It was simply far too early to speculate about this.

- *Flexibility and / or control of his pension*

I also can't see that Mr J required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Atomos. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr J required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had signed up to a new and more flexible DC pension with his new employer. This DC pension was currently being contributed towards by both Mr J and his new employer. The evidence also shows that Mr J had the capacity, if he wanted to, to increase contributions in the future to this DC scheme. And because he was still so young, it had up to 26 years left to run (16 years if he did eventually retire very early) with new contributions and potential growth. So, this secondary pension would have afforded Mr J any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr J wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr J could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of a reasonable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. It seems Mr J also had a small, but guaranteed, DB pension provided by the government as a result of serving his country.

On the other hand, by his eventual retirement he'd have probably also built up a substantial DC scheme over a long period of time – up to 26 years. So, if Mr J ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr J had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr J was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr J himself had no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £169,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr J would have required ongoing financial advice and support over many more years, all of which would cost him money which his DB scheme didn't require from him.

Atomos itself set out the estimated pension he'd get under the BSPS. In my view, this showed a reasonable income when assessed against what Mr J had speculated that he might need in retirement. Of course, I've already explained the unpredictability of assessing retirement needs so far in advance and at such a young age. However, Mr J speculated that he might have needed around £2,000 per month in 'todays' money.

Atomos's analysis said that if retiring at 65, Mr J could expect an annual pension of around £13,500. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 55, this was still £7,300 per year. But it certainly isn't unreasonable to say that by then, Mr J could have built up a six-figure DC fund even if assuming a low growth rate. We can also add his other DB pension to this and I don't think Atomos took enough regard for the likely pension Mrs J would have received; no information about this was collected. So overall, I don't think there's anything showing Mr J's combined and eventual pension entitlements wouldn't have met his anticipated requirements, without any need to transfer away from his BSPS scheme to a personal plan. Atomos simply didn't make out a case for this. I don't think it adequately explained these things to Mr J as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

Of course, despite being around £169,000 in overall transfer value, this figure is really only a moderate amount in pension terms. So, there was an opportunity here for the adviser to be direct with Mr J. He could have told him, for example, that retiring so young certainly wasn't an inevitability when viewed from that time period and the amount of assets he currently had. In my view he should have told him that his circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. Mr J may *possibly* have been able to retire earlier than 65 if he'd paid in more to a DC pension in the years following 2017. If taking his BSPS2 benefits early, there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a second DB pension and also a new DC scheme with plenty of contributions yet to come, these other unrealised assets helped support a modest early retirement aspiration, in my view.

- *Death benefits*

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 BSPS2 contained certain benefits payable to a spouse and children if Mr J died. Mr J was married and had children so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs J if he predeceased her. I don't think Atomos made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. There were other related benefits for children in education.

But the adviser told Mr J that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. This needed a careful explanation. The lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Atomos explored to what extent Mr J was prepared to accept a lower retirement income in exchange for different death benefits.

Mr J was only 38 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. As I've said, Mr J's CETV wasn't large so to this end, if Mr J had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 55 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 55 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I can't say the extent to which life insurance was discussed in this case. But at 38 years old, a modest 'term' life insurance policy would have still been a reasonably affordable product if Mr J really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that Atomos took into account the fact that Mr J could have nominated a beneficiary of any funds remaining in his new DC scheme. So, to this end, Mr J already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr J. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr J's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr J, like many employees of his former company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Atomos said he lacked trust in the company. He'd heard negative things about the PPF and Atomos said he could have more control over his pension fund.

So, it's quite possible that Mr J was also leaning towards the decision to transfer because of the concerns he had about his former employer and a negative perception of the PPF. However, it was Atomos's obligation to give Mr J an objective picture and recommend what was in his best interests. By the point of the advice being delivered it seemed likely BSPS2 was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Atomos should have reassured Mr J that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr J through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his true ATR and the effect of pension charges and fees, which in this case were significant. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Atomos's recommendation to Mr J to transfer out of the DB scheme altogether.

Other issues

Atomos has implied that the CETV offer was so high that accepting it and transferring away was the right thing for Mr J to do. However, this needs to be looked at through the prism of 2017 and the economic climate then. 2017 was still in the midst of a period of historically low interest rates and bond yields. In this context, there was no imperative that reasonably meant Mr J ought to transfer on this basis alone.

In many ways, it could reasonably be said that Mr and Mrs J still had very significant periods of their family life ahead of them. They had three young children and I'm sure their priority would be to see them through their primary, secondary and perhaps even tertiary education(s). What I'm saying here is that they simply couldn't predict the challenges that lay ahead, many of which would be financial ones. And so Atomos was providing advice without due regard to these likely changes. It was simply far too early for Mr J to transfer away from a guaranteed DB scheme.

Suitability of investments

Atomos recommended that Mr J invest his funds in a personal pension and have the funds managed by a DFM. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr J and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr J was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr J was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Atomos ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he could be worse off in retirement.

So, I don't think it was in Mr J's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

Even though there were some weeks ahead where more information from Mr J's ex-employer was due, I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr J still had many more years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr J would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think Atomos should have advised Mr J to opt into the BSPS2 in due course.

I have considered, given the circumstances of the time, whether Mr J would have transferred to a personal pension in any event. I accept that Atomos disclosed some of the risks of transferring to Mr J, and provided him with a certain amount of information. But ultimately it advised Mr J to transfer out, and I think Mr J relied on that advice.

I'm not persuaded that Mr J would have insisted on transferring out of the DB scheme, against Atomos's advice. I say this because Mr J was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Atomos had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr J's concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if Atomos had explained Mr J was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think Atomos should compensate Mr J 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 the business to put Mr J, as far as possible, into the position he would now be in but for Atomos's unsuitable advice. I consider Mr J would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Atomos should use the benefits offered by BSPS2 for comparison purposes.

Atomos 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.

Atomos 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 J and our Service upon completion of the calculation.

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 J'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, Atomos should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr J receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr J accepts Atomos's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr J for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr J's end of year tax position.

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Atomos 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 J'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.

Our investigator recommended that Atomos should pay Mr J for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr J in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr J. So I agree the recommended payment of £300 for distress and inconvenience. Atomos should pay Mr J this amount in addition to the redress I've set out above.

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

<u>Determination and money award</u>: I am upholding this complaint and I now direct Atomos Financial Planning Limited to pay Mr J 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 Atomos Financial Planning Limited pays Mr J the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr J.

If Mr J accepts my final decision, the money award becomes binding on Atomos Financial Planning Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 11 December 2023.

Michael Campbell
Ombudsman