Financial Ombudsman Service

The complaint

Mr W complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

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

What happened

In March 2016, Mr W's 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 W's 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 W 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 BFS 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 W was 45 years old, married and with two dependent children. Mr and Mrs W owned their own home with a 16-year mortgage outstanding.

- Mr W was described as being in good health and working full-time in the steel industry. Mrs W was also working. They earned around £32,000 and £15,000 per year respectively. After expenses he and Mrs W had some reasonable disposable income left over each month. They had joint savings of £12,000 and no other major assets or liabilities.

- The cash equivalent transfer value (CETV) of Mr W's BSPS was approximately £273,167. He'd accrued over 20 years' service. The normal retirement age (NRA) was 65.

- Mr W had also joined the new TATA Steel defined contribution (DC) pension scheme as a consequence of the BSPS closing to ongoing contributions.

BFS set out its advice in a suitability report on 9 January 2018. In this it advised Mr W to transfer out of the BSPS and invest the funds in a type of personal pension plan managed for him by a discretionary fund manager (DFM). BFS said this would allow Mr W to achieve his objectives. Mr W accepted this advice and so transferred out.

In 2022 Mr W complained to BFS about its advice, saying he shouldn't have been advised to transfer out to a personal pension but the business didn't uphold the complaint. Mr W then referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, BFS still says it hasn't done anything wrong and was acting on the financial objectives Mr W had at the time. BFS also says that even if the complaint were to be upheld, Mr W hasn't lost any money by transferring. It says this is because his pension, after it was transferred, has since grown in value.

As the complaint couldn't 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 BFS'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, BFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W'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 W's best interests. I have also carefully considered the final response letter from BFS. 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 W's complaint.

Introductory issues

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2. We know that if no choice was made then the member would eventually move to the PPF if they didn't transfer away to a personal pension type arrangement.

However, I can see that BFS had started engaging with Mr W before the deadline mentioned above. For example, I note there was a remuneration agreement between BFS and Mr W which was signed by him on 12 December 2017. A 'fact-find' exercise appears to have been completed on the same day. Even before this, on 6 December 2017, BFS commissioned a pension transfer analysis document ("TVAS"). I therefore think the advice process was substantially underway in December 2017 with BFS committing substantial resources to analysing Mr W's financial situation and a firm commitment to advising him about whether or not to transfer his DB pension. And at the very least, BFS could and should therefore have reinforced the deadline issue of 22 December 2017 to Mr W and he could have signed up for the BSPS2, even if only as a precautionary measure. It could have advised Mr W that he'd have still been able to change his mind and he'd have been able to later transfer to a personal pension arrangement if the advice showed this was suitable for him.

Financial viability

BFS 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.

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 if looked at through the prism of 2018, Mr W was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

The critical yield required to match the existing benefits at the age of 65 in the BSPS2, was 6.47% if Mr W took a full pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.05%. However, BFS also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr W had apparently expressed a desire to retire early. I explain more about this issue later. But for the age of 60, which BFS was clearly using as a target retirement age here, the critical yields came out at 8.37% (no tax-free cash) and 6.52% (with tax free cash) respectively.

BFS acknowledged that achieving the critical yields would be ambitious because it said they were *"high…especially when you consider the Bank of England Base Rate has been 0.5% for the last 6 years".* The report also said it wasn't generally the firm's policy to recommend transfers from a DB scheme when the critical yields were over 6% because growth of that level was likely to be unachievable. But it seems to me that BFS overrode its own 'rules' by advising Mr W to transfer mainly on what it said were flexibility reasons. I think it also attempted to persuade Mr W that the critical yields didn't matter.

However, it's important to reiterate that publishing the critical yield rates was a requirement at the time. And 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 was only 4.4% per year for 16 years to retirement (age 65), which is below all of the critical yield figures I've referred to above. For a retirement at the apparent target age of 60, the discount rate was only 4.2%. 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% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

BFS initially used some prepopulated forms to assess Mr W's attitude to risk (ATR). These produced a category for him as being a "moderately adventurous" risk investor. But I think this was too high and so did the adviser as they paired this category down to "moderately cautious". The evidence I've seen shows Mr W was not a risk taker and he didn't like the idea of his capital, if transferred to a fund, going down as well as up. It's clear Mr W had no experience of wider share-buying or 'money market' investments more commonly found in personally managed pensions and so he had no past experience to draw upon. I've taken into account that he had a new TATA DC pension. However, there's no evidence the investment approach for this was anything other than an 'off the shelf' strategy which involved no direct input from Mr W.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. I think this should have raised concerns and shown that transferring could see Mr W getting lower retirement benefits in the longer-term. Growth assumptions close to the regulator's lower-end projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 3 to 4½% were realistic here. So overall, I think that achieving the stated critical yield(s), year-on-year, upon transferring out, was unlikely.

I've also noted that using the NRA of 65, BFS's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, the estimated fund required (also known as the capital value) was £590,652. Even 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 £343,265.

To reiterate, these figures are found in BFS's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr W's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr W 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, BFS 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. It's fair to say the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields would be related to the *reduced* benefits available with the PPF and BFS itself says Mr W 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 W, would have further reduced the likely growth.

I've also considered some projections BFS used to help show that if he transferred out to a personal plan, the funds could last Mr W well into retirement. I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What BFS was showing Mr W were comparisons with plans which lacked the guarantees and benefits of a DB scheme. And some of the scenarios showed him running out of funds at a certain age whereas his DB pension was guaranteed for life.

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

Of course, according to BFS, its recommendation that he should transfer out to a personal pension was not based on the financial comparisons with his current scheme alone. Rather, BFS said Mr W 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 reasons to transfer

BFS recommended a transfer to a personal pension plan based on what it said were Mr W's wider objectives. What the adviser was trying to do was show that Mr W had a need for a flexible income, rather than a fixed one as provided by a DB scheme. But overall I don't think any credible case for a flexible income was made out by the adviser. The case for this was predominately based on the implication that Mr W might want to take a different income at certain points in the future and that this might be influenced by when his and Mrs W's state pension kicked in.

The suitability report and other documents give a flavour of what issues Mr W considered to be important to his pension thinking at the time:

- He would like to be able to access his pension benefits at the age of 60 and fully retire,
- He would like tax-free cash at age 60 and to reduce or fully redeem his mortgage liability.
- He wanted to ensure that he was able to access benefits flexibility.

In providing its recommendation rationale, the adviser added the following themes:

- He had "no need" for a spouse's pension
- The DB scheme was in a "precarious position" as it was underfunded.
- The TVAS had confirmed he could have a comparable pension by transferring away from a DB scheme and the post-retirement benefits would be greater.
- There would be a higher tax-free cash element within a personal pension plan.

I have therefore considered all these issues in turn.

- *General points*

I think a number of these themes and comments were misleading and the adviser should have been much clearer with Mr D. In fact, there was no evidence that Mr D could purchase a similar pension in the marketplace more economically because the evidence I've shown above clearly shows that at the time this just wasn't true. The adviser also used the "hurdle rate" when referring to growth but again, this wasn't comparing like-with-like and it was replacing the harder to reach critical yield rates, with a much lower yield.

As for the 'high' CETV, I accept that low bond yields in the market had produced a historically unusual environment for DB pensions which generally saw CETVs rising to values where consumers, like Mr W, might have considered high. But this needed to be looked at in context. In particular, it needed to be remembered that buying a similar pension to replace the DB scheme at that time was also very high. As I've said, we were also in a period of sustained low interest rates which seemed to be persisting for many years at that time, so I don't think there was any persuasive evidence in this case that the high CETV 'issue' was one which ought to have been used to irreversibly transfer away Mr W from a DB scheme.

- *Retiring early, flexibility and control*

When issuing the suitability report and the recommendation to transfer away from the DB scheme, BFS said Mr W wanted to retire around the age of 60. BFS said transferring and using his pension flexibly would enable him to draw more of an income in certain years, to support him through the earlier stages of retirement, to pay off his mortgage and to get much more flexibility.

However, I think it's important to focus for a moment on Mr W's age. He was still only 45 years of age and in good health. By pension standards this is still relatively young and in my view, however much Mr W might have aspired to retire early, the simple fact was that these were not concrete retirement plans. So, I think Mr W could only have really expressed an *interest* in retiring early. I say this because as well as being only aged 45 himself, I've noted Mrs W was only 38. They also had two young children aged only seven and four years old and they had a mortgage with16 years still to run. I therefore believe that Mr and Mrs W still faced many of the challenges and opportunities that commonly arise from being mid-life, mid-career and bringing up a young family.

I accept Mr W probably went into the advice sessions with an idea of what sounded good. However, he wasn't the regulated party here and he certainly wasn't experienced in these matters. BFS's job wasn't to simply transact what Mr W – a somewhat uninformed amateur - might have thought was a good idea. BFS was being substantially paid for the advice and so its job was to provide advice that was right for him. And I think the discussions on a retirement at the age of 60 were premature. Mr W was too young to be able to accurately say what his retirement needs would yet be.

Even if I were to consider these plans were more than the mere aspirations I've mentioned above, I've seen nothing that showed Mr W required changing how his retirement benefits ought to be paid. I say this because I can't see that the adviser really assessed what level of retirement income Mr W would need when he stopped working. I'm not surprised at this because, as I've said, retirement was still such a long way off for Mr W. But if the adviser and Mr W couldn't yet say what his retirement income needs would be, then he shouldn't have been advised to transfer away from a guaranteed DB scheme.

We know that the estimates in the TVAS and suitability report showed Mr W could have a known retirement if he remained in a DB scheme. He was told, for instance, that an income of around £17,795 per year at the age of 65 would be possible, or £14,592 per year if retiring at 60. Different estimates were also provided if Mr W opted to take a tax-free lump sum upon retiring and these lump sums could have been up to £78,600 depending on what he chose to do. These were BSPS figures, because the adviser didn't appear to know that BSPS2 figures had been available for some weeks by that point. Nevertheless, I still think the above broadly represents the type of retirement income Mr W could expect if he opted into the BSPS2 scheme; similar estimates were also provided for him moving to the PPF.

So, the point I'm making here is that I don't think there was ever anything properly showing that Mr W's pension entitlements in either the BSPS2 or the PPF wouldn't have met his income requirements when retiring. And so there wasn't any compelling reason for him to transfer away and into a personal pension arrangement. BFS hasn't provided any evidence to say he would have struggled to live on these sums and the adviser didn't appear to get into the detail of what pension(s) or income Mrs W might have still had when her husband eventually retired. Given she was seven years younger, I think there could have been every possibility that she would still have been employed and earning if Mr W did indeed retire at 60.

I've also read in the suitability report that the adviser noted Mr W apparently wanted to *"reduce or fully redeem his mortgage liability which will free up income in retirement"*. However, I think this demonstrates the poor advice because even if Mr W managed to retire at 60, it appears his mortgage would be almost entirely paid off. I therefore think this is a good example of the types of 'stock' objectives used by the adviser to justify the transfer-away recommendation.

Overall, I think Mr W's circumstances here were much more aligned to him moving to BSPS2 and retiring from that scheme when he felt he was ready to do so. The evidence pointed to him still being able to retire perhaps a little earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had signed up to the new TATA DC pension which would have many contributions yet to be applied in the years ahead, this supported that strategy in my view.

All this means I've seen nothing explaining why Mr W 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 W could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of meaningful 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. On the other hand, he'd have also built up a DC scheme over a reasonable period of time – up to 19 years (even over 14 years if retiring early). So, if Mr W 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 W had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr W 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 W himself had absolutely no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing his transferred funds to be onerous in the years ahead. What I've seen tends to show Mr W would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- *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 W died. Various useful benefits existed pre-accessing the pension and also post-accessing the pension. Mr W was married and had children so I think the benefits found in BSPS2 would have been of great value and reassurance. It wasn't clearly set out the level of pension of her own Mrs W had. But she was employed and had her own career, so I think it's reasonable to say she'd have had a personal pension which would have been relevant to their overall resources upon considering retirement.

I think the adviser told Mr W that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr W. But this needed carefully explaining. Whilst I appreciate death benefits are important to consumers, and Mr W 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 BFS explored to what extent Mr W was prepared to accept a lower retirement income in exchange for different death benefits.

Mr W was only 45. 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. To this end, if Mr W 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 60 was at least mentioned – BFS's defence of this complaint is partially predicated on this. The adviser should have therefore additionally known that a male retiring at 60 would likely have quite a few years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone. It also doesn't appear that BFS took into account the fact that Mr W could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme.

I note life insurance was discussed in this case. However, the adviser quoted a 'whole life' policy matching the CETV from 'day one' and at over £250 per month this was clearly very expensive. But at 45 years old and in good health, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr W really did want to leave a large legacy for a specific relative or someone else in the form of a lump sum, rather than an annual pension. So, to this end, Mr W already had plenty of options ensuring part of his pension wouldn't 'die with him'.

I think BFS also promoted to Mr W that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly and in a personal pension the lump-sum would be much higher. But again, this needed a careful explanation.

It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But BFS should have been telling Mr W at the time that extra tax-free lump sums being removed from a personal pension, as early as from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease. I also can't see there was a need for substantially more tax-free cash.

Overall, I think 'flexibility' would have sounded positive to Mr W. However, I can't see that he and Mrs W required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by BFS. I've seen nothing that showed Mr W required changing how his retirement benefits ought to be paid at the point he was seeking the advice.

- *Control or concerns over financial stability of the DB scheme*

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

So, it's quite possible that Mr W was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was BFS's obligation to give Mr W an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it 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 BFS should have reassured Mr W that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr W 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 attitude to risk and the effect of pension charges and fees. 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 BFS's recommendation to Mr W to transfer out of the DB scheme altogether.

Use of a DFM and suitability of investments

BFS recommended that Mr W invest his funds in a personal pension and use a DFM to manage them. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr W 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 W was suitable.

He was giving up the opportunity of a guaranteed, risk-free and increasing income within the BSPS2 and by transferring to a personal pension, the evidence shows Mr W was likely to obtain lower retirement benefits.

I don't think there were any other particular reasons which would justify the transfer and outweigh this. The adviser portrayed the BSPS2 and PPF in a negative dimension and implied that Mr W wouldn't be able to meet his retirement objectives unless he transferred away. However, as I've showed, I don't think this was right. Mr W didn't need the 'flexibility' BFS said he needed and in any event, this was poorly defined. I think BFS ought to have advised him against transferring out of his DB scheme for these reasons.

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

In my view, the adviser hadn't comprehensively researched details of the BSPS2. But I think it was clear by the time BFS started to advise Mr W that the BSPS2 was likely to be going ahead. He also still had quite a few years before he intended to retire and there were no indications that he wouldn't be able to have a reasonable retirement income which met his needs without transferring to a personal pension arrangement.

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 W 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 BFS should have advised Mr W to opt into the BSPS2.

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

I'm not persuaded that Mr W would have insisted on transferring out of the DB scheme, against BFS's advice. I say this because Mr W was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if BFS 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 W'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 BFS had explained Mr W was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could probably 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 BFS should compensate Mr W 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 W, as far as possible, into the position he would now be in but for BFS's unsuitable advice. I consider Mr W 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. BFS should use the benefits offered by BSPS2 for comparison purposes.

BFS 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.

BFS 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 W 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 W'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, BFS should:

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

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

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

If Mr W accepts my final decision, the money award becomes binding on Burley Financial Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 28 November 2023.

Michael Campbell
Ombudsman