DRN-3948174

The complaint

Mr B complains about the advice given by Joslin Rhodes Lifestyle Financial Planning Limited (JR) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension (PP). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr B's complaint has been brought on his behalf by a professional representative, but for ease, I'll mainly refer throughout the decision as the complaint being brought by Mr B.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the British Steel Pension Scheme (BSPS) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. BSPS was closed to further benefit accrual from 31 March 2017.

Mr B met with JR in 2016 to discuss his pension and retirement needs as he was concerned about the situation with the BSPS. At the time Mr B was 55 years old, earning between £30,000 and £35,000 per year. It was recorded that Mr B and his wife had around £11,000 in savings and wanted to move house in the near future which they estimated would require around an extra £30,000. It was recorded that Mr B wished to retire at age 58.

JR completed a fact-find and gathered information about Mr B's circumstances and objectives. JR also carried out an assessment of Mr B's attitude to risk, which it deemed to be cautious. JR noted that, based on answers Mr B had provided, the risk he was willing to take was lower than 99.8% of all results.

On 29 September 2016, JR advised Mr B not to transfer his pension benefits into a personal pension. In November 2016, JR set out advice on how Mr B could proceed if he wished to transfer his pension still. It explained this was against its advice and it would be treating him as an insistent client.

Mr B decided to proceed with transferring his DB pension to a PP in November 2016. Mr B wrote a letter confirming he was aware that he was going against JR's advice but wished to proceed with the transfer. He said, in summary, he understood the risk and was willing to accept it as he wanted to enjoy the money whilst he was in good health. Mr B transferred his pension and took 25% tax free cash (TFC) immediately with the help of JR.

Mr B complained in 2020 to JR about the suitability of the transfer advice. He said he was an unsophisticated investor and the rumours at his place of work had made him worried which is why he sought advice from JR. He said he felt pressurised by JR and he wasn't in fact an insistent client. Mr B now realised he'd be worse off as a result of transferring.

JR didn't uphold Mr B's complaint. It said, in summary, it had recommended against Mr B transferring. JR said it had made Mr B aware of the risks involved in the transfer.

Mr B referred his complaint to our service. An Investigator upheld the complaint and thought JR should pay compensation. She accepted that JR had advised Mr B not to transfer his pension, but she didn't think that JR had explored any other avenues to raise the funds Mr B wanted. She thought, had it done so, Mr B wouldn't have proceeded with the transfer as she didn't think he was truly an insistent client.

JR disagreed. It said its recommendation was for Mr B to remain in the DB scheme. It said it had provided cash flow models to Mr B showing that he could take his existing scheme benefits from age 58 and meet his objectives. But Mr B was an insistent client and it was his choice to transfer his pension. It had merely facilitated this and advised how to invest in the PP.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a decision.

I issued a provisional decision on 23 January 2023 in which I set out how I thought matters should be put right. In this I made the following findings:

> *I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*
>
> *The applicable rules, regulations and requirements*
>
> *The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of JR'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.*
>
> *I recognise that JR says that the complaint it initially responded to is different to that which has been brought to us. And I agree there are some differences. However, the crux of the complaint essentially is that Mr B was not properly advised and whether a fair insistent client process was followed, and whether Mr B was given sufficient and clear information to make an informed decision forms part of this. I'm satisfied our inquisitorial remit allows me to consider this complaint here in its current form.*

I can't know for certain what was discussed during the various meetings between Mr B and JR. So, I've considered the written evidence available from the time of the advice which includes the various reports, illustrations and meetings notes.

There is no dispute that JR's written recommendation to Mr B was to remain with BSPS. And given Mr B's circumstances, I think everyone is in agreement that it was in his best interest to remain in the DB scheme. So there is no issue with JR's recommendation that Mr B should not transfer out of the DB scheme.

Consumers can decide to go against an adviser's recommendation and JR was generally allowed to facilitate a transfer on an insistent client basis. However, I need to consider whether JR gave Mr B suitable advice overall which means whether his objectives and circumstances were properly considered and addressed and whether he was given clear and non-misleading information about his options and the risks of going against the recommendation, so that he could make an informed choice. So, I've considered whether Mr B was treated fairly by JR.

In February 2016 the regulator provided guidance on its website about what steps it expected businesses to take when advising an insistent client. There are three key steps, which it set out on its website as follows.

1. *You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.*

2. *You should be clear with the client about the risks of their chosen course of action. If the advice includes a pension transfer, conversion or opt-out, there may be additional requirements. These may include ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).*

3. *It should be clear to the client that their actions are against your advice.*

The regulator said the advice should be set out clearly in the suitability report, and that it needed to be clear with its client about the risks of their chosen course of action and that he/she is acting against its advice. It also added that if the client used their own words to indicate that they want to act against its advice, this would normally be clear.

The regulator also published additional guidance on its website giving examples of good and poor practice. It gave the following example of good practice relating to suitability reports:

"The adviser gave a personal recommendation in clear and unambiguous terms regarding both the advice on whether or not to transfer and, if the client chose to transfer, the receiving product and the funds into which the client was advised to invest.

The adviser discussed the client's reasons and the risks of not accepting the personal recommendation. The adviser documented the reasons, the discussion and its outcome in a separate document to the original personal recommendation.

Robust warnings were given and documented."

Whilst this was guidance, and not rules, I would've expected JR to have been aware of this and ensured that the advice and process it followed was consistent with the regulator's expectations.

Given the information provided by JR and Mr B, I think on balance he understood that JR's recommendation was not to transfer and that he was going against this recommendation. And I also think he likely read the report or at least parts of it. I think when he made his decision, he genuinely thought a transfer was a good idea.

However, I don't think the information Mr B was given was particularly easy to follow and I'm concerned about some of the advice process here. Overall, I don't think that Mr B was fully informed about the risks and consequences of his intended actions or that he understood the consequences of his decision fully. I'll explain why.

While the pension transfer report of 29 September 2016 set out the general risks of the transfer and explained in general terms why it wouldn't recommend Mr B transfer his pension, I don't think it went far enough in addressing Mr B's actual objectives or reasons for wanting to transfer. I also think that some of the language it used wasn't explicit enough. JR needed to make it clear from the outset that Mr B would be significantly worse off in retirement if he transferred out of the scheme and that if he took equivalent benefits from a drawdown arrangement, his fund would run out before he reached age 80. This was a key concern for Mr B that he repeated after receiving the report. And I think this demonstrates that the cashflow models included with the report did not make it clear enough to Mr B that transferring his pension would leave him with limited pension funds later in life and that they were at real risk of running out before he died.

JR also should've said in no uncertain terms that the reasons Mr B gave for wanting to transfer were not good enough reasons to give up his benefits and he had other ways of achieving his objectives without sacrificing his guaranteed pension. Instead, the pension transfer report stated on several occasions that it recognised the advantages of transferring, and listed the reasons in favour of transferring before listing those against.

For example, when giving the recommendation it said:

"Although we appreciate that there are advantages to transferring the scheme, in pure monetary terms a transfer would not be considered advantageous."

Mr B wasn't financially sophisticated. So I think by setting out the considerations in this unbalanced manner would've likely added further confusion for Mr B. And I think this would've left an impression on Mr B overall that transferring, although not recommended, was still advantageous for him.

It seems the key reasons that Mr B wanted to transfer his pension were concerns about the BSPS/PPF and to have access to funds to purchase a new property. It was recorded that Mr B needed approximately £30,000 to fund the move and that he wished to retire at around age 60, however it appears this was later changed to age 58. It wasn't noted when Mr B planned to move house so the timeline for actually needing the TFC was unclear.

When JR processed the transfer for Mr B at age 55, it said he had decided to take 25% of the fund as TFC – around £76,000. It's unclear why he decided to take this amount. It was far in excess of what he had told JR he required for a property purchase. Whilst having a large amount of TFC would no doubt have been appealing, I can't see Mr B had any pressing need for this. I think JR should've challenged the amount he was requesting, or at least explained the impact this would have on his future retirement income, but I can't see that it did.

I also think that JR should've challenged Mr B further on his need for TFC at all. The paperwork completed by JR said that this house move would involve Mr B downsizing, so *it wasn't necessarily known whether he would need any extra funds to achieve this in any event. And although it was uncertain when Mr B expected to move house, a lot of JR's paperwork suggested this might not happen until 2019 when Mr B was aged 58, some three years away. So, it was not a pressing need that had to be addressed at the time – and I think JR ought to have impressed on Mr B that he didn't need to take any immediate action to address that need.*

While JR may point to the funding issues affecting the BSPS and the possibility of the scheme entering the PPF, and Mr B's concerns about this, this was far from certain and there was no immediate threat of this happening right away. It was clear to all parties that Mr B's employer was actively consulting on other outcomes that could avoid the scheme entering the PPF, including the employer sponsoring a new DB scheme (the BSPS2). So, I think JR should've made it clear to Mr B that he should await the outcome of the consultation before taking an irreversible decision to transfer out of the scheme, which wasn't in his best interests.

I also think it could've explored other options in more depth. The transfer value analysis report (TVAS) set out that if Mr B remained in the BSPS and retired at age 58, he could take TFC of £87,000 with an annual pension of £13,130. It's not recorded within the TVAS how much TFC Mr B could've taken at his proposed retirement age of 58 if the fund were to default into the PPF. But it's likely to have been more than enough to cover the £30,000 he thought he might need. This would've provided him with more cash than he needed for the property purchase and enabled him to remain mortgage free.

I've noted this was covered and presented to Mr B as an option, but I can't see that JR went as far as making it clear that this was its recommendation to him. And I think more emphasis should've been placed on this as the recommendation and Mr B should've been challenged further on why, when he could achieve his aims by staying with BSPS, he was still planning to transfer.

Furthermore, I'm not persuaded that Mr B's plans to move home were set in stone at this point. He's now reached 58 years old and is currently living with family. Based on this, an alternative could've been to remain in the DB scheme and review this again as and when Mr B did decide to purchase a new property. Again, I think this is an option JR should've discussed with Mr B in more detail but didn't.

Mr B has said whilst JR made it clear that its formal advice was not to transfer, it hinted at transferring being a good option for him. I obviously can't know what was said at these meetings. But the documents I've detailed above certainly do, in my mind, imply to Mr B that transferring might be a good idea and would have its advantages.

It's clear from the meeting notes that Mr B was keen on transferring, but I don't think he was fully committed and had many questions. He regularly talked about what his colleagues were doing.

As I've said, my biggest concern here is that I can't see JR properly discussed and challenged Mr B's wish for flexibility and accessing more cash in earlier years. Mr B had been clear how much cash he thought he needed, so it's unclear why Mr B ended up taking more or why this wasn't challenged. I can't see he had a need for extra money at this time.

JR also needed to ensure Mr B fully understood the risks and possible consequences of the intended transfer. And I'm not persuaded strong and clear enough risks warnings were given. This is not to say JR didn't mention the risks of a transfer. The pension transfer report sets out the key risks of a transfer right at the start. However, as I've *already said, it then immediately gives an overview of considerations in favour of transferring and against transferring.*

Whilst Mr B might have understood there were some risks and that his future benefits wouldn't be guaranteed, I'm not convinced that Mr B was given clear enough information to fully understand what he was giving up by transferring.

Mr B was making a decision to transfer which wasn't in his best interest and he had no need to take risks with his pension. Everything he wanted to achieve could have been done by staying in BSPS. The ATR questionnaire Mr B completed suggested he had a lower appetite for risk than 99.8% of all respondents to that questionnaire. Based on this, I cannot see why Mr B would've given up the guarantees his DB scheme provided if it wasn't for flaws in the advice process with JR.

I appreciate JR's report contained a lot of information. However, the reasons for their recommendation not to transfer were vague in my view and it also presented potential advantages to transferring. In short, it said the disadvantages outweighed the advantages – but this should've been more specific to Mr B's individual circumstances. Mr B was then left to weigh up the advantages and disadvantages for himself. And when he came to the conclusion he wanted to transfer and take a large amount of TFC, JR in my view failed to robustly challenge this.

In summary, JR should have told Mr B in clear and simple terms that he was choosing flexibility he didn't really need in return for significantly lower benefits in retirement in addition to the very real risks of running out of funds and not leaving behind enough death benefits for his wife. I don't think the significant disadvantages in monetary terms were sufficiently discussed or emphasised based on the information I have seen.

If they had done so, on balance I think Mr B wouldn't have transferred his pension.

I appreciate that he was concerned about the security of his DB pension and the possible move to the PPF. And lots of his colleagues at the time would have been transferring out of the scheme, so it's possible Mr B was leaning towards a transfer when he approached JR.

However, it was JR's obligation to give him an objective picture and recommend what was in his best interest. This obligation didn't stop after the recommendation was given not to transfer. When it was clear Mr B was considering going ahead with the transfer anyway, JR needed to make sure he fully understood the risks of what he was doing and what he was giving up, not in the abstract, but what this would mean personally for him. And as explained above I don't think they did enough here.

JR says that it had discussed the PPF in detail with Mr B and explained this wasn't as concerning as Mr B had been led to believe. In JR's response to the Investigator's view it said:

"During our initial meeting, our adviser explained to him that the PPF "should be thought of as them saving his pension and topping it up to 90% rather than taking 10% from it"."

But I don't think the evidence I've seen supports this. The pension transfer report said:

"The PPF provides very valuable benefits, and in some cases, Pension Commencement Lump Sums and Children's Pensions, that will frequently provide better benefits than the scheme. However, the number of "small print" terms where the benefits are noticeably worse than the original scheme will mean that members will receive benefits of a much

lower value than the headline 90% or 100% would suggest."

I think this would've left Mr B with the overall impression that he should avoid the PPF and that his benefits could well be reduced by more than 10%. And in any event, without providing Mr B with figures, this wasn't very meaningful to him. Although JR didn't provide the details of the benefits Mr B could likely receive under the PPF at age 58 in the TVAS, based on what I know about the more favourable early retirement factors and TFC commutation factors, its unlikely this would've been less than the sums the scheme would've provided him with and potentially it could've been higher. This is something JR acknowledged in the quote above. So, JR should've made it clear to Mr B that the PPF would've provided him with a secure, guaranteed income and TFC above the sum he said he needed even if he retired early.

Mr B says that JR advisers assisted him in writing the letter confirming why he was going against its recommendations. I obviously can't know if that was the case or not. But regardless, I have concerns about this letter. I've reviewed the hand written letter from Mr B setting out his reasons why he was going against the recommendation of JR. In this, he explains that he understands he is giving up a guaranteed income and was comfortable with this as he feels that he can enjoy the money whilst he is in good health. These are reasons which may have made Mr B favour a transfer. However, Mr B goes on to say that "with my management and your management I feel there will be enough left in later life". From what I can see, Mr B had no investment experience, so was unlikely to actively manage the investment itself and, as I've said above, I think it ought to have been clear that his fund had the potential to run out before he turned age 80. So, even with him having the benefit of professional advice, there was still a significant risk that he may not have enough left over in later life.

Mr B goes on to say "I was advised that there could be losses of up to 6% are possible, but I am at ease with that, as it could also gain". It seems, from meeting notes, that Mr B was provided 6% as an example of what a loss would equate to in real terms. But Mr B seems to have understood this as a maximum loss. This shows me that Mr B didn't fully understand the risks he was taking. Losses of more than 6% were clearly possible, and I've not seen that JR ever challenged his assumption here.

Given that Mr B has previously been found to accept less risk than 99.8% of respondents to the ATR survey, it seems odd to me that he was now at ease with risk (even if he thought it was limited to 6%). This further persuades me that Mr B wasn't aware of the true costs of the risks he was taking versus giving up a guaranteed income. I have noted JR's argument that Mr B became more comfortable with taking risk as he started to understand more as he went along the transfer process. However, as I've set out, I'm not persuaded that Mr B was fully informed of all of the risks involved, particularly that he was almost guaranteed to be worse of in retirement and the real risk of his fund running out.

This was demonstrated in the TVAS as the critical yield required to match the benefits offered by BSPS at the time were shown as in excess of 50% if Mr B retired at age 58 and took the entire pension as an income and 44.84% if he took TFC. So it was virtually certain that Mr B would be significantly worse off in retirement, especially given his ATR. Furthermore, the TVAS showed that Mr B may exhaust his pension fund using a drawdown by the age of 79. This meant that if Mr B were to live a long life, he may well find himself with little income in the later stages of life. I don't think his wish to enjoy the funds whilst in good health would've outweighed his need for a lasting income. And had he truly understood this, I'm not persuaded he would've insisted on transferring.

Overall, I think a properly reasoned recommendation and a complete understanding of exactly what Mr B was giving up and the risk he was taking would, more likely than not, *have persuaded him to follow their advice not to transfer.*

There were disputes about whether the investment recommendation was suitable and in line with Mr B's attitude to risk as well as whether the charges were clear. However, given that I'm upholding for reasons set out above, there is no reason for me to comment on this further.

Of course, I have to consider whether Mr B would've gone ahead anyway, even if JR had given him enough information to make an informed decision.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against JR's advice had this advice been properly reasoned and Mr B been challenged further on his beliefs and objectives. I say this because Mr B was an inexperienced investor with a very low attitude to risk and this pension accounted for the majority of his retirement provision. So, if JR had provided him with clear advice setting out exactly what he was giving up and explored other means of meeting his objectives, I think he would've accepted that advice.

I'm not persuaded that Mr B's wish to release further funds to move to a larger property or concerns over BSPS were so great that he 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 and had clearly explained why, including appropriately challenging

Mr B's misconceptions. If JR had clearly explained that Mr B could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So,

I don't think Mr B would have insisted on transferring out of the DB scheme as he did.

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 B's employer would be set up – the BSPS2.

In October 2017, members of BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017. If Mr B had stayed in BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2.

Mr B's representatives said BSPS2 benefits should have been considered when giving the recommendation. However, at the time the advice was given in 2016 Mr B hadn't been given the option of BSPS2 yet. The advice for JR to give at the time was whether to stay in BSPS or transfer out and their advice was not to transfer in any event.

However, as set out above I think if JR had given properly reasoned advice and acted in Mr B's best interest, Mr B would have remained in BSPS. He might have contacted JR or another adviser again when the Time to Choose exercise began. And given that he had concerns already, I think it's likely he would've sought advice again.

So I carefully considered what Mr B likely would have done about a year later had he been given the choice of either the PPF or BSPS2 and placed into an informed position regarding the features, risks and benefits of both options.

Given that Mr B did want to take TFC and retire early at age 58, I think the PPF would've been the more attractive option at the time and what Mr B should've been advised to do. For clarity, Mr B retired at age 58. Whilst he had not yet taken an income from his pension, he has accessed the TFC. The advice was based on Mr B retiring at age 58, which he did do.

And to access the TFC from his DB scheme, he would've needed to take an income and I think it's most likely he would've done. So age 58 should be the basis for the calculations.

In light of the above, I currently think JR should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits available to Mr B at age 58 that should be used for comparison purposes.

I invited both parties to respond by 6 February 2023.

Mr B responded accepting the complaint should be upheld but explaining why he thought that the redress should be calculated using BSPS2 as a comparator and using an assumed retirement age of 65. JR didn't respond.

The complaint has now been passed back to me to make 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.

Having done so, I find myself coming to the same conclusions as I did in my provisional decision. And the findings I've set out above, from the provisional decision, should be considered as part of my final decision. But I'll address the points that Mr B has made in response.

Mr B has argued that he only accessed TFC to fund a non-essential trip and expenditure around his home. Mr B reiterated that he still was yet to take any income from his pension. And that his retirement plans weren't set in stone. He says he would've continued to work had he been advised to and pointed to the fact that he is still carrying out seasonal work. Mr B accepts that early retirement was attractive to him, but he says he didn't realise that doing so would be detrimental to him.

I've thought carefully about these points. But I need to base my decision on what was known at the time, and I cannot use the benefit of hindsight. I also find it difficult to ignore the fact that it was recorded by JR that Mr B wished to retire at age 58 and take TFC at this time, and he then went on to do so.

I accept that the use of the TFC Mr B took at age 58 may not have been considered essential. And he's pointed out that he and his wife had savings at the time he could've used. Given that he had these savings, but he still chose to take the TFC from the pension, I think this was likely always his plan and something he decided to follow through on. I recognise that his plans may not have been set in stone. But I think, at the time of the advice, Mr B had a strong idea of what he wanted to do. And this is reflected in what he ultimately did do.

I've noted Mr B's comments that no one told him that retiring early would have a detrimental impact. However, the illustrations provided by JR did explain that retiring early would mean Mr B would receive less in retirement. Furthermore, I think it would've been common knowledge to members of BSPS (a defined benefit scheme) that the more years you worked, the more benefits you build up. So I think Mr B ought reasonably to have been aware that retiring early would have an impact on what he received in retirement.

Whilst I'm aware that plans change, I'm satisfied that, at the time of the advice, Mr B's plans were to retire at age 58 and take TFC. I'm not persuaded that, had JR provided better advice, he wouldn't still have taken some pension benefits at age 58. So I think this should be the retirement age redress is calculated on.

Given that I'm satisfied that Mr B did plan to retire early and take some TFC at the time, I remain persuaded that had Mr B taken further advice about a year later once he'd received the "time to choose" letter, the PPF would've been the more attractive option at the time. So I remain of the opinion that this is what should be used as the comparator for redress for the reasons set out above and within my provisional decision.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for JR's unsuitable advice. For the reasons given above, I consider Mr B would have most likely remained in the BSPS and subsequently moved with it to the PPF had suitable advice had been given. So calculations should be made on this assumption.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a document -
https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance / rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr B.

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

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B’s acceptance of the decision.

JR may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B’s contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a ‘SERPS adjustment’ in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B’s pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn’t be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn’t possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Mr B within 90 days of the date JR receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes JR to pay Mr B.

It’s possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won’t apply.

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

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late April 2023.

It's been announced that:

‘When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.’

‘For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.’

Mr M has retired and I think he would have done the same if they had gone into the PPF as explained above. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr M. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason I require JR to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr B accepts this final decision, he will be doing so on the basis of my understanding as set out above. It's important that Mr B is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

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 Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Joslin Rhodes Lifestyle Financial Planning Limited pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts this final decision, the money award becomes binding on Joslin Rhodes Lifestyle Financial Planning Limited.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 8 March 2023.

Rob Deadman
Ombudsman