DRN-3968707

The complaint

Mr T 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.

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

What happened

In March 2016, Mr T'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 T'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 T was concerned about what the announcement by his former employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to NTM 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 T was 44 years old, married and with no financial dependents. He was described as being in good health and at the time of the advice he had accrued over 14 years of pension benefits with the BSPS. He had ceased working for British Steel in around 2009 and moved to another employer.

- Mr T lived in a home valued at around £130,000 with a mortgage outstanding of around £72,000.

- Mr T earned around £35,000. Mrs T earned around £20,000. After expenses they had some disposable income left over. They had savings of around £10,000 in a deposit account.

- Mr T had since joined a new defined contribution (DC) pension connected to his new employer, but we don't know how much was in it at the time the advice was given about his BSPS pension. This DC pension is not the subject of any complaint – only the BSPS is.

- The cash equivalent transfer value (CETV) of Mr T's BSPS was approximately £214,667. The normal retirement age (NRA) was 65.

NTM set out its advice in a suitability report on 22 December 2017. In this it advised Mr T to transfer out of the BSPS and invest the funds in a type of personal pension plan. NTM said this would allow Mr T to achieve his objectives. Mr T accepted this advice and so transferred out. In 2021 Mr T complained to NTM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

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

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 NTM's actions here.

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

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

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

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

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, NTM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests.

I've used all this information we have to consider whether transferring to a personal pension was in Mr T's best interests.

Having done all this, I'm upholding Mr T'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. It's not entirely clear whether Mr T ever made that choice. However, if he did so, he'd have only remained signed up for the forthcoming BSPS2 for a very short time. This is because we know that by the actual deadline date of 22 December, NTM had advised him to transfer to a personal pension arrangement.

It seems there was then a brief pause, no doubt due to the Christmas break period, because we know NTM re-engaged with Mr T again in January 2018 when he'd had time to digest what was in the suitability report.

So, there's no documentation, which I've seen, showing he did make a choice and we know that if no choice was made then the member would eventually move to the PPF by default.

However, I can see NTM started the advice process with Mr T in October 2017 which is well before the hard deadline of 22 December 2017. A 'letter of engagement' was produced by NTM and evidently signed by the parties on 23 November 2017 and a transfer analysis – a piece of substantial work which was part of the advice process – was dated by NTM as 1 December 2017. Again, all these events were several weeks ahead of the deadline of 22 December 2017.

I think by October 2017 there was clear evidence that NTM had started to advise Mr T. By November he'd formally engaged the business for advice and a 'fact-find' was produced. The suitability report was produced on the actual deadline date. So, I think the advice process was firmly underway throughout the autumn of 2017 with NTM committing considerable resources to analysing Mr T's financial situation and giving a firm commitment to advising him about whether or not to transfer his DB pension. Therefore, if NTM didn't advise Mr T to enter the BSPS2 as, at the very least, a precautionary measure, it certainly should have done in my view. It could have told Mr T that he would have still been able to transfer away from the BSPS2 later on if he wanted to. He wouldn't have been able to do this from the PPF.

I should say that none of this really matters to the actual *suitability* of the advice. Nevertheless, it may matter to the redress that could be due for providing an unsuitable recommendation to transfer away from a DB scheme: redress would be measured against as if the member would have joined the BSPS2, rather doing nothing and entering the PPF. However, in my view, NTM had plenty of time to issue its suitability report ahead of the deadline as its advice process commenced in October.

Financial viability

NTM 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, NTM used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2. In my view, the various critical yields produced by NTM all pointed one way – that Mr T was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

However, before assessing the critical yields in Mr T's case, I think it's important to point out that NTM could have taken time to compare the benefits of the BSPS2 with transferring out, rather than just using the current BSPS for comparisons. We know BSPS was being stopped. Also, many weeks before this advice, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time NTM produced its suitability report.

We know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr T the best opportunity to make an informed decision about what to do. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS). In my view, all this shows the advice probably wasn't quite as comprehensive as it ought to have been.

Having said all that, NTM said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 6.23% if Mr T took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.16%. However, NTM also calculated the critical yield rates for an earlier retirement, at the age of 55. It did this because Mr T had apparently expressed a desire to retire early.

However, as I'll explain more about later, NTM seems to have been imprecise about whether Mr T's early retirement aspirations were for the age of 55 or 57 – and in my view this mattered because it would have altered Mr T's financial profile considerably. Retirement was also still a very long way off for Mr T and so I very much doubt whether retiring sometime in his fifties was anything more than something he just aspired to, rather than being part of a real plan.

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 and was only 4.5% per year for 20 years to retirement (age 65), which is below all of the critical yield figures I've referred to above. If taking NTM's figures for an early retirement – it quoted the age of 55 in the transfer analysis of 1 December 2017 – these yields were higher, at 8.76% and 6.74% respectively. However, the discount rate for a retirement at 55 was only 3.8% which is considerably lower than the critical yields.

At the time, NTM assessed Mr T's attitude to risk (ATR) as "balanced" and it also said the critical yields for retiring at 65 were achievable over the long term. But I've not seen any clear evidence of this.

There would be no point in Mr T transferring away from a DB scheme, from a financial perspective, to get benefits of a similar nature to those if he had remained in a DB scheme. However in Mr T's case, I think all the above figures show that achieving the critical yield(s), year-on-year, upon transferring out was unlikely. In my view, there were no metrics or analysis showing how his transferred funds would comfortably exceed, say 6.23% for example, for over 20 years. And if retiring at 55 on a full pension as set out NTL's analysis is considered, then his funds would have to exceed 8.76% per year, year-on-year, for 11 years.

I've also noted that using the NRA of 65, NTM'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 £451,942. 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 £241,634. For an earlier retirement, these values went even higher.

To reiterate, these figures are found in NTM's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr T's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr T 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, NTM 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. NTM 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 NTM itself implies Mr T 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 T, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, NTM's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr T would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, NTM should have waited and recalculated the comparisons for Mr T when the situation with BSPS2 became clear – we know this was available at the time.

I've also considered some projections NTM used to help show that if he transferred out to a personal plan, the funds could last Mr T well into retirement. Again, I think most of these were based on growth projections which were unrealistic and essentially based on past performance. It's also fair to say these were certainly not comparing like-with-like. What NTM was showing Mr T were comparisons with plans which lacked the guarantees and benefits of a DB scheme. They relied on investment risk, factored in over many years.

Of course, according to NTM, 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, NTM said Mr T 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.

<u>*Other needs and objectives*</u>

NTM recommended a transfer to a personal pension plan based on what it said were Mr T'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:

- NTM said that Mr T wanted to retire early. It said that he wanted to shape and control his income and capital for retirement.

- NTM said he wanted more control over his pension and benefits in retirement, take higher income levels at certain times and have a higher access to tax-free cash.

- It said the BSPS Trustees had *"failed in previous years to manage the pension liability and this is a concern to you. They also need to adopt investment strategies to cope with the liability of providing benefits for all the members. You believe that your personal position will be served better with having more control of your own pension benefits and working with a financial adviser of your choice".*

- NTM said the benefits offered by a pension transfer provided a *"much higher degree of protection and specifically how the benefits will be paid"*.

I have therefore considered all these issues in turn.

Retiring early

In my view, there was a disconnect between what NTM said in its transfer analysis about early retirement and what was in the suitability report. In the first of these it said Mr T wanted to try to retire at the age of 55 and it made some calculations based on a retirement of that age. But in the second document it said he wanted to retire at 57; this was replicated in the 'fact-find' where the age of 57 was mentioned.

Even though 55 and 57 years old might not seem that far apart, this discrepancy mattered. That's because if we use 55, then there were clearly two years less when income would be going *into* Mr T's overall pension 'pot' - so retiring at 55 rather than 57 would see less contributions to his total. Conversely, he'd be potentially *drawing upon* a pension 'pot' for two years longer, if he opted for 55, rather than 57. NTM didn't do any analysis for a retirement at 57, so this discrepancy represented a lack of attention to detail on the part of the adviser.

Also, Mr T was still only 44 years old and in good health. In this context, I think NTM's adviser saying Mr T had specific plans for when he would retire lacked credibility. For example, Mr T's NRA was still over 20 years away. And I think this demonstrates that retirement dates were aspirations on Mr T's part, rather than being part of any concrete plan. In fact, I think it could be reasonably said that Mr T was only just 'mid-career' and both he and his wife, who was 42 years old, probably had well over a decade before the potential for early retirement could come realistically into focus.

At the time of the advice they also still had a mortgage to pay down. It's true they had built up moderate savings, but the adviser, as our investigator pointed out, said they would need more details about Mr T's DC pension balance with his new employer before a full picture of his available pension resources could be worked out. This was never obtained and I think the information collected about Mrs T's retirement provision was also lacking. So, there were significant gaps in what the adviser needed to know before considering an early retirement as young as 57 years old as being realistic.

This means that when Mr T said he'd probably need an income in retirement of around £1,500 per month, in my view this was merely speculation or a 'best guess' from him. A different figure was shown on the 'fact-find' although this appears to have been related to a joint retirement. But like most people, I'm sure Mr T may have hoped he might be able to retire early, but doing so in his mid-fifties would require substantial financial resources and NTM hadn't yet worked out whether these were available. What the adviser knew was the size of Mr T's deferred BSPS pension, but the advice was given without apparently knowing much about his other pension provision or that of Mrs T.

So I think early retirement was put down as a 'stock' objective to help substantiate the advice to transfer away; it was far too early to say this was a realistic or costed plan. Even if I were to accept that these retirement issues were more than the mere aspirations they clearly were at Mr T's young age, I've seen nothing showing he'd need to transfer away from his DB scheme to achieve them. I explain more about this below. But as I've said, because no assessment appears to have been made about Mr T's other pension or Mrs T's resources, NTM simply didn't demonstrate whether or how he was falling below his apparent retirement income preference of around £1,500 per month by remaining in a DB scheme – such as moving to BSPS2. In short, NTM demonstrated no rationale for transferring to a personal plan based on a need to achieve his required income in retirement.

So, I think it's important to revert back to Mr T's comparatively young age by pension standards. With anything between 13 – 20 years still left to when he'd be actually contemplating retiring, there's simply no way that this should have been a major influence in him deciding to irreversibly move away from a DB scheme. The adviser should not have recommended a transfer on this basis.

Flexibility and control

NTM also implied to Mr T 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. 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 NTM should have been telling Mr T at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of around 57 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

In a similar vein, NTM also said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income. However, I can't see that Mr T required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by NTM. I therefore think this was also 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 T required changing how his retirement benefits ought to be paid. He already apparently had a new and more flexible DC pension with his existing job which he'd started some eight years previously in 2009. There's a strong implication from the advice related documentation that his DC pension was being contributed towards by Mr T and possibly his employer. We don't have information about how much value this had reached but it's reasonable to say it still had up to 20 years left to run (13 years if he did eventually retire at 57). So, I think this secondary pension could have been in force and receiving contributions for between 22 and 29 years by retirement and it would have afforded Mr T any flexibility he might have needed in the years ahead.

All this means I've seen nothing explaining why Mr T 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 T could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable 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 substantial DC scheme over a long period of time. Therefore, if Mr T ever found he needed 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 T had either the capacity or true desire to exercise control over his funds. With his DB scheme, Mr T 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. As I've described, the adviser recorded some comments about the trustees' stewardship of the scheme in the suitability report. However, these aren't really clear in my view and they seem emotive; they affectively suggest they had failed to manage the pension's strategies correctly in the past and that transferring away would be the only 'fix'. However, as well as lacking any evidence of this, Mr T himself appeared to have had limited experience of these types of money market investments. Despite having £10,000 in savings none of this was invested in stock-related funds. He also said he had quite a lot of disposable income each month and none of this was being used to invest in funds. I therefore think he would have found the complexity, scale and responsibility of managing over £214,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr T would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

NTM 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 T 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 T speculated that he might have needed around £18,000 per year in 'todays' money.

NTM's analysis said that if retiring at 65, Mr T could expect an annual pension of around £12,497. Of course, it failed to calculate the pension at 57 at all, despite this being recorded on the suitability report as an age he'd apparently like to retire at. And it certainly isn't unreasonable to say that by either of these ages, Mr T could have built up a substantial DC fund in his other pension. So, I don't think there's anything showing Mr T's pension entitlements wouldn't have met his anticipated financial requirements upon retiring, without any need to transfer from a DB scheme. NTM simply didn't make out any case for this.

These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think NTM adequately explained these things to Mr T as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr T's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire 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 a second DC pension, this supported that strategy in my view.

<u>*Death benefits*</u>

Death benefits are also 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 T died. Mr T was married although he didn't apparently have dependent children and so the adviser told Mr T that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated.

I think there was clearly a discussion about this because NTM said of the personal plan it was recommending, there was a *"much higher degree of protection and specifically how the benefits will be paid."* So, the lump sum death benefits on offer through a personal pension, potentially payable tax-free, were probably made to look like an attractive feature to Mr T.

But I think this was misleading.

Firstly, the pension available to Mrs T under the BSPS2 if Mr T predeceased her was certainly worth having. It would have effectively paid half his pension to Mrs T for the rest of her life and there were valuable guarantees and inflation protections. I've noted it was recorded that Mr T would rather see capital amounts being paid to his wife if he died rather than a steady income. But there was no explanation as to why this was. Mrs T didn't appear to have a large income of her own and there was only one apparent need for a large cash lump-sum. This was to pay off their mortgage if Mr T died. But whilst this may sound a good idea, again I return to the likelihood of Mr T passing away anytime soon when he was only 44 and healthy. It's also my understanding their mortgage was already being duly paid down in accordance with the rules and so it would likely be paid off completely ahead of their retirement ages. It also seems to me that the current payments were well within their reach. To be clear then, no explanation was really made as to why Mrs T would need cash rather than an ongoing and guaranteed pension for the rest of her life. In any event, if Mr T had joined the BSPS2 and passed away before retiring, Mrs T would have received a modest lump-sum comprising of all his contributions.

Secondly, whilst I appreciate tax-free death benefits are important to consumers, and Mr T 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. Mr T certainly had a reasonable BSPS pension, but this would only afford him a reasonable standard of living when he eventually chose to give up work: this wasn't a 'very large' pension. A pension is primarily designed to provide income in retirement. And I don't think NTM explored to what extent Mr T was prepared to accept a different retirement income in exchange for different death benefits. I say again, Mr T was only 44. So, 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 T had lived a long life there could be nothing left at all in his personal pension plan to pass on to anyone.

Further to this, although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring in his fifties was at least mentioned – NTM's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 55 or 57 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 when he got to around life expectancy age.

I also can't see the extent to which life insurance was discussed in this case although I think Mr T was given some whole life insurance quotes; these were expensive. But at 44 years old, a 'term' life insurance policy may have still been a reasonably affordable product if Mr T really did want to leave a legacy for Mrs T. But more so, it doesn't appear that NTM took into account the fact that Mr T could have nominated a beneficiary of any funds remaining in his other DC scheme. So, to this end, Mr T 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 T. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr T's situation.

Control or concerns over financial stability of the DB scheme

It's clear that Mr T, like many employees of his former company, was concerned about his pension. His former employer had recently made the announcement about its plans for the scheme and NTM said he lacked trust in the company. He'd heard negative things about the PPF and NTM said he could have more control over his pension fund.

So, it’s quite possible that Mr T 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 NTM’s obligation to give Mr T 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 NTM should have reassured Mr T that the scheme moving to the PPF wasn’t as concerning as he thought. The income available to Mr T 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 ATR 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 NTM’s recommendation to Mr T to transfer out of the DB scheme altogether.

Suitability of investments

NTM recommended that Mr T invest his funds in a personal pension. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr T 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 T 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 T 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 NTM ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he’d be worse off in retirement.

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

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr T 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 T 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 NTM should have advised Mr T to opt into the BSPS2.

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

I'm not persuaded that Mr T would have insisted on transferring out of the DB scheme, against NTM's advice. I say this because Mr T wasn't an experienced investor and this pension probably accounted for most of his retirement provision at the time. So, if NTM 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 T'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 NTM had explained Mr T 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 NTM should compensate Mr T 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 T, as far as possible, into the position he would now be in but for NTM's unsuitable advice. I consider Mr T 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. NTM should use the benefits offered by BSPS2 for comparison purposes.

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

NTM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr T 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 T's acceptance of my final decision.

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

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and

  - a straightforward way to invest their redress prudently is to use it to augment their DC pension

- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, NTM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr T's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Our investigator recommended that NTM should pay Mr T for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr T in his particular circumstances. This pension at the time probably represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr T. So I agree the recommended payment of £300 for distress and inconvenience. NTM should pay Mr T this amount in addition to the redress I've set out above.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct NTM Financial Services Ltd to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that NTM Financial Services Ltd pays Mr T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T.

If Mr T accepts my final decision, the money award becomes binding on NTM Financial Services Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 29 September 2023.

Michael Campbell
Ombudsman