DRN-4128712

The complaint

Mr R complains about the advice given by NTM Financial Services Ltd ('NTM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr R's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr R's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr R's scheme benefits had a cash equivalent transfer value ('CETV') of around £339,390.

Like many of his colleagues, Mr R was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. He was introduced to NTM by another adviser.

NTM recorded some information about Mr R's circumstances in a fact-find. It noted that he was 52, married with two non-dependent children. He was employed earning approximately £32,800. His wife was also employed and she earned around £21,200. They owned their home outright. They had around £1,000 in cash / savings but no other investments.
Mr and Mrs R's household expenditure was around £1,900 a month, which included a car loan for around £478, leaving a monthly disposable income of around £1,700. NTM also carried out an assessment of Mr R's attitude to risk, which it deemed to be 'average' or 'balanced'.

In a file note dated 2 January 2018, NTM recorded that Mr R had chosen not to opt-in the BSPS2.

On 3 January 2018, NTM issued a suitability letter setting out its recommendation. NTM summarised Mr R's objectives of wanting to retire at 57 and that he was unhappy about the prospect of moving to the PPF, which would result in reduced benefits and a loss of choice and flexibility. It said Mr R felt let down and so he wanted to take control of his pension.

In summary, NTM recommended that Mr R transfer his pension to provide him with the control he desired, to provide flexibility in retirement so he could vary his income during the early years of his retirement, which his DB scheme couldn't provide, to provide a higher level of tax-free cash and to provide better lump sum death benefits.

Mr R complained to NTM in 2022 about the suitability of the transfer advice. Mr R said he'd received a letter from the Financial Conduct Authority ('FCA') which said that some of the advice BSPS members had received from certain firms to transfer out of the scheme wasn't suitable, so he wanted to understand whether he'd received bad advice and if he'd lost out as a result.

NTM didn't uphold Mr R's complaint. In addition to setting out a timeline of the events leading up to the 'time to choose' exercise, Mr R's interactions with NTM and his objectives at the time, in summary it said, Mr R was correctly advised, he was informed about the advantaged and disadvantages of transferring as well as the risks involved. It said all of this was also confirmed in writing. It said it had nevertheless engaged the services of an independent actuary to calculate if the advice given had created a shortfall in Mr R's pension benefits, which showed that his pension value was in excess of what was required to replace the benefits given up. It said this demonstrated the quality and value of the advice he received.

Dissatisfied with its response, Mr R asked us to consider the matter. One of our Investigators looked into the complaint and they upheld it. They thought the advice was unsuitable. They said Mr R could've taken early retirement from the scheme at 55; there was nothing to indicate he needed flexibility; he didn't have a need to access a cash lump sum for a specific purpose; his concerns about entering the PPF should've been appropriately managed by NTM; death benefits weren't of overriding importance; and he wasn't going to improve on the benefits available under the DB scheme by transferring. They said Mr R didn't need to take any risk with his pension benefits and a secure inflation-proofed income would've been more appropriate for him. They said if suitable advice had been given to remain with the scheme and move with it to the PPF, given his circumstances Mr R would've likely accepted that advice.

NTM didn't reply to the Investigator's assessment despite being sent reminders. Because it's assumed that it disagrees, the complaint was passed to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time.

This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of 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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, NTM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

- The transfer value analysis ('TVAS') report, that NTM was required to carry out by the regulator, said that the critical yield - how much Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 29.23% to match the full pension he'd have been entitled to under the scheme at age 55. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 20.41%. To match the full pension the PPF would've paid from 55 the critical yield was 14.66% and to match the tax-free cash and reduced pension the PPF would've offered, it was 13.23%.

- Because of the timing of the advice and the fact it was after the 22 December 2017 'time to choose' deadline, it wasn't an option for Mr R to continue in the BSPS in its existing form. So given NTM recorded that Mr R hadn't chosen to opt-into the BSPS2, the only relevant critical yields were based on the benefits available to Mr R through the PPF.

- Because NTM recorded that Mr R wanted to retire at 57, I think it would've been helpful to him to have produced critical yields based on the benefits available to him through the PPF at this age. Afterall, this was the basis of the advice he was seeking from NTM.
- In any event, given Mr R's recorded 'medium' or 'average' attitude to risk, the discount rate of 2.7% for two years to retirement (age 55) and the regulator's middle projection rate, I think Mr R was always likely to receive pension benefits, from age 55, of a lower value than those he'd have been entitled to under the PPF by transferring and investing in line with that attitude to risk. And while the critical yields based on a retirement age of 57 would've likely been slightly lower, I don't think they would've been materially lower such that the position would've been any different.

I think he was still likely to receive lower benefits than the PPF offered, if he retired at this age.

- While I have some concerns about how NTM arrived at Mr R's attitude to risk as being 'average' or 'medium' based on him ticking a box in the fact-find to say he considered himself a low-risk investor, given what I've said above, even if he was prepared to take a 'medium' risk approach, I think he was always going to worse off in retirement as a result of transferring. And for this reason alone, I don't think it was in Mr R's best interests to transfer to a personal pension arrangement.

- NTM recorded that Mr R wanted to retire early at 57 and it recommended the transfer because a personal pension would provide flexibility in retirement so he could tailor his income to meet his needs. I think at 52 Mr R had likely given some thought to his retirement. But nothing NTM recorded suggests he had anything that could reasonable be described as a firm retirement plan.

- Mr R didn't have to transfer his pension to retire early - he already had this option available to him. While he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement. And while NTM recorded that Mr R wanted to avoid any restrictions on him taking a lump sum at 55 and delay taking an income, it's not apparent why this was the case. NTM didn't record why Mr R wanted or needed to do this – in fact it said Mr R *'...wasn't specific on its use.'* So it doesn't appear to have been a clearly defined objective or a strong need.

- Equally NTM recorded that Mr R wanted, and a transfer would allow him, to take a greater tax-free cash lump sum. But it's not clear why Mr R needed a sum greater than his DB scheme could provide. He didn't for example have an outstanding mortgage balance that needed repaying or have a specific significant capital expenditure need.

- Mr R might have been attracted to the flexibility a personal pension provided – but given he had no apparent need for it, I think NTM's reference to this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr R's.

- Mr R said that he wanted an income at age 57 of £2,000 a month. In a file note recording the meeting of 5 January 2018 where the suitability report was discussed with Mr R, NTM noted this wasn't possible moving to the PPF or sustainable through a transfer. It also recorded that a transfer would allow Mr R to take this amount and then reduce it – but that Mr R was happy with an overall income figure of just over £18,200 as it was higher than the PPF forecast.

- NTM doesn't appear to have carried out a detailed income and expenditure in retirement analysis to arrive at this figure or to interrogate it in anyway.

  But given Mr R's current monthly expenditure of £1,900 included a loan payment of around £400, which it seems possible he could've cleared before retiring (it's recorded that his disposable income was used to repay debt) this figure doesn't appear unreasonable. And based on this, I think Mr R could've reasonably achieved things by retaining his DB scheme benefits. At 55 Mr R could either take a full pension of around £12,650 or a reduced income of around £10,580 and a lump sum of around £70,000. And at age 57 these figures would've been slightly higher. While this wouldn't have met Mr R's needs in full, Mr R's wife who was two years younger, was due to continue working. So I think her income of £21,200 a year needs to be taken into account here. Mr R's income need in my view was a joint or household need – not a sole need. It seems NTM overlooked this.

- If Mr R chose to take a cash lump sum, he could've used this to top up his income if required. And when Mr R's wife retired - recorded as being at age 60 – it was recorded that she too had a DB pension. While NTM didn't document the specific details of this, given the nature of her employer and the likely time in employment, I think this was a generous scheme. So, I see no reason why this wouldn't have provided sufficient income along with Mr R's DB scheme pension to meet their overall income need. State pensions for both of them would then further supplement things later on.

- Given this, I don't think Mr R needed to risk his guaranteed and escalating benefits, which were payable for life, to try and achieve things. Mr R wasn't going to improve on them by transferring. Indeed, NTM commented that drawing down this larger income of £18,200 and taking a lump sum wasn't sustainable. And it said taking this level of income with no lump sum was only achievable if the annual investment return was consistently at 5% a year. That said, I've not seen evidence of this as the cash modelling in the suitability report was only based on Mr R taking the same level of benefits as the PPF.

- Overall, in the circumstances, I think retaining his guaranteed benefits was a more appropriate way for Mr R to meet his retirement needs.

- NTM recommended the transfer for better lump sum death benefits. But the priority here was to advise Mr R about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr R drew in his lifetime. And so may not have provided the legacy that Mr R may have thought it would.

- If Mr R had wanted to leave a legacy for his family, NTM could've explored life insurance as an alternative. Reference was made to a whole of life policy for a sum assured for the amount of the transfer value, which NTM itself discounted on cost. But I don't think this was a fair and balanced way to present this option to Mr R – it should've been based on what amount he wanted to leave to his family instead. Afterall, he wanted to leave whatever remained of his pension upon his death. NTM recorded that he had significant disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence it did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr R. I don't think that insurance was properly explored as an alternative. And ultimately NTM should not have encouraged Mr R to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr R may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was NTM's role to objectively address those concerns. The PPF still provided Mr R with guaranteed income and the option of accessing tax-free cash. And for very early retirement, the more favourable terms outweighed the reduction in benefits he'd incur. Mr R was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr R's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen anything to persuade me that Mr R would've insisted on transferring, against advice to remain in the DB scheme. Given the broader circumstances at the time, Mr R was no doubt motivated to transfer when he met NTM. But he had no real investment experience and he ticked NTM's questionnaire to say that he had no investment knowledge. So, nothing suggests to me he had the requisite knowledge, skill or confidence to go against the advice he received – advice he'd sought out and was paying for. So, I'm upholding the complaint as I think the advice Mr R received from NTM was unsuitable for him.

I can see the Investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr R. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish NTM – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr R. Taking everything into account, including that I consider Mr R is of the age when his retirement provision is of even greater importance to him and he's worried that he'll lose out in retirement, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for NTM to put Mr R**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would most likely have remained in the occupational pension scheme and moved with it to the PPF if suitable advice had been given.

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 R and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what NTM based the inputs into the calculator on.

For clarity, Mr R retired and started taking benefits in March 2021 age 55.

So, because I think Mr R would've likely retired at the same time had suitable advice been given (the advice paperwork recorded that Mr R wanted to retire as close to 55 as possible) and because this is what actually happened, I think it's fair that compensation should be based on Mr R taking his scheme benefits at this age.

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

Redress paid to Mr R 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 R'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

Determination and money award: I uphold this complaint and require NTM Financial Services Ltd to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £170,000.

NTM Financial Services Ltd should also pay Mr R £300 for the distress and inconvenience this matter has caused.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that NTM Financial Services Ltd pays Mr R the balance.

If Mr R accepts this decision, the money award becomes binding on NTM Financial Services Ltd.

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