

The complaint

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

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

What happened

In March 2016, Mr L's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr L was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was referred to AJH which is responsible for providing the pension advice. A terms of business agreement was drawn up on 28 November 2017 between Mr L and AJH when the parties first met. And AJH completed a 'fact-find' outlining Mr L's circumstances on the same day.

Information gathered by AJH about Mr L was broadly as follows:

- Mr L was 34 years old, married with two dependent children. He was in good health and at that point he had accrued 17 years of pension benefits with the BSPS.
- AJH said Mr L owned a home with a mortgage costing around £650 a month which had around 20 years left to run.
- AJH said Mr L earned around £30,000 per year and Mrs L earned £26,000. They had some disposable income available each month.
- The cash equivalent transfer value (CETV) of Mr L's BSPS was £266,788 and the normal retirement age (NRA) was 65. AJH said Mr L wanted to retire early, if possible, at the age of 60.

It's hard to tell the exact sequence of events since it's known that AJH met Mr L in late November 2017. It commissioned a transfer analysis which is dated 11 December 2017 and it issued Mr L with a certificate evidencing it had provided regulated financial advice, dated 28 December 2017. I've also seen a BSPS discharge form indicating Mr L was leaving the scheme to transfer to a personal pension arrangement which is dated 29 December 2017. I've also seen an application to transfer which shows AJH acting as Mr L's financial advisers for this transfer.

However, I've noted the "financial profile report" (FPR), a type of suitability report containing AJH's recommendation), formally setting out the financial advice, is dated 25 January 2018.

So, it's unclear to me why the FPR would be issued *after* all the other documentation, particularly those which imply Mr L's transfer-out was going ahead and that AJH were advising him in this transfer. I'd have expected, for example, that the normal course of advice like this would see the recommendation made first – so Mr L could digest it and consider what to do – with the discharge form and a certificate of advice being issued thereafter.

I therefore think it's helpful here to bear in mind that AJH's relationship with Mr L – in as far as it related to potentially transferring out of the BSPS - lasted over a period of a few months. It began before the deadlines I've referred to above, and as I know AJH was also advising colleagues of Mr L at the same time, I think AJH would have been monitoring the events concerning the BSPS very closely. Their relationship continued thereafter with AJH acting as Mr L's financial adviser which included monitoring his transferred funds.

Mr L first complained to AJH in 2021 about the transfer being unsuitable. He later referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, AJH said it hadn't done anything wrong and was acting on the financial objectives Mr L had at the time.

I issued a provisional decision (PD) about this case in February 2023 in which I invited the parties to submit anything new they wanted me to consider. In the meantime, the Financial Conduct Authority (FCA) consulted on a redress calculator to ensure fairness for those who had complaints upheld. Mr L responded to my PD but didn't have anything else he wanted to add. AJH responded and I'll pick up some of its themes in the course of the decision, below. But essentially, AJH's response contained nothing new. It merely repeated its view that the transfer was suitable for a number of reasons, all of which I'd already comprehensively explained in my PD.

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 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 AJH'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've also comprehensively considered all AJH's responses to the complaint, including (as I'd said in my PD) those outlined in a letter from AJH's representative, on 23 September 2022. And I've reconsidered everything in the light of my PD and replies to it. Whilst I've considered everything that's been said with great care, I've rightly focussed more on the issues which affect the outcome of the complaint.

I have further considered that the regulator, the FCA, states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AJH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L's best interests.

I've used all the information we have to consider whether transferring away from the BPS to a personal pension was in Mr L's best interests.

I don't think it was, so I'm upholding Mr L's complaint in full.

Circumstances of the time

Before I go into detail about what I think about this case, I'm going to deal with the timeline of events. AJH's representative has implied there was so little known about the future for BPS at the time this advice was given – and that no-one could be sure BPS2 was even going ahead.

But I don't agree with this. We've seen many similar complaints to this one and so we've learned a great deal about what was happening at the time. We know, for example, that on 11 August 2017, Mr L's employer confirmed the terms of an agreement with the pensions regulator about the next steps for separating the BPS from the company. This included a lump sum payment into the pension fund and the announcement included confirmation that agreement had also been reached about the sponsorship, by Mr L's employer, of the BPS2. Then in late August 2017, an important update was issued in respect of BPS transfer values. This explained that the expected lump sum payment into the BPS by the employer was likely to result in an improvement to transfer values. And for those with unexpired transfer valuations, as in this case, updated valuations would be issued around October 2017 and guaranteed until at least December 2017.

On 11 September 2017 there was a further announcement, confirming the agreed payment had been made into the BPS by the employer and the separation of the BPS from the company had been completed. This set out that members would have to make a choice between staying in the BPS or moving to the BPS2 and it explained that personalised

information and illustrations would be provided in October 2017 to assist with that choice. Members would have until December 2017 to decide.

In short, I think there was much more information available at the time AJH provided its advice than it now claims. Even in its letter of 23 September 2022 I can see AJH itself quotes aspects of the 'new' scheme that were known, so I think AJH had enough information to give proper advice to Mr L.

Financial viability

AJH 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. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

AJH compared transferring against what was known about the BSPS2. It said the critical yields for retiring at the NRA of 65 were 5.8% if taking a full pension without a tax-free lump sum, and 5.2% if eventually taking a reduced pension together with a tax-free lump sum. And for early retirement, at the age of 60, the critical yields were 6.1% and 5.5% respectively. AJH said reaching the critical yield levels of growth was achievable, but I haven't seen clear evidence to support this.

I say this because 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 just before 1 October 2017 and was only 4.7% per year for 30 years to retirement (age 65), which is below the critical yield figures I've referred to above. The discount rate for retiring at 60 was 4.6%. So, the discount rates infer that reaching the yields above would be more unlikely than likely.

I've also kept in mind that the regulator's projection rates had remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

AJH categorised Mr L as having an attitude to risk (ATR) of "high medium". But I still don't think this merits it saying he could grow his funds more outside the scheme to an extent that made transferring worthwhile. The regulator's middle rate here was still not above any of the critical yields – and even if I were to assume a slightly higher growth than the regulator's middle projections, we know that the charges and fees associated with a personal pension arrangement would have acted as a 'drag' on growth. Mr L would also be taking on investment risk that he didn't currently have with the DB scheme.

The FPR itself referred to a mid-growth rate for the proposed transferred funds as being 3.8%. The transfer analysis refers to the same rate. So, taking account of everything I've seen, I don't think anything substantiates that growth rates exceeding the critical yields set out above were likely. In my view, there would be little point in transferring away from a DB

scheme from a financial comparison perspective only to achieve retirement benefits of a lower value to those which Mr L already had.

In its response to my PD, AJH says that we now know the actual growth outcome has been higher. It said, *“the annual growth of the plan since inception is noted as 4.9% pa and 4.3% during the past year. It should be noted that this growth has been achieved during the most unprecedented economic times in our history”*. For the outcome of this complaint, I’m afraid I’ve found this an unpersuasive argument. On one hand it is merely using the benefit of hindsight instead of looking at what the adviser should have considered realistic at the time. On the other hand, these outcomes, even if accurate, are still below the critical yield rates and they imply therefore that Mr L has lost out as a result of transferring.

Elsewhere in its transfer analysis, AJH also made mention of the PPF, a type of compensation scheme providing a ‘safety net’ for pension schemes when the sponsoring employer becomes insolvent. AJH said the critical yield to match the benefits available through the PPF were slightly lower than the others. But these yields related to the *reduced* benefits available with the PPF and I don’t think if advised Mr L would have wanted to transfer to this scheme – AJH itself said this in its final response letter to our Service.

I’ve noted that AJH also presented Mr L with certain scenarios where transferring out his pension to a personal arrangement could apparently enable him to draw a pension well into his old age. However, I’ve looked at the examples given and I note that some of these amounts run out of funds before his average life expectancy age. And if remaining with a DB scheme such as BSPS2, the pension would last for all Mr L’s life. But more so, these examples weren’t comparing ‘like with like’ as they lacked a direct compatibility with the DB scheme Mr L would be giving up. So the guarantees and benefits associated with BSPS2 were not replicated in the income models Mr L was shown.

What I’ve seen therefore shows Mr L would most likely receive lower financial benefits at retirement if he transferred out. However, to be clear, AJH’s recommendation that he should transfer out to a personal pension was not predicated on the financial comparisons with his current scheme alone. Rather, AJH said Mr L had different 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 above.

I’ve considered these below.

Flexibility and other needs

AJH recommended a transfer to a personal pension based on what it said were Mr L’s wider objectives. The FPR listed a number of areas where it promoted transferring for different reasons. I’ve summarised the following themes, as supporting the recommendation to transfer away:

- The ability to retire early.
- More flexibility. AJH said *“you would prefer the increased flexibility in relation to when and how your benefits are accessed.”*
- AJH said Mr L wanted his wife and children to benefit in the event of his death and that a personal pension was more beneficial in this regard.
- The future of the BPS was a concern and Mr L didn’t want to enter the PPF.

AJH also said, *“This recommendation also benefits you as:*

- *You are able to access up to the maximum 25% Tax Free Cash element of your pension benefits without taking any income.*
- *When taking benefits there are no restrictions on the amount of money you can withdraw at any one time.*
- *You can invest in a wide range of investment funds that have the potential for growth over the longer term.*
- *The death benefits are completely tax free before the age of 75 when paid to your beneficiaries and only taxable at their marginal rate of tax after 75.*
- *You are to be able to vary the underlying funds and risks, including the use of a cash fund within the pension to reflect any changes in your personal circumstances.*
- *If you wish, you are able to access your benefits early without the need to consider early penalty factors”.*

So, it seems the supporting reasons that AJH recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr L. I have therefore considered all these issues in turn.

- *Retiring early / taking tax-free cash*

AJH mentioned in various documents from the time of the advice that Mr L had said he wanted to retire early, potentially at the age of 60. I've also noted AJH's representative makes some assertions about why Mr L would be likely to *need* to retire early, basically because of the heavy industry he worked in. However, in my view these are somewhat baseless comments, unsubstantiated by any analysis or data. I said the comments were unsubstantiated when I issued my PD. But AJH mentioned this apparent need to retire early again, after I issued my PD. Again however, it failed to elaborate – its case here is basically that it knows of some other clients who found working in heavy industry to be the cause of health problems in later life. It therefore makes the connection that retiring early is necessary. However, I continue to find these comments baseless and unsupported and there is no credible case for saying Mr L, a 34-year-old, would need to retire early.

Nevertheless, I certainly don't doubt that Mr L might have genuinely hoped to retire early. But I've seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr L was only 34 years old at the time and he was in good health. And in these circumstances it's simply not credible that he had any concrete plans for retirement at that point.

AJH also promoted to Mr L that he could access 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 often 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 for Mr L, all this was decades away and AJH should have been telling Mr L at the time that extra tax-free lump sums being removed from a personal pension, potentially from his late fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease. In its reply to my PD, AJH says he was told about these things, but of course, we know that AJH still recommended the transfer, nonetheless.

Even if I were to consider the highly unlikely scenario that Mr L's retirement plans were more fixed than the mere aspirations set out by AJH - and as a 34-year-old man with a mortgage

and dependent children, he really did believe he could plan to retire early - I think AJH should have assessed the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr L, although this would have meant Mr L's pension benefits would have been somewhat different due to him accessing the pension earlier and for longer. But I think this was discounted by AJH as I've seen no evidence it was realistically discussed with a view to assessing whether it was more in Mr L's best interests. The advice simply focussed on him transferring away completely and referred to early retirement under the DB scheme as "penalties".

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other options Mr L faced, including opting for the BSPS2.

- *Flexibility*

I can't see that Mr L could yet be said to require flexibility in retirement in the way AJH suggested. AJH set out the estimated annual pension upon his NRA which Mr L would get. As a DB pension this was guaranteed and index linked (with certain restrictions).

However, as he was so young, it wasn't really possible to say what Mr L's financial and income needs were likely to be in retirement. And I haven't seen anything to persuade me that Mr L wouldn't have been able to meet his *likely* retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan. This is because, as well as retirement being a long time away, we know Mr L had already joined his employer's new defined contribution ('DC') scheme and could have been making contributions to it for up to thirty years more, until he retired. Mr L's contributions to this 'second' pension were being added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme (in BSPS2).

I think therefore, that by retirement, Mr L could have been in a good position if he'd transferred to the BSPS2. On one hand he'd have had a long-standing DB pension, but one with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial DC pension over many years, which, if he later found he did require flexibility, this pension could have provided it.

I have therefore considered what AJH said about retiring early and the potential flexibility brought about by transferring to a personal plan: it said this would include how funds were invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element.

However, I don't think recommending a transfer-out based on these reasons was suitable because so little was known about what his retirement would look like. I've also seen nothing which shows Mr L had either the desire or capacity to exercise personal control over his pension. Mr L's previous exposure to investing was not really known and he had no such investments at the time. And to grow the transferred funds in the way AJH implied he could, a higher degree of risk exposure would have been required.

So, I think Mr L's circumstances were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so, and then drawing a DB pension. Because he also had a 'second', DC pension, this supported that strategy, in my view.

I therefore think the much more suitable option was for Mr L to access his DB pension in the way it was originally intended.

- *Death benefits*

AJH says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr L died.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to Mr L. But whilst I appreciate death benefits are important to consumers, and Mr L might have thought it was a good idea to transfer the BPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think saying Mr L's death benefits would improve in a personal pension because he could pass over all his funds needed putting into context. Only in his early thirties and in good health, he and his wife had a family. In my view, the likely spouse death benefits attached to the new DB scheme were therefore very relevant to Mr L and from what I've seen, the death benefits were substantially underplayed.

The spouse's pension provided by the BPS2 were useful to Mrs L if Mr L predeceased her. As a father, I think the child specific benefits would also have been meaningful to Mr L because his children would be able to benefit from the DB scheme up until they left full-time education; and for them this was still some time away. These were guaranteed benefits and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. I therefore don't think AJH made the value of this benefit clear enough.

In any event, there may not have been a large sum left in a personal pension upon Mr L's passing, particularly if he lived a long life. The main purpose of a pension is to provide retirement income. AJH should therefore not have encouraged Mr L to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

It also doesn't appear that AJH took into account the fact that Mr L could have nominated someone else close to him as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr L had already ensured part of his pension wouldn't 'die with him'.

I note life insurance was discussed in this case. At 34 years old, this would have been a reasonably affordable product if Mr L really did want to leave a legacy for someone such as a partner or children. A form of 'term' insurance could have been considered, as opposed to a 'whole life' policy which would be much more expensive.

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

Concerns over financial stability of the DB scheme

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

So, it's quite possible that Mr L was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it

was AJH's obligation to give Mr L 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 Mr L's concerns about his scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that AJH should have reassured Mr L that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr L through the PPF would have still probably provided a reasonable 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 in a new personal pension. 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 AJH's recommendation to Mr L to transfer out of the DB scheme altogether.

Other issues

I noted a persistent theme in the documents of Mr L's apparent desire to 'grow his pension' and he selected this objective on one of AJH's forms. Although AJH portrays this as a rationale for transferring, this was no more than a 'stock' objective with no real meaning, in my view. As our investigator pointed out, if asked, just about everyone would say they wanted to do this.

I've also noted that AJH says Mr L came to it with fixed views about transferring away. To me, this just demonstrates AJH's weakness here – it was AJH which was the regulated financial adviser and it was being paid for advice. So AJH's job wasn't simply to transact what Mr L might have thought he wanted; its job was to really understand his circumstances and give advice which was in his best interests.

In a similar way, AJH implies now that Mr L had a preference for potentially going into the PPF at some point. Long after the deadlines we'd set for responses, it says his "Time to Choose" document says he'd consider moving to the PPF rather than BSPS2. AJH also blames Mr L's representative for not supplying the "Time to Choose" document until now.

To be clear however, there's no doubt here that AJH advised Mr L. In that context, I'd have expected it to acquire all the relevant documents from the time before issuing its advice. AJH should also know that all relevant documents from these advice sessions should be retained. Again, it's also clear enough that Mr L only subsequently transferred as a result of AJH's specific advice. Whether or not he thought, at some point, that the PPF was worth considering isn't therefore relevant. That's because I've seen clear enough evidence that AJH acted as his adviser and the subsequent decision to transfer away was based on what AJH advised Mr L to do.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr L. But ultimately, I don't think the advice given to Mr L 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 L 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 AJH 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 L's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties that BSPS2 was likely to be going ahead. Mr L still had many 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 L would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. As he was married, then Mr L's wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr L chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think AJH should have advised Mr L to opt into the BSPS2.

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

I'm not persuaded that Mr L would have insisted on transferring out of the DB scheme, against AJH's advice if it had been different. I say this because this pension accounted for almost all of his retirement provision at the time. So, if AJH 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 L'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 AJH had explained Mr L 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 AJH should compensate Mr L 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 L, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr L would most likely have remained in the occupational pension scheme and moved with it to join the BSPS2 if suitable advice had been given.

AJH 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>.

AJH 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 L and our Service upon completion of the calculation.

For clarity, Mr L has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 L'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, AJH should:

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

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

Distress and inconvenience

I've considered the impact on Mr L of the unsuitable advice and transfer. Our investigator recommended that a sum of £250 should be paid to Mr L by AJH for what he referred to as the trouble and upset caused by this unsuitable transfer. I've taken into consideration Mr L's age and circumstances and also that by retirement this DB pension would still have been a reasonable part of his overall pension entitlement. So I think the thought of losing benefits would have negatively impacted Mr L. I therefore agree that AJH should also pay Mr L £250 for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning.

My final decision

Determination and money award: I am upholding this complaint.

I now direct AJH Financial Services Ltd to pay Mr L 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 AJH Financial Services Ltd to pay Mr L any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require AJH Financial Services Ltd to pay Mr L any interest as set out above on the sum of £160,000.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 July 2023.

Michael Campbell
Ombudsman