DRN-4184308

The complaint

Mr N complains about the advice NTM Financial Services Ltd ('NTM') gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr N'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'). 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 N'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 September 2017, the BSPS provided Mr N with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £103,636.

The following month, 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. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017). If Mr N didn't make a choice the default position was that his pension benefits would move to the PPF.

Mr N initially contacted another firm which advised him to transfer his DB scheme funds to a personal pension. But after the regulator removed that firm's permission to give pension transfer advice Mr N approached NTM in January 2018.

NTM met with Mr N on 2 January 2018. It completed a fact-find with him and an assessment of his risk appetite. It also obtained a transfer value analysis ('TVAS') report. Amongst other things, NTM recorded that Mr N was age 57 and married to Mrs N aged 54. They had one non-financially dependent daughter. Mr N was employed earning around £37,000 a year. Mrs N was also working and earning around £21,000. They owned their home which was valued at £280,000, subject to an interest only mortgage of £180,000. Mr N had £16,000 in debts. He jointly owned six buy-to-let properties with a relative. His share of the equity in the properties was around £150,000. He had recently joined his employers defined contribution ('DC') pension scheme. Together with his employer they were paying 14% of his salary into that. Mr N had not opted into the BSPS2. He had an entitlement to another DB scheme pension, worth around £8,000 a year at age 65, from a previous employer. That employer had become insolvent and his pension fund had gone into the Financial Assistance Scheme ('FAS')[1].

NTM set out its analysis and recommendations in a suitability report dated 15 January 2018. The same day it met with Mr N to go through its recommendations. Amongst other things it said that while Mr N's answers to its attitude to risk questionnaire indicated he was a low risk investor, given the risk he had taken with his buy-to-let mortgages, it assessed him as having a balanced attitude to risk. It said Mr N should transfer his DB scheme funds to a named SIPP. In brief it said doing so would allow him to:

- Immediately access a tax free cash ('TFC') lump sum of £25,000. From that he could use £16,000 to pay off 'bad' debts, which would improve his credit worthiness and allow him some liquidity.
- Avoid his pension moving to the PPF.
- Retire on an income of £22,500 a year.
- Take higher benefits than he could from the PPF.
- Pass any residual pension left on his death to his wife as a lump sum.

Mr N accepted NTM's recommendation and transferred his DB scheme funds to the named SIPP. NTM charged Mr N £2,500 for its advice and arranging the transfer. It would also charge him 0.65% of the fund value each year for ongoing advice. The charges the SIPP provider applied were 0.99% of the fund value each year.

In 2022 after attending a seminar run by the regulator, Mr N became concerned that NTM's advice might not have been suitable for him and complained. NTM replied in 2023. It didn't uphold his complaint. In short it said that as he hadn't opted into the BSPS2 his only options were allowing his benefits to move to the PPF or transferring. If his pension benefits had moved to the PPF Mr N wouldn't have had the option to pay-off his debts promptly. It said from age 65 the PPF would pay him a pension of £5,124 a year but he could take benefits at a higher rate of £5,485 a year from a SIPP and this would last beyond his life expectancy.

Mr N asked the Financial Ombudsman Service to consider his complaint. One of our Investigators looked into it. He thought it should be upheld. Amongst other things he said NTM was wrong to say that the deadline for Mr N to opt into the BSPS2 had expired, so NTM should have considered that option. The Investigator added that NTM should have considered other avenues, other than Mr N giving up his DB scheme benefits, to address his financial concerns including selling buy-to-let properties. The Investigator also said Mr N was likely to be worse off in retirement as a result of transferring.

NTM didn't provide a substantive response to the Investigator's complaint assessment. So, as the matter couldn't be resolved informally, it's been referred to me for a final decision.

After my initial file review, we noted the BSPS2 wasn't an option for Mr N by the time NTM advised him. So our Investigator wrote to NTM and Mr N to explain that if I did uphold the complaint, I would award redress in comparison with Mr N taking benefits from the PPF rather than the BSPS2.

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[1] The FAS is a Government funded scheme which provides financial assistance to members of certain defined benefit pension schemes. Generally eligible members had lost all or part of their pension following their scheme winding up due to being underfunded, between 1 January 1997 and 6 April 2005. The FAS is administered by the PPF, on behalf of the Department for Work and Pensions..

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.

In responding to this complaint NTM has made a number of detailed points. But, in this decision, I don't intend to address each and every matter raised. Instead I will focus on the issues I see as being at the heart of Mr N's complaint and the key reasons for my decision.

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 recommending a transfer if it could clearly demonstrate it was in Mr N's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator grave.

Reasons for my decision

The regulator required NTM to obtain a TVAS showing how much Mr N's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). NTM's TVAS showed two such comparisons, the first was with Mr N's benefits from the BSPS and the second with Mr N's benefits if he allowed his pension to move to the PPF.

However, Mr N couldn't remain in the BSPS as that was coming to an end and the deadline for him to opt-into the BSPS2 had passed before Mr N approached NTM. So that wasn't an option for him. I note our Investigator said the BSPS2 deadline had been extended into January 2018. But that wasn't right. He made that comment after contacting the BSPS administrators to check on the applicable deadline dates. The BSPS administrator concerned told him the deadline had been extended to 15 January 2018. But the BSPS administrators have since confirmed that the deadline to opt into the BSPS2 was 22 December 2017 and wasn't officially extended. So, as this was a one-time only process, Mr N couldn't, at a later date, have changed his mind and opted for the BSPS2. That meant Mr N was only left with two options:

- Allowing his pension to default to the PPF.
- Transferring to an alternative arrangement.

As such the only comparison within NTM's TVAS of any real value was looking at the benefits after a transfer to a personal pension against those provided by the PPF. So that's what I've focused on below.

It's worthwhile noting that Mr N said his preferred retirement age was 63. NTM said it didn't think retirement was viable for him at age 63 and instead said age 65 would be more appropriate for him. NTM's TVAS didn't show any figures for comparison purposes if Mr N had retired at his preferred age of 63. So I will only refer to the figures from the scheme's normal retirement age of 65 with the benefits from the PPF.

The critical yield - how much Mr N's pension fund would need to grow by each year in order to provide the same benefits as the PPF was 8.87% to match the full pension he'd have been entitled to at age 65. Or to match the maximum TFC and reduced pension the scheme would provide at that age was 8.22%.

NTM decided Mr N had a balanced attitude to risk, even though his answers to its questions about his risk tolerance indicated that his risk appetite was low. However, even with a balanced attitude to risk NTM recognised the critical yields were "impossible to achieve" over the longer term. In other words NTM identified that transferring would most likely mean Mr N would be worse off in retirement by doing so. I agree with NTM's analysis here. But I don't think it did enough to make it clear to Mr N that he was, most likely, making himself poorer in retirement by transferring. Instead I think NTM to some degree did the opposite.

NTM noted that Mr N's income from the PPF – if he did not take TFC – would be £5,124 a year at age 65. In contrast it said that by transferring he could take an income (without TFC) of £5,485 from a SIPP. In other words it said Mr N would be better off by transferring.

Elsewhere in the report NTM said that if Mr N took TFC and a reduced income from a SIPP equivalent to those from the BSPS – which were higher than Mr N's PPF entitlement – the funds would last well beyond his life expectancy. But I don't find NTM's figures to be reliable.

NTM calculated that if Mr N's transferred fund grew by 5% each year then by age 65, before he began withdrawing an income from it, the fund could be worth £142,000. But there appears to be errors in NTM's TVAS on which its figures are based.

Mr N's CETV was £103,636. But, from that the SIPP provider would deduct NTM's fee of £2,500. That would instantly reduce the amount invested to £101,136. The TVAS shows year-on-year growth figures and the fund values if it grew at low, middle and high rates of 2%, 5% and 8% respectively. So, without allowing for charges or inflation by my calculations, at the end of year one, the initial CETV sum of £101,136 could have grown to:

- £103,159 (2%)
- £106,192 (5%)
- £109,227 (8%)

But the equivalent figures in NTM's TVAS are:

- £107,247 (2%)
- £110,401 (5%)
- £113,555 (8%)

In order to achieve NTM's figures the starting point for the initial investment would have to be £105,143. That sum is over £4,000 above the initial investment amount. So it seems that NTM's starting figures were most likely wrong. That means the amounts the funds would subsequently grow by would also be wrong and the amount available to Mr N at age 65 would be incorrect. That also means the amounts he could withdraw from the fund and how long those would last him would also be wrong.

In addition, the SIPP provider produced an illustration of what Mr N's fund could be worth if he retired at age 63 after investing in funds within the SIPP. It didn't give figures if Mr N retired at age 65. The provider's figures were based on yearly growth of 5% but adjusted for the effects of charges and inflation. That illustration showed, without taking an initial TFC sum, in six years time, the fund could have a value of £107,000. This compares with NTM's TVAS figures which shows that, given a 5% growth rate, Mr N's fund at age 63 could be worth £131,598. That sum is more than 22% above the SIPP provider's illustration. I think that shows how unreliable NTM's portrayal of the likely benefits Mr N would receive from transferring would be.

Further a key factor in NTM's recommendation was that transferring would allow Mr N to immediately take 25% TFC. It recommended he use £16,000 to pay off debts and retain a further £9,000 as liquid funds to help his cash flow. So if Mr N had taken 25% TFC of £25,284, the initial sum invested would have reduced to £75,852 overnight. So in order for that sum to reach the £142,000 NTM's figures were based upon would require a growth rate of over 8% a year (without allowing for charges or inflation). That growth rate was broadly equivalent to the initial critical yield to match the PPF benefits, which NTM had said was impossible to achieve. So the prospect of Mr N's fund actually growing to the levels NTM used in support of its recommendations appear remote.

It follows that I don't find NTM's presentation of the figures to be fair and reasonable or likely reflective of Mr N's situation in retirement. Rather than plainly explaining to Mr N that by following its recommended strategy he would almost certainly have a lower income in retirement, NTM gave him the impression that his benefits could be higher. I think that was very unlikely to be the case. For that reason alone, I don't think NTM's recommendation to transfer was in Mr N's best interests.

NTM also argued the transfer was suitable for Mr N because it allowed him to achieve other objectives such as paying off his "bad debt". NTM recorded Mr N was repaying his debts by means of an individual voluntary arrangement (IVA)[2]. Mr N told our Investigator that he did have debts of around £16,000. He said he'd incurred those largely because of periods when some tenants in buy-to-let properties didn't pay rent and caused damage to his properties which required repair before they could be re-let. Mr N had missed some mortgage repayments as a result. But he said his agreements to repay his debts weren't on an IVA basis and no court had been involved. He said the agreed repayments were affordable. So he had no need to take money from his pension fund in order to settle the debts.

It's clear Mr N did have some debt issues. But there's little evidence on file of exactly how pressing those were. NTM said repaying debts was Mr N's main focus. However, while it

[2] An IVA is a formal and legally binding agreement between a debtor and creditor to repay a debt. IVA's are approved by the court.

said he owed £16,000 there's no documents showing exactly who the debts were owed to, his repayment arrangements, when those would end or in fact on what basis the debts were being repaid. So there's little evidence that this was an immediate concern for him that would make repaying them his priority.

In fact Mr N told us he was meeting his debt repayments without any difficulty. So, even if he told NTM that clearing his debts was his immediate concern, given that his payments were affordable, NTM should have cautioned him as to whether that was the most suitable approach in the circumstances.

Mr N told us that, following the transfer, he did take out £16,000 from his fund. But he said he didn't do so in order to repay the debts. In fact he's provided emails from a debt repayment agency showing he's continuing to repay credit card debts, arising in 2013, which he was repaying at £10 a month each. He said those debts were interest free and as the payments were easily affordable he had no need to use pension funds that could otherwise be benefitting from investment growth to repay them. He said he was repaying his other debts on similar terms. Rather than paying debts, he told us he intended to use his cash withdrawal from his pension fund to help acquire another buy-to-let property. Although, eventually, that didn't happen and he kept the sum in cash. So it appears that repaying his debts wasn't as important as NTM believed it was.

That said, it seems likely that Mr N's debt position was lowering his credit worthiness and that would affect his options when securing mortgages at favourable rates, both for his home and for his buy-to-let properties. And NTM said that by settling his debts he could improve his credit score. But NTM hasn't gathered any evidence of when Mr N's buy-to-let loan deals would end or what the likely replacement mortgage rates would be when that happened. So there's little evidence that he needed to repair his credit file immediately. And in any event, Mr N had other options for clearing his debts if that was what he chose to do.

Rather than giving up the guarantees from his DB pension NTM might have been better to advise Mr N to consider selling one or more of his buy-to-let properties. All of his properties had equity in them. Mr N's total share of that equity at the time was around £150,000. I understand he jointly owned the properties. I also understand that property sales could be affected by the current market, the length of existing tenancy agreements, early mortgage redemption penalties and also the possibility of incurring a Capital Gains Tax liability. But, those issues didn't make sales impossible or improbable. However, NTM didn't gather the relevant information to establish the details of those factors. So it didn't find out whether or not Mr N could meet his financial needs by releasing funds from his properties, rather than giving up the guarantees available from his DB pension.

In fact NTM recorded on its fact-find that Mr N intended to start selling the properties in March 2018, only two months down the line. NTM also noted that, while he had no "specific agenda" Mr N planned to sell all the properties before he was 65. Mr N's told us his plan had always been to sell one property every year or so. And since NTM's advice, he's sold four of his properties. But NTM's suitability report doesn't reflect that Mr N would, most likely, begin the process of freeing up equity from one of his buy-to-let properties only months after it gave its advice and that this could go some way to addressing any debt issues he had.

Also, I'm aware NTM said Mr N was concerned that his mortgage on his home was on an interest only basis and he wanted to repay this before he retired. At the time Mr N didn't have any savings. He said that was because he'd been overpaying on his mortgage to reduce the sum. He was also diverting £500 a month to contribute towards his daughter's wedding, later that year. So it's not the case that Mr N's financial situation was so dire that he didn't have any disposable income and needed to transfer his pension to release cash. Instead, he was using that income for specific purposes. And, presumably, he wouldn't have to continue diverting money to his daughter's wedding fund after she married. So, at that point he would have a further £500 a month available with which he may want to consider switching his mortgage. Alternatively he could have used some of the funds from releasing equity from the sale of a buy-to-let property to reduce the mortgage burden on his home to something more manageable. So I don't think it was the case that Mr N's financial position was so precarious that the fitting solution was to give up the benefits from his DB scheme.

NTM also said the lump sum death benefits available from transferring to a SIPP would be better for his wife than the spouse's pension the PPF would pay. But NTM's priority should have been to advise Mr N about what was best for his retirement. And the spouse's pension the PPF would pay could have been valuable to his wife in the event of his death. Also there may not have been a large sum left in the SIPP if Mr N lived a long life, he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event, NTM should not have encouraged Mr N to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

I'm also aware Mr N had concerns about his pension benefits moving to the PPF. He'd already been unfortunate enough to see one of his DB pension funds move to the FAS. And he wasn't keen for that to happen with his BSPS fund. But it was NTM's role to objectively address those concerns.

I've noted that both Mr N and NTM referred to his former employer's pension as already being in the PPF. But that's not right. It is the PPF which administers the FAS but the two schemes (PPF and FAS) are not the same. They are funded differently and their benefits aren't identical. For example, the FAS doesn't allow early retirement, nor does it give the option of TFC and a reduced pension. But, in appropriate circumstances. the PPF allows both of those things. However, NTM didn't point this out and instead referred to Mr N's former pension as being a PPF pension throughout. That wasn't the case.

Also while Mr N might have found the prospect of his DB pension moving to the PPF concerning, the PPF still would have provided him with a guaranteed income, the possibility of early retirement and the option of accessing tax-free cash. Mr N was unlikely to improve on these benefits by transferring. So, entering the PPF was most likely not as concerning as he might have thought. So 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 N's best interest to give up his DB benefits and transfer them to a SIPP. And I also haven't seen anything to persuade me that Mr N would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think NTM's advice was unsuitable for Mr N.

Putting things right

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

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 N 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 N has told us that he isn't currently working due to a health issue. And, while he has accessed some TFC he has not drawn any other pension income. So, compensation should be based on the scheme's normal retirement age, 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 N'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 N redress as a cash lump sum payment,
- explain to Mr N before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr N receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr N accepts NTM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr N for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr N's end of year tax position.

Redress paid to Mr N 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 N'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 N the compensation amount as set out in the steps above, up to a maximum of £170,000.

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

If Mr N 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 N can accept my decision and go to court to ask for the balance. Mr N 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 N to accept or reject my decision before 6 December 2023.

Joe Scott
Ombudsman