DRN-3696034

The complaint

Mr F complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

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 F'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 F'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 F was concerned about what the announcement by his 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 F was 26 years old, unmarried and with no dependent children.
- Mr F lived at home with parents. However, he had significant savings in deposit type accounts and an individual savings account (ISA).
- Mr F earned around £35,000.
- With around six years' service, the cash equivalent transfer value (CETV) of Mr F's BSPS was approximately £44,615. The normal retirement age (NRA) was 65.
- Mr F had joined the new TATA defined contribution (DC) pension scheme as a consequence of the BSPS ceasing new contributions.

NTM set out its advice in a suitability report on 10 January 2018. In this it advised Mr F to transfer out of the BSPS and invest the funds in a type of personal pension plan. NTM said this would allow Mr F to achieve his objectives. Mr F accepted this advice and so transferred out. In 2021 Mr F complained to NTM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr F referred his complaint to our Service. I'm very sorry the complaint has taken so long to reach this stage. One of our investigators looked into the complaint and said in July 2022 it should be upheld. In response, NTM asked for a number of extensions to think about the investigator's view. But ultimately it said it hadn't done anything wrong and was acting on the financial objectives Mr F had at the time.

I've also recently gave the business an opportunity to consider whether it wanted to resolve the case. However, as it seems this complaint can't be resolved informally, it's therefore time for me to make a final decision.

What I've decided – and why

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

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.

<u>The applicable rules, regulations and requirements</u>

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 F's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr F's best interests. I have also carefully considered the final response letter from NTM. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr F'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 F ever made that choice. However, there's no evidence that he did. Perhaps understandably, he can't remember now if he ever filled out his "Time to Choose" form although he does recall that at the time he was having difficulty sourcing an adviser to help him due to the number of British Steel employees seeking help. But there's no documentation, which I've seen, showing he did make a choice to say he wanted to join the BSPS2. And we know that if no choice was made then the member would eventually move from the BSPS, which was no longer an option, to the PPF, if they didn't transfer away to a personal pension type arrangement.

To be clear, I don't think Mr F ever made an election to join the BSPS2 ahead of the deadline. I say this because the documentation I've got access to overwhelmingly refers to events in January 2018. For example, I can see a client letter of engagement was produced by NTM on 8 January 2018 and signed by Mr F. A 'fact-find' was also produced and this is dated the same day, as is an attitude to risk (ATR) questionnaire. Further to these documents, the pension analysis report is dated 10 January 2018 as is the recommendation (suitability) report. Confirmation he'd been given regulated advice was on 17 January 2018 and everything else I've seen refers to dates in January 2018.

So, all this was several weeks after the 'hard' deadline of 22 December 2017 I've mentioned above and where members of the BSPS needed to make a choice. I therefore think the advice process was only conducted throughout January 2018 and beyond by NTM.

However, I don't think the adviser either understood, or at the very least, promoted the relevance of these dates to Mr F. The advisers referred several times to comparisons with the "BSPS" even though this was no longer an option. What the adviser should really have been focussing Mr F on was the actual choices he still had left, which was simply to either move into the PPF or transfer away to a personal pension plan. Mentioning the BSPS in the way the adviser did, was in my view, confusing. It was demonstrative of NTM's poor advice.

I should say that none of this really matters to the actual *suitability* of the advice – it was clearly unsuitable in many respects. Nevertheless, it does matter to the redress that could be due for providing the unsuitable recommendation to transfer away from a DB scheme: redress should be measured against as if the member would have joined the PPF, rather than previously electing to join the BSPS2.

This is a departure from the redress recommendation made by our investigator which I've already corrected with both parties. Neither party has told me that Mr F ever elected to join the BSPS2 within the time allowed. So redress will be based on the PPF as this was his only other option.

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, details of which had emerged, or the PPF which was by that time the only alternative Mr F had.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr F was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

NTM said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 5.98% if Mr F took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.4%. However, NTM also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr F had apparently expressed a desire to retire early. Measured against *the PPF* upon retiring at 65, the critical yields came out at 4.95% (no tax-free cash) and 4.77% (with tax free cash) respectively.

However, as I'll explain more about later, retirement was still a very long way off for Mr F and so I very much doubt whether retiring at 60 was anything more than something he just aspired to, rather than being part of a real plan. He was only 26 years old and had literally decades before retirement would even come into focus for him. So, predicting whether or not he might take a lump-sum at retirement was quite obviously premature and in my view it lacked credibility.

Nonetheless, NTM said the critical yields at age 65 and 60 were achievable over the long term and could *"potentially match the benefit that is offered by the British Steel Pension Scheme at the different ages"*. But all this needed a careful explanation, not least because the BSPS was being closed and was no longer available. I also think the assertion the critical yield growth in Mr F's case might be achievable was misleading as it wasn't evidenced by any analysis showing how this could realistically happen. In fact, I don't think there was any reliable evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be attainable. I say this with the following in mind.

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 4.4% per year for 38 years to retirement (age 65), which is below the critical yield figures I've referred to above. Using NTM's retirement suggestion of 60, the discount rate was only 4.1%. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. However, these figures had been in place for many years and they existed unchanged through a period of extraordinary low interest rates and bond yields. So, if anything, these assumptions were somewhat higher than the reality of the economic climate in early 2018.

NTM simply couldn't predict a retirement age so far in advance. And as I've also said above, the adviser lacked clarity over what he was measuring the critical yields against. We know the BSPS was already closing and Mr F had missed the deadline to join the BSPS2. So the adviser continually mentioning "BSPS" in the advice was confusing. What was relevant here was that the discount rate of 4.4% could have been considered alongside the critical yield for a retirement at 65 using the PPF, which was 4.95%. I think this comparison would have been cause for caution as it implied Mr F might receive lower retirement benefits, not higher. That's because the discount rate for this scenario was *below* the critical yield rate thus implying that from a starting point, there was no obvious evidence pointing to Mr F achieving better retirement benefits by transferring to a personal pension plan. The opposite appeared to be true.

At the time, NTM assessed Mr F's attitude to risk (ATR) as "average". But in reality, Mr F had no previous experience of these types of investments. He evidently ticked a pre-populated box to say he understood the workings of shares, but there was no evidence he possessed any at the time. He'd also never invested personally in 'money market funds', so he had no relevant experience to draw upon. I accept he'd joined the new TATA DC scheme which involved investing, but again I've seen nothing showing this was conducted under anything other than an 'off the shelf' investment strategy which required no direct investment decisions from Mr F himself. In any event, he'd only just joined this a few months before. I've also noted that although he had around £60,000 in savings, there's no evidence these funds were held in anything other than deposit accounts or cash ISAs.

In my view, the adviser used a pre-populated questionnaire to arrive at the "average" ATR categorisation. However, they seemed to ignore the fact that Mr F was a 26-year-old man with no such investments and - certainly at his age - with probably very little idea of what retirement might look like. I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's projections and also to the discount rate were most relevant here in my view.

So, using everything I've set out above, I think growth assumptions of around 4-to-4½% were more realistic. These were below the critical yield figures which NTM showed to Mr F. I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was more unlikely than likely. 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 F, would have further reduced the likely growth assumptions. In my view, there would be little point in transferring away from a type of DB scheme (or the PPF) to get financial benefits of only a similar value. But here, even this relatively 'low bar' wasn't being reached. Looked at through the prism of 2017, there was no compelling evidence of Mr F's transferred funds growing by enough to make transferring a really worthwhile exercise based on his 'actual' ATR. A recommendation to transfer should not have been made on this basis.

I've also noted that using the NRA of 65, NTM's own transfer analysis said that even in order 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 £134,837. This was three times more expensive than Mr F's CETV – and for a much inferior pension.

No such amount was provided in respect of the PPF type benefits although I think I can safely say the cost could have been moderately lower. But to reiterate, the above figure is found in NTM's own analysis. And because this figure is far above Mr F's CETV, it represents, in my view, a revealing window into the value of the guaranteed pension Mr F could be giving up by transferring away to a personal plan.

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 F would likely receive lower pension benefits in the longer term.

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 F well into retirement. However, I think most of these were based on growth projections using past performance. It's also fair to say these were not comparing like-with-like. What NTM was showing Mr F were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

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 F 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 probable poorer benefits mentioned earlier.

I've considered these below.

Other needs and objectives

NTM recommended a transfer to a personal pension plan based on what it said were Mr F's wider objectives.

It said that *"by transferring the pension to a Defined Contribution arrangement this will give you the control of your retirement affairs that you want".* It also said*, "the pension protection fund (PPF) provides excellent protection and would secure most of the income you desire. There would be a 10% drop in your benefits if you allow your pension funds to be transferred to the PPF. However, you would not have any flexible benefits to shape your income, the ability to take more income earlier in your life, ability to tax plan using the tax-free cash"*.

NTM said Mr F wanted to control his own destiny in retirement and felt let down by the company and the wider industry. So, I have used all the documents we still have from the advice sessions to summarise the rationale for the recommendation for him to transfer away; I have noted the following themes:

- *He apparently wanted to retire at 60*
- *He was apparently attracted to the flexibility of taking control of his pension benefits, being able to control how much income he took and when. He said he would like an income of £2,000pm in retirement*
- *He had no requirement for a spousal pension at that time, preferring to leave any residual pension funds to his family*

I have therefore considered all these issues in turn.

Retiring early

I've taken into account that Mr F approached NTM for advice because of the uncertainties he faced with the BSPS.

However, as I've mentioned above, Mr F was still only 26 years old. In this context, I think NTM's adviser saying Mr F had specific uses for his retirement funds lacked any standing. I think it's important to focus for a moment here on just how young Mr F was. The evidence I've seen here is that Mr F – understandably - had absolutely no plans whatsoever for his retirement. With over 38 years still left to when he'd be actually contemplating retiring if using his NRA, there's simply no way that what he might possibly use the money for, should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement and which Mr F had no meaningful experience of.

So whilst I'm sure, like most people, Mr F probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been vague retirement aspirations on his part. In reality, there was no plan to retire early. It was simply far too early to speculate about this.

I therefore think that everything that flowed from predicting Mr F's retirement was flawed. For example, I don't think there's any real credibility behind Mr F estimating how much he'd need to live on each month when he retired as this was so far off. I think it's likely this was instigated by the adviser. But as our investigator explained, he still had his whole life ahead of him and it's reasonable to assume he'd potentially meet a partner and possibly have children. And even if his life did not follow this pattern, there were many years in which his personal and financial circumstances would almost certainly change. The adviser should have seen this very obvious uncertainty and incorporated it into their advice. Likewise, as I've explained, I don't think the adviser could have possibly determined whether or not Mr F might access a lump-sum upon retirement or even how he would access his retirement benefits at all.

I think the adviser should have noted a clear vulnerability here in advising someone so young to withdraw from a guaranteed pension.

Flexibility and control

I also can't see that Mr F required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by NTM. I therefore think this was 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 F required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr F and his employer - 6% and 10% respectively and still had up to 38 years left to run (over 33 years if he did eventually retire early). So, this secondary pension would have afforded Mr F any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr F 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 F could have been in a very agreeable position. On one hand he'd have a small but meaningful existing deferred DB scheme. 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 the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time and it's not unreasonable to say he'd have amassed a substantial six-figure sum in this by retirement. So, if Mr F ever found he needed so-called 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 F had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr F was being offered the opportunity to move to the PPF. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB-type scheme nonetheless and was run for him by trustees. Mr F himself had no experience of these types of other DC 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £44,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr F 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. I'm not going to use up time explaining what these figures were because retirement was so far away in the future as to make these estimates almost completely irrelevant. However, NTM accepted without any apparent challenge that Mr F might have needed around £2,000 per month in 'todays' money – something I seriously question given the incredibly distant timescale. What the adviser was accepting here was that Mr F could estimate how much he'd need each month in around 38 years' time.

However, I don't think there's anything showing Mr F's pension entitlements wouldn't have easily met his anticipated requirements, without any need to transfer from a DB scheme. I don't think NTM adequately explained these things to Mr F as its advice simply discounted him transferring to the PPF to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr F's circumstances here were much more aligned to him moving to the PPF and retiring from that when he felt he was ready to do so.

<u>*Death benefits*</u>

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 PPF contained certain benefits payable to a spouse and children if Mr F died. Mr F wasn't married and nor did he have children; the adviser raised this as part of the rationale for saying the death benefits weren't needed in this way.

Once again, I think this shows a significant lack of foresight by the adviser. I think it's obvious, that as a 26-year-old male, there was every reason to assume Mr F's circumstances might change in the years ahead. I think the value of these benefits were most likely underplayed because the spouse's pension provided by the PPF would have been useful to a future spouse and / or children if he predeceased them. I don't think NTM made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I can see the adviser probably told Mr F that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. The adviser specifically said, *"as a single individual, this benefit offers no value to you"*. So, the lump sum death benefits on offer through a personal pension were made to look like an attractive feature to Mr F. But whilst I appreciate death benefits are important to consumers, and Mr F 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. A pension is primarily designed to provide income in retirement. And I think what NTM said about this was again, misleading.

I can't say to what extent life insurance was discussed although it does look like he was given some whole life quotes. These were likely viewed by Mr F as expensive. But at 26 years old, a modest 'term' life insurance policy would have been a reasonably affordable product if Mr F really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that NTM took into account the fact that Mr F could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr F 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 F. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr F's situation.

Concerns over financial stability of the DB scheme

It's clear that Mr F, 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 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 F 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 NTM's obligation to give Mr F an objective picture and recommend what was in his best interests. I think that NTM should have reassured Mr F that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr F through the PPF would have still probably provided a significant minority 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 F to transfer out altogether.

Suitability of investments

NTM recommended that Mr F 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 F and I don't think he would've insisted on transferring to a new personal pension 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 migrate to the PPF. This means the investment in the new funds wouldn't have arisen if suitable advice had been given.

Other issues

NTM told us the FCA had reviewed some of its files where it had given advice in similar circumstances to Mr F's. It said the FCA didn't find it had done anything wrong. I wasn't party to what the FCA reviewed or what it found, nor do I need to be. Our function isn't a regulatory one. And while I'm required to consider the regulator's rules, guidance and standards, my role is to decide whether NTM has acted fairly and reasonably in all the specific circumstances of this complaint not simply to look at what the FCA did. So the FCA's file review of other cases isn't relevant to that consideration.

Summary

I don't think the advice given to Mr F was suitable.

His CETV may have been modest by most standards, but he was giving up a guaranteed, risk-free and increasing income within the PPF. By transferring to a personal pension, the evidence shows Mr F 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 F's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the PPF.

Mr F still had many more years before he intended to retire. Much of the rationale used to justify the transfer-out recommendation was completely irrelevant to Mr F's circumstances and I think the adviser fell a long way short of providing advice that was in Mr F's best interests. The adviser was being paid for this advice, so their job wasn't to simply transact what Mr F thought was a good idea. He was only 26 years old and had no experience of these matters. The adviser's job was to use their experience and training to see that Mr F's personal circumstances were considered and to act in his interests.

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

I'm not persuaded that Mr F would have insisted on transferring out of the DB scheme, against NTM's advice. I say this because Mr F was an inexperienced investor and this pension accounted for most of his retirement provision at the time, mainly because he was still so young. 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.

In light of the above, I think NTM should compensate Mr F 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 F, as far as possible, into the position he would now be in but for NTM's unsuitable advice. I consider Mr F would have most likely opted to join the PPF, 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 the PPF 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 F 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 F'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 F redress as a cash lump sum payment,
- explain to Mr F 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 F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr F accepts NTM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr F 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 F's end of year tax position.

Redress paid to Mr F 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 F'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.

Our investigator recommended that NTM should pay Mr F for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr F in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr F. So I agree the recommended payment of £300 for distress and inconvenience. NTM should pay Mr F this amount *in addition* to the redress instruction I've set out above.

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

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct NTM Financial Services Ltd to pay Mr F 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 F the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr F.

If Mr F 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 F can accept my decision and go to court to ask for the balance. Mr F 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 F to accept or reject my decision before 27 October 2023.

Michael Campbell
Ombudsman