DRN-3771638

The complaint

Mr A 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 2017.

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

What happened

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

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr A'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 A 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 Pi Financial 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 A was described as being in good health and at the time of the advice he had accrued around 27 years of pension benefits with the BSPS.

- He was 47 years old, married with two non-dependent children. He and Mrs A lived in a home which they fully owned with no mortgage outstanding. Mrs A worked and also had a small DB pension of her own.

- Mr A had recently taken voluntary redundancy and used the cash to pay down his liabilities. He had also taken on a new job by the time of the advice and earned around £35,000 pa. He had joined a new auto-enrollment pension scheme (which isn't included in this complaint).

- After all their monthly household expenses, they had some disposable income left over. Mr and Mrs A had existing savings of £7,000. They had no other major assets or liabilities.

- The cash equivalent transfer value (CETV) of Mr A's BSPS was approximately £460,992. The normal retirement age (NRA) was 65.

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

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

As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've decided – and why

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

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

<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 Pi Financial'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, Pi Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr A's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr A's best interests. I have also carefully considered the final response letter from Pi Financial (December 2021). 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 A's complaint.

Financial viability

Pi Financial 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, Pi Financial used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

Pi Financial also now says that using critical yields isn't fair or relevant mainly because Mr A wanted flexibility. It says reliance solely on the critical yield is a poor way of assessing suitability when thinking about pension transfers.

However, I disagree with Pi Financial on these points. 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 A was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan. Pi Financial itself also referred several times in the advice to potential growth in the transferred funds, and I think it was trying to show Mr A that transferring away from his DB scheme was much better for 'growth'. I explain further down how the critical yields don't support this.

However, before assessing the critical yields in Mr A's case, I think it's important to point out that Pi Financial compared the benefits of the BSPS with transferring out, rather than using the BSPS2 for comparisons. We know BSPS was being stopped. Also, many weeks before this advice, which was dated 24 October 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time Pi Financial produced its suitability report.

It's true the situation was dynamic in that some changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

Having said all that, Pi Financial said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 6.98% if Mr A took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.36%. However, Pi Financial also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr A had apparently expressed a desire to retire early.

However, as I'll explain more about later, retirement was still a long way off for Mr A 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. For the age of 60, the critical yields came out at 7.52% (no tax-free cash) and 5.34% (with tax free cash) respectively.

I think all this needed a careful explanation, but I don't believe it was made clear enough what Pi Financial was actually saying. It said all the critical yield rates were, in the view of the adviser, achievable; but it didn't really explain why. In my view, this was an exaggeration. 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 17 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. 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%. Mr A had already told the adviser he might not need to take tax-free cash, so Pi Financial was apparently assuming growth of over 7% when it said the critical yields "were achievable" - and over such a long period in the future, this probably wasn't credible.

At the time, Pi Financial assessed Mr A's attitude to risk (ATR) as level 6 out of 10 which it said was "medium". But everything I've seen shows Mr A had no experience of these types of 'money market' investments. Although he filled out an ATR questionnaire, Mr A didn't have any relevant investment experience to call upon and despite having around £7,000 in savings, there's no evidence this was invested in anything other than a deposit type bank account.

Pi Financial also said he wanted to "grow" his pension funds and implied he was willing to risk the capital to achieve this aim. However, I think this was an imprecise comment: I think almost everyone would wish to grow their pension fund to some degree. But in this case, the adviser only said, *"you want to achieve higher medium-long returns than cash".* In fact, at the time, invested cash was growing by almost nothing, so out-growing zero wouldn't be that hard and could potentially be done by taking very, very little risks.

However, this didn't really change anything anyway. Even if I accept he had a "medium" ATR, I think a growth assumption at around the middle of the regulator's projections and also close to the discount rate was most relevant here. This was around 4½ to 5% and so still below the critical yield figures for the BSPS. I think this showed that achieving the critical yield(s), year-on-year, upon transferring out was highly unlikely. And from a financial perspective, there would be little point in transferring away from a DB scheme, to achieve lower overall benefits in retirement.

I've also noted that using the NRA of 65, Pi Financials' own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was £1,200,665. Even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £628,292.

To reiterate, these figures are found in Pi Financial's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr A's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr A could be giving up by transferring away to a personal plan, rather than him moving to a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, Pi Financial also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. Pi Financial said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and Pi Financial itself says Mr A wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr A, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, Pi Financial's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr A would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, Pi Financial could have waited and recalculated the comparisons for Mr A when the situation with BSPS2 became clear – we know this was available at the time.

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

Of course, according to Pi Financial, 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, Pi Financial said Mr A also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

I've considered with care everything Pi Financial has said about the rationale for transferring. And I think it's fair to summarise the reasons it set out as being around greater flexibility and meeting some of the aspirations Mr and Mrs A had for retirement. In its response to our investigator's View, for example, Pi Financial said it had *"looked at the overall financial position of* [Mr A] *and his family."* It also said, *"advice was provided on the information available at the time and the pros and cons were weighed up to assess whether a transfer was suitable. It was agreed, the transfer was suitable to meet the needs and the desires of* [Mr A] *which he now enjoys through pension freedoms".*

I do understand the points being made - that the recommended transfer to a personal pension plan was much more based on Mr A's wider objectives. So, I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away:

- Pi Financial implied that Mr A wanted to retire at the age of 60.
- Pi Financial said he'd be able to have more flexibility and control over his pension going forward. This included the flexibility to change his income in the future to suit his needs.
- Pi Financial said he could more flexibly pass on the benefits from a personal plan, potentially tax-free, if he died.

- He wanted to break ties with British Steel.

I have therefore considered all these issues in turn.

Retiring early

I've taken into account that Mr A approached Pi Financial for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

In my view, the adviser portrayed the DB scheme opportunity Mr A had with the proposed BSPS2 very much in the negative dimension. The impression given by the adviser was strongly that transferring to the BSPS2 was somehow too restrictive for Mr A and unsuitable for him. I say this because references were made by the adviser to the new DB scheme being underfunded. Whilst this may have been factually correct, recent injections of cash had taken place and it certainly isn't unusual for large DB schemes to be funded at rates below 100%.

References were also made to the annual uplift in the benefits paid each year with DB pensions. The adviser told Mr A that over 99% of his current pension provision was uplifted using the retail prices index (RPI). But it said the new BSPS2, if he transferred, would see 100% of his pension provision uplifted only by the consumer prices index (CPI). The adviser then went on to explain why the CPI was much less valuable. But what the adviser left out was that if he transferred to a personal pension plan, there were no guarantees at all that his annual pension would be uplifted by *any* amount – it could quite obviously even fall in value.

So, I think all this was mis-leading. Overall I think the adviser focused heavily on transferring away, rather than starting by assessing whether BSPS2 could meet Mr A's retirement needs and objectives. The adviser just promoted the more flexible arrangements which Mr A would find with a personal pension plan.

However, I think it's important to specifically focus for a moment here on Mr A's comparatively young age by pension standards. He was only 47 and in good health and Mrs A was slightly younger. The evidence I've seen here is that Mr A – understandably - had no concrete plans for his retirement. He had only referred to the possibility of retiring at 60, which was clearly aspirational rather than definite. With two children in their early twenties, they might not have been financially dependent on their parents, but I think Mr and Mrs A would have anticipated helping their children financially to some degree. At the very least, this provided uncertainty about when retiring realistically might be possible.

This underscores that any formal retirement plans, viewed from the age of 47, were probably still some way off. The adviser should have known this. There was still over 17 years left to when Mr A would be actually contemplating retiring if using his NRA of 65. And even if I did use the age of 60, there's simply no way he should have been advised to irreversibly move away from a DB scheme just yet, in his circumstances. Doing so involved an investment risk – and as I've shown above - would likely mean lower overall financial benefits at retirement.

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

Flexibility and control

In a similar vein, Pi Financial basically said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income.

However, I can't see that Mr A required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Pi Financial. 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 A required changing how his retirement benefits ought to be paid. He already had started a new and more flexible DC pension with his new job. I accept this DC pension was only six months old, but it was being contributed towards by both Mr A and his employer. Mr A would have been able to increase contributions in the years ahead if he felt this was warranted and of course, he still had over 17 years left to run (over 12 years if he did eventually retire early). So, this secondary pension would have contributed towards Mr A obtaining any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr A wouldn't want to continue with deferred membership of a DB scheme and to use that scheme in exactly the way it was originally intended. I've noted the same adviser recommended to *Mrs* A that her DB pension provided certainty for retirement, so I don't see why Mr A was told effectively the opposite. Indeed, I think that by retirement, whenever it eventually came, Mr A could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a new DC scheme over a still significant period of time – up to 17 years. So, if Mr A 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 A had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr A was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr A himself had no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing around £461,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr A would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

Pi Financial itself set out the estimated pension he'd get under the BSPS. Of course, it's always difficult to think about what one might need in 'todays' money and to then assess whether the projected retirement income would be enough to live on. But in my view, Mr A's projected DB scheme annual pension was a very reasonable income when comparing against what he said he might need in retirement. I've already explained the unpredictability of assessing retirement needs so far in advance and at such a young age. Mr A hazarded a guess that he might have needed around £2,500 per month in 'todays' money when retirement came about. But as I've said, this was no more than an educated guess and not underpinned by analysis.

Pi Financial said that if retiring at 65, Mr A could expect an annual pension of around £28,168 with the existing DB scheme. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 60, this was still £18,499 per year. And it certainly isn't unreasonable to say that by then, Mr A could have built up a meaningful DC fund in his new pension after he and his employer had been contributing for quite a few years. We know Mrs A also had her own deferred DB pension.

So, I don't think there's anything showing Mr A's pension entitlements wouldn't have met his and Mrs A's anticipated requirements, without any need to transfer away from the DB scheme. These were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think Pi Financial adequately explained these things to Mr A as its advice simply focussed on him transferring away and into a personal pension arrangement to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr A's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to potentially retire earlier than 65 if he felt he really needed to. Doing this from the position of BSPS2 was possible – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, and Mrs A had a small pension, this supported that strategy in my view.

Death benefits

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 BSPS2 contained certain benefits payable to a spouse if Mr A died. Mr A was married and so in my view this represented a good benefit. But again, the adviser portrayed this in a negative light and said he could die early and Mrs A would only get 50% of his BSPS pension. Conversely, the adviser told Mr A that he'd be able to pass on the *whole* value of a personal pension if he died, potentially tax-free, to anyone he nominated.

But whilst I appreciate death benefits are important to consumers, and Mr A 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 don't think Pi Financial explored to what extent Mr A was prepared to accept a lower retirement income in exchange for different death benefits.

Mr A was only 47 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr A had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 60 was at least mentioned – Pi Financial's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 60 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I think life insurance was discussed in this case and I've noted that whilst employed, Mr A had some death in service protection. But again, the adviser failed to present all the relevant options about insurance to Mr A, because they were wholly focussed on transferring him away from a DB scheme and into a personal pension plan. The adviser focussed on Mrs A 'losing something' from a financial perspective if Mr A passed away and she only received a 50% annual spouse's pension. I don't think this was good advice or advice that was in Mr A's best interests.

I say this because Mr A died, the spouse's pension with BSPS2 was guaranteed for Mrs A's whole life. Also, at 47 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product for Mr A if he really did insist on leaving a lump-sum (rather than an annual pension) legacy for Mrs A, or indeed anyone else such as their two children. It also doesn't appear that Pi Financial took into account the fact that Mr A could have nominated a beneficiary of any funds remaining in his other DC scheme. Therefore, to that end, Mr A already had plenty of options ensuring part of his pension wouldn't 'die with him'.

In these circumstances, Mrs A would also receive a lump-sum upon Mr A's death, which he seemed to find attractive.

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 A. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr A's situation.

Concerns over financial stability of the DB scheme

Pi Financial said Mr A wanted to break ties with British Steel and it provided this as part of the rationale for recommending a transfer away. However, Mr A denies he wanted to break ties and I agree with him. There's simply no evidence this was a genuine reason to transfer to a personal pension plan. The box Mr A appears to have ticked in the 'fact-find' which relates to this point is a pre-populated one and I think this waters down its relevance.

Even so, I can understand that when Mr A met with Pi Financial he may have been concerned about the overall financial stability of the BSPS pension. Lots of his former colleagues at the time were considering transferring out of the scheme and he may have worried that his pension could end up in the PPF. If the scheme did end up moving to the PPF, I think the adviser should have explained that this was not as concerning as Mr A thought. He was still unlikely to match, let alone exceed, the benefits available to him through the PPF if he transferred out to a personal pension plan. I don't think that this was properly explained to him. So, I don't think that these concerns should have led to Pi Financial's recommendation to Mr A to transfer out of the DB scheme altogether.

Suitability of investments

Pi Financial recommended that Mr A 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 A and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised not to transfer and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

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

Pi Financial entered into this advice by portraying the BSPS and BSPS2 in a negative way. Instead of assessing whether Mr A might meet his retirement objectives by becoming a member of BSPS2, the adviser focussed wholly on transferring away.

This meant Mr A was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows he was likely to obtain lower retirement benefits.

I also don't think there were any other particular reasons which would justify the transfer and outweigh this. The implication that Mr A was certain to retire early wasn't borne out by the evidence. Neither was his apparent needs for flexibility and control of his funds, moving forward. These things weren't properly defined and like the advice around death benefits, they represented nothing more than 'stock' objectives used to justify the transfer-out recommendation.

So, I don't think it was in Mr A'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 also don't think that it was in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF. Doing this wouldn't be offset by the more favourable reduction for early retirement. By opting into the BSPS2, Mr A would have retained the ability to transfer out of the scheme nearer to his retirement age if he really needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think Pi Financial should have advised Mr A to opt into the BSPS2.

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

I'm not persuaded that Mr A would have insisted on transferring out of the DB scheme, against Pi Financial's advice. I say this because Mr A was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if Pi Financial 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 Pi Financial should compensate Mr A 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 A, as far as possible, into the position he would now be in but for Pi Financial's unsuitable advice. I consider Mr A would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Pi Financial should use the benefits offered by BSPS2 for comparison purposes.

Pi Financial 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.

Pi Financial 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 A and our Service upon completion of the calculation.

For clarity, Mr A has not yet retired. 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 A'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, Pi Financial should:

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

Redress paid to Mr A as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Pi Financial 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 A's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

This pension at the time represented nearly all of Mr A's retirement provision. I believe the uncertainty and worrying impact of this unsuitable advice caused him significant distress and inconvenience. I therefore also order Pi Financial Ltd to pay an additional £300 to Mr A.

My final decision

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

If Mr A accepts my final decision, the money award becomes binding Pi Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A 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 A to accept or reject my decision before 13 September 2023.

Michael Campbell
Ombudsman