DRN-4499926

The complaint

Mr M complains about the advice given by Strata Financial Resourcing Ltd ('Strata') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr M is being represented by a professional third party but for ease of reading this decision I'll largely refer to representations as being made by Mr M.

What happened

Mr M held benefits in the BSPS. In March 2016, the sponsoring employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent.

In May 2017, the 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 the 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. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr M's pension being £314,384.40. And in October 2017 members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr M was referred to Strata by another business for advice about his pension.

Strata completed a fact-find to gather information about Mr M's circumstances and objectives. Mr M was 36, in good health, married to Mrs M, who was 31, and they had one child. They were both employed, and their income was recorded as exceeding their outgoings. They had a mortgage on their property with a remaining term of 34 years.

In addition to the benefits he held in the BSPS scheme, Mr M was also a member of his employer's defined contribution ('DC') pension, with he and his employer making combined contributions equivalent to 12% of his salary. It was also noted that Mrs M was a member of her employer's pension scheme, although details of the expected benefits were limited.

Strata's notes said that Mr M was aware of the options he had regarding his BSPS benefits and preferred to transfer out to have the pension fund under his control. It said he was concerned about how the scheme had been handled and he had lost trust. Strata noted that

Mr M's main priority was the security of his pension and said he had concerns the BSPS2 may also fall into the PPF so considered a transfer the most secure option. Strata said Mr M thought he was likely to retire early, realistically by age 60 and expected to need an income of £1,800 per month. Although it noted it was difficult to consider retirement options given his age it said Mr M was clear he'd like to retire early. And it said he'd want access to his pension benefits, including tax-free cash to clear his remaining mortgage, at that point.

Strata also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'high medium'. This assessment said the target portfolio for a 'high medium' risk profile investor had an estimated annual growth rate of 3.11%.

On 29 November 2017, Strata advised Mr M to transfer his pension benefits into a personal pension with a named provider and invest in one of its portfolios. The suitability report noted Strata and Mr M agreed it was difficult to have a clear picture of what his retirement would look like that far in advance. But Strata still considered a transfer was suitable. It said his and Mrs M's state pension, as well as their other provisions were likely to meet their longer-term income needs. Strata felt the returns required to match the benefits Mr M was giving up, the critical yield, were realistic and achievable. And a transfer would allow Mr M to take control of his pension and achieve his objective of retiring early.

Mr M complained in December 2021 to Strata about the suitability of the transfer advice. Strata didn't uphold Mr M's complaint. It said Mr M had a longer term aim to retire early and that it thought transferring was the best way to achieve this. It still believed the critical yields were achievable based on the past performance of the recommended fund and what had happened since. Some of the other benefits offered by a personal pension, such as lump sum death benefits, were beneficial to Mr M. And it said Mr M had been clear that he wanted to transfer his benefits away from the BSPS and hadn't been concerned by the loss of guaranteed benefits. So, Strata said it felt if it hadn't recommended a transfer, Mr M would've still made efforts to transfer.

Mr M referred his complaint to the Financial Ombudsman Service. One of our Investigator's considered the complaint and said they thought it should be upheld. He thought Mr M was unlikely to improve on the benefits he was giving up by transferring, particularly if he had taken early retirement. He also didn't think Mr M needed to transfer in order to meet his aim of retiring early, as he would've by that time built up additional benefits in the intervening years that could've been used to assist in meeting these aims. So, he thought Strata should've advised him to retain his guaranteed benefits, particularly given Mr M's concerns about pension security. And he recommended that Strata compensate Mr M for any losses caused by the unsuitable advice and pay him £200 for the worry he'd been caused.

Strata first said that it disagreed. In summary, it said the critical yield figures from the time were potentially higher than they should be, because the trustees of the BSPS had provided limited information. But in any event, Strata believed these were achievable. It also said there was no guarantee in regard to what level of other pension benefits Mr M would've built up by retirement. And Strata said Mr M had been fully aware of the advantages and disadvantages of a transfer and it still strongly believed he'd have sought to transfer if Strata had recommended he not.

Strata added it was satisfied it had complied with the requirements of it at the time – which were to take reasonable steps to ensure the advice was suitable for Mr M, not guarantee that it would be with hindsight. And it said the Investigator had placed too much weight on the critical yield, and not Mr M's overall circumstances.

More recently, Strata explained that, while it still didn't agree with the Investigator's opinion, in an attempt to resolve matters it had carried out a redress calculation using the BSPS specific redress calculator that the regulator, the Financial Conduct Authority ('FCA') has developed. Although the calculator has been developed for the BSPS consumer redress scheme, it can still be used to carry out calculations in non-scheme cases, such as Mr M's complaint with the Financial Ombudsman Service. And our Investigator informed both parties, when this was developed, that if an Ombudsman's decision was required and they upheld the complaint, they may require Strata to use this calculator.

Strata said its calculation showed that Mr M had not suffered a loss as a result of the transfer advice. It also confirmed, to the Investigator, that it would agree to pay the £200 that was recommended for distress, as a gesture of goodwill.

We shared this with Mr M. Our Investigator said they believed the calculation had been carried out correctly and that it appeared no redress was due. So, he asked Mr M whether he was now willing to accept the offer of £200 Strata had made as a gesture of goodwill to resolve matters.

Mr M's representatives said he would still like a final decision by an Ombudsman. It had nothing to add in respect of the calculation. But it said Mr M had suffered a lot of worry and felt more should be awarded to address the distress caused.

In light of Mr M's comments and as agreement could not be reached, I'm now providing a final decision on the matter.

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.

Strata has said while it doesn't believe the advice was unsuitable and doesn't agree with the Investigator's opinion, it has carried out a loss calculation and agrees to pay Mr M £200 for the distress caused, as a gesture of goodwill, as recommended by our Investigator. So, it has agreed to put things right, in the way that the Investigator felt was fair.

With this in mind, what is effectively left to decide is if the offer made is fair and reasonable. For the avoidance of doubt though, I have thought about the advice given. 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 - including the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And, having done so, I agree with our Investigator's view that the advice was unsuitable, for broadly the same reasons.

Strata says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr M. I agree that under COBS, Strata was required to take reasonable steps to ensure that its personal recommendation to Mr M was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. And additional regulations and guidance apply to advising on transferring out of DB schemes (COBS 19). These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that Strata should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr M's best interests (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll briefly explain why.

- There would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, the same level of benefits outside the scheme.

- Strata produced a TVAS report, as required by the regulator, which included the calculation of critical yields. It calculated the critical yields to replicate the benefits Mr M could receive under the BSPS2 and the PPF at the normal scheme retirement age of 65 and at age 60.

- It has said that the yields calculated may actually have been higher than they should have been, this was because the BSPS trustees had not provided full information. But I'd also note that the benefits the TVAS estimated Mr M would be entitled to under the BSPS2 were less than those his personalised "time to choose" report said he might expect to receive. So, if he the figures in the "time to choose" letter were correct, and he would've been entitled to greater benefits than the TVAS estimated, the critical yields may actually have been too low.

- That notwithstanding, I've considered the critical yields that were calculated. I've also thought about Mr M's recorded attitude to risk as well as the regulator's standard projections from the time. I've taken into account the information in the risk assessment Strata produced, which said the estimated potential annual growth for a portfolio matching Mr M's risk profile was 3.11%. And I've thought about the potential rates of return the recommended pension provider used in its personalised illustration.

- 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. While Strata was not required to consider these discount rates, the regulator did require businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while Strata was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And it was free to do so. So, I've also considered the relevant discount rates from the time.

- Taking all of these things into account, the critical yields were largely above the level of growth these other measures suggested was likely to be consistently achievable. And I think Mr M was always unlikely to improve on the benefits he'd have received under the BSPS2 or the PPF at the normal retirement age, by transferring. And if he had retired early, I think Mr M was likely to receive benefits of lower value than he'd have been entitled to under the BSPS2 or the PPF.

- And while I've taken on board what Strata has said about the past performance of the recommended fund and how it has performed since the transfer, as it is aware past performance is no guarantee for future performance. The personalised illustration from the pension provider also used very different, more conservative, estimated growth rates. And overall, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

- And the critical yields aren't the only thing that, in my view, indicates Mr M would be worse off in retirement by transferring. The TVAS estimated that the cost, or pension fund value that would be required, to purchase equivalent benefits at age 60 to match the TFC and reduced pension the BSPS2 would've offered was an estimated £669,016.87. And to match the full pension the BSPS2 would provide, this figure would be £836,343.75. A personalised illustration from the pension provider said though that if the mid-rate of growth was achieved until age 60, the value of the pension was likely to only be £305,000. And if 'high' growth was achieved it would still only be £601,000 – both significantly below what would be needed to replicate the guaranteed benefits that he'd given up. So overall, I think Mr M was always likely to be worse off in retirement by transferring.

- Strata said Mr M was very keen on retiring early and expected to do so at age 60. But he was only 36 at the time of the advice – a long way from when he expected to retire. The recommendation even acknowledged that it was very difficult to have a clear picture of what retirement would look like for Mr M as he was so far removed from it. And indeed. Strata also said Mr M might have chosen to change his working pattern, rather than retire at 60 – which I think supports his plans were not known.

- Mr M could've taken benefits early under the BSPS2 or the PPF. He was also contributing to another pension that he could've accessed flexibly from age 60. And a combination of these benefits appears to have been likely to be able to meet his income needs. And he could've accessed tax-free cash through those pension arrangements as well, which Strata said he expected to want – although I'm not sure how much he'd have actually required was well defined as I can't see that there was any real analysis of how much his outstanding mortgage would be by age 60.

- Strata has said that Mr M wouldn't have needed the majority of the income from his DB scheme once he and Mrs M began receiving their state pensions and accessing their other benefits. And has suggested the income would then have become unnecessary. But I think it's rarely the case that people complain of having too much money.

- Strata has also said that there was potential uncertainty over Mr M's employment and there was no guarantee he'd have continued to contribute to the new pension with his employer. But its reasonable, in my view, to think he'd have continued to build his pension benefits, either through this scheme or with another employer if he moved roles, until he retired.

- Again though, ultimately Mr M was only 36 at the time of the advice. I don't doubt that he likely indicated in discussion with Strata that he aspired to retire early. I think, when asked, most people would say they would like to do so. But his circumstances, objectives or aims could've changed over the years that followed. So overall, I think it was too soon for an irreversible decision to transfer out of his DB scheme to be considered in his best interests. Particularly when he had the option of joining the BSPS2, which would've meant he retained the option to transfer out at a later date if his circumstances required it.

- Strata suggested in its recommendation that the alternative death benefits offered by a personal pension were a benefit to Mr M. But as a pension's primary purpose is to meet the holder's needs in retirement, I don't think this meant a transfer was in Mr M's best interest, particularly when life insurance could've been explored and, in my view, would have been a more appropriate solution for providing a legacy.

- Strata said that Mr M was worried about the security of his pension benefits and considered a transfer to be the best way to assure this. But a transfer exposed the pension to market risk which he bore in full. Whereas in the DB scheme the trustees assumed all of the risk and guaranteed to provide a pension of a certain amount to Mr M.

- I don't doubt that Mr M was likely to have been worried by what had happened to that point regarding the DB scheme. The consultation was likely to have been unsettling and he may well have had negative feelings about how his pension had been handled and might've thought moving his pension away from the sponsoring employer was appropriate. I think that would have been a very natural emotional response to what was happening. But Strata's role was to give impartial, objective advice.

- There had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr M the option to transfer closer to retirement. Strata has said that Mr M had concerns about whether the BSPS2 would also encounter problems and potentially fall into the PPF. But I don't think there was any evidence to support this would be the likely outcome at the time, beyond the concerns and negative sentiment the consultation might've created. Which Strata should've addressed.

- But even if Mr M moved to the PPF, this still provided him with a guaranteed income and the option of accessing his benefits early. As I've said, I think Mr M was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a personal pension.

Strata has said that Mr M made an informed decision to transfer, that he had considered his options and already thought a transfer was what he wanted and that it feels strongly, had it advised him against doing so, he would've insisted and sought to proceed.

As I've said, Mr M might've gone into the discussion thinking about transferring. And in discussions with Strata he might've indicated, as it has suggested, he had a good understanding of his pension. But, even if this was the case, I don't think him having thought about this or showing an understanding of his pension, meant that he would've rejected the recommendations of a professional adviser. Ultimately Strata advised Mr M to transfer. And I think he relied on that advice. If Strata, a professional adviser whose expertise he had been recommended, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As I think Mr M has received unsuitable advice, the aim of any recommendation would be to put him, as far as possible, in the position he would've been but for that advice. Mr M cannot though return to the BSPS. So, the aim is to put Mr M back in the financial position he would have been in at retirement had he remained in the DB scheme. For which the FCA developed a calculator, specific to the BSPS. And Strata has now carried out a calculation using that calculator. Which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by Strata which are personal to Mr M. These include Mr M's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. All of which appear to have been input correctly. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65 – in line with the recommendation of the Investigator and what the regulator says should be the usual starting assumption about retirement age.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr M's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr M has not suffered a financial loss by transferring his pension.

And as an appropriate calculation has now been carried out by Strata, I don't think it needs to do anything further in respect of any potential financial loss.

Strata has offered to pay £200 as recommended by our Investigator, as a gesture of goodwill for the distress this matter has caused Mr M. His representative has said Mr M thinks he should receive greater compensation for this.

Mr M received advice from Strata in November 2017. He first complained about that advice in late 2021. I haven't seen anything that suggests the advice caused him ongoing distress during that period as the first indication he potentially had any concerns about the advice seems to have been when he first discussed matters with his professional representative. So, I don't think I can fairly conclude he was caused ongoing distress by the advice from the point it was given to when he made a complaint. Nor can I see that he has been caused any inconvenience – administrative or other – in that period, resulting from the advice.

I acknowledge that Mr M then raised a complaint. But his representative has handled the complaint on his behalf since it was first made. So, this doesn't appear to have inconvenienced him. And we wouldn't usually make an award just for someone having to go to the effort of making a complaint - because things do go wrong from time to time and it's reasonable to expect that they will need to be put right. And I don't think it'd be fair to do so here.

Since discussing this with his representative and lodging a complaint, Mr M might potentially have been worried by the thought of the advice he received having been unsuitable for him. The advice related to his pension, which is important to his longer-term financial planning. But again, Mr M was only 36 at the time he received advice and 40 at the time he complained – so still a long way from retiring or, in my view, from having any concrete plans relating to retirement.

I don't doubt, given the circumstances and uncertainty under which he asked for advice, thinking about this potentially being wrong has likely caused him some concern. Which is likely in my view to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But I believe most people feel strongly about complaints they make, if they think something has gone wrong. And our role is not to fine or punish Strata. And, although I don't doubt that Mr M has potentially been worried that he might've received unsuitable advice, the calculation Strata has carried out should reassure him that he has not suffered a loss. So, having taken all of this into consideration, while I know this will come as a disappointment to Mr M, I think the award of £200 recommended by the Investigator, which Strata has agreed to pay, is fair in the circumstances.

My final decision

I uphold this complaint and require Strata Financial Resourcing Ltd to pay Mr M £200, as it has previously agreed to, for the distress this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 January 2024.

Ben Stoker
Ombudsman