DRN-3835296

The complaint

Mr P 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.

Bede Financial Group Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "BFGL".

What happened

In March 2016, Mr P'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 P'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 P 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 BFGL 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 P was 54 years old, married and had no financial dependents. He was described as being in good health. He had accrued over 32 years' worth of service with BSPS.
- The cash equivalent transfer value (CETV) of Mr P's BSPS was approximately £864,492. The normal retirement age (NRA) was 65.
- Mr P had some other pensions which were defined contribution (DC) schemes. The total funds amounted to around £41,000.
- Mr and Mrs P lived in a home valued at around £160,000 which was mortgage free. They had a secured loan originally for £18,000 which was being gradually paid down in accordance with the original loan agreement. They had no other debts recorded.
- Mr P had left the steel industry by the time of the advice and earned around £28,000 (gross) per year. Mrs P worked and had her own DB pension scheme with this job. After all their household expenses they had some disposable income left over.

- Mr and Mr P had some modest cash savings at the time. The also both had premium bonds although it's not entirely clear how much.

It seems Mr P had a number of advice sessions throughout the second half of 2017. I've noted, for example, that there were meetings in July 2017 and a transfer analysis was commissioned in August 2017. BFGL set out its advice in a suitability report on 24 October 2017. In this it advised Mr P to transfer out of the BSPS and invest the funds in a type of personal pension plan. BFGL said this would allow Mr P to achieve his objectives. Mr P accepted this advice and so transferred out. In February 2022 Mr P complained to BFGL about its advice, saying he shouldn't have been advised to transfer out to a personal pension but BFGL didn't uphold his complaint.

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

As the complaint hasn't been resolved, 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.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of BFGL'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, BFGL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P'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 P's best interests. In particular, I have also carefully considered the final response letter from BFGL. 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 P's complaint.

Introductory issues

To be clear, I think it's helpful for me to first set out that I'm aware Mr P made two complaints which related to this pension. However, what I'm specifically looking at here is whether transferring from the BSPS to a personal pension in 2017 was suitable for him.

I'm also aware that Mr P has submitted a great deal of information and commentary with his complaint. So, I'd like to assure him that I've read everything that he's sent in very carefully indeed. And of course, I've read just as carefully everything sent in by BFGL. However, in explaining my decision I've focussed on the main and relevant points. And just because I haven't addressed some points in writing, it certainly doesn't mean that I haven't taken them into account. What this final decision focusses on are the matters which the complaint turns on and what affects the overall outcome.

Financial viability

As I've said, BFGL commissioned a transfer analysis in August 2017. I've noted this was based on financial information that subsequently changed a little. For instance, the CETV at that time was slightly lower than the eventual transfer amount, at £837,192. We know Mr P received a slight uplift to this which in my experience wasn't uncommon. I also think the figures used to compare Mr P's existing scheme benefits were for the BSPS rather than the BSPS2 details of which were beginning to emerge by the time the advice was eventually delivered to Mr P.

BFGL 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. 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.

BFGL said that the critical yield required to match the benefits of the BSPS2 at the age of 65 was 7.06%. BFGL has since pointed out that this yield might have been slightly inflated due to the changes in the overall pension CETV which I've mentioned above. We also know that BSPS2 critical yields were likely to be somewhere in between the BSPS figures and the PPF one; but they would likely have been much closer to the BSPS ones. So, BFGL makes the point that these small differences would have slightly changed the critical yield, effectively making it a little lower.

I think these points are, to a degree, correct. But of course, BFGL didn't issue its suitability report until 24 October 2017 by which time many more details of the BSPS2 were available. I've noted Mr P's "Time to Choose" option letter was also issued in October 2017 although I can't be sure on what date he received it. And if BFGL is saying now that the critical yield figures might have been slightly lower, it should have calculated these at the time and entered the updated version in the suitability report so that Mr P could have access to information on which he could make an informed decision.

Nevertheless, I think the critical yield comparison in Mr P's situation all pointed firmly one way - he was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan. 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 it was only 3.8% per year for just over 10 years to retirement (age 65), which is well below the critical yield figure I've referred to above. This implies that reaching a rate of growth that made transferring worthwhile from a financial perspective, was quite unlikely when viewed from the prism of 2017 and the economic picture at that time.

But Mr P had also told BFGL that he would like to retire in around three -to- five years' time, so I think the critical yields ought to have been calculated and shown to him for the early retirement ages of around 57 to 60. The discount rate for a retirement at 57 was only 2.7%. The discount rate for 60 was only 3.1% and we know 2017 was a period of sustained very low interest rates and low bond yields. 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% although these hadn't been updated for some time. So, if anything, projected returns would realistically be lower given economic conditions such as very low bond yields. BFGL itself also said that someone with Mr P's attitude to risk (ATR) could expect annual returns of anywhere between 2.58% and 5.08% in the types of funds being recommended to him.

At the time, BFGL assessed Mr P's ATR as "medium" which I think was accurately placed. 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. I say this because the growth assumptions close to the regulator's middle projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 2½-to-5% were much more realistic. These were below the critical yield figures for the BSPS and I believe they would have been below those for the BSPS2, so I think this showed that achieving the critical yield, year-on-year, upon transferring out, was unlikely.

Even if I were to accept the chances of reaching the (unpublished) BSPS2 critical yield was slightly better than reaching that of the existing BSPS, I'd still need to factor in that there would be costs and charges associated with a personal pension which were not present in the DB scheme Mr P had, or was able to move into in due course. And in any event, there would be little point in transferring - from a financial comparison point of view – unless there were clear indications that growth would comfortably exceed the critical yield rate and so cope with any additional fees.

I've also noted that using the NRA of 65, BFGL's 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 was much higher than Mr P's CETV. 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 £905,602. To be clear, this was to buy a much inferior pension. And because this figure is well above Mr P's CETV, it represents, in my view, a revealing window into the value of the guaranteed pension Mr P could be giving up by transferring away to a personal plan.

Elsewhere in its transfer analysis, BFGL 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. The critical yields to match the benefits available through the PPF at age 65 were much lower. But these yields related to the *reduced* benefits available with the PPF and BFGL itself says Mr P wouldn't have wanted to transfer to this scheme. Again, it's also important to remember the effect of charges and fees associated with a personal pension. These would have further reduced the potential for future growth.

I therefore think it's fair to say that from a financial comparison perspective, BFGL's own figures showed that transferring to a personal pension plan would mean Mr P would likely receive lower pension benefits in the longer term, when compared against the available DB scheme.

I've also considered some projections BFGL used to help show that if he transferred out to a personal plan, the funds could last Mr P well into retirement. Again, I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What BFGL was showing Mr P were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to BFGL, 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, BFGL said Mr P also had other reasons to transfer away. I've therefore 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 reasons for transferring

BFGL recommended a transfer to a personal pension plan based on what it said were Mr P's wider objectives. The suitability report mentioned that retiring earlier than 65 was something Mr P was very much hoping to do although it was also recorded that this was likely still three -to- five years away.

I have also used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away. The following areas were set out in the suitability report effectively justifying the recommendation to transfer (which I've summarised):

- *Transferring provides to access to a much higher tax-free cash sum. Tax-free cash can be used to clear your loan and leave you debt free.*
- *Transferring will give you the financial flexibility to either retire early or take a lower paid job*
- *Flexi Access Drawdown is available - you can increase or decrease income taken in line with changing needs*
- *You will not be "paying" for a spouse's pension that you may not need - death benefits are tax free with a personal plan*
- *You can invest in a wide range of investment funds that have the potential for growth*

over the longer term. You are to be able to vary the underlying funds and risks within the pension to reflect any

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

- *Achieving higher tax-free cash*

I think BFGL promoted to Mr P that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and that this was much more than he'd get with the DB scheme. It said he'd then be able to use the remaining funds more flexibly.

It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But BFGL should have been telling Mr P at the time that extra tax-free lump sums being removed from a personal pension, potentially in his mid-50s in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

Linked to this, it was also recorded that Mr and Mrs P had been thinking about moving home and potentially building a house. But they also mentioned extending their current home instead, and like our investigator I've concluded that their thoughts about all this were aspirational ideas, rather than definite and costed proposals.

I therefore don't think that accessing tax-free cash should have been used as rationale for Mr P transferring away from a DB scheme. The implication was that more tax-free cash would mean more money but as I've shown above, this needed to be explained very carefully. What the 'higher' tax-free cash meant was that his overall pension benefits were being paid differently.

There's also very little indication that Mr P needed access to a large amount of tax-free cash - I explain more about this later. But he could have also accessed tax-free cash with the BSPS2 and I haven't seen enough evidence to show why this wouldn't have met his needs.

- *Flexibility*

The adviser promoted a transfer partly to allow Mr P to retire early, or at least to work less hours. Mr P had said he'd consider retiring in around three -to- five years' time but I think what I've seen shows he was quite flexible about this. Mr P had said that if he did retire or semi-retire, he'd like his income to be broadly in the area of between £25,000 -and- £30,000 and I think this was probably based on maintaining an income that was commensurate with what his current standard of living was whilst he was still fully employed.

Mrs P appeared to work part-time when this advice was being sought and she was older than Mr P. I think retirement for her was potentially closer, although she too appeared to be open to working longer. She had her own pension although we don't have all the details of it because they were never recorded. But Mrs P was in a public sector DB scheme and had long service, so there's every indication her income (and wider benefits) from this pension would have been very good.

For Mr P himself, his BSPS pension was large by most people's standards. The estimated pension at the NRA (10 years distant) was £42,508 per year. Even if he were to take early retirement more or less immediately, the amount quoted in his BSPS existing scheme was

£23,011 per year if taken all as an annual pension. And if deciding to also take tax-free cash, it was £16,338 per year and a lump sum of over £108,000 tax-free. These were BSPS figures but we know his former colleagues were receiving quotes about BSPS2 that were not demonstrably different. And as I've said, I think BFGL should have updated the amounts by the time of the October 2017 suitability report. Even if these new details were still emerging, I think Mr P could have been advised to wait a short time until more accurate figures became available.

BFGL makes the point now that neither of these annual pension sums met Mr P's requirements for a £25,000 - £30,000 per year pension. However, we don't know whether – or to what degree – Mr P wanted or would have chosen to take a tax-free lump sum at around this time. As I've said, the 'need' for having a large amount of cash remains unclear as the property build or property improvements mentioned were not yet mature or costed ideas. I've also got no information showing his loan wasn't being paid down in accordance with the payment plan and 'retirement money' wasn't needed to pay this off. As I've stated, the advice was provided during a period where interest rates were ultra-low and cash deposits received virtually no interest.

I can also confidently say that, in all reality, there was simply no need for Mr P to access his British Steel benefits immediately because he had already committed to a *minimum* of three years more at his current job where he earned £28,000 per year. The effect of working longer like this would have meant the above BSPS annual pension amounts would be somewhat higher. And, of course, if he had worked say, five or six years more, they would be higher still. In this context he'd have most likely achieved his hoped-for retirement income by remaining with the BSPS2 scheme alone.

Of course, we know Mr P also had some other pensions. I accept that in pension terms, the combined value of these (around £41,000) might seem modest. But again, if working for several years more, as he had committed to, Mr P might reasonably see the value of these schemes increase, particularly if he was still contributing to the one offered by his current employer. I've also noted too, that he was paying £125 per month into his current work-related share scheme. He also did still have some monthly disposable income which he could have channelled tax-efficiently into a DC scheme. So, I don't think it's unreasonable to say that in a few years' time, Mr P's other DC pensions would have represented a meaningful total overall.

This all means that I've seen nothing explaining why Mr P wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. If all he needed was upwards of £25,000 per year I think the adviser should have pointed out that this already seemed achievable given the income that would be available from BSPS2. And if he'd needed a little more, there was meaningful other income he could call upon from the DC schemes.

I don't think BFGL adequately explained these things to Mr P as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

So, I don't think there's anything showing Mr P's pension entitlements in both the DB and DC schemes, and Mrs P's own DB pension wouldn't have fairly easily met their anticipated future income requirements when retired. This could be achieved without any need for Mr P to transfer away from a DB scheme. I think that by retirement, whenever it eventually came, Mr P could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of very 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 reasonable DC scheme total over a number of years. And if Mr P ever found he needed some flexibility, then he'd be able to use the latter, rather than transferring away from the former.

- *Death benefits*

Death benefits are an emotive subject. When asked, I think most people would like their loved ones to be taken care of when they die. Everyone's circumstances are also different and here, I've noted that Mr P didn't have any children and his wife was older than him.

However, the BSPS2 contained certain benefits payable to his spouse if Mr P died. The benefits included related to both pre-retirement and post-retirement. Mrs P might have been entitled to over 50% of Mr P's pension if he pre-deceased her. I therefore think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs P as I've seen no evidence of why she'd need a lump sum instead. I think his wife would have found this ongoing annual pension a source of comfort and security. 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 think the adviser discussed with Mr P that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to him. But I can't see there was a clear direction from Mr P specifying that he'd be wanting to pass on benefits to anyone other than his wife, particularly as there were no children involved. Whilst I appreciate death benefits are important to consumers, and Mr P 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.

Mr P was still only 54 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 P had lived a long life there could be very little left in his personal pension plan. However, Mr P could also have nominated a beneficiary of any funds remaining in his other DC schemes.

At 54, a modest 'term' insurance policy might also still have been affordable. So, if a lump sum legacy to Mrs P, rather than an annual pension, really was so important, this might have been a useful product if Mr P passed away first. In this scenario, as Mr P's wife was older than him, if he'd insured his life for say 15 years, this would have provided a potential lump sum legacy until Mrs P was almost in her nineties. Also, in this case because Mr P had opted to stay in a DB scheme instead of transferring, Mrs P would have also retained a guaranteed annual spouse's pension for her whole life. To this end, Mr P already had some alternative options which could have negated the need to transfer away.

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

- *Control of funds*

I've also seen no evidence that Mr P had either the true capacity or desire to exercise control over his funds. With his DB scheme, Mr P 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.

I accept that Mr P may have had an understanding of pensions and a reasonable grasp of wider financial matters. But there's no evidence he was an experienced 'money market' investor. He had some other small DC pensions in addition to the BSPS. But I've seen nothing showing the investment strategy for these pensions were anything other than 'off the shelf' mixes of investments commonly found in most company DC schemes. I also think he would have found the complexity, scale and responsibility of managing over £864,000 of his own transferred funds from his DB scheme to be onerous in the years ahead. This was a very large amount of money and what I've seen tends to show Mr P would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr P, like many employees of his former company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and BFGL said he lacked trust in the company. He'd heard negative things about the PPF and BFGL said he could have more control over his pension fund. So, I think it's quite possible that Mr P 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 BFGL's obligation to give Mr P an objective picture and recommend what was in his best interests. By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that BFGL should have reassured Mr P that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr P through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and it was still highly uncertain that he'd 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 BFGL's recommendation to Mr P to transfer out of the DB scheme altogether.

Suitability of investments

BFGL recommended that Mr P 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 P and I don't think he would have 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 to remain in a DB scheme 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 P was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr P 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 BFGL ought to have advised him against transferring out of his DB scheme for this reason.

I think Mr P'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 retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. He also had a number of smaller DC pensions and these supported that strategy in my view.

I don't think it was in Mr P's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. I think it was clear to all parties that the BSPS2 was likely to be going ahead. I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr P would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. On this basis, I think BFGL should have advised Mr P to opt into the BSPS2.

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

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

BFGL must then 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.

BFGL 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 P and our Service upon completion of the calculation together with supporting evidence of what BFGL based the inputs into the calculator on.

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 P'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, BFGL should:

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts BFGL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

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

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

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

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct Bede Financial Group Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Bede Financial Group Limited pays Mr P the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr P.

If Mr P accepts my final decision, the money award becomes binding on Bede Financial Group Limited.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 12 November 2023.

Michael Campbell
Ombudsman