DRN-3406528

Financial Ombudsman Service

The complaint

Mr P's representative has complained, on his behalf, that FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management (FBWM), gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a personal pension plan (PPP).

What happened

In March 2016, Tata Steel UK Ltd 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, 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. The BSPS was closed to further benefit accrual from 31 March 2017.

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 BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

A deadline was set for members to notify the scheme administrators as to their choice by December 2017.

Mr P met with FBWM in late July 2016 and his circumstances were recorded as follows:

- He was 55 years old and single, with no dependent children.
- He was employed, earning £38,000 pa and with an annual cost of living of £15,000.
- He owned his home, valued at £170,000, with no outstanding mortgage.
- He had cash savings of £40,000, along with investment ISA funds worth around £300,000.
- He was recorded as having a high risk attitude towards investing.
- Mr P had been a member of the BSPS for 38 years. He'd opted out of the scheme with effect from 31 May 2016.
- Mr P was considering retirement in the next few years.
- Mr P was in good health.
- He had limited knowledge and experience of financial services and products.

In terms of Mr P's deferred benefit entitlement, he had a normal retirement age of 65, at which point FBWM said that he could expect an annual income of £28,007.

At Mr P's desired retirement age of 56, this would be £15,403 pa.

Mr P received a transfer value from the BSPS for his deferred benefits of £260,118, which was guaranteed until 11 October 2016.

Within the suitability report produced in September 2016, Mr P's "preferences and priorities" were recorded as follows:

- To choose and manage his pension investment strategy.
- To have the flexibility in taking an income form the pension and make changes to this as required.
- To leave a legacy for his nieces and nephews.

Mr P didn't want an ongoing service or any financial advice. He had asked that the advice be limited to the matter of the transfer of his BSPS defined benefits.

The TVAS indicated the amount of growth required by the transferred funds to match those being relinquished in the scheme – the critical yield. It concluded that the PPP would need to grow by 15.35% pa to match the BSPS benefits at a retirement age of 65. FBWM said that it didn't consider this to be achievable consistently and Mr P's retirement income in retirement was likely to be lower overall as a result of the transfer.

But it also said that the amount of income offered by the scheme wasn't needed – rather an estimated income of £4,500 would be needed by Mr P and the critical yield to achieve this would be significantly lower.

The critical yield required to match the scheme benefits at age 56 hadn't been calculated, but the TVAS said that it was in excess of 50% pa.

A projection was also made of the required yield to match the PPF benefits. This showed that, for age 65, the PPP would need to grow by 9.45% pa to match the PPF benefits.

FBWM also provided the "hurdle rate", which it said was the estimated annual investment return which the PPP would need to achieve to match the annual income Mr P would receive from the BSPS at age 65. This assumed no spouse's pension, no increases in payment, and no guarantee. The hurdle rate was 8.41% pa.

FBWM recommended that Mr P transfer his deferred benefits to a PPP in order for him to achieve his objectives, and Mr P accepted the recommendation.

The fee to advise on the transfer was £1,500, and 3% of the transfer value if the transfer proceeded.

Mr P complained to FBWM, through his representative, in February 2020, saying that he didn't think he'd been given the right advice and that he'd suffered financial loss as a result.

FBWM didn't uphold the complaint, however, saying the following in summary:

- Mr P had anticipated that he would retire in May 2017, requiring an income of £15,000 pa to cover expenditure.

- He wanted the flexibility to manage his investments, take income flexibly (and tax efficiently), and leave a financial legacy for his nieces and nephews.

- Mr P was concerned that the scheme would fall into the PPF, which would prevent any transfer into a personal arrangement.

- Mr P had sought to transfer his pension benefits to another provider and had already been in contact with them about setting up an account and receiving the transferred funds.

- Mr P had already obtained details of his transfer value and deferred pension and required advice to enable him to make a decision before the former expired.

- He had no health issues and didn't want to lock himself into a guaranteed income.

- The primary driver behind the transfer was the facility to take income from his ISA funds, draw pension income up to his personal allowance and drip feed the tax free cash – which would ensure that he paid no income tax in retirement. He also wanted to leave a legacy to his nieces and nephews – neither of these objectives could have been achieved through the scheme benefits.

- Mr P wanted to manage his post-transfer pension funds, and was seeking advice on the merits of the transfer, which also needed to be sought due to the transfer value being in excess of £30,000.

- Cash flow modelling confirmed the affordability of the transfer. Mr P wouldn't be eligible for an enhanced annuity as he was in good health.

- Mr P had built up over £300,000 in ISAs, which he managed himself. He also saved approximately £10,000 pa.

- FBWM's adviser deemed there to be a risk of the scheme falling into the PPF, which meant that Mr P wouldn't be able to meet his objectives.

- The "retirement options" questionnaire completed by Mr P demonstrated the objectives set out by FBWM.

- A customer satisfaction survey completed by Mr P after the transfer showed that, although he knew he could have obtained the same service for less money elsewhere, he was keen to complete it quickly, which was achieved through FBWM.

Dissatisfied with the response, Mr P submitted his complaint to this service through his representative.

Our investigation

One of our investigators considered the matter, and recommended that the complaint not be upheld. He said the following in summary:

- Mr P had accrued 38 years' benefits in the BSPS, which were relatively secure. They would form a significant part of his pension provision, and although the 50% spouse's pension would have offered no benefits for him, the safeguarded nature of his own benefits was valuable, at low cost.

- The regulator's requirement when considering a transfer of defined benefits was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- In determining whether this was the case, he first considered the required critical yield to match the scheme benefits.

- The advice had been given during the period in which this service was publishing information with which businesses could calculate future “discount” rates for complaints about transfers which were being upheld.

- Whilst businesses weren’t required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The investigator noted that the discount rate was 3.7% pa for a period of nine years to retirement, compared to a required critical yield to match the BSPS benefits of 15.35%. The discount rate of 2.3% applied to age 56, compared to a critical yield of over 50%.

- He said that this meant the potential to improve on the BSPS benefits was compromised – the critical yield was too high.

- However, he considered that the requirement to match the BSPS benefits was somewhat negated as Mr P was single and had no financial dependants. By transferring, Mr P would have ensured that the value of those benefits was passed to him.

- Therefore, whilst the critical yield was unachievable, it was of less importance in determining the transfer’s suitability.

- Mr P had been recorded as having a high risk attitude, and had a history of investing his ISA funds since 2007, albeit Mr P had said that this was adviser-led.

- Nevertheless, the investigator noted that Mr P would have witnessed the reductions in value caused by the financial crisis in 2008. As such, the investigator concluded that, in light of this experience and Mr P’s “high risk” investment attitude, he was likely prepared to take a risk with his pension for the sake of higher returns, tax efficiency and flexibility of income.

- Mr P’s capacity for loss was also evident, as he was a homeowner with no mortgage or other liabilities, held £40,000 (£15,000 of which was earmarked for planned expenditure) in cash deposits and over £300,000 in ISA funds.

- Mr P also initiated the contact with FBWM and had established a receiving scheme prior to obtaining advice. Mr P was also involved in liaising between the ceding scheme, including establishing its requirements, and FBWM.

- Taking the above into account, along with Mr P’s comments in the post transfer customer satisfaction survey, the investigator concluded that Mr P was keen that the transfer occur as quickly as possible and that, had FBWM not facilitated it, Mr P would have transferred through another firm.

- The investigator also noted that Mr P wished to retire a year later, at age 56, and would have been concerned that his pension funds could enter the PPF. It would have been reasonable for Mr P to have wanted as much personal benefit for himself (i.e. without factoring in the funding of aspects such as the spouse’s and dependants’ benefit) as possible to be secured by way of the transfer.

- He also considered that the suitability letter and TVAS had been comprehensive in setting out the PPF provisions and amounts which might be payable at age 65.

- Although the initial TVAS said that the pension payable from the scheme at ages 65 and 56 would be £28,007 pa and £2,249 pa respectively, the subsequent TVAS detailed the early retirement pension as £15,403 pa, which was the correct figure. This corrected amount was also set out in the suitability report, and the investigator was confident that Mr P would have understood the scheme benefits he was relinquishing.

- The investigator acknowledged that Mr P's safeguarded benefits would have met the majority of his expenditure, but the recommendation also catered for meeting his requirements by alternative means which allowed Mr P to achieve his stated objectives, i.e. reducing his inheritance tax liability by using ISA returns as income, or by drawing down pension funds should he need to. And if he didn't, the pension funds would continue to grow tax efficiently, but remain outside of his estate to benefit his nieces and nephews.

- The transfer also facilitated the further objective of self management for Mr P, who was clearly keen to minimise advice costs, which was the reason why there was no comprehensive analysis of his ISA assets. But his existing portfolio would ensure diversification.

- Mr P had wanted advice on the transfer only, and although FBWM still needed to ensure it was suitable, the investigator considered that the advice was reasonable.

- A further benefit to the transfer was the flexibility of income, which would enable Mr P to reduce any that he was withdrawing from pension funds when he began to receive the state pension – rather than receiving unneeded excess income through the fixed income in the scheme, which would in turn only increase his IHT liability.

- The investigator also didn't think that the charges for completing the work were excessive, and he was confident that Mr P had considered these and thought them to be acceptable.

- Security of a guaranteed income had been one of Mr P's lowest priorities, as recorded in the retirement options questionnaire. Mr P also confirmed a high level of understanding of risk and investment experience.

In summary, the investigator said that Mr P was a medium to high risk investor who had benefited from an increased transfer value due to his single status, and who had demonstrated a clear intention to transfer, even before FBWM's advice. He would benefit from a post transfer flexible and tax efficient income, which would allow him to retain an IHT exempt fund value for the benefit of his chosen beneficiaries in the event of his death.

As such, the investigator didn't think that the complaint should be upheld.

Mr P's representative disagreed, however, saying the following:

- It wished to emphasise that, as per the regulator's requirements, a transfer needed to *clearly* be in a client's best interests. As there would be no financial benefit to Mr P in terms of the income produced, there needed to very significant benefits of the transfer in other areas. But it didn't think that this was the case here.

- On the basis that Mr P wished to retire in a year's time, the scheme benefits would have met his income requirement of £15,000.

- The lack of an estimate for income from the PPF at age 56 was a serious omission, given that this was his desired retirement age according to FBWM. But it in any case thought that the figure would have been close to £15,000 and so would also have largely met Mr P's objective.

- As Mr P could therefore have met his income objective without taking any risk whatsoever, he didn't need to transfer.

- Although Mr P had been recorded as being comfortable with the prospect of taking risks, there would have been no point in taking a risk for the sake of it. This would only have been worthwhile if there was a reasonable chance of improving on the guaranteed income he could receive from the scheme.

- The critical yields for retirement at ages 56 and 65 were accepted by all parties as being unrealistic, but it noted that this had been described as less relevant here for other reasons.

- It noted the point relating to Mr P's single status, but said that even without this benefit, the critical yields to match Mr P's individual scheme benefits would have bene unachievable, as evidenced by the high hurdle rates – 8.4% for age 65 and over 50% for age 56 - which stripped out the spouse's and dependants' benefits.

- From an income perspective, therefore, transferring was not a good outcome for Mr P.

- The representative then addressed the other reasons cited by FBWM for Mr P to transfer in turn, saying that they were either incorrect or matters which could in any case have been addressed without Mr P needing to transfer.

- With regard to the first of these – that the BSPS was in deficit and Mr P may not receive his full pension – whilst this was true, FBWM should have explained to Mr P that the trustees had already outlined a replacement scheme in May 2016 which wouldn't look too dissimilar to the BSPS – and it was believed that this would be implemented. But even if it wasn't, the PPF would still have provided a greater income than Mr P would receive from a replacement PPP.

- In terms of the record of Mr P not needing the income which would be produced by the BSPS, it wasn't correct to say that Mr P didn't need that income. He needed a retirement income, and the only issue was how that would be produced. It was clearly in his best interests to take the guaranteed income from the scheme, when the alternative was an unknown, but inevitably lower, income from a PPP with all the risk and management expense associate with that.

- With regard to the loss of the value of death benefits due to his single status, it was possible that his circumstances could change in the future.

- But it wasn't in any case in Mr P's interests to transfer for the sake of the legacy for nieces and nephews who weren't financially dependent upon him. It wasn't certain that they would receive any legacy at all if the pension funds had been exhausted and there were other options for providing a legacy if required, including the ISA funds or taking out a life assurance policy. But these alternatives weren't discussed with Mr P.

- As to Mr P's desire for investment flexibility, this would have meant little if there was no realistic prospect of those investments producing the returns required to match the guaranteed income already available under the BSPS – as was accepted here.

- With regard to the record of Mr P wanting flexibility and tax efficiency of income, any such tax advantages would have been minimal, and would have required careful management to achieve, thus requiring ongoing advice. But these advantages wouldn't have been so great as to justify the risks associated with transferring. But there was also no evidence that tax efficiency formed part of FBWM's reasoning, or that this was discussed with Mr P.

- In terms of Mr P being comfortable with taking risks and having other sources of income to fall back on, there was no sense in taking risks for the sake of it, and there was no realistic prospect of achieving the investment returns necessary to match the BSPS benefits.

- It further considered the rationale relating to income being set at the outset to be meaningless, and any facility for Mr P to buy an enhanced annuity in the future, if required, was inconsistent with the other reasons given by FBWM for transferring.

- It wasn't acceptable for FBWM to advise on the transfer without knowing what assets would be used for investment of the proceeds – this was also at odds with the regulator's view.

- The TVAS was undertaken on the basis of Mr P investing in a generic provider portfolio, but the regulator had said that this was unacceptable. This demonstrated that FBWM didn't "know its client", as was required under the rules, and it wasn't possible to give a suitable recommendation without this.

- The investigator's comment that Mr P would have a diversified portfolio by way of being invested in "collectives" was problematic. Mr P hadn't ever managed his own pension before, as evidenced by FBWM's own comment that he had limited knowledge and experience.

The investigator considered the representative's comments, but said the following in response:

- Although it had commented that the transferred funds would have been Mr P's only source of guaranteed benefits, this omitted Mr P's state pension, which would provide a significant part of Mr P's required income.

- Had Mr P not transferred, the state pension plus fixed guaranteed income from the scheme would have resulted in a significant amount of taxable income, whereas drawing income below his personal allowance would have resulted in Mr P paying no income tax. If Mr P needed more that the personal allowance, he could have drawn down further amounts as required.

- This was a key reason why flexibility of income would have been a significant benefit to Mr P. And the undrawn pension funds would have continued to enjoy tax efficient growth.

- The investigator maintained that the transfer had been demonstrated to clearly be in

Mr P's best interests. Further, given Mr P's high risk investor categorisation, it wouldn't have been appropriate to deny him the opportunity for increased growth and subsequent personal benefits to him of transferring.

- Instead of simply concluding that the transfer was unsuitable because the income requirement could be met from the guaranteed scheme benefits, a more holistic approach should be taken, factoring in the benefits to Mr P of the transfer.

- With particular regard to the issue of lump sum death benefits, Mr P had expressed a preference to pass this to his nephews and nieces. This was set out as a clear objective in the suitability letter and Mr P hadn't disagreed with its inclusion either at the time or afterwards.

- The investigator also considered that the manner in which Mr P had managed his pension funds, as evidenced by information which the representative had submitted, demonstrated that Mr P had taken an equity-heavy approach to investing his funds. This would also suggest that Mr P wasn't seeking a safeguarded income – otherwise he would have invested more conservatively.

Mr P's representative maintained its disagreement with the proposed outcome, saying the following:

- It noted the investigator's point about Mr P being a high risk investor and that denying him the opportunity for increased growth wouldn't have been in his best interests. But the point it wished to emphasise was that there was no realistic prospect of a self invested fund being able to match the income produced by the scheme benefits. It was almost impossible to achieve, given the critical yields, and FBWM was aware of this.

- It also accepted that an advisory firm needed to take a holistic approach to its recommendations, but it said that the stated reasons to transfer were insufficient, in view of the almost inevitable financial loss Mr P would suffer through the transfer. And it certainly hadn't been demonstrated to be clearly in Mr P's best interests.

- Although it noted the flexibility of income argument, it said that there was no mention in the suitability letter of any potential income tax benefits arising from the transfer – the recommendation wasn't based on this prospective benefit.

- It remained of the view that any potential income tax benefits were in any case negligible. On the annual scheme income of £15,000, Mr P would have paid approximately £600 pa, and once he was in receipt of the state pension, this would have risen to around £2,500 pa. Over the course of his retirement (assuming life expectancy to 84), the overall tax savings would be in the region of £50,000. It said that this wasn't insignificant, but it was important to bear in mind that Mr P may have required advice to achieve the full saving, which would have incurred costs.

- Additionally, although Mr P described himself as having a high level of knowledge and understanding when it came to investment, he had little understanding relating to pensions or drawdown. And although this was acknowledged by FBWM in its suitability report, it made no attempt to value those potential tax advantages against the obvious disadvantages of losing the guaranteed scheme income.

- It contended that any potential tax advantages would have been outweighed by the disadvantages of relinquishing the scheme benefits.

- As to the point about Mr P likely investing in a more conservative manner if he'd been concerned about the suitability of the transfer, it disagreed, as there would have been no point in investing the post-transfer funds cautiously. This would simply make it more unlikely that the required returns to match the scheme benefits would be achieved.

- A riskier investment approach would therefore be required – but this in any case had little bearing on the suitability of the transfer. Mr P would be worse off irrespective of how he invested his funds or the return he would make.

As agreement couldn't be reached on the matter, the complaint was referred to me for review.

I issued a provisional decision on 8 February 2022, saying in summary that I thought the complaint should be upheld. Those findings are set out below:

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

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I have some sympathy with the position of Mr P and his representative in this matter, for the reasons I'll set out below.

The applicable rules, regulations and requirements

This isn't a comprehensive list of the rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client".

The FCA's suitability rules and guidance that applied at the time FBWM advised Mr P were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like FBWM, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, FBWM needed to gather the necessary information for it to be confident that its advice met Mr P's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading "Suitability", COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of FBWM's advice to Mr P in the context of the above requirements.

FBWM's rationale for transferring

FBWM's advice pre-dated the outcome of the consultation on the future of the BSPS, and so Mr P hadn't yet received information relating to the "time to choose" exercise which began in late 2017. It's FBWM's position that Mr P was sufficiently concerned about the future of the BSPS to make him keen to transfer (which I address below), and that he was seeking a very much restricted recommendation for the transfer. But Mr P was nevertheless seeking advice on his options for meeting his objectives in terms of the potential transfer. Mr P wasn't *categorised as an insistent client, and so FBWM could be confident that he would be acting upon, or at least taking into account, its advice.*

In accordance with COBS 9.2.2R, FBWM undertook its fact finding for Mr P and then set out its assessment of his circumstances and objectives.

As set out above, in its suitability report FBWM summarised Mr P's objectives as follows:

- *To choose and manage his pension investment strategy.*
- *To have the flexibility in taking an income form the pension and make changes to this as required.*
- *To leave a legacy for his nieces and nephews.*

Although not included in the above, it's also been asserted that Mr P was considering early retirement in the next few years, hence the mention of this at age 56. However, before I assess these, I think it would be prudent to assess the transfer from the perspective of any purely financial benefit – so in terms of actual likely payments to Mr P.

FBWM obtained a TVAS report for comparison purposes to determine the viability of the transfer to meet Mr P's objectives from a financial perspective.

The suitability report was issued before the FCA's revised guidance which was released in late October 2017, and provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. Businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the 9 years left to the scheme retirement age of 65 was 3.7% pa. And that for retirement in one year's time at age 56 was 2.3%.

The critical yield for retirement at age 65 with the BSPS, at 15.35% pa, or even that required to match the PPF benefits, at 9.45% pa, was therefore considerably higher than both the discount (or growth) rate deemed achievable over the same period, and the mid-band growth rate used by the regulator – 5% pa. FBWM itself said that it considered the critical yields to be unachievable, given Mr P's attitude to investment risk.

And I agree. As with both FBWM and the investigator, I'm not persuaded that the critical yields were in fact achievable, year on year, for the number of years that Mr P had until he reached the scheme retirement age, and certainly not for retirement in one year's time. And as a reminder, these growth rates were required to just match the scheme benefits.

There needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. And, in line with the DB transfer requirements at the time, it needed to be clearly demonstrated that the transfer would be in Mr P's best interests. As such, my view is that the transfer couldn't be justified from a purely financial perspective, especially given the valuable guarantees which Mr P would be relinquishing. But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

My understanding of FBWM's position is that the basis of the recommendation was the benefit to Mr P in terms of other objectives being met - including flexibility of income, along with the different format of death benefits with a PPP. It also said in the suitability report that the amount of income which would be produced by the scheme wasn't needed on a yearly basis – an income of £4,500 pa was deemed sufficient for Mr P's needs, which it said would *require a lower critical yield to achieve.*

On that particular point, I would say that, unless there was good reason – or reasons - to do so, it wouldn't be suitable to recommend a transfer which would reduce an individual's future income, simply because they might be able to afford to live on the lower amount. This would, for hopefully obvious reasons, be some way removed from providing a recommendation which was clearly in that individual's best interests. And I'd also agree with the position of Mr P's representative that there would be little point in taking a financial risk for the sake of it if the no-risk option could address the individual's requirements.

But before I assess those other reasons to transfer in greater detail, I think it's firstly fair to say that FBWM did provide warnings on the guarantees which would be relinquished. However, as FBWM will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a suitability report, this also wouldn't make otherwise unsuitable advice suitable. FBWM needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr P.

<u>The requirement for flexibility and managing his own investment strategy</u>

As I've said above, FBWM's reasoning for the recommended transfer was that Mr P required flexibility of income due to his particular circumstances and objectives. And so I've given this argument careful consideration.

As a preliminary comment, I do acknowledge that Mr P was likely to have understood the principle of needing to take some risk to achieve the required reward, along with the discussions around such concepts that he may have had with colleagues. Furthermore, Mr P had some experience of investing his ISA holdings. And so I think Mr P may have had a reasonable understanding of the concept of risk/reward.

But I don't think that the experience with his ISA funds would have imbued Mr P with knowledge or experience of pension investment matters, especially with such a specialised area of defined benefit transfers.

I've also thought about Mr P's capacity to take financial risks with his pension funds. Mr P hadn't had the opportunity by that time of joining the replacement defined contribution scheme (launched in 2017), and so, other than the state pension which wouldn't be payable until his late 60s, the defined benefits accrued through the BSPS were likely to have been his only source of guaranteed income. Any reduction in the benefits payable from them would therefore have had an impact on his financial security in retirement.

Mr P had a sizeable ISA portfolio, and a reasonable amount of savings, and so it's likely that he would have been able to sustain some losses in his pension funds. But I've also thought about whether he needed to take such risks.

FBWM has added "tax efficiency" to the stated rationale for transferring, but as with Mr P's representative, I've seen no mention of this in the suitability report. But even if I were to accept that this formed part of the overall "flexibility" rationale, I've thought carefully about the advantages which might have been gained from taking income flexibly and so managing the income tax to be paid, versus the disadvantages of relinquishing the guaranteed income from the scheme.

And having done so, I've reached similar conclusions to those set out by Mr P's representative. Although I don't think that it would have required particularly complicated planning on Mr P's behalf, on the basis of the likely saving over his predicted life expectancy, *I don't think this would have justified relinquishing the guaranteed income. Mr P's representative has calculated an approximate £50,000 tax bill over the 28 years or so which Mr P might expect to live beyond 56 – at which point he could have begun receiving the £15,000 pa which would have been sufficient for his income needs, and to which he could have added from his ISA funds if necessary.*

I think this is likely to have been slightly higher, given the escalating nature of Mr P's scheme income. And as also noted by Mr P's representative, this isn't an inconsiderable sum, but this means, averaged out over those 28 years, income tax of around £1,700 pa would be payable. The likely reduction in guaranteed income produced by transferring would have comfortably exceeded this. It will be FBWM's position that replacing one source of guaranteed income with another wasn't the objective here – rather, it was the facility for Mr P to withdraw income flexibly. But the very likely incapacity of the transferred fund to match the scheme benefits is representative of the overall financial loss. And that would read across into the performance required of a flexi-drawdown fund to do the same. The only way of Mr P maintaining his pension funds to a reasonable age would be to withdraw less than he could have received as guaranteed income from the scheme. I don't therefore think that the kind of annual tax bill mentioned above on an average (scheme and state pension) income of £20,610 pa over 28 years could reasonably justify Mr P relinquishing that income's higher, guaranteed nature.

And even if Mr P found himself in a position of receiving more income than he required, which might otherwise add to an IHT bill upon his death, then he could have gifted this immediately to avoid it being subject to IHT, or used it to buy a life assurance policy written into trust.

On the other hand, if Mr P had primarily used his tax free cash and ISA funds to provide an income, and retained the bulk of his pension funds, if he exceeded age 75 (and there was no reason to assume that he wouldn't) his beneficiaries would have needed to pay their own marginal rate of income tax on any residual uncrystallised pension fund withdrawals upon his death.

And so, without even needing to consider whether it was suitable for Mr P to take the investment risks associated with the transfer and subsequent reinvestment, I just can't see sufficient justification for him needing to do so in the first place. Even a high level of investment risk, for example primarily in equities, would be unlikely to produce the returns required, year on year, to match the benefit of the scheme income. Quite apart from which, combining a guaranteed source of income with a measure of risk/reward investment through his ISA portfolio would seem to me to represent just the type of well diversified means of retirement provision which would be suitable for someone like Mr P.

<u>Mr P's concerns about the scheme benefits entering the PPF</u>

FBWM has said that Mr P was concerned about the prospect of the scheme entering the PPF. But Mr P's concerns should have been addressed and appropriately managed. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, as appears to have been the case here, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. The extent to which Mr P's concerns were discussed and managed appears to have been as follows in the suitability report:

"It seems increasingly likely that British Steel will not be able to find a new employer wishing to take on the Scheme in its current form, and that the Scheme would be required to go into the Pension Protection Fund (PPF). Please refer to your letter from the British Steel Pension Scheme dated 26th May 2016 for more information."

Had reassurances instead been given about the protections which would still be available, even in the "worst case" scenario of the scheme benefits needing to enter the PPF, I think Mr P would have viewed things differently.

It's also fair to say that the detail of any potential successor scheme, as an alternative to the PPF, is likely to have been lacking at this point in time. This advice predated the announcement in May 2017 relating to the RAA, but even if the BSPS entered the PPF, many important guarantees would remain. And my view is that, if Mr P had wanted to retire early and it was deemed feasible (and dependent upon the actual age), he would in fact have been better off by transferring to the PPF rather than the BSPS 2. A reduction of 10% would apply to the benefits payable, but even if Mr P retired early, it's possible that those benefits would still have met his income needs.

But Mr P also didn't need to make any decision about whether to transfer until more details were known about the options which might later be available. My understanding is that there was no imminent prospect of the BSPS entering the PPF. And the consultation was geared towards the opposite outcome. But even once the options were known, members still had the choice of transferring out of the scheme, rather than being forced into the PPF.

So I don't think that these concerns, if appropriately managed, would have been sufficient justification to transfer at this time.

<u>Death benefits</u>

Improving on this position was recorded as being an objective for Mr P. The death benefits offered by the transfer would be more beneficial to Mr P and his extended family – specifically his nephews and nieces. After the transfer, a lump sum would be payable to his beneficiaries, rather than in the form of spouse's/dependants' pensions from the scheme.

But I have several concerns about this as a reason for transferring Mr P's benefits. Firstly, he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

The second is that accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for extended family members. The recommendation needed to be given in the context of Mr P's best interests, not those of his nephews and nieces.

And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual's best interests. This desire to leave a legacy to his nephews and nieces cannot reasonably have subjugated Mr P's own personal requirement to benefit from his accrued pension benefits. The wish to leave a legacy should have been properly weighed against the guaranteed benefits Mr P was relinquishing, and FBWM should have advised him that his own financial benefit took priority here.

But there was also an absence of detail or discussion relating to the legacy which Mr P could in any case have left to his nephews and nieces and would have allowed him to retain his *guaranteed benefits in the scheme – a property worth in the region of £170,000, which was unencumbered by a mortgage, along with whatever might have remained of his ISA savings.*

I've also seen no detail as to why a death benefit payment to his nephews and nieces from his pension was so important to Mr P - for example, financially straitened circumstances or some kind of financial dependence. And there was no record of Mr P needing to provide for his nephews and nieces as part of his normal outgoings. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr P compromising the security of his own financial future.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr P's nephews and nieces by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr P personally.

<u>What should FBWM have done – and would it have made a difference to Mr P's decision?</u>

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's undeniable that this was a period of great uncertainty for individuals such as Mr P. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've said above, there was no imminent prospect of his scheme benefits entering the PPF, which would have ruled out a later transfer. It would have been better for him to await further detail as to the prospects for the BSPS, whether this was a transfer into the PPF, or as was ultimately the case, the further option of transferring into the BSPS 2.

I've also thought very carefully about whether the service provided to Mr P was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr P, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And looking at those options, one of the key recorded objectives - early retirement – was in any case achievable within the BSPS 2, and would have remained so even in the "worst case" scenario of entering the PPF. And it's likely that, on the basis of early retirement, Mr P would have been better advised to enter the PPF.

For the reasons given above, I don't think the perceived advantage of flexibility of income and investment control outweighed the guaranteed benefits in the scheme. Even taking account of the tax efficiency of a flexible income, the available evidence simply doesn't support the position as to why these attributes would have been sufficiently compelling reasons for Mr P to relinquish valuable benefit guarantees. And he would have needed to invest in manner which exceeded even his high risk rating to try to achieve the required returns to replace the scheme benefits.

My further view is that, if properly discussed, Mr P's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which I don't think he needed, and a future pension which would be diminished as a result of losing the scheme guarantees.

Tax free cash for whatever purpose Mr P saw fit would have been available from his defined benefit pension funds. Death benefits were payable from the defined benefit scheme in a different format from those available from the PPP. But for the reasons set out above, I don't *think this should have been a more important consideration than Mr P's own retirement guarantees which he'd be relinquishing through the transfer.*

The critical yield is usually a telling indicator of the value of the benefits being relinquished. And as the critical yield to just match either the PPF or BSPS benefits was considerably higher than the discount rate, the regulator's mid (and indeed higher) rate growth assumptions, I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits. This position is supported by FBWM's own comments within the suitability report.

The justification for transferring has been that it was nevertheless suitable in view of Mr P's stated objectives and the concerns about the BSPS. And whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what FBWM considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

FBWM's view is that Mr P was keen on effecting the transfer. And I've noted the comment that he'd already made arrangements with a separate product provider to receive the transfer proceeds. And I accept that, prior to meeting with FBWM, Mr P may have considered that transferring was his best option. But this was FBWM's opportunity to take proper account of Mr P's circumstances and objectives and advise him not to do so, for all the reasons set out above.

I certainly acknowledge that it wouldn't be straightforward to effectively "undo" any preconceptions held by Mr P about what he considered to be the benefits of transferring. But I think the advantages of Mr P retaining his scheme benefits, if set out in terms similar to those above, would more likely than not have persuaded him to do just that. And I think any concerns about the pension scheme, especially relating to the prospect of it moving into the PPF, would have been assuaged if properly managed.

In terms of the responsibilities of Mr P in deciding whether to still proceed (and as I've said above, I accept that Mr P was given risk warnings and was more likely than not capable of understanding them), I don't disagree that properly informed, correctly advised individuals would be in a position to take that kind of responsibility and decide for themselves if they wanted to transfer their defined benefits. The problem here is that this was a complex matter involving many factors with which Mr P, as a layman on pension matters, wouldn't have been familiar (even taking account of his experience in ISA investments) – hence him seeking the services of a professional party to take those factors into account and provide suitable, balanced advice.

For the reasons given above, my view is that Mr P simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility.

Mr P's decision to proceed may well have been borne of wider concerns relating to the financial viability of the BSPS, but as I've said above, this was due to the absence of a detailed and balanced assessment of the scheme's attributes and prospects in the advice process.

Taking account of Mr P's circumstances, including his attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that FBWM should have advised against the transfer.

And I think that, had this happened, Mr P would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a conclusion that the recommendation to transfer wasn't suitable for Mr P, nor was it in his best interests. The key contributing factors here are: Mr P's attitude to risk and its incompatibility with the type of investment risk which would have been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr P's options and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least one of the key benefits sought by Mr P was available without needing to transfer – early retirement, which would have been available to him through the BSPS (or indeed through the PPF).

It follows that my view is that, taking account of those critical yields, Mr P's attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer. As the other reasons for transferring were in my view insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, FBWM would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr P's best interests.

Putting things right

My aim to is put Mr P, as closely as possible, into the position he'd be but for FBWM's unsuitable advice. Reinstatement of Mr P's deferred benefits isn't possible. Therefore, FBWM should undertake a redress calculation in line with the pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

My current view is that, had Mr P not transferred his pension funds to the PPP, he would have opted to join the PPF. There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

But the reduction for early retirement under the PPF was lower and the commutation factors for tax free cash entitlement were also slightly more favourable under the PPF. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

In terms of death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr P's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. But Mr P wasn't married at the time of the advice, and didn't envisage this happening in the future, and so I don't think this particular enhancement over the PPF benefits would have outweighed those relating to his own early retirement.

And so I currently think it's the benefits offered by the PPF which should be used for comparison purposes.

An extract from the wording of the communication to members in October 2020 was as follows:

"When the buy-out happens, all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF

assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out."

This has been followed up by a further announcement in December 2021 that the process of the buy-out was now expected to be complete by the end of Summer 2022. This said the following:

"For most members, PPF level benefits are less than full Scheme benefits. When the buy-out happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out."

Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the actual terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr P. As such, it may be the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

As such, if the complaint were to be upheld, I would likely require FBWM to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If the complaint were to be upheld, and Mr P accepted the decision, he would be doing so on the basis of my understanding as set out above. It's important that Mr P is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

As such, the calculation on the basis of choosing to enter the PPF should be carried out using the most recent financial assumptions at the date of the actual calculation. FBWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr P's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr P's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

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 future loss adequately reflects this.

The compensation amount must where possible be paid to Mr P within 90 days of the date FBWM receives notification of his acceptance of any final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 90 day period, that it takes FBWM to pay Mr P.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

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.

***Determination and money award**: In the event that I uphold this complaint, I would require FBWM to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.*

Where the compensation amount does not exceed £160,000, I would additionally require FBWM to pay Mr P any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require FBWM to pay Mr P any interest as set out above on the sum of £160,000.

***Recommendation**: If the compensation amount exceeds £160,000, I would also recommend that FBWM 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 were to accept a final decision on the above basis, the money award would be binding on FBWM. My recommendation would not be binding on FBWM. Further, it's unlikely that Mr P could accept my decision and go to court to ask for the balance. In the event that the complaint is ultimately upheld, Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision."

FBWM's representative disagreed with my findings, however, saying that Mr P made his own decision to transfer independently of any advice given by FBWM, and so the complaint should be rejected. But even if this wasn't the case, the transfer was a suitable outcome and Mr P was likely to derive greater benefit as a result of the transfer.

It set out further submissions under the following subheadings:

Decision to transfer against advice

- Mr P had approached FBWM with a firm intention to transfer as identified by the investigator and recorded in the adviser's notes.

- Although the provisional decision acknowledged that Mr P had established a SIPP to receive his scheme benefits, no weight had been attributed to the fact that if FBWM had advised against the transfer, Mr P could have achieved his aim elsewhere.

- The investigator's conclusion had been that Mr P would have transferred, regardless of advice from FBWM. It was therefore "beyond doubt" that the advice wasn't causative of the decision to transfer. As a matter of law, no liability could attach to FBWM. And if an ombudsman's decision departed from the law, it must set out why it had done so. The decision made no attempt to do so and as a consequence, FBWM was being held to an uncertain standard. This was neither fair nor reasonable.

- Mr P could not have met his objectives of choosing to manage his pension's investment strategy and having flexibility of income by retaining his deferred benefits in the scheme. Mr P was therefore aware that the transfer wasn't based upon the critical yield, which the report said was unachievable. Again, Mr P had made up his mind to transfer, and no advice would have changed this.

- Even putting that aside, the transfer was a suitable outcome for Mr P. The relevant test for considering the suitability of advice is whether it was within the scope of advice which could have been given by a reasonably competent adviser. Any advice to transfer was suitable and in Mr P's best interests, and advice shouldn't be deemed to be unsuitable simply because alternative advice could also have been provided – this was a matter of law, to which regard needed to be given.

Assessment of suitability

- According to the relevant obligations here – COBS within the FCA's handbook – a firm didn't need to guarantee or ensure, particularly with the benefit of hindsight, that a transfer was suitable.

- But it was in any case a suitable outcome. What constitutes the "best interest" of a customer is subjective and specific to their needs and circumstances at the time. That the starting assumption was that a transfer would be unsuitable didn't mean that this would always be the case. Considering what was in a customer's best interest needed to strike the balance between the financial security of a defined benefits scheme and the benefits of the lifestyle choices the customer was seeking to achieve through the advice – as well as considering their personal circumstances.

- Mr P's wish to leave a legacy to his nieces and nephews hadn't been given adequate consideration – the same importance should be apportioned to this as to leaving a legacy to his children. It was concerned that this service wasn't approaching the matter from a neutral standpoint, instead assuming that all defined benefit transfers will be unsuitable. But a transfer will be in the interests of some consumers and refusing to countenance this is not fair or reasonable.

Mr P's circumstances

- Mr P was 55 at the time of advice, with no dependants, and was earning £38,000 pa. He owned his own home outright, worth £170,000, had £40,000 in cash savings and around £300,000 in a self manged investment ISA.

- He intended to retire at 56 and only needed an income of £15,000 pa, based on his current expenditure. Income from the BSPS would cover the majority of Mr P's expenditure, but wouldn't have provided him with the flexibility to alter this or to leave a legacy to his nieces and nephews.

- Had he retained his BSPS pension, the income at age 56 would have been subject to a reduction of 18%, which would not have been in his best interests.

- At the time of the advice, the BSPS was in deficit and highly unlikely to be able to pay full benefits to Mr P. It also didn't look like any new employer was going to take on the scheme, which meant that it would enter the PPF. This would have meant a 10% reduction in Mr P's starting benefits. As Mr P wouldn't have been able to achieve his objectives by retaining his scheme benefits, it was difficult to understand how advice to do so would have been suitable.

- Mr P was recorded as having an attitude to risk of “8 out of 10”, where “10” was the highest. It was therefore wholly appropriate for Mr P to accept a degree of risk in the course of meeting his objectives. This was also aligned with his objective of managing his investments. Mr P had accepted that the only way to make money was to take risks and it was noted in the suitability report that the scheme “simply” offered an inflation linked income each year which couldn’t be altered. It wouldn’t therefore have been suitable to disregard Mr P’s “beliefs” and advise against transferring out of a scheme which offered minimal risk with no possibility of generating increased returns.

- Mr P was entitled to a scheme pension of £28,007 pa from age 65, although he didn’t need the spouse’s pension. At 56, the scheme income would be £15,403. A range of critical yields were produced, the most relevant critical yield was that for a single life annuity – at 15.35% pa. To match the PPF benefits, this was 8.97% pa if tax free cash was taken. These were deemed to be unachievable, but less so for the income of £4,500 pa which was deemed to be sufficient for Mr P’s needs.

- The suitability report said that Mr P was willing to sacrifice the fixed, guaranteed income in return for the flexibility of taking withdrawals as and when he needed them. He didn’t want to lock into a fixed income, but he would still have the option to buy an annuity if required in the future.

- The scheme income would have covered most of Mr P’s annual £15,000 expenditure, but allowed no flexibility and no legacy for his nieces and nephews. The transfer would enable both of these. The comparison tool, which used conservative growth projections for the transferred funds were clearly set out for Mr P to draw his own conclusions as to suitability.

- The suitability report concluded by listing the various positives and negatives of a transfer and Mr P transferred in full knowledge of these.

The investigator’s decision and the provisional decision

- On the basis of the investigator’s findings – which took into account Mr P’s circumstances and objectives – it was clear that the advice was suitable, and that Mr P would have transferred regardless of FBWM’s advice. Simply put, he could have achieved his objectives by retaining his scheme benefits.

- I had provisionally upheld the complaint on the basis that: Mr P’s attitude to risk was incompatible with the type of risk required to match the scheme benefits; FBWM failed to provide a comprehensive and balanced portrayal of Mr P’s options and the future benefits available from the BSPS defined benefits and defined contribution scheme; and that one of Mr P’s key objectives – early retirement – could have been achieved through the BSPS or the PPF.

The representative further addressed these findings as set out below.

Attitude to risk

- Mr P had a high risk attitude and was adamant that he wanted to manage his pension’s investment strategy, as he’d done with his ISA. His experience meant that he was well placed to understand and undertake the risks of the transfer and what would be needed to generate the desired income.

- The concept of defined benefit transfers wasn't difficult to understand when comparing the income with taking capital. FBWM set out the advantages and disadvantages of transferring, along with clear illustrations showing the level of returns to match the scheme and PPF benefits – and to sustain income once he'd transferred.

- The benefits of remaining in the BSPS were clearly set out in the suitability report and the provisional decision acknowledged that Mr P had experience in managing his own investments.

- The provisional decision set out a position that Mr P didn't need to take the investment risks associated with the transfer and a legacy for his nieces and nephews didn't justify compromising his financial future. But if this was the case, no consumers should ever take the risk of a transfer, as in all circumstances BSPS members would be in receipt of regular income. Mr P was in an extremely strong financial position following the transfer and was on course to fully meet his objectives. And so it was unlikely that Mr P has encountered the financial difficulties alluded to due to transferring out his BSPS benefits.

<u>*Mr P's options*</u>

- Had Mr P retained his scheme benefits, he would have been able to meet his oncome needs from the (post-PPF reduction) income of around £13,500 pa and wouldn't have needed to draw income from other sources. He wouldn't have needed the returns generated on his ISAs and which would be taxable upon death. And as soon as the state pension began, a reasonable proportion of his income would be taxable. There would therefore be no flexibility, increased income tax liability and potentially a significant exposure to inheritance tax.

- Alternatively, Mr P could transfer out of the BSPS, take income from his ISAs tax free, grow his pension in a tax free environment and decrease his taxable income when his state pension became payable. This would also reduce the tax liability on the legacy left to his nieces and nephews and fully met his needs and objectives. Further, the income required from the ISAs would be achievable, given Mr P's above average attitude to risk.

- The additional benefit of transferring was that Mr P could choose his level of income as and when required, rather than it being fixed through the BSPS. The advantages of this kind of flexibility had been set out in FBWM's initial response to this service.

- It didn't appear to be the case that any weight had been placed on Mr P's ability to draw a higher income in the early years, compared to the restrictive arrangement in the BSPS or PPF. As Mr P was intending to retire within the next year, it wouldn't have been appropriate for him to wait until the outcome of the consultation was known, when everything was pointing to it falling into the PPF. This would have prevented Mr P achieving his objectives without severe penalties.

- Whilst it had been said that many important guarantees would remain if Mr P entered the PPF, not all of these guarantees were of use to him, and would be unlikely to outweigh the hindrance of not being able to transfer once the scheme had entered the PPF.

<u>*Key objectives*</u>

- Although the provisional decision had said that at least one of the objectives – early retirement – was available from the scheme, this didn't take into account the objectives as a whole.

- These were for Mr P to be able to choose and manage his pension's investment strategy, for him to have flexibility in his income withdrawals, to leave a legacy for his nieces and nephews, but to restrict advice to the transfer, with no ongoing servicing requirement.

- It was noted that any other financial needs wouldn't be addressed as a part of the limited advice service, and Mr P didn't seek advice from FBWM on early retirement, likely due to him having already decided on this course of action. It was therefore unfair to cite the key objective of early retirement to justify upholding the complaint, whilst ignoring all of the other objectives and the scope of the advice.

- Neither the BSPS nor the PPF would have allowed Mr P to manage his own pension investments or take income flexibly. The provisional decision said that the perceived advantages didn't outweigh the guaranteed benefits of the scheme, but the representative questioned how this service would have considered a complaint in the circumstances where advice was given contrary to the objectives of the complainant. It further said that the importance of the rights and benefits attached to either taking income from a defined benefits scheme or taking capital are subjective, depending upon the consumer's needs, objectives and reasonable perceptions.

- Mr P's needs, objectives and perceptions were fully informed and wholly reasonable, and it wasn't justified for this service to determine that the advantages of a transfer didn't outweigh the negatives. It was a subjective question, and clearly from Mr P's perspective, they did.

- The provisional decision had said that there needed to be a realistic chance of the benefits of the scheme being bettered by transferring out, but only the financial benefits had been considered, with no value being placed on flexibility which was one of Mr P's key objectives.

- Mr P could have lived on a lower level of income as identified by the forecasting, but in reality he could have taken a much higher amount earlier on and lowered this sum as he became older. This would arguably provide more value to Mr P should he fall ill or die at a younger age. There was also no reason to assume that the overall value of the transferred amount wouldn't eclipse the benefits which would have been available from the BSPS or the PPF.

Allowance for early retirement

- Even if FBWM was tasked with advising Mr P on early retirement, transferring would still have been a suitable option due to the reduction which would have been applied by the BSPS for taking benefits early.

My view on suitability

- It's been concluded that, taking account of Mr P's circumstances, including his attitude to risk, his objectives and the guarantees offered by the BSPS and the PPF, FBWM should have advised against the transfer – and that Mr P would have accepted this advice. But Mr P had a high attitude to risk, was in a strong financial position, with a good knowledge of investments and didn't stand to benefit from the additional scheme guarantees such as a spouse's benefit. All of the stated objectives were consistent with Mr P transferring out of the scheme.

- Mr P had already made arrangements to transfer out to the SIPP, so there was no basis to conclude that he wouldn't have sought advice elsewhere in order to proceed with the transfer.

- The representative then said that I had misunderstood the analysis for suitability. Referencing COBS 19.1.6, it noted that, when advising on a defined benefit transfer, the adviser should begin by assuming that the transfer won't be suitable, and that it would only be suitable if they could clearly demonstrate that it is in the client's best interests. But this was only guidance, to be read alongside COBS 9.2.1R and 9.2.3R. The first of these said that, when making a personal recommendation the business must obtain the necessary information regarding the client's knowledge and experience in the investment field, financial situation and investment objectives to make a recommendation which is suitable for the client. FBWM acted in accordance with this rule and made a recommendation which was suitable for Mr P. There was no requirement for an adviser to recommend the most suitable option, just one which was suitable for Mr P.

- The transfer was the only option which would have met Mr P's needs and objectives. He wanted to retire at age 56, have flexibility over his income and leave a legacy for his nieces and nephews. He also didn't want his pension to fall into the PPF. This left him with only one option, which was to transfer. When considered in this context, his decision to transfer was wholly understandable.

- The transfer provided valuable benefits which weren't available within the BSPS, such as the legacy for his nieces and nephews and the ability to vary his income. Additionally, the BSPS2 wasn't on the horizon at the time, but entry into the PPF was a real possibility, with the 10% starting reduction in income which this would entail. Therefore, the only way to maximise the transfer value was to transfer before the "time to choose" process ended.

- A lot of weight had been placed on the critical yield figure, but it was unlikely that this would have been achievable as Mr P intended to take benefits when he turned 56. The more relevant comparison would therefore be the income he would receive if the scheme entered the PPF. Comparing an income of around £15,000 pa for 31 years (his assumed longevity), this would amount to approximately £465,000. Compared with this, using a conservative growth rate (for a high risk investor) of 4% pa, a transferred fund of £260,000 would generate around £322,400, and Mr P would have the added benefit of the capital sum. This took no account of the compound return which would have been achieved had the returns been reinvested (if the income was being taken from the ISAs). It seemed clear, therefore, that transferring was likely to produce a greater overall value.

In conclusion, the representative said that the transfer wasn't caused by its client's advice and no liability should attach as a consequence. If Mr P was so concerned about the loss of a secure income, it queried as to why he hadn't made any attempt to use the transferred funds to buy one. This would support the suggestion that Mr P would always have transferred and have no interest in exchanging capital for income.

But the transfer in any case met Mr P's objectives, the representative said, and it was clearly within the scope of what a reasonably competent adviser could have recommended. It expressed concern at the change in outcome, based on the same evidence. And it also noted an article which said that 98% of complaints about transfers out of the BSPS had been upheld by this service, which it said was a far higher uphold rate for pension transfers in general – at 40%,and also significantly above the regulator's failure rate of 47% based on the cases it had looked at.

It considered the uphold rate by this service to be tantamount to a "strict liability" test in circumstances where advice simply needed to be suitable, and it was concerned about potential bias as a consequence. It requested that this service provide internal documents relating to the treatment and assessment of BSPS transfer cases.

Mr P's representative also submitted further comments as follows:

- Mr P was keen to emphasise that he hadn't established a receiving scheme prior to obtaining advice. Mr P's representative provided an acknowledgement email from his pension provider dated 12 September 2016, which post-dated FBWM's suitability report.

- The representative also said that, whilst Mr P had expressed an interest in retiring early at the time of the advice, he was now 60 and continued to work part time. He hadn't accessed any of his pension benefits.

- Mr P's preference would have been to work part time and gradually reduce his hours, but this wasn't possible when the advice was given. But it became possible in 2017 before the "time to choose" exercise had concluded. Had Mr P been advised to await the outcome of the consultation, as I had said should have happened in the provisional decision, he would have then capitalised on this opportunity and not retired early.

- As such, Mr P's representative said that it should be assumed that Mr P would have opted to transfer into the BSPS2 rather that the PPF.

On the basis of this submission, I revised my proposed basis of redress to assume that Mr P would have opted to join the BSPS2, and asked the investigator to let both parties know this.

My rationale was that, as set out in the provisional decision, I'd concluded that, notwithstanding my view that the advice to transfer was unsuitable, Mr P didn't need to make any decision about transferring until the outcome of the consultation was known. Nor did he in any case need to transfer to fulfil the objective of early retirement. And on the basis that Mr P then chose to reduce his hours when this working pattern became available, rather than retiring early, I was confident that this is also what he would have chosen to do, had he retained his benefits in the scheme.

As such, given that the lower early retirement deduction in the PPF would no longer have been of benefit, I was of the view that it would have been more financially advantageous for Mr P to have opted to transfer into the BSPS2 rather than the PPF.

In response, FBWM's representative said the following:

- On 26 May 2016, Mr P received a letter (which it attached) within which it stated, *"it seems increasingly likely that it will not be possible to find a new employer wishing to take on the Scheme in its current form, and that the Scheme would be required to go into the Pension Protection Fund"*

- The letter further said that this would result in significant reductions in future pension increases and cuts in pensions of at least 10% for those who hadn't yet reached age 65 (applicable to Mr P).

- Likely prompted by the uncertainty around the value of his pension fund and ability to retire early, Mr P made arrangements to leave the BSPS and then approached FBWM for advice in July 2016 to enable him to transfer.

- FBWM needed to advise Mr P on the basis of the information which was available at the time, which was that there was no sign of the BSPS being saved from entering the PPF. This would then have prevented Mr P from transferring out.

- In all of the documents retained by FBWM, it was clear that Mr P's intention was to retire the following year.

- When Mr P approached FBWM, he'd already opted out of the BSPS without FBWM's advice, which enabled him to obtain the transfer value which would expire in October 2016. The only reason for opting out would be as a precursor to transferring. Had Mr P not intended to retire in the near future, there would have been no reason for him to seek the transfer valuation.

- When Mr P met with FBWM in July 2016 to discuss retirement planning, he said that he intended to retire in the next couple of years.

- Mr P didn't challenge the facts as set out in the fact find completed in August 2016 – which recorded that he intended to retire in May 2017. There was nothing to suggest that Mr P would be offered part time work at a later date or that he would consider this as an option. If Mr P was aware that this was an option, he should have disclosed it to FBWM.

- In August 2016, Mr P provided FBWM with a breakdown of his annual outgoings and set out the financial advice requirements for the transfer quote, confirming his intention to proceed with the transfer and early retirement.

- It noted my position on Mr P not needing to make any decision until the outcome of the "time to choose" exercise was known. It said that this ran from October to late December 2017, but Mr P had transferred out of the scheme over a year before this, along with opting out of the scheme and obtaining a transfer value before engaging the services of FBWM.

- Had Mr P changed his decision, it was possible for him to do so, as FBWM had no involvement with executing the transfer of Mr P's benefits to the pension plan. This strongly indicated that Mr P wanted the transfer to proceed both at the time of the transfer and after his relationship with FBWM had ended.

- The option for Mr P to work part time only arose in 2017, long after FBWM had advised Mr P. It was therefore difficult to understand how it could be predicted that Mr P would have changed his mind and not retired when the option of part time working arose.

- It also wasn't for this service to speculate on what Mr P would have done had he not transferred and waited for the outcome of the consultation. Many other factors could have influenced Mr P's change in position and no explanation had been provided by Mr P himself as to what happened between August 2016 and April 2018 when he began working part time.

- Under DISP 3.3.4A, an ombudsman may dismiss a complaint if dealing with it would impair the effective operation of this service, with examples being cases which would be more suitable for the courts or another Alternative Dispute Resolution (ADR) entity. If there were doubts as to Mr P's thinking at the time of the advice and which might materially differ from what had been recorded by FBWM, it would be more appropriate for this complaint to be passed to a court, as circumstances where witness evidence is required fall outside of our jurisdiction.

- If this wasn't agreed, the representative asked that it be explained as to why it was believed that this service had the correct expertise and jurisdiction to support its findings.

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.

For ease of reference, I've used the same subheadings as FBWM's representative in addressing the points it's raised.

Decision to transfer against advice

With regard firstly to the adviser's notes, it's worth clarifying that these were prepared in response to the complaint, rather than being a contemporaneous record. They do refer to an email from August 2016 in which Mr P confirmed the ceding scheme's requirements to transfer. But this post-dated Mr P's initial meeting with FBWM in July 2016, and so I don't think this is clear evidence of a plan to transfer his scheme benefits pre-dating the involvement of FBWM.

Nor do I think that Mr P expressing awareness in a subsequent customer satisfaction form that he might have been able to transfer with another firm – but perhaps not within the same timeframe – as being evidence that he'd been determined to transfer and to do so in a particular timeframe.

But even if another interpretation of this was possible, my view, as set out in the provisional decision and explored further below, was that it was FBWM's advisory process which ought to have made Mr P aware that transferring was not the suitable course of action, nor in his best interests. Unfortunately, the outcome of FBWM's advisory process was the opposite, in that it recommended the transfer. For the reasons given in the provisional decision and below, my view is that, suitably advised and properly informed by FBWM, Mr P would not then have transferred – either through FBWM, or with any other business.

Turning then to the comment relating to the investigator's findings, and that, based on his reasonable evaluation of the facts, it was "beyond doubt" that Mr P would have transferred irrespective of the advice, as FBWM's representative will be aware, we have a two tier system which allows for a review of the facts of the case. And my finding is different, in that the advice *was* causative of Mr P's decision to transfer. There has therefore been no departure from the law, and so no explanation as to why such a departure has occurred is necessary.

I concluded in the provisional decision that Mr P wasn't fully informed. I acknowledge that it can't be concluded with absolute certainty that, if properly informed, he wouldn't have acted differently. My task was, and remains, to therefore decide, on a fair and reasonable basis, taking into account the facts, what is more likely than not to have happened. And my conclusion, for the reasons given, is that – fully informed - Mr P would have retained his scheme benefits.

With regard to the point about control of his pension funds and the requirement for flexibility, I addressed these points in the provisional decision, and my view remains the same. But to clarify, had it been clearly explained to Mr P that he could achieve the objectives of control flexibility, but at the very likely cost of a lower overall financial benefit, I think the appeal of flexibility and control would have been somewhat, and more likely than not fatally, undermined.

The representative has further said that, putting such considerations aside, the test for suitability of advice is whether it was within the scope of advice which could have been given by a reasonably competent adviser. And that any advice to transfer would have been in Mr P's best interests. But I'm afraid I fundamentally disagree. This wasn't a case of advice to transfer simply being a possible suitable alternative to Mr P retaining is scheme benefits – within a range of suitable options. My view, for the reasons given, is that the only suitable option here, and the only one which would have been acting in Mr P's best interests, was for Mr P not to transfer.

Assessment of suitability

I'd agree that there's no requirement for a business to guarantee that advice was suitable, especially with the benefit of hindsight. But I don't think the benefit of hindsight is needed here. A consideration of the transfer proposal on a contemporaneous basis reveals in sufficient clarity that FBWM should have advised Mr P to not transfer.

I also agree that the consideration of what's in the customer's best interest should take account of the advantages and disadvantages of both retaining the scheme benefits and transferring. And I must make it clear that at no point have I said that defined benefits transfers won't be suitable for some consumers. As such, there has been no refusal, as suggested by FBWM's representative, on my part to countenance the possibility that, in some circumstances, it might be suitable. It's simply the case that, for Mr P, it wasn't.

On the particular point of Mr P wishing to leave a legacy for his nieces and nephews, my first observation would be that, absent any evidence of financial dependency of the latter on the former, there would reasonably be no equivalence between this and wanting to leave a legacy for children of his own (notwithstanding that Mr P didn't have any children). I haven't seen any evidence of financial dependency, and none has been offered in response to the provisional decision. My comments on that particular matter, and the prioritisation of Mr P's security in retirement over a seemingly non-essential legacy for his nieces and nephews therefore stand.

Mr P's circumstances

The representative said that Mr P only needed an income of £15,000 pa to meet his current expenditure. As noted in the provisional decision, the income deemed sufficient to meet Mr P's needs was actually assessed to be more like £4,500 pa, which FBWM used to point out that the critical yield required to achieve this would be substantially lower than the 15.35% pa required to match the scheme benefits at age 65, and over 50% pa at age 56.

But my point about Mr P unnecessarily settling for a lower income which might have met his expenditure, rather than an enhanced pension from the BSPS remains the same – as set out in the provisional decision. There's simply no good reason to advocate a course of action which would reduce an individual's income, simply because they might be able to afford to live on that reduced amount, if there exists a means of receiving a higher, guaranteed income. Notwithstanding arguments around control, flexibility (I've already revisited the issue of death benefits above), which I'll address further below, the higher guaranteed benefit is in my view the obviously suitable choice. To be clear, not simply an alternative to another possibly suitable choice – rather, *the* suitable choice.

FBWM's representative has also said that, due to the 18% early retirement reduction in scheme benefits at age 56, this wouldn't have been in his best interests. This is, I'm afraid, a fallacious argument. To clarify, whilst the scheme benefits may have been reduced to account for the longer period of payment to Mr P, transferred pension funds would also have had less time to appreciate in value – and as a reminder, they needed to increase by over 50% at age 56 to match the scheme's guaranteed income level - before they began to be withdrawn and would also need to sustain those withdrawals over a longer period of time.

It has been further asserted that the BSPS was in deficit and it was likely that the scheme benefits would move into the PPF. For all the reasons given in the provisional decision, I don't think the latter was more likely than not to have been the outcome – hence the consultation to avoid just such an eventuality.

As to the further point that retaining the scheme benefits wouldn't have enabled Mr P to meet his objectives, I can really only reiterate what I've said in the provisional decision. The argument in favour of control and flexibility of income didn't justify the transfer of Mr P's scheme benefits. There were other ways, as outlined in the decision, of managing a guaranteed, escalating scheme income and gifting any excess if necessary, and the claimed tax advantages didn't stand up to scrutiny. Further, the objective of leaving a legacy to Mr P's nieces and nephews could have been met without needing to transfer – for example by leaving them his mortgage-free property, or if for whatever unexplained reason they needed more than this, through a life assurance policy.

My view is that this should all have been explained to Mr P, with the suitable outcome being that he didn't need to, and shouldn't, transfer. But as it wasn't explained to him in these terms, he was, as I've said above, effectively in an uninformed position.

Regarding the point about Mr P's attitude to risk, I'd again repeat what I said in the provisional decision. There's no point in taking a high risk for the sake of it, especially if the income requirement can be achieved through guaranteed means. And for Mr P to have increased the financial benefit, he would have needed to take an extremely speculative approach to investing – as a repeated reminder, to just match the starting scheme income at age 56, the transferred benefits would need to increase by over 50%. There was therefore no reasonable prospect for Mr P, even with his recorded risk rating, of achieving the required returns which might render the objectives of investment control and flexibility worthwhile in terms of justifying the transfer.

I also note the comment that the scheme benefits *"simply offered an inflation linked income each year"* – I think the purpose of this was to downplay the value of such a guaranteed income stream, but I think few individuals who didn't have access to such a guaranteed, increasing income for the rest of their lives would see it in such a negative light. And the benefit of a guaranteed, escalating income to an individual, such as Mr P, who had no other guaranteed income other than a state pension which wouldn't begin for many years would be significant. It may not have been possible to alter it, but I'd refer to other commentary on how Mr P could manage any excess income – which I think would most commonly be viewed as a comfortable, perhaps enviable, position to be in.

To sacrifice these guarantees for the sake of flexibility in an income which could never reasonably achieve the same value as that offered by the scheme, would not in my view be a suitable course of action. As I've said above, Mr P was effectively swapping a higher guaranteed income for the sake of flexibility in withdrawing a lower overall income.

FBWM's representative has noted that, at 56, Mr P's likely retirement age, he would have received a scheme pension of £15,403 pa. But it then said that the most relevant critical yields were 15.53% pa to match the scheme benefits, and 8.97% pa to match those from the

PPF. But I'm afraid that isn't right – those were the critical yields to match scheme benefits at the normal scheme retirement age of 65. The required yield to match the income which Mr P could take from the scheme at 56 was in excess of 50% pa. And although it's also been further asserted that Mr P could establish an annuity later on if needed, any of the above critical yields – even those to age 65 - tell me that the chances of matching the scheme income would be remote.

I've further noted the comment that Mr P was provided with comparisons of income, which would have enabled him to draw his own conclusions on suitability. But Mr P had engaged FBWM to assess suitability here. As an individual who would have had no prior experience or knowledge of defined benefit transfers, it wasn't up to him to determine suitability. FBWM was being paid several thousand pounds to assess this on his behalf and provide both a balanced and comprehensive overview of his options, and to recommend a suitable course of action. My view, for the reasons given, is that neither of these occurred here.

The representative then said that the position that Mr P didn't need to take the financial risks associated with the transfer was nonsensical, adding that no BSPS member should ever take the risk of transferring as they would all be in receipt of regular income. It said it was wholly legitimate for a consumer to seek greater returns from the fund, by way of both income and the capital sum. Security of income wasn't of paramount concern to all investors.

There a couple of issues to address here. Firstly, according to the guidance, the starting assumption for any defined benefit transfer is that it will be unsuitable, unless it can clearly be demonstrated otherwise. This is largely due to the guaranteed benefits being relinquished, which in many instances it would be very difficult to replace.

And that is precisely the case here. To reiterate, on the basis of the required critical yields, there was no reasonable prospect of Mr P being able to derive greater financial returns from his transferred funds. And the prospect of the capital sum which Mr P could leave as a financial legacy has already been addressed in this, and the provisional, decision.

There may of course be circumstances in which a transfer is the suitable course of action, for example the consumer had a limited life expectancy and the prospect of a spouse's or dependants' pensions was, for whatever reason (single, no dependants) outweighed by the advantage of a capital lump sum. Additionally, if the critical yield to exceed the scheme benefits was achievable, and the consumer was willing to take the risk for the sake of better returns, this might render a transfer suitable – so long as this wasn't outweighed by other considerations as to why it wouldn't be suitable. There may also be very specific and necessary purposes in mind for a lump sum which couldn't be met by using other assets (although it would need to be clearly demonstrated that the consumer understood what they were relinquishing).

But none of these conditions were present here – and for the reasons already given, none of the objectives recorded by FBWM would reasonably justify the transfer, especially where alternatives towards meeting those objectives were available, for example reinvesting/gifting surplus income and leaving a different kind of financial legacy to Mr P's nieces and nephews.

The representative has said that Mr P was in a strong financial position after transferring and that it was unlikely he'd encountered any of the difficulties alluded to as a reason to not transfer. The problem with this is that Mr P was in an even stronger financial position *before* transferring his benefits, with no reasons to be concerned by the impact of such issues as stock market fluctuations on his pension income, which would – after the transfer - now affect both his investment ISAs and his pension funds. Mr P may have been recorded as a high risk investor, but reinvestment of the pension funds could only make any sense if there was a reasonable prospect of them bettering the scheme benefits. And this simply wasn't the case here.

Mr P may also have benefitted from un uptick in financial markets – which would serve to mitigate any redress due as set out in the provisional decision - but as all parties to this complaint will be aware, this is far from guaranteed to be the case in the future. At the time of drafting this decision, I note that the increase in the value of the FTSE 100 has been just under 9% since September 2016 – an average growth rate of under 2% pa. And so some distance from the type of return required to even just match the scheme benefits. This is the reality of swapping guaranteed benefits for those dependent upon financial markets. And this isn't commentary with the benefit of hindsight. These are precisely the kind of low growth examples, repeated throughout the sometimes quite volatile history of stock markets, which should have been taken into account when advising Mr P to exchange the guaranteed scheme benefits for an overall lower, non-guaranteed benefit.

And Mr P may have been recorded as a high risk investor, and so willing to accept market fluctuations, but as I've said above, for even a high risk investor there needs to be the realistic prospect of exceeding the financial benefits of the scheme income to make the transfer – and any perceived advantage of flexibility – worthwhile. And this wasn't the case here, even to match the scheme benefits which would be available at age 65 – with a required critical yield of over 15% pa. This was around double the upper growth band, which might reasonably be consistent with a high risk investor, deemed feasible by the regulator. And Mr P's attitude to risk to achieve the over 50% pa critical yield to match the scheme benefits at age 56 would have needed to be highly speculative.

Therefore, for an individual such as Mr P, the critical yields required to match the scheme benefits weren't realistically achievable, as acknowledged by FBWM itself.

Mr P's options

FBWM's representative has set out Mr P's options, concluding that to retain his benefits in the scheme would have afforded no flexibility, increased his income tax liability and created a potentially significant exposure to IHT. I've already addressed the issue of flexibility, and why I don't think this justified relinquishing the scheme guarantees, and I set out my view on the income tax issue, which I also concluded didn't bear scrutiny as a reason for transferring (nor had it formed part of original rationale for transferring). Suffice to say my reasoning remains the same. The lower income tax burden of accessing income flexibly is unlikely to have offset the overall reduction in Mr P's financial benefit through transferring.

And as regards IHT, the threshold in 2016 was £325,000, and so Mr P would have exceeded this when ISAs, other savings and his property were considered. Taking into account their total value, 40% tax would have been levied on the excess of £175,000, meaning £70,000 being payable to HMRC. But if he'd relied on his ISAs for income and reduced these over the years, any unused pension funds passed on upon his death after age 75, although outside of the estate, would also have been taxed at the beneficiaries' marginal rate, which was likely to be between 20% and 40%. As at the time of the transfer, a marginal rate of 20% would have meant around £52,000 payable to HMRC, and a marginal rate of 40% would have resulted in £104,000 being payable to HMRC.

All of these amounts would likely have increased by the time Mr P was 75. But for illustration purposes, using the position in 2016 demonstrates that the likely tax applied to any lump sum legacy for Mr P's nieces and nephews from unused pension funds would have either been £18,000 below an IHT bill which would otherwise have been paid on the estate assets, or £34,000 higher. And so I don't think it can reasonably be said that there would be a clear IHT benefit in drawing income from the ISAs and leaving transferred pension funds as a death benefit. And certainly not one which would justify relinquishing the scheme guarantees.

As the assertion that no weight has been placed on Mr P's ability to draw a higher income in the earlier years, rather than being restricted to a fixed level of income from the scheme, I'd simply comment that Mr P didn't need an income higher than that which would be offered by the scheme – around £15,000 pa with BSPS, or around £13,500 pa from the PPF. Any excess requirements could simply have been met by withdrawals from his ISAs or other savings. and as I've said previously, any excess in the later years could have been gifted or reinvested, as Mr P saw fit.

And whilst it's been said that not all of the guarantees attached to the scheme benefits would have been of use to Mr P, certainly the most important one would have been – guaranteed, escalating income, rather than access to a fund which would almost certainly have produced a lower overall benefit.

Key objectives

The representative has said that it isn't fair to focus on early retirement as being an objective which could be met through retention of the scheme benefits and use this as justification for upholding the complaint. It has further asserted that, in doing so, I've ignored all of the other objectives in doing so.

Firstly, addressing the claim that early retirement wasn't in fact an objective, but was rather something which Mr P had already decided upon, I think it could reasonably be said that, in the absence of any part time working opportunity at the time of the advice, Mr P was seeking an assessment of a suitable means of retiring early. And I think this could reasonably be described as a key – in fact overriding – objective. Even if he'd already decided to do so, this remained a key objective. And I think it's fair to say that the other objectives recorded in the suitability report were subordinate aspects of the key objective. Particular aspects of the suitability assessment, including the claimed advantage of flexibility of income, along with projections of benefits from age 56, would be entirely consistent with the thinking around how best to achieve the key objective of early retirement.

As an aside, I also note that, further on in the representative's submission, early retirement is referred to as an objective.

But even if a different interpretation of the above was possible, I'm afraid the assertion that I've ignored the other stated objectives is plainly wrong – a significant part of the provisional decision was dedicated to an assessment of Mr P's recorded objectives and it's difficult to understand how the conclusion that these have been ignored could reasonably have been reached.

The representative has then queried my conclusion that the disadvantages of the transfer outweighed the benefits, enquiring as to how this service would have considered a complaint where advice was given contrary to Mr P's objectives. The answer is quite straightforward – such a case would have been considered on the basis of the facts of the case, as has happened here. My view is that suitable advice here would have been to not transfer, for all the reasons given in this and the provisional decision. And had this been the case, but Mr P had complained about advice to not transfer, which he heeded, it's likely in my view that the complaint wouldn't have been upheld – although this would of course be dependent upon the substance of that complaint.

Had he not heeded that advice, FBWM could either have opted to transact the business on an insistent client basis – meeting the benchmark and requirements of such a categorisation

– or, if it deemed such a transfer to be obviously against Mr P's best interest, it would have had the option to decline to facilitate the transfer.

And as to the argument that it wasn't justified for this service to determine that the advantages of the transfer didn't outweigh the disadvantages, I think this is a somewhat surprising comment from a representative which is familiar with the function and purpose of this service. It's precisely our role to determine, on a fair and reasonable assessment of the facts, whether, in our view, the advantages of the transfer outweighed the disadvantages. It may be a subjective question, and I acknowledge that I'm expressing an opinion on what should have happened here. But we are a fair, informal – and crucially impartial – service, with no incentive to either uphold or reject complaints such as these.

And the problem with asserting that, from Mr P's perspective, the advantages outweighed the disadvantages is that he wasn't in a fully informed position. If it had been clearly explained to him that he could: retire at age 56 with guaranteed escalating scheme benefits which would cover his annual expenditure; top up that income from ISAs/savings if required; gift (free of IHT) or reinvest any surplus income as he saw fit; have no particularly adverse IHT implications from using pension funds instead of ISAs for retirement income; make his property and any remaining ISA funds or savings (or life assurance policy if necessary) the legacy for his nieces and nephews; and still fully manage and control over half of his liquid wealth - his ISAs – as he saw fit, I think he may have viewed things somewhat differently.

And more importantly, if FBWM, armed with the same knowledge, had advised Mr P to retain his scheme benefits with the above explanation, I think Mr P would have accepted that recommendation.

And this would especially be the case if it was also made clear to him that there was very little prospect of him being able to better the overall financial reward represented by the scheme benefits by transferring and then managing his own investments – and certainly not without taking speculative risks.

The representative's further point is that, whilst I had said that there needed to be a realistic chance of the benefits being bettered by transferring, only the financial benefits were compared, with no value placed upon "flexibility". Flexibility may indeed have a value, but I'd query the advantage of such flexibility if there is little chance of those benefits being improved upon, no matter how flexible the withdrawals were. I think it's very unlikely, for example, that someone might eschew the opportunity of a guaranteed, escalating income in favour of flexibility with an overall lower level of income.

For example, presenting Mr P with a scenario in which, for the sake of the benefit of flexibility, he would need to restrict his withdrawals to just £4,500 pa from the outset to just match the overall scheme benefits which would otherwise have paid a starting income of £13,500 pa – on a guaranteed, escalating basis – would I think have resulted in a different outcome here.

As to the point about Mr P being able to take a higher amount of income earlier, if he decided to withdraw from the pension fund rather than, or alongside, the ISAs, indeed he could, but with a likely significant impact on his ability to fund his retirement later on in retirement. As a reminder, Mr P was, at the time of the advice, planning to retire in one year's time – at 56 – and so he would have had a prospective further 30 years of retirement to sustain, with all of the uncertain fluctuations in financial markets which might occur in that period of time.

Had there been a reasonable chance that the transferred benefits might even just match the scheme benefits, then there may be an argument for an individual with a risk attitude like Mr

P’s to have transferred for the sake of bettering the overall financial outcome. But despite the representative’s argument that that there was no reason to assume that the transferred benefits wouldn’t eclipse those from the BSPS or the PPF, this self-evidently wasn’t the case, as indicated by the high critical yields and FBWM’s own acknowledgment – along with the representative’s later in its response - that they weren’t achievable.

Overall, my view is that the perceived advantages of “flexibility” and “management” have been overplayed. And had Mr P been properly aware that such flexibility meant that he could simply manage and vary a lower overall pension benefit throughout his retirement – minus the guarantees which were present in the BPSPS or the PPF - I think he would quite justifiably have formed a different conclusion as to whether to transfer.

Allowance for early retirement

I’ve addressed this point above – it’s misleading to use the reduction factor applied by a scheme for earlier, and longer, payment, without also recognising the effect that taking transferred benefits earlier would have on both the ability of the pension funds to grow before income withdrawals, and the number of additional years’ retirement which the pension fund would need to then sustain.

My view on suitability

In terms of the representative’s claim that Mr P’s circumstances and objectives were consistent with a transfer, I think there’s little I can add to what I’ve already said above. Mr P didn’t need to transfer to satisfy his objectives – he could have reinvested/gifted any surplus income, fulfilled investment management goals through his ISAs, and left a different financial legacy to his nephews and nieces. And even though these may not have precisely matched the strictly pension-related objectives recorded by FBWM, an explanation as to why a different format of financial planning, whilst retaining the scheme guarantees was suitable here would, in my view, have persuaded Mr P to retain his scheme benefits.

Mr P may have already established a SIPP, although the evidence he’s provided suggests otherwise, but I don’t in any case think this means he would have used a different business to facilitate the transfer if FBWM had advised against it. My view is that, properly informed and suitably advised, Mr P would have appreciated that transferring wasn’t in his best interests. And closing the SIPP wouldn’t have been particularly onerous.

Turning then to the claim that I have misunderstood the analysis for suitability, I must disagree. I’d firstly comment that, whilst a business should take into account the guidance on assuming unsuitability at the outset when considering a defined benefits transfer, there’s no elevation here of the guidance over the rules.

And the rules to which the representative refers clearly set out the requirement to make a suitable recommendation. For all the reasons given, my view is that the advice given by FBWM didn’t constitute a suitable recommendation, and the provisional decision referred to specific rules which I didn’t think had been adhered to. And it’s not the case that this was one of a range of potential suitable options of which not transferring might have been the most suitable – there may have been the possibility of this with regard to whether Mr P ultimately decided to enter the PPF or the BSPS2 once the “time to choose” process had begun, but my view is that, within the very binary and markedly different outcomes of either retaining his scheme benefits or transferring, only the former would have been a suitable recommendation.

The representative has said that transferring was the only option for Mr P to meet his needs and objectives. And that, when considered in this context, Mr P’s decision to transfer was understandable. And I agree that, in the context of the recommendation and assessment of his options as presented by FBWM, Mr P's decision to transfer was wholly understandable. But that's a significant part of the problem. As I've said previously, my view is that this wasn't a balanced and comprehensive assessment of Mr P's objectives and ways of achieving them, albeit in perhaps a slightly different format. And had his options been presented in a more balanced way, which would have meant that he could have retained and capitalised on the greater financial benefit offered by either the BSPS or the PPF, I think he would have acted differently.

And this includes any concerns which Mr P had about entering the PPF. For the reasons set out in the provisional decision, if these concerns had been properly managed and addressed, I think that Mr P would have been reassured by the guarantees still in place within that arrangement.

The representative said that, in addition to Mr P not being able to leave a legacy for his nieces and nephews, along with the inability to vary income, both of which I've addressed above, the BSPS2 wasn't on the horizon, but that the PPF was a real possibility. And that the only way to maximise the transfer value was to transfer before the "time to choose" process completed. But for the reasons given, I don't think Mr P needed to maximise his transfer value. My view is that Mr P should have retained his scheme benefits, which renders any maximisation of a transfer value moot. This would only be relevant if a transfer was suitable, but timing was key – which isn't the case here. Had Mr P not transferred, he'd then have had the option to either move into the BSPS2 or the PPF.

I also think that there's a misinterpretation here as to what happens when scheme benefits enter the PPF. My understanding is that once this has occurred, it isn't possible to transfer out a CETV, and so no reduction would or could be applied to that. The 10% reduction is applied to the income which is payable by the PFPF in lieu of the scheme income.

As regards the point made about the critical yield, I agree that this would have more likely than not been unachievable. But unfortunately, the alternative calculation which the representative has then used to justify the transfer is flawed. It has said that the income of around £15,000 from age 56 would have amounted to a total benefit of around £465,000 over the assumed longevity of 31 years. This would in fact be a slightly lower starting amount within the PPF, as has been acknowledged above, but this doesn't account for the guaranteed escalation in the pension in payment. The actual benefit to Mr P over 31 years would therefore be significantly higher than this – with escalation at, say, 2.5% pa, this would be in the region of £650,000.

The amount of the uncrystallised pension funds was then calculated to be around £322,000 with growth at 4% pa. I agree that compounded growth would increase this if Mr P didn't need to draw from his pension funds at all. But if Mr P was relying on the pension income for expenditure, it would be reasonable to apply the same compound growth to the ISA funds which FBWM has said could have been used instead. Essentially one or the other "pots" of money, or a mixture of both, would have been used to fund Mr P's retirement income, leaving the other to grow. So the compound growth argument is broadly neutral.

Furthermore, the £650,000 which would be provided by the scheme over 31 years was guaranteed to Mr P. A presumed growth rate of 4% pa had no such guarantees attached, and as above, I'd refer to actual stock market performance since the advice as evidence – if needed - of this.

And whilst I don't think that disproportionate weight has been attributed to the critical yields – the other objectives have also been considered - those required to match the scheme benefits were indicative of the likely inability of the transferred funds to match the scheme benefits. Although a critical yield does also factor in spouse's/dependants' benefits, and Mr P may have been single with no dependants at the time of the advice, I don't think it could be effectively ruled out that a future dependant or spouse might also benefit from the additional death benefits offered by the scheme.

Put simply, and to repeat what I've said above, Mr P didn't need to take the investment risk associated with the transfer for the sake of an overall likely lower financial benefit. And being able to either manage the funds or take them flexibly, when there's little scope for matching the scheme benefits, let alone improve on them, couldn't in my view reasonably compensate for that overall reduction.

With regard to the concluding comments made by FBWM's representative in its response to the provisional decision, I'm afraid I disagree that the transfer wasn't caused by FBWM's advice. Irrespective of the evidence provided by Mr P's representative that Mr P hadn't in fact already arranged a recipient plan for the transfer funds, my view is that, if suitably advised and fully informed, Mr P wouldn't have transferred – for all the reasons given above.

As to the reason why Mr P hasn't bought a guaranteed income, as set out above, Mr P hasn't retired. He has instead capitalised on the opportunity to work on a part time basis which became available before the "time to choose" exercise was complete.

And I'm afraid I disagree that the advice was suitable, for all the reasons given above. And similarly, I don't therefore consider that it was within a range of potentially suitable outcomes here.

FBWM's representative has further commented on the change in outcome from the investigator's view. As I've said above, given the representative's familiarity with our service, I don't think I need to labour this point, but this service operates a two tier process, and although we have looked at broadly the same evidence, it's entirely possible that a review might produce a different outcome based upon my interpretation of the facts. Were this not possibility, there would seem little point in having the two tier process in the first place.

As to the statistics mentioned by the representative, and its conclusion that this might imply a "strict liability" test being applied for these cases, I'd be hopeful that the 20 or so pages of provisional decision, in addition to the further commentary above, would reasonably lead to a different conclusion – that the individual facts and circumstances of this case have been considered to determine, on a fair and reasonable basis, that FBWM gave unsuitable advice and so was at fault for any consequential loss suffered by Mr P.

Further, a high percentage of BSPS transfer complaints being upheld is likely to simply reflect the similarly high prevalence of unsuitability within those transfer advice cases. As to any concerns about such cases which might be held by the regulator, it's not my position to comment on those, especially in this individual decision, but it might be useful, as an indication as to the nature and degree of those concerns, to refer FBWM and its representative to the pending redress scheme which is being established to consider BSPS transfer cases.

I've also noted the request for any internal documents relating to this service's assessment of BSPS transfer cases. This is being dealt with separately, but I see no reason as to why that should reasonably further delay resolution in this case.

Turning then to the comments of FBWM's representative regarding my altered view as to Mr P more likely than not opting to join the BSPS2 rather than entering the PPF, I firstly note that it has only quoted the second paragraph of a two page letter, which beyond that particular paragraph, set out why the scheme considered that entry into the PPF would be a poor outcome and why the proposed consultation was designed to avoid just this eventuality. It's worth noting that the extract cited by the representative referred to the scheme in its "current form". Again, the purpose of the exercise, as set out in that letter, was to restructure the scheme so that it could avoid forced entry into the PPF

Therefore, as I've set out above, and notwithstanding the valuable guarantees which would have persisted even in the PPF, the benefit of which should have been properly explained and emphasised by FBWM, I don't think that entry into the PPF was more likely than not to have been the outcome here. The whole purpose of the exercise was to prevent this, and this in itself would, in my view, have justified waiting to see what that outcome was. As I've said above, there was no immediate threat of the scheme entering the PPF.

I don't doubt that Mr P would have had concerns regarding the future of the scheme, and he may have already opted out, but again, as I've previously said, it was FBWM's responsibility to appropriately manage and address those concerns. And as also set out above, my view remains that this didn't happen here. Had it done so, even on the basis of having opted out, Mr P could, and in my view would, have retained valuable deferred scheme benefits.

I further accept that, at the time of the advice, Mr P was intending to retire at age 56. But this was on the basis that, at that time, there wasn't the opportunity of working part time. Again, I accept that neither Mr P nor FBWM could have known this in 2016. But had FBWM given Mr P suitable advice to retain his scheme benefits, which could in any case have taken account of the prospect of retiring at 56 for the reasons given above, he would then have become aware of the option to work part time in 2017 - and afterwards made a decision on whether to transfer to the BSPS2 or the PPF.

The representative has said that no explanation has been offered by Mr P as to what happened between August 2016 and April 2018, at which point he began working part time. But the straightforward and, in my view, entirely reasonable explanation is simply the implementation of the ability to work part time. I don't think it's particularly unusual for employees to begin to reduce their working hours as an alternative to full retirement. And the reason that this wouldn't previously been mentioned as a possibility, or as being appealing to Mr P, is that, prior to it being introduced in 2017, it simply wasn't a possibility.

And I'm afraid the representative is mistaken in saying that it isn't for this service to think about what decisions Mr P might have made if he'd not been advised to transfer and had participated in the "time to choose" exercise. It's the role of this service to consider, on the balance of the available evidence, what is more likely than not to have happened if different advice had been given – and in this case, had FBWM given suitable advice to Mr P to retain his scheme benefits.

And my view, based on the evidence of what Mr P actually did when presented with the opportunity to work part time, is that he would have done the same, and then, with imminent retirement no longer a prospect, more likely than not have appreciated that the BSPS2 best suited his circumstances. The advantage of entering the PPF for the greater benefit offered to early retirees would no longer, by that point, have been so relevant.

And finally, to address the suggestion that this case be dismissed on the basis that it would be better suited to the courts, and would otherwise seriously impair the effective operation of this service, my answer is that there isn't, nor has been, any impediment to this service being able to properly consider this case and its merits, nor would there be any reasonable prospect of it representing an impediment to our effective operation. As to the particular point that there may be doubts about Mr P's thoughts at the time, which if different to those recorded by FBWM, would constitute "witness evidence" which could only, according to the representative, be properly considered by the courts, there are a couple of issues here.

Firstly, as I've said above, I accept that at the time of the advice, Mr P was intending to retire at age 56, and so there's no discrepancy between what he was proposing at that time and what was recorded by FBWM. But I'd refer to what I've said above about the likely course of events, had suitable advice been given to Mr P to retain his scheme benefits.

And then secondly, I'm not entirely certain as to what is meant by the "witness evidence" which the representative asserts is applicable here, but certainly evidence, both verbal and written - and submitted by both parties - is precisely what this service considers when making determinations on what's fair and reasonable in the circumstances of the complaint. This service doesn't "cross examine" the parties involved, if that's what's being referred to. But there's been no need to in this case. In my view, there's sufficient available evidence for me to have been able to reach a fair and reasonable conclusion on the facts of the case.

And whilst I suspect that there is confusion here between our ability to dismiss a case as being more suited to the courts and whether it falls within our jurisdiction, there's nothing about this case in terms of being able to properly assess doubts in Mr P's thinking about early retirement at the time of the advice – which as I've explained above wasn't the case – which would mean that we should either dismiss it, or that we don't have jurisdiction to consider it.

As to the point relating to whether this service has the necessary expertise to consider a case such as this, ombudsmen are appointed to the panel by our board on the basis that they're able to demonstrate sufficient ability to deal with the cases put before them. For greater clarity on this, I'd refer the representative to the "Who we are" section of our website.

Summary

For all the reasons given in the provisional decision, along with my additional comments above, I remain of the view that the advice given by FBWM to Mr P to transfer his BSPS benefits wasn't suitable. Furthermore, and again for the reasons set out above, I maintain the view that, but for the unsuitable advice of FBWM to transfer his scheme benefits, and if properly informed, Mr P wouldn't have transferred. And he would then, more likely than not, have opted to join the BSPS2.

Putting things right

As I said the provisional decision, my aim to is put Mr P, as closely as possible, into the position he'd be but for the unsuitable advice of FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management. Reinstatement of Mr P's deferred benefits isn't possible. Therefore, FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, should undertake a redress calculation in line with the pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

As set out above, my view has altered, in that, had Mr P not transferred his pension funds, he would have opted to join the BSPS 2. There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

The reduction for early retirement under the PPF was lower and the commutation factors for tax free cash entitlement were also slightly more favourable under the PPF. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

But for the reasons set out above, I think it's likely that, properly advised, Mr P would have retained his scheme benefits, and then when part time working became available, capitalised on this – as he ultimately did. His scheme benefits could then have been deferred until normal scheme retirement age.

In terms of death benefits, under the BPSP 2 the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. Mr P wasn't married at the time, but as I've said above, I don't think this could, or should, have been ruled out as a possibility in the future.

And so it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

As such, the calculation on the basis of choosing to enter the BSPS 2 should be carried out using the most recent financial assumptions at the date of the actual calculation. FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, may wish to contact the Department for Work and Pensions (DWP) to obtain Mr P's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr P's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

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 future loss adequately reflects this.

The compensation amount must where possible be paid to Mr P within 90 days of the date FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, receives notification of his acceptance of any final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 90 day period, that it takes FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, to pay Mr P.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

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.

Determination and money award: I require FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, to pay Mr P any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, to pay Mr P any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, pays Mr P the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr P.

If Mr P accepts my decision, the money award would be binding on FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management. My recommendation is not binding on FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management.

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 this decision.

My final decision

My final decision is that I uphold this complaint. FB Wealth Management Ltd, trading as Forrester Boyd Wealth Management, should undertake the above calculation and, if it demonstrates a loss, compensate Mr P accordingly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 April 2022.

Philip Miller
Ombudsman