DRN-3654583

The complaint

Mr L complains about the advice KBFS Financial Limited gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

At the time KBFS gave advice it was trading under a different name. But as it remains responsible for the transfer advice I will only refer to KBFS within this decision.

Professional representatives have helped Mr L to bring this complaint. But, for ease of reading I will refer to the representatives' comments as being Mr L's.

What happened

In March 2016, Mr L's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr L's employer would be set up – the BSPS2.

Mr L was concerned about what his employer's announcement meant for the security of his pension. So, he contacted a financial adviser (which I'll refer to as 'Firm A') for advice. Mr L met with Firm A in July 2017 and it completed a fact-find and an assessment of his risk appetite. Amongst other things it noted that:

- Mr L was 48 years old, in good health, married, with two non-dependent children
- He was working and earning £38,000 a year, equivalent to £2,000 a month net.
- He was a member of the BSPS and was also paying into a money purchase pension. To which he contributed 10% of his yearly salary which his employer matched.
- Mr L's wife was working and earning around £1,400 a month net.
- She would be entitled to her own employer's pension.
- They owned their house with an outstanding mortgage of around £60,000 with around 10 years remaining on the mortgage term.
- They had a rental property worth around £160,000 which provided an income of around £400 a month.
- They had no other investments.
- Mr L had a balanced attitude to risk.
- He believed he would need an income of around £15,000 a year in retirement.

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

As Mr L wanted to discuss transferring his DB scheme to a personal pension and Firm A didn't hold the relevant permission from the Financial Conduct Authority ('FCA') to advise on the transfer of his DB scheme, it referred him to KBFS.

KBFS obtained a transfer value analysis report. It then spoke with Mr L on 30 August 2017, about his circumstances and objectives. Amongst other things KBFS recorded that:

- Mr L felt he couldn't trust his employer as it had previously lied to the workers and he didn't trust it to look after the pension scheme.
- He was aware that others might take over the pension funds but he'd been told that the benefits would be lower than the existing scheme.
- He didn't wish to keep working in the same industry until he was 65 years old. He wanted to retire at 55 and enjoy life. He said he would consider a part-time job at age 55 but in a different industry.
- He wanted a flexible income to be able to take a higher pension at age 55 and then reduce that income once he started receiving his state pension.
- KBFS explained the risks involved with transferring out of a DB scheme and the guarantees which Mr L would be giving up by transferring.

On 7 September KBFS wrote to Mr L via Firm A. Amongst other things it said:

- It estimated BSPS could pay Mr L a yearly pension of £24,725 at age 65.
- It set out a number of the risks of transferring his pension away from the DB scheme.
- His BSPS benefits had a cash equivalent transfer value ('CETV') of £391,991.
- An alternative arrangement would need to grow by (a measure known as the critical yield) 6.68% to match the BSPS benefits.
- The PPF would pay him 90% of his BSPS benefits which it said was a yearly pension of £20,330.
- He would need a yearly investment return (critical yield) of 3.96% to match the PPF benefits.
- Based on an estimated investment growth of 5% a year, if Mr L were to take his pension from an alternative drawdown arrangement, the fund would last him until he was 110 years old.

KBFS attached a number of documents including key facts and illustrations of the proposed alternative personal pension. It also asked Mr L to complete a number of forms and provide identification to allow the transfer to go ahead.

Mr L signed and returned the relevant documents authorising the transfer on 11 September 2017.

The following day, 12 September 2017, KBFS sent Mr L a letter setting out its detailed analysis, advice and reasons for its recommendation. Such documents are often known in the industry as suitability reports; so I've used that term when referring to this letter in the rest of this decision. As well as repeating the information from its letter of 7 September 2017, the report also said, amongst other things:

- If Mr L wished to buy an annuity to match the benefits from the DB scheme then KBFS would recommend he stay where he was.
- By transferring Mr L could take 25% tax free cash ('TFC') at age 55 and use that to pay off his remaining mortgage which he anticipated would be around £20,000.

- He could use the remaining funds to bolster his income in the early part of his retirement until he reached age 67 when his and his wife's state pensions would become payable and he could reduce his drawdown income.
- His wife wasn't dependent on his income and so didn't need the spouse's pension available on his death from the DB scheme. Instead she or his adult children could benefit from receiving the lump sum remaining in the personal pension fund.
- KBFS would charge him 2% of the fund value for its advice.
- Firm A would provide ongoing financial advice thereafter.

KBFS recommended that Mr L should transfer from the BSPS to a named personal pension. It said this would allow Mr L to achieve his objectives of:

- Protecting the full value of the fund in the event of his death, so he could pass that to his wife and children.
- Have the option of flexible income to suit his financial needs, giving up work at age 55.
- More control over where his pension is invested.
- Avoid his pension going into the PPF.

In October 2017, BSPS administrators sent the scheme members a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make the choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr L's pension transfer was completed in November 2017. At that time the fund was revalued and £404,773 was paid into his newly set up personal pension from which KBFS received fees of £8,095.

Mr L complained in 2021 to KBFS. In brief he said the advice to transfer out of his final salary scheme wasn't suitable for him and not in his best interests.

KBFS didn't uphold Mr L's complaint. Amongst other things it said:

- The transfer was suitable for Mr L as it met his objectives of flexibility and control of his pension.
- He was concerned that his pension benefits would be transferred to the PPF and wasn't certain that BSPS2 would be set up.
- Mr L wanted to retire early and have the flexibility to take his pension benefits in the early years of retirement.
- He was aware of the risks and guaranteed benefits he'd be giving up. But he was willing to give up the guarantees in order to have control of his pension income.
- Owing to the early retirement deduction factors his BSPS pension would have reduced to £13,470 a year at age 55 which wouldn't give him enough to live on.
- Mr L wanted an income of £15,000 a year which he would take between ages 55 to 67 when he reached state pension age. He would then reduce the amount he took from a personal pension.
- Mr L wanted to use 25% TFC to pay off his mortgage.
- He wanted to ensure his family could inherit his residual funds on his death.
- He wanted to take advantage of the higher CETV.
- KBFS had warned Mr L that income from a personal pension was not guaranteed; that values can go up and down; and the money might not last the rest of Mr L's life.
- The pension transfer was completed in November 2017 and before the details of the potential new scheme had been released. In the meantime the BSPS administrators

had sent Mr L “time to choose” papers. But the new scheme wasn’t guaranteed and there was still potential for his fund to go into the PPF, which he didn’t want.
- Mr L had told Firm A’s adviser that he was happy with KBFS’ advice but that some of his colleagues had received compensation and he thought he “*might give it a go*”.

Mr L referred his complaint to our service. An investigator upheld the complaint and required KBFS to pay compensation, including redress of £300 for the distress and inconvenience Mr L experienced. In brief our investigator didn’t think that the transfer was suitable for Mr L and thought instead that KBFS should have recommended he moved his benefits into BSPS2. Amongst other things she said:

- The critical yields to match the benefits from the existing scheme were unlikely to be met.
- The suitability report made very little mention of the BSPS2 benefits.
- While Mr L would have lost the ability to transfer his benefits if his pension had moved into the PPF, he could have transferred his BSPS2 benefits if he’d moved into that.
- It was more likely than not that the BSPS2 would go ahead.
- KBFS didn’t give enough consideration to Mr L an taking income from other sources including his money purchase pension in early retirement.
- While a personal pension can offer better death benefits in certain circumstances those weren't worth giving up guaranteed benefits for.
- KBFS didn’t examine other methods such as life insurance for providing death benefits.

KBFS disagreed with our Investigator’s assessment of the complaint. Amongst other things it said:

- The Investigator didn’t give enough weight to the situation the BSPS was in and the “*very real probability*” that it would move into the PPF.
- Mr L’s wish to take control of his pension was a core objective as he needed to reduce the level of uncertainty, which was causing him significant anxiety.
- At the time of the transfer the only two guaranteed options were transferring out or moving to the PPF. While there was talk of BSPS2 it wasn’t guaranteed. And if it did go ahead future revalued pensions would be less than the existing scheme.
- There was no confidence that the new scheme would go ahead or that it would be able to meet all its members’ liabilities and could end up in the PPF.
- Mr L said that his employer had lied to the scheme members and he wanted his pension to be completely separate from the existing scheme, which was evidence that he wanted control of his pension. Also the new scheme still wasn’t “real” at that time.
- It wasn’t possible to wait until all the new scheme information was available and arrange a meeting then. The deadline for Mr L to choose what he wanted to do was three months before he knew if the new scheme would be going ahead. And, if his pension had moved into the PPF then he would have lost the opportunity to transfer.
- When giving advice KBFS could only use the facts available at the time. And based on those the advice to transfer was right for Mr L. KBFS made him fully aware of the risks he was taking and the benefits he was giving up. Its recommendation was not based on what might or might not happen.
- Mr L couldn't wait until nearer his preferred pension age to decide what to do. Had BSPS2 entered the PPF, which was a “*reasonable concern at the time*”, then there would have been no option to transfer.
- The scheme trustees had said that future CETVs would be lower due to the reduced inflation protection in the BSPS2.

- As there was still a possibility that the BSPS2 wouldn't go ahead and that it would transfer to the PPF a more realistic critical yield comparison was with the PPF. And to meet the expected benefits from the PPF would require a critical yield of 3.96%, which was well within our published growth rate (the discount rate – which I explain below) of 4.3%.
- Our investigator didn't consider what actions Mr L would have taken if KBFS had advised him to stay in the BSPS scheme. KBFS said it understood that Mr L had "shopped" a number of advising firms looking for the best value. So KBFS said that if he hadn't transferred through it he would have used one of the other firms.
- Mr L had clearly demonstrated his understanding of the investment world, he'd done his own research and fully appreciated the benefits he would be giving up.
- There was no way of knowing what Mr L's money purchase scheme would have been worth by the time of his preferred retirement. In fact Mr L wasn't even sure that his job was secure. So he may not have paid into that money purchase scheme until retirement.
- Mr L wanted to retire at 55 and so flexibility was very important to him. It said the PPF didn't allow this.
- Our investigator's comments were from the position of knowing that the BSPS2 did go ahead and as such were made with the benefit of hindsight.
- KBFS did discuss the option of life insurance but Mr L didn't want this as he didn't want his wife to lose the option of a lump sum.
- Transferring to a personal pension allowed Mr L to achieve his objectives.
- Mr L didn't want a set income and wanted the tax advantages of being able to take tax-free income from his pension pot.

As our initial investigator had left our Service a second investigator replied to KBFS. He wasn't persuaded to change the assessment of the complaint. In brief he said that moving away from a pension with guaranteed benefits would only add to and not remove uncertainty. While the BSPS2 hadn't been confirmed there was enough information available to know that it couldn't be ruled out as an option. While Mr L distrusted his employer there was a significant separation between the employer and the scheme trustees and KBFS should have reassured him on that point.

KBFS should have established if Mr L and his wife could meet their income needs if Mr L's pension went into the PPF or the BSPS2. Simply because Mr L might have shopped around for the best value advice doesn't mean that it was a forgone conclusion that he wanted to transfer. Providing appropriate risk warnings doesn't absolve an adviser from acting in a customer's best interests or make advice suitable.

As KBFS didn't agree with our investigators' views the complaint was referred to me to make a final decision.

What I've decided – and why

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

In bringing this complaint and responding to it Mr L and KBFS have made a number of detailed points. While I've considered everything carefully, in this decision I don't intend to address each and every point raised. Instead I will focus on what I see as being the key issues at the heart of Mr L's complaint and the reasons for my decision.

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

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of KBFS' actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly the same reasons given by the investigators.

The regulator, the FCA, states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, KBFS should have only considered a transfer if it could clearly demonstrate that it was in Mr L's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Distrust, uncertainty and control

In KBFS's response to our investigator's assessment of the complaint it's highlighted that Mr L had a deep distrust of his employer. KBFS said Mr L told it the employer had lied to him. And he didn't trust it with his pension. KBFS added that, at the time it gave its advice, the BSPS2 hadn't yet been put in place and so wasn't a "*real*" thing. KBFS also said that Mr L was keen to address the uncertainty of the situation and he could do so by taking control of his pension by transferring it into a personal arrangement.

I'm aware that many BSPS members like Mr L had serious concerns about their employer's attitude towards their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr L. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand 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. And as indicated above, Mr L had some very real concerns about his employer's conduct and so might well have been leaning towards transferring his pension when he sought advice. But KBFS was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr L should transfer out of his DB scheme KBFS needed to be able to clearly demonstrate that doing so was in his best interests.

I don't dispute that when Mr L approached KBFS there was still the possibility that his pension could move to the PPF. And KBFS has strongly argued that the BSPS2 may not have gone ahead. But I think KBFS overestimated the chance of the BSPS2 not happening.

I note that Mr L sought advice before he'd received his "time to choose" letter. But, some months earlier, in May 2017, the PPF announced that the terms of the *Regulated Apportionment Arrangement* ("RAA") had been agreed. Under the announced plans, Mr L's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently on 28 August 2017 – before KBFS provided it's advice – the BSPS administrators provided scheme members, including Mr L, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr L's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr L, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr L's employer had made the payment referred to was announced on 11 September 2017. That was the day before KBFS sent Mr L its suitability report.

So, I don't think it was the case that KBFS or Mr L were in a position whereby they couldn't wait for details of the BSPS2. And given that the whole purpose of the RAA was to prevent the entirety of the BSPS entering the PPF, I think that KBFS should have been aware that it was more likely than not that the BSPS2 would go ahead**.** And I disagree with KBFS that it was only with the benefit of hindsight that it could have arrived at that position. In those circumstances, while entry into the PPF was still a possibility, I think KBFS should have explained to Mr L that this was unlikely to be Mr L's only option and taken the necessary steps, including deferring giving its advice until more details of the BSPS2 was known, But it didn't do that.

Further, even if Mr L remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think KBFS should have addressed that concern. A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't apply across the board, and for those taking early retirement the PPF could have been more beneficial. But, as I go into in more detail below, given that KBFS didn't do an analysis or comparison of those early retirement benefits from the PPF, it's not clear to exactly what extent those benefits might have favoured Mr L or how KBFS put that to him in order to allay his fears.

So, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be.

And it's certainly possible, as I explain below, that Mr L could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF. Although, given the lack of information on KBFS' file, I can't say to what extent that's the case. But, I'm not persuaded that the uncertainty that Mr L experienced when he entered into the advice process was sufficient reason to recommend that he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That's because, to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have led to KBFS recommending Mr L transfer out of the DB scheme altogether.

KBFS' advice process

KBFS carried out a transfer value analysis report (as the regulator required) showing how much Mr L's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme. But, this was based on his existing scheme benefits and Mr L didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

I accept that, at the time it drafted its suitability report the precise details from BSPS2 weren't known. But, as I've said above, KBFS could have deferred giving advice until those were known. In any event what was assumed was that the benefits of the BSPS were thought to be better than those proposed in the BSPS2. And the BSPS2 was thought to be of greater benefit than the funds going into the PPF for the scheme's normal retirement age of 65. So, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. And while it was possible that the BSPS2 might not have gone ahead, given that it was more likely than not that it would, as I've said above, I think KBFS should have factored in the likely benefits available to Mr L through the BSPS2 before it gave its advice. Had it done so Mr L would have been in a better place to make an informed decision.

However, not only did KBFS not gather all the required information about BSPS2 it also gave its advice with only limited details from the BSPS and the PPF. I've provided an analysis of the suitability of that advice below. But, I think I need to also comment on the timing and the manner in which KBFS provided its advice.

It's notable that after KBFS spoke with Mr L on 30 August 2017 its next contact with him was its letter of 7 September 2017. That letter set out some basic details about Mr L's position together with some information about the guarantees he'd be giving up and the risks he would be taking by transferring out of the DB scheme. KBFS also attached information about the proposed alternative fund and asked Mr L to sign documents authorising the transfer. So, having spoken to Mr L once, and without giving him sight of any in-depth analysis of his situation, KBFS wrote to him assuming that the transfer out of the scheme was a done deal. That's the case, even though, at that point – as far as I can see – KBFS hadn't given Mr L details of the personal pension it was recommending he should transfer to.

A much clearer process would have been for KBFS to provide its advice as a whole. That advice should have considered the overall picture – including an analysis of moving to the PPF, moving to the BSPS2 or transferring out of the DB scheme altogether. KBFS should have presented those options together in one document. But KBFS didn't send Mr L its – more detailed – analysis in its suitability report until after Mr L had already signed to say he wanted to go ahead with the transfer.

KBFS would no doubt argue that it explained the content of its suitability report to Mr L in its phone conversation. And, as it believed he was clear about his objectives and his means of meeting those it put the wheels in motion to sort out the transfer without first putting its detailed analysis to him in writing. But, transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. So, KBFS should have ensured that Mr L had sight of all the information he needed in order to make an informed choice before making that decision. And that included the information within KBFS' suitability report. But KBFS didn't do that.

But, even if that hadn't been the case and KBFS had sent Mr L its suitability report before asking him to sign the documents to arrange the transfer, I still don't think it gave him enough information to fully consider his options.

KBFS’ suitability report refers to Mr L’s desire to retire at age 55 on a number of occasions. And it said its recommendation would allow him to achieve that aim. But it provided very little information in its reports about how he would achieve that and what he would be giving up in order to do so. There was certainly no such analysis included in its letter of 7 September 2017

Also, KBFS’ suitability and transfer value analysis reports provided projected retirement income rates and the critical yields to match those for both the BSPS and the PPF at age 65. But KBFS didn’t provide the same level of detail if Mr L were to retire at age 55. It told Mr L that his BSPS benefits would reduce to around £13,470 a year at age 55. But it didn’t give a critical yield figure to compare what the growth rate from the personal pension would need to be in order to match that. It also didn’t give figures for the amount of TFC Mr L could take or how that would reduce Mr L’s income if he remained in the DB scheme at age 55. It seems that KBFS omitted TFC figures from its advice because the BSPS administrators hadn't provided those figures when giving Mr L his CETV quote. But if that was the case then KBFS should have asked the administrators for those figures before giving its advice. Alternatively it should have obtained those with its transfer value analysis report. That way it could have ensured it gave Mr L all the information he needed in order to make an informed choice. But it didn’t do so.

Similarly, KBFS’ reports don't give any figures for Mr L’s benefit entitlement from the PPF at age 55. That’s significant as the PPF was known to provide more generous benefits for those retiring earlier than the BSPS, particularly where TFC was taken – at least in the short term. But I've seen no evidence that KBFS provided an analysis of the benefit comparison between the BSPS, the personal pension and the PPF at age 55. And without that analysis I don't think it gave Mr L sufficient information on which he could reach a fully informed opinion of what was in his best interests.

It follows that I don’t think KBFS communicated with Mr L in a way that was clear, fair and not misleading. In fact it could be argued that by failing to gather all the information Mr L needed in order to make an informed decision KBFS was in breach of COBS rule 9.2.6. That rule says that firms should not make a recommendation to clients where it doesn't have all the necessary information to assess the suitability of its recommendation. And I'm not convinced that KBFS had all the information it needed when giving Mr L advice.

Financial viability

Looking at the information KBFS did provide says that the relevant critical yield at age 65 for Mr L taking a full pension from the BSPS without TFC was 6.68%. The critical yield required to match the benefits provided through the PPF at age 65 was 3.96% if Mr L took a full pension. While KBFS didn’t, incorrectly in my view, present the BSPS2 figures, even without those we can assume the lower annual increases under the BSPS2 would’ve likely decreased the critical yields compared to the BSPS. But, I still think those would’ve likely been higher than the critical yield matching the PPF benefits at age 65.

KBFS gave its advice after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.3% a year for 16 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% a year. And it's notable that the discount rate would drop to 3.3% when adjusted for Mr L retiring at age 55, which was six years from retirement.

I've taken these figures into account, along with the composition of assets in the discount rate, Mr L's attitude to risk and also the term to retirement. I note that a discount rate of 4.3% is higher than the critical yield required to match the PPF benefits. And KBFS has indicated that this makes its recommendation financially viable. That is, because the potential for growth was higher than required until age 65 to match the benefits from the PPF, KBFS argues that Mr L could have been better off by transferring to a personal pension than if his benefits moved to the PPF. But that ignores the potential benefits from the BSPS2. And, as I've already said, it's likely that the BSPS2 benefits would have been higher than the comparison to the PPF at age 65. So the critical yield would likely have been nearer to the BSPS figure than the PPF figure. And in those circumstances it's unlikely that the discount rate would have met or exceeded the critical yield required to match the benefits from the BSPS2.

Further, Mr L clearly advised KBFS that he intended to retire earlier than age 65. So, I think the critical yields at age 55 or 60 would've been substantially higher than those for age 65. That's because the transferred funds would've been invested for less time and so had less potential for growth before Mr L accessed them. Also he would likely need to access those funds over a longer period of time.

In addition, there would be little point in Mr L giving up the guarantees available to him through a DB scheme only to achieve, at best, similar levels of benefits outside the scheme. The critical yield to match the BSPS at age 65 was 6.68%. So it would likely have been slightly lower to match the BSPS2 benefits. But that still would almost certainly have been above the discount rate of 4.3%. Given that, and the regulator's low and mid-level projections of 2% and 5% respectively, I think Mr L was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension and took benefits at age 65, as a result of investing in line with his attitude to risk. And if retiring earlier than this, I think the benefits would've been substantially lower than the DB scheme.

Further, if there was a sustained period of poor performance then there was a very real chance that Mr L's fund would grow at a much slower rate or could suffer losses. And while KBFS did point out these risks to Mr L I believe it should have advised him that opting into the BSPS2 (the benefits under which would be guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs. So, I don't think it was in Mr L's best interests for him to transfer his pension just to have flexibility and control that he didn't need

Given Mr L was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice. And KBFS has argued that, as a result of its recommendation, Mr L could achieve his other financial objectives. So I've gone on to consider whether KBFS has clearly demonstrated that the advice to transfer was in Mr L's best interests. When doing so I've been mindful that KBFS's role was to find out what Mr L's wants and needs were and why. Its role wasn't simply to do what Mr L wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and income needs

It seems the main reason KBFS recommended Mr L transfer was for the flexibility and control it offered Mr L. Having considered the evidence, I don't think Mr L needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

Mr L told KBFS that his work was physically very demanding. And his preference was to retire at 55. Although I note he said he would also consider other work, on a part-time basis, but in a different industry at that time. But I think most people would say that they would like to retire early if given the chance. However, I think most people would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their retirement for. It seems to me that this is something Mr L was likely to reassess once he reached age 55. And as such, I think early retirement was something that was – most likely – nice to have rather than a genuine need for Mr L.

Further, if Mr L did have a genuine need for early retirement then he might have been better off by opting for a transfer to the PPF. As I've said above it was well-known that the manner in which PPF calculates its early retirement factors, including TFC sums, are more generous than in many DB schemes, including BSPS. In this case KBFS hasn't gathered the information needed in order to see what Mr L might have been entitled to from the PPF at age 55. But, I've noted that KBFS' transfer value analysis shows that the PPF would entitle Mr L to TFC of £104,991 and a yearly pension of £15,780 at age 65. And given that its early retirement reduction factors were more generous than the BSPS, it's likely the PPF would have paid Mr L a handsome TFC amount at age 55 which would have adequately covered his mortgage and other costs leaving a significant sum left over as well as an annual pension.

I note that KBFS didn't record what Mr L's wife's likely choices would be and whether or not she would continue to work if Mr L retired at age 55. It has recorded that Mrs L wouldn't need to rely on Mr L's income, as she would have her own pension and rental income in retirement. But there's no mention of what age she intended to retire at and whether her income could support the household finances if Mr L took early retirement. Similarly, while Mr L said that he would like to retire at 55, he also said that he might continue to work, albeit on a part-time basis and in another industry. But I can't see that KBFS looked at how Mr L's benefit entitlement from the BSPS2 or PPF might have supported that option.

In addition, Mr L had relatively recently started paying into a money purchase pension that both he and his employer contributed 10% each of his salary towards. At that time that would have been the equivalent of £7,600 a year. In six years time, if Mr L didn't ever adjust his contributions, and assuming the fund didn't suffer losses, then that pension pot would have stood at around £45,600. But if Mr L's salary grew (below the rate of inflation) at 2% a year and assuming the fund also grew at 2%, which was the regulator's lowest projected rate then the fund could be worth over £61,000 when Mr L reached age 55. So an option for Mr L could have been to use the TFC and income from his money purchase pension fund to enhance his income from the PPF or the BSPS2, if he chose to retire early. Alternatively he could, for example, have taken the funds from the money purchase pension to improve his income if he started to work part-time, while leaving his BSPS2 funds untouched. That way the scheme's early retirement factors would have less impact on his guaranteed income at the time he decided to take it. So I don't think Mr L's only solution for retiring early from his current job was to transfer his funds away from his DB pension.

In any event, as I've said above, like most of us, I can understand why Mr L would want to retire at age 55. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that's seems to be a more likely prospect for Mr L. But there's no evidence that KBFS seriously challenged Mr L's objective of early retirement at age 55. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Mr L was still six years away from 55. So he had no need to make an urgent decision to transfer out of his DB scheme as he could have opted to move into the BSPS2. And, if he still felt that he wanted to retire when he reached 55, and felt that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 49 years old. But it doesn't appear that KBFS put that option to him.

That said, it's true to say that Mr L couldn't have had the same level of flexible access to his DB funds. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr L had any concrete need to take TFC at all or to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see that Mr L had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that KBFS gave its advice.

Death benefits

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr L. But whilst I appreciate death benefits are important to consumers, and Mr L might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr L about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr L was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his wife and family that they may not need for many years to come. And by that time, the fund could have been depleted by Mr L's withdrawals from it in the meantime.

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I also think the existing death benefits attached to the DB scheme were underplayed. Mr L was married and so the spouse's pension provided by the BSPS2 scheme or the PPF would've been useful to his wife if Mr L predeceased her. I'm aware that Mr L said Mrs L wouldn't need to rely on Mr L's pension in retirement. But that doesn't mean an additional income would be unwelcome, particularly if Mr L died prematurely. And I don't think KBFS made the value of these benefits clear enough to Mr L. They were guaranteed and escalated – the spouse's pension would also be calculated as if no TFC had been taken under the BSPS2. Further, it was not dependent on investment performance, whereas the sum

remaining on death in a personal pension was. KBFS' said Mr L's pension fund would be depleted by age 110 if he retired at 65 and withdrew the same pension he'd be entitled to through the BSPS. So Mr L might have thought that guaranteed a significant lump sum for his wife on his death. But that was based on a consistent investment return of 5% each year. So, if the fund grew by less than that sum, or suffered losses, then there would be less available as a death benefit.

Further, the fund would reduce as Mr L drew down money from it. And I note that Mr L said that he intended to use the fund to support his early years of retirement until his and his wife's state pension became payable when they were 67. If that happened, any funds Mr L took from his personal pension at an early stage would reduce the lump sum benefit available in the event of his death. So, for example, if Mr L had taken 25% TFC, then that would automatically reduce the amount in the fund available for death benefits by 25%. And that fund would then continue to deplete unless left untouched.

If Mr L genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think KBFS could've explored life insurance further. Mr L already had a significant death in service benefit through his employer. But if he wanted an extra sum to cover his retirement years, he could've taken extra cover out on a whole of life basis. I've noted that there are quotes on file for a whole of life policy. And KBFS told us that Mr L didn't want this as he wanted to leave a lump sum from his pension pot to his wife. But it's not clear when Mr L discussed this with KBFS as it's not documented anywhere on the file I've seen and it's not mentioned in the suitability report. So I can't see to what extent KBFS challenged Mr L's desire for death benefits over the security of income in retirement. And to my mind, the fact that life insurance wasn't explored further suggests to me that greater death benefits wasn't a genuine objective for Mr L, instead, it was simply a consequence of transferring his pension.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr L.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr L. But KBFS wasn't there to just transact what Mr L might have thought he wanted. The adviser's role was to really understand what Mr L needed and recommend what was in his best interests.

KBFS was in a good position to have analysed, tested, challenged and advised Mr L about what was in his best interests for retirement planning. It knows valuable pension pots like Mr L's DB scheme were paid into with the intention of providing for retirement. And ultimately, I don't think the advice KBFS gave to Mr L was suitable. He was giving up a guaranteed, risk-free and increasing income within BSPS2 (or the PPF). By transferring to a personal pension Mr L was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr L's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when KBFS gave its advice, but I think it was clear to all parties that it was likely to be going ahead. Mr L had over six years to his desired retirement age and 16 years to the scheme's normal retirement age. So his needs in retirement could have changed in the meantime. And by opting into the BSPS2 Mr L would have kept the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr L was married and his wife's pension in the BSPS2 would be set at 50% of his pension at the date of death. This would be calculated as if no lump sum was taken at retirement (if Mr L chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think KBFS should've advised Mr L to opt into the BSPS2.

KBFS says that regardless of its advice Mr L would've transferred in any event. But I'm not persuaded that's the case. KBFS said that Mr L "shopped around" for the best value advice. That might be the case, although I note that it was Firm A that referred Mr L to KBFS. But assuming that Mr L did shop around for advice, that doesn't mean he was always destined to transfer from the scheme. At that point he hadn't received any advice. The fact that Mr L might have wanted the best value advice service on offer isn't an indication he intended to ignore the advice he was paying for. And, if KBFS had clearly set out why it wasn't in Mr L's best interests not to transfer, I'm not persuaded he would have gone against that advice. That's because, Mr L was an inexperienced investor and this pension accounted for a large portion of his retirement provision at the time. So, if KBFS had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice. I'm also not persuaded Mr L's concerns about his employer were so great that he would've gone against the advice he was given, particularly if KBFS had explained that his employer and the BSPS trustees were not one and the same.

It follows that I don't think KBFS' advice to Mr L to transfer out of his DB scheme was suitable for him. And I think KBFS should have advised Mr L to opt into the BSPS2.

So, I think KBFS should compensate Mr L for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Mr L, I think KBFS should pay him £300 to address that.

In response to our investigator's assessment of the complaint Mr L's representatives said that a 15% nominal tax deduction from the compensation – as set out below – doesn't fairly account for the charges that would've been taken from the fund value over that time. While I appreciate the representatives feel this may unfairly reduce the redress payable, I'm mindful that it's not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr L back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed below fairly compensates Mr L for the impact of the unsuitable advice.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA published a policy statement on 28 November 2022 which set out the new rules and guidance - https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

We've previously asked Mr L whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance/rules to be published. Mr L would like his complaint to be settled in line with the new guidance /rules. So, I consider it's fair that KBFS calculates Mr L's redress in line with new guidance and rules once those come into effect.

A fair and reasonable outcome would be for KBFS to put Mr L**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme and transferred his benefits to the BSPS2.

The basic objective of the proposed amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and its proposed updates to the DB transfer redress methodology, I'm satisfied that the proposed changes will, if ultimately implemented, still reflect a fair way to compensate Mr L.

KBFS must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG 17/9).

For clarity, while Mr L said he wanted ideally to retire at age 55, he's told us that he has no plans to retire at present. So, compensation should be based on him taking benefits at the scheme's normal retirement age of 65.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr L'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 L as a lump sum after making a notional deduction to allow for 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 his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr L within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and KBFS has received notification of Mr L's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% a year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes KBFS to pay Mr L**.**

Income tax may be payable on any interest paid. If KBFS deducts income tax from the interest, it should tell Mr L how much has been taken off. KBFS should give Mr L a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

Determination and money award: I uphold this complaint and require KBFS Financial Limited to pay Mr L 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 KBFS Financial Limited to pay Mr L any interest on that amount in full, as set out above.

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

Recommendation: If the compensation amount exceeds £160,000, I also recommend that KBFS Financial Limited pays Mr L the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr L.

If Mr L accepts this decision, the money award becomes binding on KBFS Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 January 2023.

Joe Scott
Ombudsman