DRN-3740556

Financial Ombudsman Service

The complaint

Mr M complained that he was given unsuitable advice in 2017 to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a personal pension plan.

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

What happened

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

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

Mr M was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do, so he first contacted an independent financial adviser (IFA). As the IFA did not have the regulatory permission to advise on DB pension transfers it asked KBFS to provide the advice.

Information gathered about his circumstances and objectives were broadly as follows:

- Mr M was 49 years old, married and with no financially dependent children. He was in good health.
- He lived in a home valued at approximately £95,000, owned jointly with his wife which had an outstanding mortgage of around £26,000. The mortgage had around 7 years left to run.
- Mrs M also worked. Together they had a joint income of £2,800 (net) per month and disposable income of over £1,000 per month. They had a £4,000 loan which was being paid down and credit card borrowing of a similar amount. Mr and Mrs M had around £3,500 in savings.
- The cash equivalent transfer value (CETV) of Mr M's BSPS was approximately £336,000. The normal retirement age (NRA) was 65 although Mr M expressed a desire to retire earlier if possible.

Throughout the summer of 2017, Mr M met with his IFA who subsequently passed on details to KBFS. KBFS discussed Mr M's circumstances and objectives on 30 August 2017 and it set out its advice in a suitability letter on 12 September 2017.

The letter said that on the basis of the financial comparisons alone, it didn't think that if Mr M transferred to a personal pension, his transferred-out funds could grow by enough to meet a growth figure called the 'critical yield' which I explain more about later. However, it went on to say that based on his wider circumstances and objectives, it advised him to transfer away and invest the funds in a personal pension plan. KBFS said this would allow Mr M to achieve his financial objectives.

Mr M accepted this advice and so transferred from his BSPS to a personal pension plan. In 2021 Mr M complained to KBFS about its advice, saying he shouldn't have been advised to transfer out of his BSPS. In response, KBFS said it hadn't done anything wrong and was acting on the objectives Mr M had at the time.

Mr M referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, KBFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

I don't think it was, so I'm upholding Mr M's complaint.

Financial viability

As required by the regulator, to demonstrate the financial comparisons between his current scheme and transferring out to a personal pension, KBFS referred in its transfer analysis to critical yield rates.

The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity income as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

However, before I go into detail about the comparisons made, I think it's relevant for me to comment on what KBFS was basing its financial comparisons on. In its suitability letter, KBFS implied that so little was known about the 'new' BSPS2 scheme as to make any analysis or comparisons of no use. But I don't think this is right.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And I think it's reasonable to say, for example, that after mid-August 2017 KBFS should have waited for these new details (BSPS2) to emerge as the existing scheme (BSPS) was no longer an option.

Further important announcements were made throughout August and early September 2017, so using analysis based on the BSPS wasn't particularly helpful to Mr M because he didn't have the option to remain in that scheme: he either needed to opt into the BSPS2 or move with the scheme to the PPF.

Nevertheless, I think it's also reasonable for me to say that the BSPS2 critical yield rates were likely to be between the existing BSPS rates, and the PPF ones - although the new scheme was most likely closer to the BSPS critical yield figures. Of course, it's possible this scheme may not have gone ahead. But I still think the benefits available to Mr M through the BSPS2 could and should have been factored in with the advice, given the suitability letter was drawn up on 12 September 2017 and Mr M's transfer value didn't expire until 21 October 2017. Given these shortcomings, I don't think Mr M was given the best opportunity here to be able to make an informed decision, particularly about the BSPS2.

Still, in my view, there's no real dispute between the parties that Mr M would probably receive lower growth outside the DB scheme as a result of transferring to a personal pension. This is because the KBFS adviser themselves outlined this by saying that the critical yield *"in my opinion, may not be an achievable rate of return year on year, based on the term to retirement, however, the advice for the transfer is based on all of your circumstances not just this factor".*

To be clear, I also don't think transferring out was financially viable in this context either, because achieving future growth rates above the critical yield weren't likely in my view. And there would be little point in Mr M giving up the guarantees and benefits available to him through a DB scheme only to achieve a lower level of benefits in a personal pension.

For example, KBFS said the critical yield required to match the benefits of BSPS at the age of 65 was 6.7% if he took a full pension. It did not provide an analysis against taking a reduced pension together with a tax-free lump sum at 65, nor was there any critical yields for retirement earlier than the age of 65 even though KBFS said this was one of Mr M's objectives. But I think it's reasonable to assume the critical yields would have been higher given the funds would be invested for a shorter time before being accessed and then would be accessed over a longer period of time.

Elsewhere, in its transfer analysis, KBFS also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. It said the critical yield to match the reduced benefits available through the PPF at age 65 was 3.87% per year if Mr M took a pension

under the reduced terms offered, and 3.49% with a further reduced pension and tax-free lump sum. As above, the critical yields would have been higher if he retired earlier than 65.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use 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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The relevant discount rate published by the Financial Ombudsman Service for the period before 1 October 2017 was 4.3% per year for 15 years to retirement (calculated to age 65). I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. At the time, as KBFS assessed Mr M's attitude to risk (ATR) as balanced, I think a figure at the mid-point of these projections was most relevant. Both the regulator's mid-projection and the discount rate are well below the critical yield figure for the BSPS, so I think KBFS was right to say that achieving the critical yield, year-on-year, upon transferring out, wasn't likely. And that was even more likely if Mr M retired early, as per his desire. I also think the annual management fees and charges associated with a personal pension would have further reduced potential growth and so also the viability of transferring away from a DB scheme.

I've noted too, that KBFS said that in order to purchase an annuity to provide benefits of an equal value to the existing scheme at retirement at the age of 65, the funds required would be around £821,000. Even the fund required to purchase an annuity without a spouse's pension and increases to the pension payable, was around £462,000, considerably higher than Mr M's CETV. So, all these things, in my view, provide a powerful indication of the real value Mr M would lose if he transferred out to a personal pension.

So, I think it's fair to say that from a financial comparison perspective, KBFS's figures, shown in its suitability letter and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr M would receive lower pension benefits in the longer term, when compared against the BSPS. This was supported by KBFS's own statements in the suitability letter, which I've referred to above. And I think it's safe to say the same can be said broadly of the BSPS2 scheme, although we don't have corresponding analysis here to show it.

Of course, according to KBFS itself, its recommendation that he should transfer out to a personal pension was not based on the financial comparisons with his current scheme. Rather, KBFS said Mr M had different reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned above. I've considered these below.

Flexibility and income needs

As I've said, KBFS recommended a transfer out based on what it said were Mr M's objectives. It listed these in the letter and I summarise them below as follows:

- He wanted the option of flexible income to suit his situation; he wanted to give up work from the age of 56 without any reduction in benefits.
- He wanted more control over where his pension was invested and in which funds.
- He wanted to protect the full value of his fund in the event of his death, and to pass the value on to his wife, and eventually his two grown-up children.

- He didn’t want his pension to enter the PPF and he didn’t trust his employer.

So, it seems the main reasons that KBFS recommended the transfer was for the flexibility and control it offered to Mr M. I have therefore considered all these issues with great care, beginning with Mr M’s apparent desire to retire early.

- *Retiring early*

There are conflicting ages in the documents I’ve seen about when Mr M wanted to retire, ranging from ages 55 – 60. I don’t doubt that Mr M might have genuinely hoped to retire early, but I’ve seen nothing that shows this was anything more than something he aspired to do at that stage, as opposed to being part of a formulated plan. I say this because Mr M was only 49 years old and from what I’ve seen, he had no concrete plans for retirement at that point. I’ve also noted that Mr M could have retired early as a member of the BSPS2 and the PPF.

So, even if I were to consider that Mr M’s retirement plans were more advanced than the mere aspirations set out by KBFS - and he really did want to retire early - I think KBFS should have more comprehensively assessed the possibility of achieving this goal whilst being a member of the BSPS2 or the PPF. As I’ve said, details of BSPS2 were emerging at the time and early retirement with the PPF was already something that could be calculated. But I think KBFS portrayed early retirement from these types of scheme in a negative dimension. Whilst it’s clear that in these circumstances there would have been ‘actuarial reductions’ caused by early retirement from the scheme, KBFS set out in the suitability letter, only the early retirement income figures under the BSPS at 55 years of age. Not surprisingly, this was likely to produce a much lower retirement income and KBFS said the resulting £11,342 per year was too low for Mr M to contemplate.

However, I’ve seen some conflicting estimates of what Mr M’s required retirement income was actually projected to be. The ‘fact-find’ said a joint income of £20,000 was required. But I’ve also seen his estimation was for around £1,000 per month in retirement. I’ve also accounted for Mr M’s mortgage being projected as being paid off around him reaching the age of 56; and any income source Mrs M may have still had doesn’t appear to have been considered here either. Finally, as I explain more about later, Mr M also had another pension he was contributing to, as was his employer.

I appreciate that KBFS may not have had access to Mr M’s ‘time to choose’ documents when it gave the advice. But I think it ought to have waited for this to fully advise him on his best options. And having now seen this information, if Mr M had wanted to retire at 55 under the BSPS2, this income would have also more or less met his needs, particularly when combined with his other pension.

All these things indicate to me that retiring early from the BSPS2 or even the PPF would meet Mr M’s retirement needs – because whatever shortfall there was could’ve been met by Mr M using the funds he’d built up in the new scheme over the next five plus years. And I note Mr M said he expected Mrs M to continue earning money from childminding. He and Mrs M were also due to have state pensions at 66. So, I don’t think early retirement within the new scheme, or indeed the PPF, ought to have been portrayed so negatively by KBFS and effectively discounted. Although early retirement in these circumstances would have meant Mr M’s pension benefits would have been somewhat reduced due to him accessing the pension earlier and for longer, I’ve seen no evidence this was really properly assessed with a view to advising him whether it was more in his best interests, rather than him being advised to transfer away completely.

- *Flexibility*

In its suitability letter, KBFS said that by transferring out and having a personal pension plan, Mr M would be able to flexibly access the tax-free cash element earlier. However, I've seen no compelling evidence showing access to a lump-sum at 55 years old was necessary or required for any specific reasons. In fact, KBFS itself said that Mr M had no such plans for the money.

It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But KBFS should have been telling Mr M at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 onwards, also came with consequences in that the amount left for his later retirement years would obviously decrease and the main purpose of a pension is to provide an income in retirement.

I think the apparent aspirations Mr M had, as set out in KBFS's final response letter, to enjoy life and buy a camper van could have been met from his existing financial resources. KBFS demonstrated no need whatsoever for Mr M to transfer away from a DB pension, based on these types of reasons. Mr and Mrs M seem to have had a significant monthly disposable income and access to modest savings. The 'fact-find' completed by KBFS showed, for instance, that they had several hundred pounds of difference between their joint monthly incomes and expenditures.

So, whilst I accept the notion of accessing tax-free cash earlier than his NRA might have been appealing, this needed to be considered against the other options Mr M faced, including opting for the BSPS2.

Also, I can't see that Mr M required flexibility in retirement in the way KBFS implied. KBFS said in its transfer analysis that Mr M's estimated annual pension upon his NRA was £20,831 per year. But as I've said, when discussing his circumstances with KBFS, Mr M had speculated that in retirement he might actually need less income than this. As I've also explained, there were limited degrees of flexibility still available to Mr M to retire younger than 65 and take tax-free cash, had he opted for the BSPS2. This was guaranteed and index linked and I think it fitted Mr M's needs.

The 'time to choose' document also shows Mr M could have taken tax-free cash of around £61,860 and a reduced pension of £9,280 per year at age 55 from the BSPS2. So, if Mr M did in fact require tax-free cash, I think he could have achieved this through the BSPS2, whilst still ensuring his income needs were met, particularly as he had also recently joined his employer's new defined contribution ('DC') scheme and would have been making contributions to it until he retired. And if he really did want to retire early, it seems to me that in the event of any shortfalls in Mr M's income needs could have been met by drawing on this second pension.

So overall, I haven't seen anything to persuade me that Mr M wouldn't have been able to meet his retirement income needs by accessing his DB pension instead. In my view, KBFS did not properly consider his additional DC pension when giving him the advice.

I have therefore considered everything KBFS said in its suitability letter about flexibility: it said this would include how funds were invested, the level of income he could withdraw from the age of 55 and a greater ability to flexibly use the tax-free lump sum element. It also said that Mr M would be able to have more control over the pension if he transferred out.

However, I've seen nothing which shows Mr M had either the desire or capacity to exercise personal control over his pension. In my view, Mr M's circumstances were much more aligned to him retiring from a DB scheme, such as BSPS2, and drawing a pension. So, I think the suitable option was for him to access his DB pension in the way it was originally intended. His DC pension could have supported some of his other aspirations for flexibility if ever needed.

- *Death benefits*

KBFS says that death benefits were discussed at the time and that Mr M was better off with the more flexible death benefits associated with a personal pension plan. In particular, it said money could be passed to his wife and / or grown-up children. However, this was, in my view, a demonstration of KBFS's failure to clearly explain the value of the death benefits he already enjoyed through the BSPS (and which would be broadly replicated in BSPS2).

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 M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 him about what was best for his retirement provisions. As I've said, a pension is primarily designed to provide income in retirement. And I don't think KBFS explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I've noted that at the time of the suitability letter, Mr M was described as being in good health and only 49 years old. Mrs M was also only in her early fifties and I've noted there was no mention of her having a pension of her own.

So, I also think the death benefits attached to the DB scheme were underplayed. The spouse's pension provided by the DB scheme would have been very useful to Mrs M if Mr M predeceased her and I don't think KBFS made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And in any event, there may not have been a large sum left in a personal pension plan to pass on to anyone, particularly if Mr M lived a long life or if investment returns were poor. So, KBFS should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, it doesn't appear that KBFS took into account the fact that Mr M could have nominated Mrs M (or their children) as the beneficiary of any funds remaining in his DC scheme. To this end, Mr M could have ensured part of his pension wouldn't just 'die with him'.

I can't be sure about the extent to which life insurance was discussed in this case although I've seen some quotes from another adviser. However, these appeared essentially to be quotes based on the transfer value of Mr M's full pension benefits and assumed that he could pass away on day one following the transfer. Accordingly, they were very expensive and unrealistic. At around 49 years old and apparently healthy, 'term' life insurance may have been a reasonably affordable product if he really did want to leave a legacy for his loved ones.

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

objective, listed as it was in the suitability letter, was no more than a generic comment and not meaningful to Mr M's situation.

- *Control or concerns over financial stability of the DB scheme*

It's clear that Mr M, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and KBFS said Mr M preferred to have control over his pension fund.

So, it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was KBFS's obligation to give Mr M an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were emerging and it seemed likely it was going ahead. So, the advice should have properly taken the likely benefits available to Mr M through the BSPS2 into account and I think this should have alleviated any concerns about the scheme moving to the PPF.

I'm conscious that Mr M said he didn't want his employer having control over his pension – so KBFS says he wasn't interested in the BSPS2. But I note Mr M still worked for the same employer and he was a member of the new defined contribution pension scheme. So, his other pension would still be tied to his employer. I think it also should have been mentioned that his employer and the pension scheme trustees were not entirely one and the same; I think that would have reassured Mr M somewhat.

Even if there was a chance the BSPS2 wouldn't go ahead, I think that KBFS should have reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would have still provided a significant portion of the income he thought he needed at retirement, and he was still unlikely to be able to exceed this by transferring out if he retired early. Although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. He also had his 'second' pension – the DC scheme – which just wasn't featured in the advice. So, I don't think that these concerns should have led to KBFS's recommendation to Mr M to transfer out to the personal pension.

<u>*Summary*</u>

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 M. But KBFS wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr M was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr M's best interests for him to transfer to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been fully confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr M still had up to 15

years before he might retire and he couldn't yet know what his needs in retirement would be, in my view. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr M would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr M was married so his wife'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 (if Mr M chose to do so).

On this basis, I think KBFS should have advised Mr M to opt into the BSPS2.

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

I'm not persuaded that Mr M would have insisted on transferring out of the DB scheme, against KBFS's advice. I say this because Mr M was an inexperienced investor and this pension accounted for most of his retirement provision at the time. And I don't think his concerns over his employer were so great that he would've gone against a professional adviser's recommendation. 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, I think he would have accepted that advice.

In light of the above, I think KBFS should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for KBFS's unsuitable advice. I consider Mr M would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, KBFS should use the benefits offered by BSPS2 for comparison purposes.

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.

A policy statement was published 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.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

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

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 FG17/9).

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 M'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 M 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 M 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 M's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per 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 M.

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

In addition KBFS should pay Mr P £300 for the distress and inconvenience this matter has caused him.

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.

My final decision

Determination and money award: I've decided to uphold this complaint and require KBFS Financial Limited to pay Mr M 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 M 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 M 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 M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award becomes binding on KBFS Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 30 December 2022.

Michael Campbell
Ombudsman