DRN-2221096

**The complaint**

Mr P complains that he was given poor advice by County Capital Wealth Management Limited trading as The Pension Review Service ('CC') to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a personal pension.

**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 pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. 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 BSPS2.

In October 2017, members of BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017.

Mr P contacted another firm (WW) for advice in November 2017. They completed a fact find and risk profile with Mr P. Mr P says WW advised him to transfer to a personal pension.However, on 18 December 2017, they informed him they couldn't complete the transfer for him due to restrictions to their regulatory permissions. They explained that if he still wanted to transfer he had to make alternative arrangements. They referred Mr P to CC for advice.

CC completed their own fact find in early January 2018. This and the suitability report showed Mr P was 28, living with his partner and a young child in rented accommodation, he was in good health and was earning £32,500 per year. He had savings of around £1,300 and he was a member of his employer's new money purchase pension with his contributions being 6% of his salary and employer's contributions of 10%. His risk profile was recorded as balanced. A pension transfer questionnaire recorded that Mr P was considering a transfer so he could have control over his pension and access it earlier than in the DB scheme. He said he didn't know how much income or tax-free cash he would need in retirement. He said he would decide nearer the time.

On 20 January 2018, CC advised Mr P to transfer his BSPS benefits into a personal pension and invest his funds through a discretionary fund management firm (DFM). The same day all other necessary paperwork for the transfer was completed. The suitability report said the reasons for this recommendation were that Mr P wanted to access his pension flexibly at age 58, it would give him an element of control over how and where his money was invested, CC's cashflow analysis had shown his financial position would potentially improve and the new arrangement would provide greater death benefits for his child.

CC says they were only providing a "bureau service" for WW and it was WW's adviser who took Mr P through the cash flow analysis and reports. CC says WW played a key role in advising Mr P and continued a client relationship with him.

Mr P, through his representative, complained in 2019 about the suitability of the transfer advice. After CC rejected his complaint, Mr P referred his complaint to this service. He also made a separate complaint against WW. WW has since gone into liquidation and so this service cannot consider the complaint against them anymore.

An investigator thought the advice CC gave Mr P was unsuitable and asked them to compensate Mr P for the losses he incurred by transferring his DB pension.

CC disagreed so the complaint was passed to me for a 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.

The starting assumption when advising on a transfer from a DB scheme is that it is unsuitable. CC should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr P's best interest (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was. I'll explain why.

*financial viability*

The advice was given after the regulator gave instructions in Final Guidance FG17 /9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, 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 documents from the time of advice show that Mr P was looking to retire at age 58 if possible, so comparisons were done to age 65 and 58.

CC prepared a transfer analysis which showed that the average investment return required in the new pension to match the BSPS benefits at age 58 (critical yield) was quoted as 5.83% per year if Mr P's benefits in retirement were taken as a lump sum plus a reduced pension. The critical yield to match the benefits available in the PPF at age 58 taken in the same form was 4.86%.

I've seen evidence from the DB scheme administrators that Mr P had opted to join BSPS2 before the deadline of 22 December 2017. So I think CC should have done some comparisons to BSPS2, rather than the BSPS which would not exist anymore.

The benefits from BSPS2 were assumed to be slightly less than BSPS and more than the PPF, so I think- using CC's figures -the critical yield to match the benefits in BSPS2 would have been somewhere between 4.86% and 5.83%.

The closest discount rate to this time which I'm able to refer to was published by the

Financial Ombudsman Service for the period before 1 October 2017. It was 4.7% per year both for 29 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% per year. I've taken this into account, along with the composition of assets in the discount rate.

Looking at the critical yields in the transfer analysis report , I think it's possible Mr P could have more or less matched the benefits in the PPF and possibly even in BSPS2 if he was invested in line with a medium risk strategy as suggested. However, there was still a risk he wouldn't. And I think the chances he could actually improve on his benefits was unlikely.

For completion I'd like to mention that I've seen the estimated benefits for BSPS2 in the time to choose paperwork sent to Mr P and they were higher than the values CC used for the BSPS benefits comparison. This doesn't make sense. So I think the BSPS figures in the transfer analysis may also have been underestimated and if so critical yields would have been higher and an improvement on benefits in the new personal pension would have been even less likely.

I've also considered CC's cash flow models which they say showed Mr P could have been significantly better off in the personal pension plan. They compared his existing situation with scenarios where his transfer value grew a) only in line with inflation, b) assuming returns of the recommended investment portfolio based on historic returns and c) a stress test where the transfer value fell by 14% in the first couple of years and then performed in line with historic returns of the asset allocation of the recommended portfolio.

I firstly note that in the model for Mr P's existing financial position, CC failed to include the annual increases on Mr P's DB benefits in payment. Also, as CC will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. CC's models also show that if returns were only in line with inflation or there was poor performance for a couple of years Mr P's financial assets would actually be lower in the long-term than if he kept his DB pension.

Overall, I'm satisfied that by transferring his pension Mr P was unlikely to improve his benefits. Instead there was a risk he would be worse off in retirement. So based on the above alone, a transfer wasn't in Mr P's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower or the same benefits.

*concerns about financial stability of BSPS*

Mr P approached CC as he was concerned about his BSPS pension. Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. I've also considered that by the time Mr L was introduced to CC he had been advised by WW to transfer. So I think it's very likely that Mr P came to CC leaning towards the decision to transfer. However, it was CC's obligation to give Mr P an objective picture and recommend what was in his best interest. Mr P, like many of his colleagues, was concerned about BSPS moving to the PPF. However, as the figures show, even is this happened, Mr P was still likely to be better off not transferring. I can't see that this was explained to him.

From what I've seen CC didn't provide Mr P with an objective picture about the PPF and what this might mean for him specifically. And as I said above Mr P had elected to go into

BSPS2, so this option should have been considered as well. If CC didn't have this information they should have asked. CC says the information provided by the trustees at the time showed that the PPF was a better choice than BSPS2 if someone wanted to retire early and tax-free cash was important to them. However, whilst Mr P surely liked the idea of retiring early, he was still many years away from retirement and both his retirement age and whether he wanted or needed a higher amount of tax-free cash from his DB scheme were completely uncertain. So I don't think the BSPS2 option (which he selected himself) should not have been excluded from CC's advice.

Overall, I think CC didn't do much to alleviate Mr P's concerns and fears about the uncertainty around his pension scheme.

*Flexibility and control*

I appreciate that being so far away from retirement age Mr P likely wanted to keep the option open to take flexible benefits in retirement. However, Mr P had another pension with generous employer contributions and many years to build up further pension provisions. He could have accessed this pension (or other future ones) flexibly when he chose to retire. So in fact keeping the DB benefits would have given him a risk-free guaranteed income and he could still have flexible benefits through his other pension provision. He didn't need, in my view, to transfer his DB benefits for flexibility when he could have achieved this through his other pensions.

Mr P said in a questionnaire he wanted control over his pension and have the ability to choose his investments. Similarly to what I said in regards to flexibility, I think if Mr P was interested in being more actively involved in his pension provisions, he could have chosen his investments in his money purchase pension (which I believe he did) and any possible future personal pension plans. And more importantly, I don't think this preference should have reasonably outweighed the fact he would likely be better off financially if he didn't transfer.

*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. I'm sure that the idea of leaving a large sum to his partner and child in the event of his death sounded attractive.

However, CC should have put some perspective on this subject. Mr P had generous death in service cover if he died before retirement and the DB scheme would have paid dependants' pensions. His family would have received the value of his money purchase pension too if he died. Mr P was also young and in good health, so I don't think he should have been overly concerned about death benefits. I can't see that any of this was explained to Mr P in a balanced way.

In any event, whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr P about what was best for his own retirement provisions. A pension is primarily designed to provide income in retirement. So I don't think different death benefits justified the likely decrease of retirement benefits for Mr P.

*Summary*

Overall, I'm satisfied that the advice given to Mr P was not suitable. He was giving up a guaranteed, risk free and increasing income. By transferring he was risking obtaining lower retirement benefits and there were no other particular reasons which would justify a transfer and outweigh this. I don't think his options with regards to his DB scheme were properly explored.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr P likely was keen to transfer out as he was worried about his pension and colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr P. He should have advised him what was best for his circumstances and explain what he was giving up in the DB scheme and that even if he moved to the PPF this was not as concerning as he thought. For the reasons given above I think this advice should have been not to transfer out.. On balance I think Mr P would have listened to the adviser and followed their advice if they provided proper and clear reasons why he was better off keeping his DB benefits.

*WW's involvement*

I understand CC say they only performed a bureau service for WW. CC said WW had already advised Mr P to transfer and they were still heavily involved in the advice process throughout.

I can't consider the complaint against WW as they have gone into liquidation. However, based on the information I have seen it seems indeed that WW had previously advised Mr P and continued to be involved. However, notwithstanding WW's involvement, CC had a duty to give Mr P suitable advice and without their advice a transfer couldn't have proceeded. CC is responsible for their own actions here.

If CC had given suitable advice, Mr P would have had a positive recommendation from WW as well as a recommendation not to transfer from CC. It's possible that WW might have continued to persuade Mr P to proceed with the transfer. However, given that WW had not been able to proceed with the advice due to issues with the regulator, I think on balance Mr P would have listened to CC's advice if their reasons why a transfer wasn't in his interest had been explained properly. So in my view CC's unsuitable advice ultimately led to Mr P transferring his DB benefits and so it's fair and reasonable to hold them responsible for any losses this transfer caused Mr P. If they consider WW should also be held liable, CC is free to pursue them directly after having compensated Mr P in full.

**Putting things right**

My aim to is put Mr P, as closely as possible, into the position he'd be in now but for CC's unsuitable advice. Mr P had already selected BSPS2, so I consider he would have moved there if CC had advised him not to transfer. The calculations should be done on this basis.

CC 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.

The calculation should be carried out using the most recent financial assumptions at the date of the actual calculation.

CC 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.

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

The compensation amount must where possible be paid to Mr P within 90 days of the date CC 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 CC 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.

**My final decision**

Determination and money award: I uphold this complaint and require County Capital Wealth Management Ltd 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 County Capital Wealth Management Ltd 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 County Capital Wealth Management Ltd 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 County Capital Wealth Management Ltd pays Mr P the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr P.

If Mr P accepts this decision, the money award becomes binding on County Capital Wealth Management Ltd. My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 March 2021.

Nina Walter
**Ombudsman**