DRN-2802496

The complaint

Mr P complains that he was given unsuitable advice by Better Retirement Group Ltd (BRG) to transfer deferred benefits from his Defined Benefit (DB) pension with British Steel ('BSPS') as well as from another smaller DB pension ('DB2') to a Self-Invested Personal Pension (SIPP).

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 late 2016, Mr P was looking to get some advice on both his DB pensions. He says his local mortgage adviser put him in contact with an unregulated introducer ('JM'). JM referred Mr P to another firm for advice ('Fiducia').They completed some of the initial paperwork for Mr P and requested information from the DB pension schemes, but as they didn't have the relevant permissions to advise on DB pension transfers they involved BRG to provide the pension transfer advice.

A fact find was completed in April 2017 which showed:

- Mr P was 50 years old, married, and in good health. He had two children, aged 17 and 22. (Mr P says they were both financially dependent.). He earned £36,000 per year. He had an outstanding mortgage of £51,000 and £2,000 in other debts. He had a life insurance policy worth £220,000 and savings of £8,000.

- Mr P was also member of his employer's money purchase pension scheme which provided employer contributions of 8%.

- He wanted to retire at 65

BRG issued a report which recommended Mr P to transfer his DB2 benefits worth around £108,000 in May 2017. A couple of months later Fiducia asked BRG to provide Mr P with advice on transferring his BSPS pension too. BRG also recommended Mr P to transfer these benefits. At the time the transfer value was around £275,000**.** BRG said they only advised on the transfer itself. Fiducia would be responsible for the investment recommendations. BRG did say in their suitability report however that they were aware Mr P would go into a particular SIPP and use a specific discretionary fund manager (DFM). They said the intended investment into the DFM's *Growth Portfolio* was appropriate for Mr P's attitude to risk and capacity for loss.

Both transfers out of the DB schemes and Mr P moving into a drawdown plan were recommended as the best option for him for the following reasons:

- Allows you to access your Tax-Free Cash any time after age 55.
- Gives you flexibility in the future.
- Allows you to take a higher or lower level of income you need.
- Allows you to leave your money to whomever you chose on death.

Mr P complained in 2019 about the advice he received from BRG and Fiducia. He also complained to the DFM. He said he was given flawed advice which caused significant financial losses. BRG rejected his complaint.

Mr P referred his complaint against BRG to this service. Fiducia and the DFM are both in liquidation, so complaints against them can't be considered by this service.

One of our investigators upheld Mr P's complaint. He thought BRG had given unsuitable advice and Mr P should have been advised to stay in his DB schemes.

BRG disagreed and so Mr P's complaint was passed to me for an ombudsman's 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 for a transfer from a DB scheme is that it is unsuitable. BRG should have only considered a transfer from either scheme 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 the transfers were in his best interest. I'll explain why.

financial viability

DB2 scheme

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The investment return required to match the DB2 pension at retirement at age 60 (critical yield) was 12.65% per year. The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.7% per year for 9 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% per year.

I've taken this into account, along with the composition of assets in the discount rate.
And I think Mr P was likely to receive benefits of a substantially lower overall value than the DB2 scheme at retirement.

I appreciate that at the time BRG gave Mr P advice on this transfer, they apparently assumed he was keeping the BSPS pension. So based on this assumption and taking into account that he also had a money purchase pension which would increase over the next 15 years and that his wife also had a final salary pension accrued over 26 years' worth of service, they considered he had capacity to take some risk with his pension. And I agree that this might have been the case.

However, looking at the critical yields here, it's clear that even if he took a *very* high risk with his pension (and BRG had Mr P recorded as a highest medium risk investor), it would be highly unlikely he could match, let alone exceed his DB pension benefits.

I appreciate BRG considers the critical yields not as particularly relevant. However, I disagree. It does provide a good indication of the value of benefits a consumer is giving up by transferring and the regulator deems it an important part of the decision-making process. So I deem them highly relevant.

BRG used cash models to show that Mr P could take the same benefits from the SIPP than from the DB scheme and sustain this until different ages depending on growth levels. However, these illustrations showed that with returns of 2% per year, funds would run out before his average life expectancy. With returns of 5% benefits would last until age 87 (or 91 for BSPS). However, there was a risk Mr P could live longer or returns of lower than 5% would be achieved. Of course Mr P could have taken lower benefits and extended the time his benefits would last, however I can't see the benefits of doing this. And I also see no reason why Mr P needed to take these risks with his pension.

In my view a transfer made no sense financially.

<u>BSPS scheme</u>

BRG's transfer analysis showed that the critical yields to match the benefits available in BSPS were 9.69% at age 65 and 5.62% if BSPS moved to the PPF. The relevant discount rate closest to when the advice was given was 4.2% per year for 14 years to retirement.

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. This was expected to provide similar benefits to BSPS albeit with lower increases.

So when BRG gave their advice in July 2017, they should have considered that BSPS2 could have been an option for Mr P. Even if they didn't have information yet about the likely benefits in BSPS2, it was reasonable to assume they would be somewhere between BSPS and PPF benefits and they should have considered waiting with their advice until more details were known.

In any event, even if I consider the lowest critical yield of 5.62% which assumes benefits taken from the PPF, I think it was unlikely Mr P could match his DB benefits in the SIPP.

I note that Mr P's attitude to risk was recorded as highest medium (6 out of ten). However, I do have concerns about this assessment. In his original client review form with Fiducia, the answers in relation to his attitude to risk do in my view do point to someone with a lower attitude to risk.

He answered "agree" to the following the statements:

- I would rather put my money in a bank account than invest in shares.
- I do not feel comfortable with financial uncertainty.
- I would rather know that I was getting a guaranteed rate of return than be uncertain about my investments.

- When I am faced with a financial decision I am generally more concerned about the possible losses than the probable gains.

And to the question how much of the investment he could stand to lose without having a significant impact on his future standard of living, he answered small losses could be tolerated.

Mr P was assessed as highest medium risk investor, a low medium investor and then back to highest medium risk investor. Mr P says he was a cautious investor and in my view the risk questionnaires I've seen and the fact that Mr P didn't have any significant investment experience support this.

Even if I assumed he was a medium risk investor, I think achieving returns of 5.62% year on year would have been difficult. And simply matching the DB benefits wouldn't have been sufficient to make a transfer financially viable. There needed to be a reasonable chance for the SIPP to provide higher returns than this and I think this was even less likely.

I also note that by this point BRG had already advised Mr P to transfer out of his DB2 pension and the BSPS benefits made up the majority of his retirement provisions. So he couldn't afford to take great risk with them in my view.

In summary, even if BSPS had moved to the PPF and Mr P's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a SIPP. And if he chose to switch to BSPS2 that chance was even lower. By transferring his pension it was highly likely Mr P would be financially 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 pension transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I considered below whether such other reasons applied here.

flexibility and death benefits

Mr P's objectives of being able to take benefits flexibly and providing a lump sum to his family in case of his death were in my view generic without much foundation. I haven't seen any persuasive that Mr P had a strong need for flexible income. He also had a money purchase pension which he could have used more flexibly than his final salary benefits from age 55. The possibility to take tax-free cash at any point after age 55 was mentioned, but I can't see that this was a concrete objective or plan for Mr P. If after age 55 he did want to access a higher lump than his money purchase pension could provide, he still could have decided to transfer his DB2 pension then.

It was recorded Mr P wanted the ability to leave potentially superior death benefits to his family including the provision of a capital sum or drawdown arrangement. 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. So the thought of leaving a large sum to his family when he died might sounded more attractive than the DB scheme where his wife would receive a reduced pension.

However, in the DB schemes Mr P's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr P predeceased her. At least for the BSPS scheme I'm also aware that dependants' pensions would have been available too. In addition Mr P had a generous death in service life cover and a life insurance policy which covered considerably more than the outstanding mortgage. His money purchase pension could have also been left as a lump sum to his children. In comparison, if Mr P lived a long life -and there was no reason to believe he wouldn't- there might not have been a large or any sum to leave to beneficiaries from the SIPP.

In any event, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. Mr P was in good health and so more focus should have been on ensuring Mr P would receive his required income over a long period of time.

Overall, I can't see that flexibility or death benefits were sufficient reasons in Mr P's circumstances to risk being worse off in retirement.

concerns about financial stability of BSPS

Mr P 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.

So it's quite possible that Mr P was leaning towards the decision to transfer. However, it was BRG's obligation to give Mr P an objective picture and recommend what was in his best interest. Mr P was particularly concerned about BSPS moving to the PPF. He was worried he could lose some of his pension. However, as the figures above show, even if this happened, Mr P was still likely to be better off not transferring. I can't see that this was properly explained to him or BRG did enough to alleviate these concerns.

Time to choose

In September 2017, Mr P had the choice to move to the PPF or transfer to BSPS2.

I carefully considered what Mr P likely would have done if he had been previously recommended to remain in BSPS. And on balance I think he would have opted to move to BSPS2. I say this because BSPS2 wouldn't have decreased Mr P's initial pension entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. Under BSPS2, the spouse's pension would be set at 50% of Mr P's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So it was likely to be higher than in the PPF.

Early retirement factors in the PPF were lower and commutation factors for tax free cash entitlement were more favourable under the PPF. However, Mr P didn't have plans to retire early and I think higher income overall as well as a higher spouse's pension would have been more important to him than a potentially larger tax-free cash sum.

summary

I don't doubt that flexibility, control and lump sum death benefits would have sounded like attractive features. But the adviser's role was to really understand what Mr P needed and recommend what was in his best interest.

For the reasons mentioned above, I think BRG should have recommended Mr P to stay a member of both DB2 and BSPS and not transfer his benefits. And if they had done so and explained their reasons properly why Mr P would be better off keeping his deferred benefits, I think Mr P likely would have followed their advice.

I acknowledge that Mr P was also advised by Fiducia and was in contact with JM. And they might have influenced his decision too. However I think a properly reasoned recommendation from BRG, in their role as DB pension transfer specialists, alleviating some of his fears about the PPF and explaining why a transfer wasn't in his best interest, more likely than not would have persuaded him to follow their advice.

I've considered that both Fiducia and the DFM were also regulated parties, had their own regulatory obligations and possibly have contributed to Mr P's losses. However, I can only consider the complaint in front of me which is against BRG and I think it's fair in the circumstances that they compensate him for his losses in full. I say this because, as explained above, without BRG's unsuitable advice Mr P likely would have remained in his DB schemes and wouldn't have ended up in a SIPP or DFM. Consequently, he wouldn't have been exposed to any risky investments as he has been.

It follows in my view that the losses Mr P suffered in his SIPP could have been fully avoided if BRG had given suitable advice and so I consider it fair and reasonable that they should compensate him for any losses he suffered by transferring out of his secure DB schemes.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of DB2 and BSPS. Subsequently, he would have likely moved from BSPS to BSPS2 when he was given the choice in late 2017. So for the BSPS calculation, BSPS2 benefits should be used as the comparator.

BRG must undertake redress calculations for both DB schemes in line with the regulator's 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.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr P's acceptance of the decision.

BRG 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 calculations demonstrate a loss, the compensation 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 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.

I understand Mr P's SIPP includes illiquid investments, meaning they can't be readily sold on the open market. This means it can be complicated to establish its value.

To calculate the compensation, BRG should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs, and take ownership of the investments.

If BRG is unable to buy the investments, they should give it a nil value for the purposes of calculating compensation. The value of the SIPP used in the calculations should include anything BRG has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted.

In return for this, BRG may ask Mr P to provide an undertaking to account to them for the net amount of any payment he may receive from the investment in future. That undertaking should allow for the effect of any tax and charges on what he receives. BRG will need to meet any costs in drawing up the undertaking. If BRG asks Mr P to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

In order for the SIPP to be closed (should Mr P wish to move his investment portfolio) and further SIPP fees to be prevented, the investments need to be removed from the SIPP. I've set out above how this might be achieved by BRG taking over the investment, or this is something that Mr P can discuss with his SIPP provider directly. But I don't know how long that will take.

Third parties are involved, and we don't have the power to tell them what to do. To provide certainty to all parties, I think it's fair that BRG pay Mr P an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

In addition BRG 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 BRG receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes BRG 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

<u>Determination and money award:</u> I uphold this complaint and require Better Retirement Group 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 Better Retirement Group 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 Better Retirement Group 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 Better Retirement Group 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 Better Retirement Group 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 7 April 2022.

Nina Walter
Ombudsman