DRN-2918403

The complaint

Mr R complains about the advice given by CST Wealth Management Limited ('CST') to transfer out of the British Steel Pension Scheme ('BSPS') and invest the funds in a personal pension. He says the advice was unsuitable for him which has resulted in him suffering a financial loss.

What happened

In March 2016, Mr R'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 private pension arrangement.

Mr R was concerned about what the announcement by his employer meant for the security of the defined benefits he held in the BSPS. As Mr R was unsure about what to do with his pension he approached CST for advice in September 2017, having already met with another firm previously.

In November 2017 CST advised Mr R to transfer out of the BSPS to a self-invested personal pension ('SIPP'). It recommended he invest the funds with a discretionary fund manager ('DFM'). £474,713.20 was transferred to Mr R's SIPP in March 2018 and after the initial adviser fee was taken, the remainder was invested by the DFM.

Mr R complained, via a representative, in 2019. He thought the advice to transfer out of the BSPS was unsuitable for him as he would be worse off in retirement and the new arrangement was expensive.

CST didn't uphold the complaint. It thought the advice was suitable for Mr R as he'd said he wanted to retire at 55 and it believed he could've only met this objectives by transferring out of the BSPS. Transferring out would've meant he could take higher tax-free cash ('TFC') at 55 to clear some of his debts and he would be able to take a higher income until age 67, when his state pension became payable. CST says Mr R couldn't have achieved this through the BSPS2 or the PPF.

Mr R referred his complaint to our service. He disputed that he had a genuine plan to retire early.

Our investigator agreed that Mr R's objectives could only have been met by transferring out of the BSPS. But he didn't think the advice about how to invest Mr R's funds was suitable as the SIPP and the DFM's charges were excessive and he wasn't persuaded that Mr R needed the expertise or complexity of a DFM. The investigator recommended that Mr R should be compensated by comparing his actual position with a benchmark in line with his attitude to risk, and paying him the difference.

CST didn't agree. It said the SIPP wasn't expensive and it thought Mr R could've benefited from the use of a DFM. It pointed to Mr R's ongoing correspondence with it in 2018 and 2019, showing Mr R took an active role in managing his investments. It said he wouldn't have been able to have this kind of say in his investments if his funds had been invested in mainstream funds as suggested by the investigator. The investigator didn't change his opinion so the complaint was referred to me to make a final decision.

After reviewing the file, I informed CST that I was intending to depart from the investigator's findings. On balance, I didn't think the advice to transfer out of the BSPS was suitable for Mr R. I thought Mr R probably intended to retire at 55. So, I thought he should've been advised to remain in the scheme and move with it to the PPF. This was because I thought Mr R would be able to clear his residential mortgage and meet his ongoing income requirements through his PPF entitlement, until his state pension became payable. I thought Mr R should be compensated using the regulator's defined benefits pension transfer redress methodology, explaining it was the benefits offered by the PPF which should be used for comparison purposes. I later informed both parties of a change to the redress calculation, which takes account of the impact of the BSPS trustees buying an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out.

CST didn't agree with my provisional findings. It said Mr R had a number of debts that needed to be repaid, and the TFC available under the PPF wasn't enough to clear them all. So, it said some of these debts would be ongoing in retirement and Mr and Mrs R's combined pension income wouldn't be sufficient to meet their household expenses and service their debts. It reiterated that Mr R's needs could only be met by transferring out of the BSPS and it thought he would be better off by doing so. CST also thought that not enough consideration had been given to Mr R's clear need for flexibility. It said Mr R wanted as much money available to him in the early years of his retirement so that he and his wife could enjoy it, before Mrs R's health condition deteriorated. Finally CST added that Mr R should be required to purchase an annuity to replace the benefits he lost – and if he didn't want to do this, it would demonstrate that his complaint was simply an attempt to enhance his pension fund.

As CST did not agree to settle the complaint, I'm now providing my final decision on the matter.

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.

Having done so, I'm upholding this complaint. I have taken CST's detailed objections into consideration, but overall, I still don't think the advice to transfer out of the BSPS was suitable for Mr R. I'll explain why.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a defined-benefit scheme is that it is unsuitable. So, CST should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr R's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interest. I'll explain why.

Financial viability

Mr R was aged 49 at the time of CST's advice, which was given based on his stated desire to retire at age 55. Mr R argues that he didn't actually intend to retire at 55, instead he says he hoped to retire from his role at the steel works at 55 and continue working until 60 or 65 as a property developer. But based on what I've seen, I think Mr R probably did want to retire fully at 55. There was a lot of emphasis in the fact-finds completed at the time on his wife's deteriorating health, which meant she was likely to retire when she reached age 55 (in April 2024). Mr R said he wanted to retire at the same time as Mrs R so they could enjoy the early years of their retirement together before her health condition got worse. There isn't any mention of Mr R becoming a property developer or working in any other capacity after he retired from the steel works. So, when considering whether the transfer of benefits was financially viable, it's the benefits available to Mr R at 55 under the BSPS2 and the PPF that should be used for comparison purposes.

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.

CST carried out a transfer value analysis report ('TVAS') showing the growth Mr R's fund would need to achieve in order to match the benefits he could obtain through the BSPS2. The investment return (critical yield) required to match the BSPS2 pension at age 55 was quoted as 11.41% per year if no TFC was taken. The critical yield required if Mr R took TFC and a reduced pension was 8.7%. The critical yield to match the benefits available if Mr R remained with the BSPS and moved with it to the PPF was 8.26%% without taking TFC, and 7.65% with TFC and a reduced pension.

The relevant discount rate published by the Financial Ombudsman Service at the time the advice was given was 3.3% per year for 6 years to retirement. For further comparison, the FCA's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

Even taking the lowest critical yield here (7.65%), which was a comparison to the PPF at age 55 if Mr R took TFC and a reduced pension, it's highly unlikely Mr R could've matched, let alone exceeded the benefits available to him through his SIPP if he was invested in line with the cautious strategy as suggested by CST. Although I appreciate that Mr R's attitude to risk was assessed as being 'highest-medium', CST noted Mr R's capacity for loss was lower, so it recommended a cautious approach with his BSPS benefits. I agree that it would be fair to categorise Mr R's attitude to risk was 'medium' at most. So, taking Mr R's attitude to risk into account, I think a return of 7.65% was very unlikely. So, I still don't think he would've likely been able to match or exceed the benefits available to him through the PPF if he transferred out of the BSPS.

However, CST has said that the portfolio it recommended with D had an average return (net of fees) of 7%. So, it doesn't think it is necessarily true that Mr R would be worse off financially by transferring out of the BSPS. And in any event, CST says that analysis of the critical yield should not be the primary focus of advising on defined-benefit pension schemes. It says the cash flow models demonstrate that Mr R could meet his income needs by transferring to a personal pension, and a net return of 3% would see him be able to match the income the BSPS2 would provide him with.

I've considered CST's cash flow model but this was based on Mr R taking a much reduced pension from the SIPP at age 67, so it wasn't a like for like comparison with the total income he'd receive through either the BSPS2 or the PPF. It was also based on assumed growth rates that had been achieved in the past. And as CST 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.

With regard to the model showing that only a 3% net return would be sufficient to produce a fund big enough to provide the same escalating income to Mr R from age 55, I note that this was based on the BSPS2 benefits. I think this ought to have been based on the PPF benefits instead because the early retirement reductions were far more favourable at 55 – Mr R would've been entitled to higher TFC and a higher starting pension. So, I think returns of more than 3% would've been needed. Also, this was a net figure, so higher growth also would've been needed to cover the cost of fees and ongoing advice charges.

Furthermore, this fund was only based on providing Mr R with an income. But the guidance under COBS 19.1.3 states that the comparison undertaken by CST should:

1) *take into account all of the retail client's relevant circumstances;*
2) *have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;*
3) *explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; and*
4) *be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested…*

This model didn't replicate the cost of the benefits Mr R was giving up – it didn't provide for an escalating spouse's pension – which it was the regulator required. So, I think this undermined the comparison the regulator asked it to give Mr R (the critical yields) and I think it would've made it harder for Mr R to understand whether or not he'd be better off remaining in the BSPS.

Overall, I'm satisfied that by transferring his pension it was very unlikely Mr R's benefits would match, let alone exceed his existing benefits in the BSPS. Instead there was a real risk he would be worse off in retirement, particularly if investment returns were poor. So based on the above alone, a transfer wasn't in Mr R's best interest.

Nevertheless, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, as CST has argued here, despite providing overall lower benefits. I've considered these below.

Access to TFC

CST says Mr R needed flexibility in his pension as at 55 he needed the maximum TFC available so he could pay off his residential mortgage, and pay down as much of the remaining buy-to-let ('BTL') mortgages he and his wife had. CST says Mr R could've only achieved this by transferring his BSPS funds to a SIPP as the TFC available through the BSPS2 or the PPF wasn't sufficient.

But Mr R says that the BTL mortgages were not a financial burden – the rent received on property A was sufficient to repay the interest-only BTL mortgages on property A and property B (where Mrs R's parents resided rent-free). Furthermore, Mr R said they wanted to downsize so were open to selling their residential property. In fact, they had bought a cottage (property C) and attempted to sell their residential home before taking advice from

CST – but as this didn't sell, they intended to sell property C instead. The sale went through in 2018. So, Mr R says that CST was aware that Mr and Mrs R were looking to downsize in future if possible, and Mr R says they were also open to selling property A if they needed the money.

I've considered the information provided by CST from the time, including the fact-finds and suitability report, as well as the final response letter, which includes additional details from the time that doesn't appear in the other evidence provided.

Mr R's residential mortgage had a balance of around £147,000 at the time of the advice, which (based on the calculations provided by CST) would have a balance of around £101,648 when Mr R reached age 55. However, I think that it's important to note here that Mr R's motivation was to retire at the same time as Mrs R. At the time, it seems Mr R thought it likely that she would retire at age 55 - in April 2024 - however, I think we must also bear in mind the possibility that Mrs R would continue working beyond that age, after all, it was dependent on her state of health. So, the earliest I think Mr R wanted to retire was in April 2024, by which time the balance of the mortgage would have reduced to £98,512.68, according to the loan calculator provided by CST. And, if Mrs R had continued working beyond then, it would have been less.

As I think Mr R probably did hope to retire fully around age 55, I agree that he would've needed access to TFC to repay his residential mortgage – this was Mr and Mrs R's largest monthly commitment. However, I'm not persuaded that Mr R needed to repay or part-repay the two BTLs that they still expected to have in 2024 – property A and property B.

Mr R provided evidence showing that he received £500 per month in rent for property A in 2017. Having considered the figures CST provided in relation to the mortgages for property A and property B, I'm satisfied that the rent received was enough to cover both interest-only mortgages, which had annual repayments of £2,119.66 and £1,536 respectively in 2018. And I'm satisfied that the mortgage on property B was of no concern because it was not repayable until 2033 and the plan was to sell this when Mrs R's parents died.

However, CST says that Mr and Mrs R incurred significant additional costs in respect of property A in the financial years ending 2018 (£3,430) and 2019 (£4,838), which had to be borne in mind at the time of the advice. It said the rental income alone wasn't sufficient to cover both mortgage repayments and the extra costs associated with maintaining the property.

But I think Mr R was always open to selling Property A if it no longer made financial sense to keep it. It is noted in CST's final response letter that if his pension lump sum was not sufficient to clear all of his loans ahead of retirement then he would consider selling one of his BTLs (which could only have been property A). This would've made some extra capital available to continue funding the mortgage for property B. Furthermore, it seems likely to me that if he still owned property A in 2024 when he sought to retire, the rent would have been increased over time. Indeed, that option was always available to Mr R to help cover the ongoing costs. So, I'm still not persuaded that repaying the mortgages on property A or property B at age 55 were objectives which had to be met and which justified Mr R risking lower retirement benefits.

So, I've considered what funds could've been available to Mr R to meet his need to repay his residential mortgage. Mr R would've been entitled to the following benefits at age 55:

- PPF entitlement: TFC of £84,138.94 and an annual pension of £12,651.36
- BSPS2 entitlement: TFC of £76,409.23 and an annual pension of £11,461.38

Mr R was also paying into his employer's new defined contribution scheme ('DCS') – CST forecasted that Mr R could have a fund of around £53,700 at age 55, meaning he'd have access to TFC of £13,425. Mrs R was also entitled to TFC of £32,740 from her occupational pension scheme ('OPS').

It is evident that the PPF provided Mr R with higher benefits at 55 than the BSPS2, so I think it is these benefits that I should use to determine whether Mr R needed to transfer to a personal arrangement to meet his needs. Mr and Mrs R would've had a total of at least £130,303.94 available to them in April 2024 when they both thought they would retire. I say at least, because the retirement date for each of them was dependent on Mrs R's health so it's possible they would've continued to work beyond this. So, I think Mr and Mrs R had ample cash available to them to repay their residential mortgage if they still needed to and hadn't downsized by then. For this reason, I don't think Mr R needed to transfer out to meet his need for TFC. After repaying the mortgage, Mr and Mrs R would have had around £30,000 remaining.

Income requirements

One of CST's main arguments in support of its recommendation to transfer was that Mr R could not have met his income needs between the ages of 55 and 67 (when his state pension became payable) if he remained with the scheme and moved with it to the PPF. And there has been much dispute over how much income Mr and Mrs R actually required during this time. Mr R says he thought they would need around £20,000 to £25,000 per year if their mortgage was cleared. Whereas CST says that in fact they told CST they required £21,600 (net) for lifestyle needs alone, which would mean around £23,000 (net) in 2023/2024. This didn't include servicing the debts that would remain at the time. So, CST says that in reality, at age 55 Mr and Mrs R would need access to at least £26,000 (net) per year. CST maintains that this would not have been achievable if Mr R allowed his pension to move to the PPF.

Based on the information provided, at the time of the advice, Mr and Mrs R had the following debts:

	Capital remaining	Monthly repayment	Repayment date
Residential mortgage	£147,000	£743	2036
Property A mortgage	£64,000	£138.13	2035
Property B mortgage	£63,347	£126.17	2033
Car finance	£13,000 (estimated)	£269.50	2021
Loan with Bank T	£14,000	£187.34	May 2024
Loan with Bank T (Mrs R)	£15,000	£149.98	August 2025
Loan with Bank S	£10,000	£237.38	May 2021

When Mr R was likely to retire in April 2024, his residential mortgage would be repaid using his and Mrs R's TFC entitlement. The mortgage on property A was covered by the rental income, and I think this would've likely covered the mortgage on property B, as I've said above.

I also note that by April 2024 most of the loans would have been repaid. This would leave only one repayment on Mr R's loan with Bank T and around £2,400 left to repay on Mrs R's loan with Bank T. Mr R tells us that this loan was taken for the benefit of his daughter and was repaid early. Although repaying any of the above loans before their end dates was a possibility, I don't think it is reasonable to expect CST have made an allowance for this at the time of the advice. So, I think it's fair to say that CST would have needed to factor in the £149.98 repayment into their income needs. For the sake of argument, allowing for the possibility of property A having been sold, or the rental income not being sufficient to cover the mortgage on property B, I think CST could've reasonably factored in the mortgage repayments on property B to their income needs as well.

However, I don't think it is fair or reasonable for CST to assume that Mr and Mrs R would have an ongoing repayment towards car finance throughout their retirement. Mr R has told us that when his car finance ended in 2021, they traded in their car for a new one, with the finance repayments due until October 2023. Mr R says he has no intention to take any car finance beyond this. And this is reflected in CST's data capture form – car finance was not an anticipated monthly expense in retirement.

While I agree with CST that Mr and Mrs R's new car was unlikely to last for the remainder of their lives, I wouldn't expect anyone in retirement to take on unnecessary debt, particularly as they were no longer working and so no longer commuted. If Mr and Mrs R did need a new car, I think this was likely to be much further in the future, and most likely when their state pensions had become payable. At this point, they would've had capacity to take on additional debt if they wanted to given their increased incomes.

So, based on all of the above, I think Mr and Mrs R would need additional income of £276.15 per month until August 2025, and then £126.17 per month thereafter. But given that the repayment for the loan with Bank T would only have around 16 months left, and may have been cleared by then, for the purpose of this decision, I think it's fair to only include the mortgage repayment for property B as an ongoing expense.

I am prepared to accept CST's belief that Mr and Mrs R required £1,800 per month for their other expenses, so this takes their income needs in retirement to around £1,930 per month or £23,160 (net). Adjusted for inflation, this would equal £26,900.

Mr R's PPF entitlement at 55 was £12,651 and Mrs R was entitled to £10,913 from her OPS. So, between them they had guaranteed escalating income of £23,564 per year. This left a shortfall of around £3,400 per year. As I've said above, Mr and Mrs R would've also had around £30,000 remaining from their combined TFC entitlements (including the TFC available to Mr R through his DCS) after the residential mortgage had been cleared. So, I think this could've been used to supplement any income needs they had above their guaranteed income streams until they were in receipt of their state pensions. Mr R could've also drawn down the remaining funds in his DCS during this time (around £32,000 after tax) if required.

There is also some dispute as to whether Mr and Mrs R would've been able to save between the time of the advice and their retirement. CST says that this wasn't likely, because Mr and Mrs R hadn't been able to save up to that point. But this directly contradicts the cash flow report it produced, which factored in Mr R saving £10,000 per year. And based on what I've seen, I think Mr and Mrs R did have the capacity to save. Their combined income was around £4,400 (net), compared to monthly expenses of around £3,200. Some of the loans would also be repaid during this time, freeing up additional income. So, I think Mr and Mrs R had capacity to save and so also would've been able to count on these funds to supplement their income in the early years of their retirement.

CST says that the income Mr and Mrs R would have if Mr R moved with the scheme to the PPF wouldn't leave them with much to enjoy the early years of their retirement, which is what Mr R wanted. But I'm satisfied that this was factored into their anticipated retirement income in CST's data capture form. This included increased spending on holidays, socialising/entertainment and meals out.

So, on balance, I think Mr and Mrs M could've met their income needs in retirement between them if Mr R had remained in the BSPS and moved with it to the PPF. My key concern here is this wasn't explored with Mr R in any meaningful way. Instead, he was led to believe that he could only meet his income and capital requirements by transferring to a SIPP.

Concerns about financial stability of BSPS

Mr R approached CST as he was concerned about his BSPS pension. CST's fact-find states that Mr R was concerned about the PPF and he wanted to have control of his pension. CST's suitability report further stated that Mr R wanted to break ties with his employer.

I accept that Mr R came to CST leaning towards the decision to transfer. However, it was CST's obligation to give Mr R an objective picture and recommend what was in his best interests. Mr R, like many of his colleagues, was concerned about the BSPS moving to the PPF. But the PPF provided guaranteed benefits that were still very valuable and difficult to replicate elsewhere. From what I've seen, CST didn't challenge Mr R's preconceived ideas about the PPF. And I don't think CST provided Mr R with an objective picture about the PPF and what this might mean for him specifically.

Mr R was clearly interested in retiring early and this was still possible in the PPF. In fact, the early retirement reductions were lower in the PPF than in the BSPS. I don't think this was shared with Mr R in an objective way, instead, CST focused on the reduction of benefits for retiring early and emphasised that Mr R would not need to take reduced benefits from a personal pension. However, as the figures above show, even if Mr R retired early as planned, Mr R was still likely to be better off overall by not transferring and he would be able to meet his income needs without having to give up the associated guarantees. I can't see that this was properly explained to him.

Mr R also had some concerns about his employer generally. And I don't think CST explained that his scheme benefits entering the PPF removed his pension from his employer's control. It seems to me that an explanation along those lines would've gone some way to reassuring Mr R about his concerns.

Overall, I don't think CST did much to alleviate Mr R's concerns and fears. Instead, it appears to have used these concerns to justify the transfer.

Death Benefits

CST says Mr R wanted to ensure he could pass on whatever was remaining of his pension to his wife and daughter upon his death.

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. And I'm sure that the idea of leaving a large sum to his children in the event of his death sounded attractive to Mr R. But whilst I appreciate death benefits are important to consumers, and Mr R might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CST explored to what extent Mr R was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits with PPF were underplayed. Mrs R was entitled to 50% spouse's pension for life which would have been very valuable if Mr R predeceased her. Also, Mr R had generous death in service cover if he died before retirement and he had extra life insurance covering his mortgage. I can't see that the value of these benefits were explained to Mr R in a balanced way.

Furthermore, if Mr R genuinely wanted to leave a legacy for his wife or daughter, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CST could've explored extra life insurance. Alternatively, Mr and Mrs R could've made provisions for this by reinvesting any excess income that wasn't needed after their state pension became payable. This could've been placed in trust to mitigate, as far as possible, any inheritance tax liability they would have on their death.

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 R. And I don't think that insurance or alternative investments were properly explored as an alternative.

Summary

I accept that Mr R was attracted by the idea of transferring. And I don't doubt that flexibility, control and higher death benefits would have sounded like attractive features. But CST wasn't there to just transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr R was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, he was risking obtaining lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. And I don't think his options with regards to his BSPS benefits 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 R was likely 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 R. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above I think this advice should have been to remain in the BSPS and move with the scheme to the PPF. I say this because Mr R needed to take TFC and income at 55, and his entitlement through the PPF was higher than through the BSPS2.

Of course, I have to consider whether Mr R would've gone ahead anyway, against CST's advice. CST suggested that Mr R had already been advised not to transfer out of the BSPS, but Mr R chose not to follow this advice and engaged the services of CST. It says this supports that Mr R was determined to transfer out of the BSPS regardless of the advice provided. I can't see any evidence to support this and Mr R has said although he did speak to another IFA, he didn't receive advice from them. But even if Mr R had received advice from another firm not to transfer before meeting with CST, if CST had also advised him against transferring, he would have had two independent parties telling him not to proceed. And I think it's likely he would have accepted this.

I've also considered the content of the emails Mr R sent to CST in 2017. CST says this shows Mr R was intent on transferring away from the BSPS regardless – he wanted to sign papers before the advice was given. I accept that these emails show Mr R was motivated to transfer away from the BSPS. But in my view, that was based on the general fear about the alternatives going around at his workplace and the short time members had to make their choices. It was the role of CST's adviser to 'bust the myths' surrounding the scheme and his options. At that point, Mr R didn't know that he would still be better off financially in the PPF than if he transferred to a SIPP. He was of the impression that the scheme entering the PPF was the worst possible scenario. And I don't think CST did anything to dispel those myths. In my view, it ought to have emphasised that this would still be a good outcome for Mr R and it should've emphasised the value of defined benefits over any other type of pension, which subjected the funds to investment risk.

Ultimately I haven't seen any evidence to persuade me that Mr R would've gone against CST's advice. I accept he had serious concerns about the situation he faced. But Mr R was an inexperienced investor and he was concerned about the security of his pension; this pension made up a significant part of his retirement provision. So, I think clear advice against transferring out, explaining that Mr R would be worse off in retirement if he did so and that he could still meet his needs through the PPF without any of the risk, would've persuaded him against this course of action. And had he been given reassurance about the reality of the options he had, I think he would've accepted the advice, remained in the scheme and moved with it to the PPF instead.

So, overall, I think CST should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the PPF that should be used for comparison purposes.

CST argues that Mr R should be compelled to purchase an annuity – it believes he would turn this down, thereby demonstrating his desire for flexibility. It is evident that Mr R will benefit from flexibility by virtue of the position he's in now, but that has only arisen because of the unsuitable advice. And ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

CST has also said that since the advice, Mr R has deviated from its investment advice. It says that if Mr R had continued to follow its investment recommendations his fund would have grown significantly, such that it believes there wouldn't be any financial loss.

I've taken this on board, but the redress calculation cannot be based on CST's projections of what Mr R's fund could be worth now. The regulator's redress requires CST to compare the actual position. I appreciate that Mr R has made different investment decisions since CST's advice and that may have reduced the value of his pension. But Mr R is only in this position because of the unsuitable advice. If he had been advised to remain in the BSPS and move with the scheme to the PPF, he wouldn't have been in a position to make those decisions.

Putting things right

A fair and reasonable outcome would be for CST to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would have remained a member of the BSPS and subsequently moved with it to the PPF. So calculations should be undertaken on this assumption.

CST must undertake a redress calculation 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.

For clarity, although Mr R thought he would retire early, he is still working now and has no plans to retire at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 R's acceptance of the decision.

CST may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R'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 R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr R'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 R 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 R within 90 days of the date CST 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 CST to pay Mr R.

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.

<u>Additional compensation</u>

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late summer 2022.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

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

The amounts of possible increases are yet unknown. The scheme expects to be able to have information on this by late summer 2022. Mr R would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. So, I think it's fair any such increases are taken into account when compensating Mr R.

I don't think it's reasonable for CST to delay the compensation calculation in its entirety until the buy-out is completed. Although it is expected to happen in late summer 2022, I'm conscious that this could be delayed further due to its complexity. To give some certainty to the parties, I think it's fair CST calculates and pays Mr R compensation now as set out above comparing his existing benefits with the PPF. Once the buy-out is completed and more detailed information is available how exactly PPF benefits will increase, CST should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time. They should base their calculations on the benefits Mr R would have been entitled to after the buy-out.

This calculation should be done as soon as possible after the new buy-out benefits are known. CST should keep up to date with developments on this matter, for example any information published on **www.oldbritishsteelpension.co.uk.** Equally, if Mr R becomes aware further information is available, he should let CST know. If the second calculation results in a higher redress amount than the first calculation, CST must pay Mr R the difference. If the second calculation results in the same or a lower redress amount than the first calculation, no further action should be taken.

The compensation amount of the second calculation must where possible be paid to Mr R within 90 days of the date a public announcement is made that the buy-out has completed. Further interest must be added to the compensation amount at the rate of 8% per year simple from the announcement to the date of settlement for any time, in excess of 90 days, that it takes CST to pay Mr R.

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 CST Wealth Management Limited to pay Mr R 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 CST Wealth Management Limited to pay Mr R any interest on that amount in full, as set out above.

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

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

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

CST Wealth Management Limited should provide details of its calculations to Mr R and his representative in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 22 April 2022.

Hannah Wise
Ombudsman