DRN-3170096

The complaint

Mr L 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 L'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 L contacted another firm (WW) for advice in August 2017. They completed a fact find and risk profile with Mr L. WW advised Mr L 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 L to CC for advice.

CC completed their own fact find in January 2018. This showed Mr L was 52, married with no dependants, in good health and was earning around £35,000 per year. His wife was a year younger and had a salary of £20,000. They had savings of around £9,000 and a mortgage free home worth around £180,000. Mr L 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 wife had her own DB pension which would provide her with an estimated annual income of £12,000 in retirement. Mr L's risk profile was recorded as balanced. A pension transfer questionnaire recorded that Mr L was considering a transfer because he wanted the option to retire early and to pass on any benefits to his family in a flexible way. It was recorded he needed £1,500 from age 60 until the start of his state pension. He said he had no need for tax-free cash.

On 9 January 2018, CC advised Mr L 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 L wanted to access his pension flexibly at age 60
- he needed an income of £1,500 per month in retirement
- he could pass on the full value of the capital to his family in case of his death
- the transfer value of his final salary scheme could be secured as a financial asset.

Mr L said he never met with CC. This is backed up by CC's testimony that they were only providing a "bureau service" for WW and it was WW's adviser who took Mr L through the cash flow analysis and reports. CC says WW played a key role in advising Mr L.

Mr L, through his representative, complained in 2019 about the suitability of the transfer advice. After CC rejected his complaint, Mr L 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 L was unsuitable and asked them to compensate Mr L 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 L'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 L was looking to retire at age 60. The average investment return required in the new pension to match the PPF benefits at age 60 (critical yield) was quoted in the suitability report as 6.95%.

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 3.4% per year both for 7 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.

Given the above, I think there was a real risk Mr L wouldn't have been able to match, let alone exceed his DB benefits in the personal pension if he was invested in line with a medium risk strategy as suggested.

I've also considered CC's cash flow models which they say showed Mr L 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 L's existing financial position, CC failed to include the annual increases on Mr L's BSPS 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 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 it was unlikely Mr L's benefits would match, let alone exceed his existing benefits in the DB scheme. Instead there was a risk he would be worse off in retirement. His DB benefits represented the majority of his retirement benefits so I think he didn't have the capacity to take on this risk. I've also considered Mr L's recorded income objective of £1,500 in retirement. I can't see that this sum was properly discussed or tested with Mr L.

CC said in their suitability report that Mr L could have drawn an annual income of £12,633 per year from the PPF at age 60 and around £3,000 from his money purchase pension. That would have given him around £15,600, rather than the £18,000 he apparently required.

I think discussions should have taken place about how much income Mr L really needed from age 60. His and his wife's outgoings, which covered non-essential spending and putting £300 towards savings, were recorded as £1,952 per month. Mrs L's intended retirement date was 67, she was a year younger than Mr L and she had a net salary of £1,400 per month. So based on the joint income and outgoings recorded in the fact find, I think Mr L could have comfortably retired on the benefits the PPF and his money purchase pension could provide.

Mr L says he doesn't know where the £1,500 figure came from and I haven't seen evidence how this figure was established. However, even if I assume that he and his wife thought this was what they wanted at the time, it was CC's job to challenge this and properly establish their needs. I don't think the additional £1,400 per year until state retirement age warranted a transfer which put Mr L at risk of likely being worse off in retirement over the long-term. Based on the above alone, I don't consider a transfer was in Mr L'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 benefits.

concerns about financial stability of BSPS

Mr L 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. So it's quite possible that Mr L came to CC leaning towards the decision to transfer. However, it was CC's obligation to give Mr L an objective picture and recommend what was in his best interest. Mr L, like many of his colleagues, was concerned about BSPS moving to the PPF. However, as the figures above show, even if this happened, Mr L was still likely to be better off not transferring. I can't see that this was properly explained to him.

From what I've seen CC didn't provide Mr L with an objective picture about the PPF and what this might mean for him specifically. Mr L was interested in retiring early. However, this was possible in the PPF and early retirement reductions were in fact lower in the PPF than in BSPS.

Overall, I think CC didn't do much to alleviate Mr L's concerns and fears.

flexibility and death benefits

It's recorded that Mr L wanted a flexible income, however again I can't see evidence that he had a particular need for this. Mr L also had another pension with generous employer contributions and over seven years or possibly longer to build up further pension provisions. He could have accessed this pension 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 a small degree of flexibility through his other pension provision.

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 wife and son in the event of his death sounded attractive.

However, I think CC underplayed the DB pension's death benefits. They described the spouse's pension from Mr L's DB scheme as "small", however this would have been 50% of his pension which would have been paid to Mrs L for the rest of her life which was a valuable guarantee. Mrs L also had her own final salary pension, so both together would have left her with a guaranteed income for life of at least £18,000 per year increasing every year, so keeping up with inflation. Mr L also had generous death in service cover if he died before retirement and his wife and son would have received the values of his other pension too if he died. I can't see that any of this was explained to Mr L in a balanced way.

In any event, whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr L about what was best for his own retirement provisions. A pension is primarily designed to provide income in retirement. So there generally shouldn't be a disproportionate emphasis on death benefits compared to their own retirement needs. Mr L was in good health and so more focus should have been on his long-term retirement provisions. Overall, I don't think different death benefits justified the likely decrease of retirement benefits for Mr L.

Summary

Overall, I'm satisfied that the advice given to Mr L 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 in my view. 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 L likely was keen to transfer out as he was worried about his pension. However, it was the adviser's responsibility to objectively weigh up the options for Mr L. He should have advised him what was best for his circumstances and explain what he was giving up in the DB scheme 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.

CC have also pointed to the Time to Choose literature Mr L would have received at the time and which would have given him information about the benefits he could have in BSPS 2 and PPF and what members should be aware of when transferring out. I'm familiar with the information provided from trustees to members at the time. However, this doesn't replace personal and independent financial advice about whether Mr L should transfer or not. This advice could only be given by a regulated financial adviser with specific permissions. And Mr L was entitled to trust CC personal recommendation to him.

On balance I think Mr L would have listened to the adviser and followed their advice if they had recommended him not to transfer out and explained why.

WW's involvement

I understand CC say they only performed a bureau service for WW. CC said WW had already advised Mr L 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 L and continued to be involved. However, notwithstanding WW's involvement, CC had a duty to give Mr L 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 L 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 L 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 L 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 L transferring his DB benefits and so it's fair and reasonable to hold them responsible for any losses this transfer caused Mr L. If they consider WW should also be held liable, CC is free to pursue them directly after having compensated Mr L in full.

CC did point out that they only got involved once the "Time to Choose" period had expired. So unless Mr L had chosen to move to BSPS2 before the deadline of 22 December 2017, his only option other than transferring to a personal pension was to stay in BSPS and move to the PPF.

Mr L sought advice from WW in October 2017 and was told he should transfer out of his DB scheme, so I think it's plausible to think he likely didn't request to move to BSPS2 before December 2017. The investigator came to the same conclusion and found that CC could not be held responsible for any potential losses Mr L suffered for not joining BSPS2. At the point they became involved this option wasn't available to Mr L any longer. Mr L's representatives haven't commented on this or provided evidence which shows this assumption isn't true. So I have no reason to come to a different decision here.

Putting things right

My aim to is put Mr L, as closely as possible, into the position he'd be in now but for CC's unsuitable advice. I consider he would have stayed in BSPS and subsequently moved to the PPF (which was his only other option at the point CC advised him in 2018).

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 L'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 L'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 L's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr L as a lump sum after making a notional deduction to allow for 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 L'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 L £250 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr L 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 L.

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.

Additional compensation

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 L would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. I think it's fair any such increases are taken into account when compensating him.

I don't think it's reasonable for CC 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 CC calculates and pays Mr L 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, CC 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 L 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. CC should keep up to date with developments on this matter, for example any information published on www.oldbritishsteelpension.co.uk. Equally, if Mr L becomes aware further information is available, he should let CC know. If the second calculation results in a higher redress amount than the first calculation, CC must pay Mr L 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 L 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 date of settlement for any time, in excess of 90 days, that it takes CC to pay Mr L.

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 County Capital Wealth Management Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require County Capital Wealth Management Ltd to pay Mr L any interest on that amount in full, as set out above.

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

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that County Capital Wealth Management Ltd pays Mr L the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr L.

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 13 April 2022.
Nina Walter
Ombudsman