The complaint

Mr D complains that he was given unsuitable 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, Mr D'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.

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

Mr D was concerned about what the announcement by his employer meant for the security of his DB scheme. So, he contacted another firm (which I'll refer to as 'Firm A') for advice. Firm A completed a fact-find, pension transfer questionnaire and risk profile with Mr D on 7 November 2017. Mr D says it verbally advised him to transfer out of the BSPS to a personal pension.

However, in late November 2017, Firm A informed Mr D that it couldn't complete the transfer for him due to restrictions to their regulatory permissions. It explained that if he still wanted to transfer he had to make alternative arrangements. It also reminded Mr D of the deadline by which he needed to make his choice. Firm A ultimately referred Mr D to CC for advice.

CC completed its own fact find in December 2017. This showed Mr D was 48, divorced, in good health with two dependent children. He was earning £40,000 per year and had savings of around £5,500. Mr D had a mortgage of £30,000, with repayments of £190 per month ending in 2031. Mr D was a member of his employer's new money purchase pension, with him contributing 20% of his salary and his employer contributing 10%. His risk profile was recorded as being 'balanced'.

A pension transfer questionnaire, also completed in December 2017, recorded that Mr D was considering a transfer because he wanted to retire at age 60 and he preferred that whatever was remaining of his pension when he died was left to his children as a lump sum. He also said he had lost confidence in his employer and wanted control of his pension.

On 3 January 2018, CC advised Mr D to transfer his BSPS benefits into a personal pension and invest his funds through a discretionary fund management firm ('DFM'). The suitability report said the reasons for this recommendation were that Mr D wanted to access his pension flexibly at age 60 and leave the funds invested. CC's cashflow analysis had shown his financial position would potentially improve. Also the transfer value of his final salary scheme could be secured as a financial asset that could be passed on to his family in the event of his death. Mr D accepted the advice and his BSPS benefits were transferred.

Mr D, through his representative, complained in 2019 to Firm A and CC about the suitability of the transfer advice. Mr D said he never met with CC and transferred based on the advice given by Firm A. He said he should've been advised to opt into the BSPS2.

Firm A told Mr D it hadn't provided him with advice to transfer his pension – it said it had referred him to CC.

CC didn't uphold Mr D's complaint. It said by the time Mr D had been referred to CC he had missed his opportunity to join the BSPS2, so his complaint should lie with Firm A.

Mr D referred his complaints about both businesses to this service. Firm A has since gone into liquidation and so this service cannot consider the complaint against it anymore.

An investigator thought the advice CC gave Mr D was unsuitable and said it should compensate Mr D for the losses he incurred by transferring his DB pension. He said compensation should be based on Mr D having moved his pension to the PPF given the deadline for joining the BSPS2 had passed by the time CC gave its advice.

CC disagreed. It said they were only providing a "bureau service" for Firm A and it was Firm A's adviser who took Mr D through the cash flow analysis and reports. CC says Firm A played a key role in advising Mr D; he had already decided to transfer based on Firm A's advice, so it should be held responsible for Mr D's alleged loss. CC added using the critical yields required to match Mr D's BSPS benefits alone as a basis for upholding the complaint was unreasonable. It also said it was unreasonable to compare the discount rates and critical yields as they do not measure the same thing. CC said the purpose of the transfer wasn't to provide higher income than the BSPS, it was to meet Mr D's other objectives.

As no agreement could be reached, the complaint was passed to me for a final decision.

I 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.

Mr D's representative didn't respond.

CC didn't think the redress amendment was fair because it required CC to carry out another calculation to determine if additional redress was payable once the buy-out completed. CC said it should only have to compensate Mr D based on the position he'd be in now, not at another point in the future. It said this meant Mr D was getting the best of both worlds. CC added that if it had known at the time of the advice that the BSPS would be bought out of the PPF, it wouldn't have advised Mr D to transfer his benefits.

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 regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CC should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr D'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 interests. I'll explain why.

Financial viability

CC's suitability report says that Mr D wanted to retire at age 60. The pension transfer questionnaire said Mr D wasn't sure what level of income he needed and he was undecided about whether he would take tax-free cash ('TFC').

CC carried out a transfer value analysis report ('TVAS') showing the average investment return required in the new pension to match the DB pension benefits (critical yield). At age 60, the critical yield was quoted as 5.92% per year if Mr D took a full pension and 5.46% per year if he took TFC and a reduced pension. But by the time the advice was given to Mr D, his only option was to allow his benefits to transfer out or move with the scheme to the PPF. So, I think the critical yields relating to the PPF are the most relevant figures to use. The critical yield to match the benefits available in the PPF at age 60 was quoted as 5.2% per year if he took a full pension and 4.76% per year if he took TFC and a reduced pension.

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. 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 3.9% per year for 11 years to retirement (age 60). 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. Even taking the lowest critical yield here (4.76%), which was a comparison to the PPF at age 60 if Mr D took TFC, there was a real risk Mr D 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.

CC says it is unreasonable to take the discount rate into account because it isn't a fair comparison to the critical yield. But I still think the discount rate provides a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case. And in any event, I've also considered whether the regulator's middle projection rate of 5% was achievable. Taking Mr D's attitude to risk into account, I think a net return of 5% (that is, after platform, DFM and adviser fees) was 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.

CC has said it told Mr D that the critical yields if he retired at age 60 were not achievable. Instead, CC says it recommended Mr D transfer out of the BSPS to meet his other objectives, although it says the cash flow models demonstrate that Mr D could meet his income requirements by transferring to a personal pension.

I've considered CC's cash flow models which it says showed Mr D 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 D's existing financial position, for the total income, CC used an annual pension figure of £20,227 per year, which was the sum available to Mr D through the BSPS if he retired at age 60 and didn't take any TFC. But that figure was irrelevant because the only option Mr D actually had when the advice was given was for his benefits to enter the PPF. The figure also failed to include the annual increases on the BSPS/PPF benefits in payment. 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 D's financial assets would actually be lower in the long-term than if he kept his DB pension. 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.

Overall, I'm satisfied that by transferring his pension it was unlikely Mr D's benefits would match, let alone exceed his existing benefits in the DB scheme. Instead there was a real risk he would be worse off in retirement. So based on the above alone, a transfer wasn't in Mr D's best interest.

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

Concerns about financial stability of BSPS

Mr D approached Firm A as he was concerned about his BSPS pension. Firm A's fact-find and CC's pension transfer questionnaire states that Mr D had lost confidence in his employer and he wanted to have control of his pension. CC's suitability report further stated that Mr D had already decided that he did not want to keep his pension benefits in the BSPS.

It's quite possible that Mr D came to CC leaning towards the decision to transfer. However, it was CC's obligation to recommend what was in his best interests. Mr D, like many of his colleagues, was concerned about the BSPS moving to the PPF. But from what I've seen, CC didn't provide Mr D with an objective picture about the PPF and what this might mean for him specifically.

Mr D 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 D, instead, he was given the impression that because he wanted to retire early, he would be better off transferring out of the BSPS. However, as the figures above show, even if this happened, Mr D was still likely to be better off by not transferring out. I can't see that this was properly explained to him.

And in any event, I think Mr D's concerns were with his employer generally. And I don't think CC explained that Mr D's scheme benefits entering the PPF would remove 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 D about his concerns.

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

Flexibility

CC says that Mr D wanted flexibility in his pension contract, but it doesn't seem to have explored with Mr D why he needed that flexibility. According to the pension transfer questionnaire, Mr D was undecided about whether or not to take TFC. He had a small mortgage of £30,000, which would be fully repaid in around 14 years when Mr D would be 63. But Mr D told CC he was intending to make overpayments towards the mortgage as he had sufficient disposable income. Mr D already had savings of over £5,000 and he was making significant contributions to his employer's new money purchase pension. So, I think it's unlikely he would've needed to take a lump sum from his BSPS pension to repay any debt when he took benefits at age 60.

If, however, Mr D did need to take a lump sum from his pension at age 60, he still could've done this if his BSPS benefits moved with the scheme to the PPF. The pension transfer questionnaire said Mr D intended to start drawing an income at age 60. So, he didn't require the ability to take TFC and leave the remaining funds invested, which is the sort of flexibility the new arrangement provided.

In terms of Mr D's income needs, the pension transfer questionnaire stated that Mr D was undecided about what level of income he required, and this was repeated in CC's suitability report. But it suggested that if Mr D transferred to a personal arrangement he'd be able to take £20,400 per year (net) which it considered to be sustainable assuming the mid growth rate projections were met.

According to the fact-find, Mr D's expected expenditure in retirement was around £1,700. This would equate to around £20,400 per year, which seems to tally with the recommendation given. But this figure included committing £500 per month to savings and I don't think Mr D would've needed to take extra money from his pension just to put it into his savings. With this in mind, it seems to me that Mr D's actual income requirement in retirement was around £1,200 per month, or £14,400 per year. If Mr D's pension moved with the scheme to the PPF, at age 60 he'd be entitled to an escalating pension of £18,446.13 per year or TFC of £100,116.29 and an escalating pension of £15,001.44 per year. Whatever combination of benefits Mr D took, I think he'd comfortably be able to meet his income needs through the PPF. And while I haven't seen any documented need to vary his income, if Mr D wanted to take a higher income in his early years of retirement, he could've drawn on the funds that had built in his money purchase pension.

For this reason, I don't think CC should've advised Mr D to transfer out of the BSPS simply to have flexibility that it hadn't established he actually needed. So, I think Mr D should've been advised to let his DB scheme enter the PPF rather than transfer his pension to a personal pension.

Death Benefits

CC says Mr D wanted to ensure he could pass on whatever was remaining of his pension to his children 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 D. But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CC explored to what extent Mr D 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. Although Mr D was divorced, Firm A's fact-find noted the possibility of him marrying again in future, in which case, his future partner would have received a spouse's pension for life, which would have been valuable if Mr D predeceased them. Also, Mr D had generous death in service cover if he died before retirement. I can't see that any of these benefits were explained to Mr D in a balanced way.

Furthermore, if Mr D genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CC should've instead explored life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured of £521,900 – this was discounted by Mr D because of the cost (£537 per month). But I don't think that this was a balanced way of presenting this option to Mr D.

Basing the quote on the transfer value of Mr D's BSPS benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr D wanted to leave whatever remained of his pension to his children, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr D how much he would ideally like to leave to his children, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

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 D. And I don't think that insurance was properly explored as an alternative.

Summary

I don't think the advice given to Mr D 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. 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 D 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 D. 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.

On balance I think Mr D would have listened to the adviser and followed their advice. Mr D 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, and I don't think he would've wanted to take any unnecessary risk with it. So, if CC had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice. So, I think CC should compensate Mr D for the unsuitable advice, using the regulator's DB pension transfer redress methodology. As Mr D had lost the opportunity to opt into the BSPS2 by the time CC gave him advice, it is the benefits available to him through the PPF that should be used for comparison purposes.

I've taken into account CC's comments about the fairness of the redress method which requires it to carry out a second calculation.

I've considered this carefully, but I think it would be fair for CC to carry out the second calculation and pay to Mr D any additional compensation this calculation produces as a result of the buy-out completing. As I've explained above, I'm satisfied that Mr D should've been advised to allow his pension to move with the scheme to the PPF. And as Mr D's pension wouldn't have been in payment at the time the buy-out is completed, I think he may have been entitled to an increase in benefits as a result of the buy-out if he had been in the PPF. So, it is only fair that Mr D's settlement takes account of this. I don't think this means Mr D is getting the best of both worlds, it simply seeks to compensate him for the position he should've been in but for the unsuitable advice.

I appreciate that CC says it wouldn't have advised Mr D to transfer out of the BSPS if it knew it would be bought out of the PPF. But I don't think that is particularly relevant here. CC needed to determine whether transferring out of the BSPS or moving with the scheme to the PPF was in Mr D's best interests. And I still think it was clear Mr D would've been better off moving with the scheme to the PPF, and that transferring out wasn't suitable for him, regardless of any future buy-out.

Firm A's involvement

I understand CC says it only performed a bureau service for Firm A. CC said Firm A had already advised Mr D to transfer and they were still heavily involved in the advice process throughout.

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

Nevertheless, if CC had given suitable advice, Mr D would have had a recommendation not to transfer out of the BSPS from CC, but he still would've had the verbal advice to transfer from Firm A. It's possible that Firm A might have continued to persuade Mr D to proceed with the transfer. However, given that Firm A had not been able to proceed with the advice due to issues with the regulator, I think on balance Mr D would have listened to CC's advice if its reasons why a transfer wasn't in his interest had been explained properly. So in my view it was CC's unsuitable advice that ultimately led to Mr D transferring his DB benefits. For this reason, I think it's fair and reasonable to hold CC fully responsible for any losses this transfer caused Mr D. If CC considers that Firm A should also be held liable, CC is free to pursue Firm A directly after having compensated Mr D in full.

Putting things right

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

CC 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.

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 D's acceptance of the decision.

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

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

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 D 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 D.

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 D 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 D 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 D 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 D 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 D 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 CC to pay Mr D.

For the upset caused by the unsuitable advice, CC should also pay Mr D £400.

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 D 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 D 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 D 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 D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D 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 D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision.

County Capital Wealth Management Ltd should provide details of its calculations to Mr D and his representative in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 April 2022.

Hannah Wise
Ombudsman