DRN-3283764

The complaint

Mr C complains about the advice given by Beacon IFA Limited (Beacon) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr C'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 ('DB') scheme. Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the 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 DB pension scheme sponsored by Mr C's employer would be set up – the BSPS2. The Pensions Regulator approved the RAA on 11 August 2017.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options - to stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr C approached Beacon in October 2017 to discuss his pension and retirement needs. He also wanted to look at the situation in respect of his employer and the BSPS. I understand that he was referred to Beacon by another adviser.

Beacon completed a fact-find to gather information about Mr C's circumstances and objectives. This showed that:

- Mr C was aged 52 and married, he and Mrs C had no liabilities and no dependent children.
- Mr C was in 'fair' health, he did have type 2 diabetes.
- They owned their home, valued at around £110,000.
- Mrs C owned a second property with a family member.
- They held around £5,000 in cash savings.
- Mr C was employed by Tata Steel and had been for 35 years. Mrs C had been with her current employer for seven years.

In respect of their pension arrangements Mr C had deferred benefits in the BSPS. On 18 September 2017, BSPS issued a statement of benefits to Mr C. This showed that his OPS benefits had a transfer value of £453,027 accrued over 34 years of service. Mr C was a member of Tata Steel's occupational scheme. A total of 16% of his salary would be paid into this.

Mrs C was a member of her OPS and had some additional voluntary contributions.

Beacon also carried out an assessment of Mr C's attitude to risk, which it said was 'cautious'. The fact find said that he was only prepared to invest cautiously in funds that 'smoothed' returns. Mr C didn't have any investment experience and his capacity for loss was recorded as being low.

On 20 November 2017, Beacon advised Mr C to transfer his pension benefits into a personal pension and invest the proceeds. He did this, placing half of the DB transfer proceeds in the new providers cautious fund and half in its growth fund. The suitability report said the reasons for this recommendation were that Mr C wanted to:

- Have flexibility about how he drew his retirement savings. And control the income strategy.
- Retire at age 58 and receive an income of £2,500 per month before tax.
- Move away from the BSPS due to the proposed reduction to his BSPS scheme entitlement. He wanted to avoid further reductions in his pension benefits.
- Provide greater cash lump sum benefits at retirement or if he was to pre-decease Mrs C.

Mr C complained in 2021 to Beacon about the suitability of the transfer advice. He felt that he had been wrongly advised to transfer his BSPS pension away and he has lost valuable guarantees when he did this.

Beacon didn't uphold Mr C's complaint. It said the advice met Mr C's objectives as they were recorded on the fact find. And whilst the DB transfer did have some risk this was explained to Mr C, and he accepted it. In particular, he signed to say he agreed with the loss of guarantees.

Mr C referred his complaint to our service. An Investigator upheld the complaint and recommended that Beacon pay compensation. Our Investigator thought that Mr C's complaint should succeed. He thought that Mr C didn't want to take the risk of the transfer and it was very likely that he would receive lower benefits overall because of it. It wasn't clear that the more flexible income, or increased death benefits, the personal pension had would outweigh this reduction in income. He should have been advised not to transfer and to join the BSPS2 scheme.

Beacon disagreed, saying:

- Mr C didn't want to take an annuity and so the critical yields are not really relevant. They painted an unfairly negative picture of his pension pot. He could provide a sustainable income through drawdown
- Mr C wouldn't have been able to retire early with enough income from the BSPS. He didn't have enough other funds to have enabled him to do this.
- Increasing the death benefit was important to him, particularly given his diabetes.
- The investment link of the personal pension was suitable for him. Beacon properly assessed Mr C's attitude to risk.
- Transferring to the BSPS2 would have led to a reduction in his benefits.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to an ombudsman to make a final decision.

Shortly after this, in November 2022, Beacon performed a loss calculation to determine if Mr C had suffered financially due to the advice it gave. It went on to say that it didn't agree with the outcome the Investigator had reached, but it would no longer contest the case

This first loss assessment showed that Mr C hadn't suffered a loss. Beacon said it would pay £250 compensation for the distress and inconvenience the advice had caused Mr C. It later increased the offer it was prepared to make to £300.

In May 2023 Beacon recalculated the loss using the FCA's new redress calculator which is specific to BSPS complaints. This also showed that Mr C hadn't suffered a loss. It made an offer of £500 but said this would be withdrawn if Mr C proceeded to have an ombudsman consider the complaint.

Mr C didn't accept these offers, or the loss calculations. He confirmed he was still in employment and was not looking to retire till age 65. Any withdrawals he had taken didn't indicate that he had retired. Mr C considers that the calculation should be performed as at November 2021 when the Investigator issued their opinion.

As no agreement has been reached about this complaint it has been passed to me to issue 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Beacon's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Beacon should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Beacon carried out a transfer value analysis report in October 2017 (as required by the regulator) showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

However, this was based on his existing scheme benefits and Mr C didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF. Mr C had received his "time to choose" pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible this may not have gone ahead, but I still think the benefits available to Mr C through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision. It was a significant failing when Beacon didn't do this.

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

Mr C was 52 at the time of the advice and wanted to retire at age 58 or 59. The critical yield required to match Mr C's benefits at age 58 was 17.75% if he took a full pension and 13.1% if he took tax-free cash and a reduced pension. The same percentages for his age 65 were 8.4% for a full pension and 6.57% if he took tax-free cash and a reduced pension.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 4.37% per year if Mr C took a full pension and 3.88% per year if he took tax-free cash and a reduced pension. The same figures for his age 58 were shown as 7.7% and 6.72% respectively.

As I've said above, Mr C remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by Beacon. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

The relevant discount rates closest to when the advice was given which I can refer to were published by the Financial Ombudsman Service for the period before 1 October 2017 and was 3.1% per year for five years to retirement and 4% for 12 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's 'low' attitude to risk and also the term to retirement. There would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was over 3.88%, and most were much higher than this. I think Mr C was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF.

Beacon did some cashflow analysis which it says shows Mr C would've been able to meet his needs despite the high critical yields. I've considered these, but Beacon's models show that if Mr C received the same income as he would from the DB scheme, then the fund would run out somewhere between his ages of 91 and 99. So if he lived a long life, or investment returns fell sharply, he may run out of funds.

And the TVAS showed that the fund required to purchase the benefits he was giving up at age 65 was £1,039,077. And it was £1,041,308 at his age 58. These amounts are far higher than it would be reasonable to expect the transferred out fund to grow to. And they give a revealing insight into the cost of the benefits Mr C was giving up at the time.

Also, as Beacon 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.

Beacon also says that the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. Beacon says Mr C didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required Beacon to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr C could realistically say with any certainty whether he would want to take a flexible income at retirement or not. It's entirely possible that Mr C would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

For this reason alone a transfer out of the DB scheme wasn't in Mr C's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Beacon has said in this case. Beacon said Mr C wanted to improve the flexibility he had, and the death benefits his pension planning provided. And There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It seems the main reason that Beacon recommended this transfer was for the flexibility and control it offered Mr C. Having considered the evidence, I don't think Mr C needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

Mr C wanted £2,500 a month in retirement according to the information gathered by Beacon. But this wasn't quantified in any way, that is there is no clear indication why they wanted this amount. And there was very little, information recorded about Mr and Mrs C's current expenditure and what they expected this to be in their retirement. It does say that they had significant surplus income at the time of sale of around £2,000. But there is very little detail about this, and it seems very high. I don't think their retirement needs were properly established. It's hard to see how Beacon could have given advice on Mr C's future retirement without knowing this.

If Mr C took benefits from the DB scheme at 58, he would be entitled to an annual income of £19,770, or tax-free cash of £91,617 and a reduced pension of £13,742. And at 65 the annual pension was £25,608 or tax-free cash of £91,617 and a reduced pension of £16,971.

This would not have met Mr C's retirement needs as noted in the fact-find. But I still think they could have potentially met his retirement income needs by remaining in the DB scheme.

I understand that Mr and Mrs C would both receive their state pension at their ages 65 to 67. Mrs C also had some provision of her own. Mrs C was a member of her employers OPS scheme and Mr C had just joined his employers DC scheme. And he would build up a fund he could use flexibly going forward. This could be significant if he remained employed past his age 60.

So, I think they would have more income than it was recorded they needed at their state retirement ages if they took the full income from the BSPS scheme. So, I've considered if Mr C's current arrangements offer him the opportunity to realistically retire early. Having looked at everything I think they did.

As I said earlier, I'm not persuaded that Mr C did need, or want, as much as £2,500 per month. And Beacon itself suggested that the £2,500 a month income figure was a little bit too high. It was recorded that Mr and Mrs C had £2,000 surplus income at the time of sale. And there is no reasoning why their expenditure would increase by such a large amount in their retirement. I'm not persuaded that this was really accurate, but it does indicate a margin of flexibility in the income they needed.

And at 58 Mr C could receive an income of around £20,000. This was less than the amount he said he wanted. But the figure of £2,500 a month was a gross figure, and Mr C would pay proportionally more tax on it than the approximately £1,666 the DB scheme would provide. And he would have the DC scheme proceeds to use flexibly to his state pension age if he needed them.

I think if Beacon had fully explored Mr C's retirement needs it's likely that it would have found that Mr C could probably retire early without altering his existing pension arrangements.

So, I don't think Mr C required the flexibility that the DB scheme gave him in retirement. This is because, based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash earlier than the normal scheme retirement age and leave his funds invested until a later date. I also can't see evidence that Mr C had a strong need for variable income throughout his retirement. Neither of these seems to have been properly discussed.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr C had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 Mr C would've been entitled to a lower pension than he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr C would've had his DC scheme to draw on until his state pension became payable, as well as his wife's pension to supplement their household income. So, I still think Mr C could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

So, I'm satisfied Mr C could have better met his retirement needs through the DB scheme.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr C. But whilst I appreciate death benefits were important to Mr C, and he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Beacon explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr C predeceased her. I don't think Beacon made the value of this benefit clear enough to Mr C. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left particularly if Mr C lived a long life. In any event, Beacon should not have encouraged Mr C to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr C genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Beacon should've instead explored life insurance.

I appreciate that Beacon looked at a whole of life policy with a sum assured of £453,027 – this was discounted by Mr C because of the cost which was over £500 per month. But I don't think that this was a balanced way of presenting this option to Mr C.

Basing the quote on the transfer value of Mr C's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr C wanted to leave whatever remained of his pension to his spouse, 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 C how much he would ideally like to leave to his spouse, 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.

I acknowledge that Mr C had a health condition. But Mr C not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr C would need his to last longer. If Mr C transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's pension was guaranteed and escalated.

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

Control or concerns over financial stability of the DB scheme

One of the main reasons that Mr C wanted to transfer was also due to the changes within his employer and his OPS scheme. It was documented that Mr C wanted to take control over his retirement provisions due to the proposed reduction of benefits under PPF/BSPS2. And that he understood that this involved accepting the investment risk but felt more comfortable with this than the alternative options.

It’s clear that Mr C, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He’d heard negative things about the PPF and he said he preferred to have control over his pension fund. So, it’s quite possible that Mr C was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF.

It’s well documented that this was a period of uncertainty for people like Mr C. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So, Beacon needed to give Mr C an objective picture and recommend what was in his best interests.

As I’ve explained, by the time the advice was given details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should’ve alleviated Mr C’s concerns about the scheme moving to the PPF. But even if there was a chance the BSPS2 wouldn’t go ahead, I think that Beacon should’ve reassured Mr C that the scheme moving to the PPF wasn’t as concerning as he thought. The income available to Mr C through the PPF would still provide a significant amount of the income he thought he’d need at retirement, and if he semi-retired at age 58, it’s likely the benefits available under the PPF could’ve been higher than those under the BSPS2. Furthermore, this income was still guaranteed and was not subject to any investment risk. So, I don’t think that these concerns should’ve led to Beacon recommending Mr C transfer out of the DB scheme altogether.

I think Mr C’s desire for control over his pension benefits was overstated. Mr C was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don’t think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from his DB scheme.

And in any event Mr C was still employed by the same employer and had joined the DC scheme. He couldn’t, and clearly didn’t want to, make a clean break from this employer.

And the funding of his employer’s DB scheme was not in a position such that Mr C should have genuinely been concerned about the security of his pension. Furthermore, if the scheme did end up moving to the PPF, I think Beacon should have explained that this was not as concerning as Mr C thought. As I’ve explained above, Mr C was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

I don’t think that these concerns should’ve led to Beacon recommending Mr C transfer out of the DB scheme altogether.

Suitability of investments

Beacon recommended that Mr C invest in risk based funds. As I’m upholding the complaint on the grounds that a transfer out of the DB scheme wasn’t suitable for Mr C, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr C should have been advised to remain in the DB scheme and so the investments in the personal pension funds wouldn’t have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr C. But Beacon wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was very likely to obtain lower retirement benefits, and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr C shouldn't have been advised to transfer out of the scheme just because of the concerns he had with his employer and the BSPS scheme. These concerns weren't worth giving up the guarantees associated with his DB scheme.

So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a personal pension now when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr C still had some years before he expected to retire, and he didn't entirely know what his needs in retirement would be. So, I don't think that it would've been in his interests to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr C would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr C was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr C chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Beacon should've advised Mr C to opt into the BSPS2.

Of course, I have to consider whether Mr C would've gone ahead anyway, against Beacon's advice.

I've considered this carefully, but I'm not persuaded that Mr C would've insisted on transferring out of the DB scheme, against Beacon's advice. I say this because Mr C was an inexperienced investor with a low attitude to risk and this pension accounted for the majority of Mr C's retirement provision. So, if Beacon had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr C's fear about the PPF was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. And if Beacon had explained to Mr C that he was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would've carried significant weight.

I'm aware that Mr C may have appeared motivated to get the transfer out completed. But Mr C had received advice from Beacon that he should transfer out of the DB scheme. So, I think this has to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to opt into the BSPS2. So, I don't think this demonstrates he'd have gone against the advice.

In light of the above, I think Beacon should compensate Mr C for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Beacon has offered to pay Mr C £300 for the distress and inconvenience that the unsuitable advice caused him. I agree that this is a reasonable amount to compensate him for the distress this issue has caused him.

Putting things right

Mr C feels that the loss should be calculated as at the date the Investigator first upheld the complaint. But this isn't the right thing to do. The loss assessment is to show whether Mr C has suffered a loss now (rather than in the past). And this does change over time. So, Beacon must calculate any loss using the FCA's BSPS specific redress scheme calculator using the current assumptions.

I appreciate that this may show that Mr C has not suffered a loss, as similar calculations have done in the past. But if this is the case then this will mean that, at the current time, he would be able to replicate the benefits he would have received from the DB scheme with the personal pension, and so it's not right to award compensation where this is the case.

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would most likely have remained in the occupational pension scheme and moved with it to the join the BSPS2 if suitable advice had been given.

Beacon must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Beacon should use the FCA's BSPS-specific redress calculator to calculate the redress. If Beacon does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr C and our Service upon completion of the calculation.

For clarity, Mr C has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Beacon should:

- calculate and offer Mr C redress as a cash lump sum payment,
- explain to Mr C before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his DC pension

- offer to calculate how much of any redress Mr C receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr C accepts Beacon's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr C for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr C's end of year tax position.

Redress paid to Mr C as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Beacon may make a notional deduction to cash lump sum payments to take account of tax that Mr Cs would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Beacon should pay Mr C £300 for the distress the poor advice caused him.

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 Beacon IFA Limited to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Beacon Limited pays Mr C the balance.

If Mr C accepts this decision, the money award becomes binding on Beacon IFA Limited.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 3 August 2023.

Andy Burlinson
Ombudsman