DRN-3283768

The complaint

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

What happened

In March 2016, Mr D's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) 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 June 2017, Mr D received a transfer value quotation from the trustees of the BSPS. This summarised the benefits Mr D was entitled to under the BSPS at that point. It also gave the cash equivalent transfer value ('CETV') of Mr D's BSPS pension benefits, which was £409,334.67.

On 11 August 2017, Mr D's employer confirmed the terms of an agreement with the pensions regulator about the next steps for separating the BSPS from the company – which had been broadly agreed in May 2017 and included a lump sum payment into the pension fund – had been signed. This announcement included confirmation that agreement had also been reached about the sponsorship, by Mr D's employer, of the BSPS2.

Then on 25 August 2017, an important update was issued in respect of BSPS transfer values. This explained that the expected lump sum payment into the BSPS by Mr D's employer was likely to result in an improvement to transfer values. And for those with unexpired transfer values, as in Mr D's case, updated valuations would be issued around October 2017, which would be guaranteed until at least December 2017.

Mr D approached Beacon in August 2017 to discuss his pension and retirement needs. He had been referred to Beacon by another adviser and I understand that he was concerned about the situation with his employer and the BSPS.

Beacon completed a fact-find in August 2017 to gather information about Mr D's circumstances and objectives. The fact-find, and other information from the point of sale, showed that:

- Mr D was aged 57 and Mrs D was 54, they had one dependent child.
- They were both in good health.
- They owned their own home which was subject to a mortgage that had around two years left to run.
- They had an outstanding loan with a value of £20,000.
- They had around £15,000 in savings held on deposit.
- Mr D was employed by Tata Steel. Mrs D was also employed full time.

- Their net monthly income was recorded as being about £3,750 while their expenditure was £1,200, leaving a net disposable income of £2,550.

In respect of their pension arrangements Mr D had been a member of the BSPS for 38 years. Mrs D had also been a member of her OPS for over 30 years. And they would both receive full state pensions. Mr D had recently joined his employers defined contribution ('DC') pension scheme. He and his employer were in total contributing 16% of Mr D's salary into this.

Beacon also carried out an assessment of Mr D's attitude to risk, which it said was 'cautious'. Mr D had no prior investment experience, and it was recorded that he had a 'low' capacity for loss.

On 11 September 2017 there was a further announcement, confirming the agreed payment had been made into the BSPS by Mr D's employers and the separation of the BSPS from the company had been completed. This set out that members would have to make a choice between staying in the BSPS or moving to the BSPS2 and explained that personalised information and illustrations would be provided in October 2017 to assist with that choice and that members would have until December 2017 to make a decision.

On 12 September 2017, Beacon advised Mr D to transfer his pension benefits into a SIPP and invest the proceeds in a range of funds. The suitability report, and the other point of sale information, said the reasons for this recommendation were:

- To ensure he had flexibility and control over when and how he drew his retirement savings. Mr D found the increased flexibility to be appealing and, this would help Mr D to retire early and dictate his own income strategy.
- To increase the death benefits available to his dependents.
- To capitalise on his BSPS transfer value while it was high.
- To move away from the scheme due to the proposed reduction to his BSPS. He felt that remaining in the BSPS was a bigger risk than moving away from it.
- As Mrs D had significant DB scheme benefits, their income needs would be met. So, this pension could be used for 'life luxuries'.

Mr D complained in 2021 to Beacon about the suitability of the transfer advice because he strongly felt that his pension was mis-sold. He has seen the industry regulators information about potential DB transfer mis selling and thought this may be the case for this transfer. He noted that the information the transfer was based on was incorrect as it didn't take into consideration the pension sharing order that was in place. He says that if he was aware of the magnitude of the potential loss of income then he wouldn't have proceeded.

Beacon didn't uphold Mr D's complaint. It said that it did a full, and detailed, fact-finding process and provided full information about the DB transfer. It said the advice met Mr D's objectives as they were recorded on the fact-find. And whilst the DB transfer did have some risk this was explained to Mr D in full, and he accepted it. In particular, he signed to say he agreed with the loss of guarantees.

Mr D referred his complaint to our service. An Investigator upheld the complaint and recommended that Beacon pay compensation. Our Investigator didn't think that the transfer was financially viable and so Mr D would be worse off if he went ahead with it. And it was particularly unsuitable given that Mr D was generally risk averse. He should have waited until it was clear what benefits the BSPS2 would provide and, ultimately, the BSPS2 would have been the best option for him. He didn't need flexibility and the income from his current arrangements would have met his needs.

Beacon disagreed, saying:

- Even though the TVAS was incorrect it was still ok to advise Mr D due to the urgency of the situation.
- Mr D didn't want a secure pension as his other provision would have met his needs.
- The death benefits were very important to him, and he wanted the ability to pass the full fund to his wife or children.
- Whilst the BSPS had some benefits it was perfectly reasonable for Mr D to have been concerned about its future.

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

Following this Beacon indicated that it would be willing to calculate any loss Mr D had suffered and pay him £300 for the distress and inconvenience he had experienced.

Mr D didn't initially accept this offer and he wanted to ensure that transactional costs and platform charges were included in the compensation. And he has reservations about supplying information to Beacon about his pension which it said it needed to calculate the loss.

Both sides have been informed that an ombudsman is likely to require that Beacon calculate any loss using the BSPS2 specific loss calculator. Beacon has confirmed that it is happy to do this.

But, as no agreement has been reached, I have fully considered this complaint.

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 Businesses ('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 D's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Beacon was gathering information and ultimately advised Mr D at a time when there were some significant updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice. It was also explained that the expected payment into the BSPS by Mr D's employer was likely to result in an improvement to transfer values. And that members with unexpired transfer values would be sent updated valuations – again likely improved ones – which would be guaranteed until at least December 2017. And the lump sum payment to the BSPS was confirmed just before Beacon issued the suitability letter that gave Mr D advice.

Beacon proceeded with the advice without really accounting for any of these developments. It is clear that Beacon and Mr D were aware of all of this and I think it should have been fully factored in. There were no comparisons carried out of the benefits the BSPS2 would potentially provide. And the advice was based on the CETV Mr D had received in June 2017, which was due to expire at the end of September 2017.

Beacon has indicated that Mr D wanted to act urgently, and he thought that staying in the BSPS was a risk. But I don't think this was right at the time. Beacon's role wasn't to facilitate what Mr D might've thought he wanted. It was to look at and advise him about what was in his best interests. Given what information the announcements indicated would be forthcoming, in order to give Mr D enough information to make a fully informed decision about what was in his best interests, I think Beacon should have told Mr D to defer making a decision on the transfer until further details of the BSPS2 were known and revised transfer values received.

Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. The announcements indicated that Mr D would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. And waiting would've allowed Beacon to carry out an analysis of the BSPS2 benefits, and properly compare these to the alternatives, and based its advice on this. Because I think without doing this, Beacon was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr D's best interests.

I have also noted that Mr D's pension was subject to a Pension Sharing Order, Beacon has said that the TVAS results may have been incorrect as the income amount was wrong. Beacon has said that it proceeded with the recommendation on the basis that the situation was urgent, but I don't agree with this. It can't have advised Mr D properly about his options when the information underpinning the advice was incorrect.

In summary Beacon has given advice despite knowing the information in the TVAS was incorrect and in the middle of some significant changes to Mr D's DB scheme entitlement. This seems to me to be wholly inappropriate and is a serious failing. I can't see how it can say it has advised Mr D properly with this in mind and I think it's a significant error of judgement.

That said I've looked at the figures that were provided to see if they give an indication about whether it was reasonable for Mr D to transfer.

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

The critical yield applicable to the BSPS2 benefits wasn't calculated – although again I think Beacon ought to have waited and analysed this before providing its advice. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat in comparison to the BSPS. But I still think they would've likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

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.

Mr D was 57 at the time of the advice and wanted to retire between ages 60 and 65. The critical yield required to match Mr D's benefits at age 65 was 18.56% if he took a full pension and 16.66% if he took tax-free cash and a reduced pension. The same figures for his age 60 was not shown for a full pension as it was calculated to be over 50%, but when he took tax-free cash this was shown to be 42.61%

The critical yield to match the benefits available through the PPF at age 65 was quoted as 11.91% per year if Mr D took a full pension and 11.09% per year if he took tax-free cash and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was 3.4% per year for 7 years to retirement and 2.7% for two years to retirement. I've kept in mind that 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 D's 'cautious' attitude to risk and also the term to retirement. There would be little point in Mr D 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 11%, I think Mr D 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 has provided cashflow models which it says show Mr D 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 D took the same income as the DB scheme, and it increased by the retail price index, then his funds would run out somewhere between his age 78 and 84. So, if there was a period of poor investment returns, or he lived a long time, he may run into problems.

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.

Lastly Beacon estimated that if he were to replace the income he was giving up in the DB scheme he would need a fund value of around £1,400,000. This is a very large amount and far higher than the DB scheme funds could reasonably be expected to grow to. I think this gives a revealing insight into the cost of the benefits Mr D was giving up.

Of course, all of this is only indicative of the DB transfer viability as the figures are incorrect. I understand that Mr D's ex-wife would be entitled to a third of his pension. And this isn't accounted for in the figures above. Beacon say this will have artificially increased the critical yields. But even so the yields are very high, and I think that even if this was properly accounted for the transfer still wouldn't be viable.

For this reason alone, a transfer out of the DB scheme wasn't in Mr D's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Beacon has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

One of the main reasons that the DB transfer was recommended to Mr D was to increase the flexibility that he had from his retirement provision. He wanted to retire early if possible, and perhaps use the DB scheme benefits to bridge the gap between his retirement and the state pension age. He wanted the flexibility to control his withdrawals to do this.

It's evident that Mr D could not take his DB scheme benefits flexibly in this way. Although he could choose to take tax-free cash and a reduced annual pension, Mr D had to take those benefits at the same time. But I'm not persuaded that Mr D had any concrete need to take tax-free cash and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective.

It was recorded that he and Mrs D wanted £1,500 per month net. It's not clear how this was calculated but it seems like a useful starting point. This is £18,000 a year or probably around £25,000 before tax.

It was recorded that Mr D's DB scheme would provide benefits at age 65 of an income of £36,261 or tax-free cash of £160,210 and a reduced income of £24,031. Or at age 60 he could receive an annual income of £29,734 or tax-free cash of £136,088 and a reduced annual pension of £20,413.

Of course, as I've said above this would be reduced by around a third due to Mr D's pension sharing order. This really should have been properly accounted for. And the pension would be reduced by the move to the BSPS2. So, on its own this pension would not provide all of the income Mr D said he needed at retirement if he were to retire early.

But this doesn't give the full picture here. Mr D was a member of his new employers DC scheme and he and his employer were contributing 16% of his salary each month into this, and he was looking to increase this. And he would build up a sum of money to use in retirement.

Mrs D had a DB scheme entitlement herself. It's not clear exactly what benefits Mrs D's pension would provide, and I think this is a significant failing on Beacon's part as it couldn't have advised Mr D on his income needs in retirement without knowing this. But given her income, and the length of time she had been in it, it was likely to be significant. And I note that Mr D felt that they could use this and their state pension to live on.

But I think it's reasonable to say that Mr and Mrs D's existing provision, including their state pension entitlement, would have met their aims.

I think the right advice here would be for Mr D to remain in his DB scheme and anticipate that this would form a core guaranteed income. And Mr and Mrs D could continue to build up funds and other provision elsewhere to enable them to be flexible about their retirement when they had a better idea what they wanted to do.

Beacon may think that once Mr D's state pension, and other provisions, became payable he would have too much income. But Mr D could've reinvested any surplus income for the benefit of his children in a tax-efficient manner such as within a trust.

Even if Mr and Mrs D could have got by without the income form Mr D's DB scheme once their state pensions became payable this isn't a good reason to transfer in itself. This income could have been an important foundation for their retirement, providing a guaranteed amount that would've at least mostly covered Mr and Mrs D's main expenses meaning that any income received above this could've allowed them to enjoy their retirement fully.

Overall, I'm satisfied Mr D could have met his income needs in retirement by maintaining the guaranteed income available to him through the PPF or the BSPS2. So, I don't think it was in Mr D's best interests for him to transfer his pension just to have flexibility that he didn't really need. And if Mr D found that his circumstances changed and he did in fact need flexibility, if he'd opted to go into the BSPS2 he would've retained the ability to transfer out closer to his actual retirement age. So, ultimately, I think any need for flexibility could've been addressed nearer to his retirement.

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 was likely an attractive feature 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 DB scheme to a personal pension 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 Beacon 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 attached to the DB scheme were underplayed. Mr D was married and he had a dependent child and so the spouse's and dependent's pension provided by the DB scheme would've been useful if Mr D predeceased them. I don't think Beacon made the value of this benefit clear enough to Mr D. 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, the fund may have been depleted particularly if Mr D lived a long life. In any event, Beacon should not have encouraged Mr D to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr D genuinely wanted to leave a legacy for his spouse or children, 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 the suitability report mentioned a whole of life policy with a sum assured of £407,000 – this was discounted by Mr D because of the cost (over £570 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 pension 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 dependents, which would be a lot less than this if he lived a long life 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 on his death, 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.

Control or concerns over financial stability of the DB scheme

One of the main reasons that Mr D wanted to transfer was due to the changes within his employer and his OPS scheme. It was documented that Mr D 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 D, 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 D 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 D. 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 D an objective picture and recommend what was in his best interests.

And on the subject of financial stability, I think Beacon could've done a lot more to allay any concerns. As I've explained, I think Beacon should have waited before confirming its advice so that the option of the BSPS2 could've been fully considered and explained. Prior to the advice being given there were several important updates regarding the BSPS2 that indicated it was progressing and appeared likely to be an option for customers in Mr D's position. So, the advice should've properly taken the benefits available to Mr D through the BSPS2 into account. Which, as I've said, it appears he was unlikely to improve upon by transferring. And I think this should've alleviated some of the concerns Mr D might've had about the scheme moving to the PPF and the BSPS2.

I'm also conscious that while Beacon says Mr D was keen for a 'clean break', he still worked for the same employer. And hadn't suggested he intended to find alternative employment. He was also a member of the new defined contribution pension scheme his employer provided. So, he wasn't going to achieve a 'clean break' by transferring, as he would remain tied to the employer in other respects. And I think it also should've been talked about with more clarity that his employer and the pension scheme trustees were not one and the same.

I think Mr D's desire for control over his pension benefits was overstated. Mr D 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 D – it was simply a consequence of transferring away from his DB scheme.

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 D thought. As I've explained above, Mr D was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

Suitability of investments

Beacon recommended that Mr D invest in some funds which he now thinks may not have been suitable. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr D, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr D should have been advised to remain in the DB scheme and so the investments 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 D. But Beacon wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

Ultimately, 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, Mr D 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 D 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.

Whilst Mr D indicated he was interested in retiring early, he was already 57 and doesn't seem to have been able to say with any certainty what his needs in retirement would likely be. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. I say this because while it is true the PPF would've provided a more favourable reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction in the pension he accepted would end up being offset by this more favourable reduction for early retirement. And by opting into the BSPS2, Mr D would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think if Beacon had correctly advised him against transferring Mr D would've opted into the BSPS2.

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

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

I've considered this carefully. But I'm not persuaded that Mr D would've insisted on transferring out of the DB scheme, against Beacon's advice.

Mr D had obtained a CETV from the trustees of the BSPS before speaking to Beacon. But he'd also been told by that point about significant potential changes to the BSPS and that he'd likely have to make a choice at some point. Obtaining a CETV helped him to make an informed choice. But I don't think this means his mind was already made up.

I don't doubt that Mr D likely had a negative opinion of his employer at that time in respect of the pension arrangements, given what had happened up to that point. And I think he had likely put a lot of thought to the information he'd been given and may even have gone into the discussion leaning towards transferring. But Mr D still worked for the employer and hadn't indicated an intention to stop. So, I don't think the relationship and trust was as irretrievably broken down. Again, he wasn't obtaining a 'clean break' through a transfer, as Beacon has suggested. And his employer and the pension scheme trustees were not one and the same.

And while I accept that Beacon disclosed risks associated with transferring to Mr D and provided him with information about this in the suitability report, that isn't a substitute for suitable advice. And ultimately Beacon advised Mr D to transfer his benefits, and I think Mr D relied on that advice.

And Mr D was an inexperienced investor with a cautious attitude to risk and this pension accounted for the majority of Mr D'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.

So, I don't think Mr D would have insisted on transferring out of the DB scheme.

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

Mr D has raised some concerns about how Beacon will perform the calculation particularly in respect of some aspects of the charges. My decision is that Beacon should use the FCA derived BSPS redress calculator which gives guidance on how to account for ongoing charges. It is the method both the Financial Ombudsman and the regulator think is appropriate where a customer shouldn't have been advised to leave the BSPS scheme.

And, if Mr D does accept this decision he should assist Beacon to perform the calculation correctly, by either providing authority for, or obtaining himself, the information it needs to do this.

Beacon has offered to pay Mr D £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

A fair and reasonable outcome would be for the business 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 most likely have remained in the occupational pension scheme and opted to 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. A copy of the BSPS calculator output should be sent to Mr D and our Service upon completion of the calculation.

For clarity, Mr D 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 D'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 D redress as a cash lump sum payment,
- explain to Mr D 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 D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts Beacon's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr D 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 D's end of year tax position.

Redress paid to Mr D 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 consumers 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 D'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 D £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 D 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 IFA Limited pays Mr D the balance.

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

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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 August 2023.

Andy Burlinson
Ombudsman