DRN-3315288

The complaint

Mr S complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

CST Wealth Management Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "CST".

What happened

In March 2016, Mr S'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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr S's employer would be set up – the BSPS2.

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

Mr S was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to CST which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr S was 30 years old, unmarried and with no dependent children. However, Mr S was due to be married in due course. His fiancée was 28 years old.

- Mr S lived in a home valued at approximately £170,000 with a mortgage of around £140,000 with 28 years remaining.

- Mr S earned around £36,000 per year.

- With almost 12 years' service, the cash equivalent transfer value (CETV) of Mr S's BSPS was approximately £125,016. The normal retirement age (NRA) was 65.

- Mr S had joined the new TATA defined contribution (DC) pension scheme as a consequence of the BSPS ceasing new contributions.

CST set out its advice in a suitability report in October 2017. In this it advised Mr S to transfer out of the BSPS and invest the funds in a type of personal pension plan. CST said this would allow Mr S to achieve his objectives. Mr S accepted this advice and so transferred out. In 2021 Mr S complained to CST about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr S referred his complaint to our Service. But CST still said it hadn't done anything wrong and was acting on the financial objectives Mr S had at the time.

As this complaint can't be resolved informally it's been sent to me to make a Final 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 also 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'). 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 CST'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CST should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr S's best interests. I have also carefully considered the final response letter from CST. I've carefully considered too, the various other responses made to the points contained within our investigator's view. In particular I've considered a number of points made by CST's legal representatives.

I've incorporated responses to all the main issues in this Final Decision although I don't intend to address every single point made. Suffice to say I've comprehensively dealt with the relevant factors and applied what I consider to be both fair and reasonable in arriving at my Decision.

Having done all this, I'm upholding Mr S's complaint.

Financial viability

CST referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes.

At least two transfer analysis documents were produced during Mr S's advice sessions – these are often referred to as "TVAS" documents. However, I've focussed on the TVAS dated 16 October 2017 as this is the most recent and it represented the type of fund Mr S was ultimately recommended to transfer into. In this document the critical yield required to match the benefits at the age of 65 in the existing scheme, was listed as 5.82% if Mr S took a pension without a tax-free lump sum. If taking a tax-free lump sum at retirement, the critical yield was 4.97%.

However, what found its way into the suitability report (dated 17 October 2017) was, in my view, much less detailed information about the critical yield(s). For example, CST only said that the critical yield was 4.97% and we know this was the lower of the two figures I've listed above. Also, in my experience, consumers like Mr S would be directed by an adviser more towards the suitability report, rather than the somewhat complex data found in the TVAS. And in the suitability report the TVAS section was completely blank (section 6.5).

So, what CST was doing here was promoting to Mr S the lower of all the critical yields it could relate to his circumstances within the suitability report. This lower yield involved a retirement at the age of 65 – and one where he would expressly take a tax-free lump sum and a reduced pension. However, I've noted that even though CST said Mr S apparently wanted to take *early* retirement – the ages of 60 and 57 were mentioned – it didn't present a critical yield for retirement at these ages within its suitability report.

The issue I have with all this is firstly, Mr S's age. Because he was so young, his NRA was still over 34 years into the future. And so whilst I accept Mr S might well have eventually elected to take his retirement benefits as described above, CST couldn't possibly predict this so far in the future. Nor did it tell him about the critical yields for other retirement ages. I think this is important because these may well have been higher critical yield rates, thus implying that reaching them by transferring out, could be very difficult.

Therefore, listing only the lower critical yield figure in the suitability report was, in my view, misleading. In any event, I don't think there was any persuasive evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be more likely. I say this with the following in mind.

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.

The relevant discount rate closest to when the advice was given which I can refer to was only 4.7% per year for 34 years to retirement (age 65), which is below the critical yield figures I've referred to above - 5.82% was the higher yield figure.

I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. However, these figures had been in place for many years and they existed unchanged through a period of extraordinary low interest rates and bond yields. So, if anything, these assumptions were somewhat higher than the reality of the economic climate in 2017.

At the time, CST assessed Mr S's attitude to risk (ATR) as "medium to high". But in reality, Mr S had no previous experience of these types of investments. He was given a questionnaire about his investment experience with pre-determined questions about his investing history, if he had any. However, I've noticed the answers to many of these questions were clearly contradictory and this indicates to me that Mr S wasn't an experienced and / or confident investor. That's because he specifically told the adviser he had never bought shares. And asked if he had any investment experience he ticked the box, *"No, not at all experienced: I am not very comfortable with investing".* So, when CST implies in its final response letter to the complaint that Mr S had previously invested without the help of an adviser, I don't think this is likely to be correct. In my view, the evidence is much more persuasive here that he had no relevant investment experience to draw upon. He also said elsewhere that he didn't feel comfortable with financial uncertainty.

I accept he'd joined the new TATA DC scheme which involved investing, but again I've seen nothing showing this was conducted under anything other than an 'off the shelf' investment strategy which required no direct investment decisions from Mr S himself. In any event, he'd only just joined this a few months before. I've also noted that although he had modest savings, there's no evidence these funds were held in anything other than a type of fixed-rate bond.

In summary then, the adviser used a pre-determined questionnaire to arrive at the ATR categorisation which was higher than I think it ought to have been. However, they seemed to ignore the fact that Mr S was a 30-year-old steelworker with no such investments, no previous experience to draw upon and a questionable attitude to stock market fluctuations. He was getting married and I'm sure it's possible he and the future Mrs S might have started a family. His mortgage still had 28 years to run. In short, he had his whole life ahead of him with all sorts of potential challenges ahead.

Further to this, because he was so young, I think it's fair to say he probably had very little idea of what retirement might look like for him. In my view, even though Mr S may have answered some questions on a form, the adviser should have considered these obvious factors. I therefore don't think the adviser had enough information or evidence to apply a medium / high ATR rating to Mr S. Therefore, the realistic growth assumptions were those close to the lower end of the regulator's range, and also close to the discount rate.

Looked at through the prism of 2017, there was very little chance of Mr S's transferred funds growing by enough to make transferring a really worthwhile exercise and I think the adviser was risking Mr S's future benefits by applying a higher ATR than was merited. A recommendation to transfer should therefore not have been made on this basis. I think this showed that achieving the critical yield, year-on-year, was unlikely with Mr S's *realistic* ATR. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr S, would have further reduced the likely growth assumptions. And in my view, there would be little point in transferring away from a type of DB scheme to get financial benefits of only a similar value. But here, even this relatively 'low bar' didn't look likely.

So, using everything I've set out above, I think maximum growth assumptions of around 4½ to 5% at best were more realistic. However, CST used past performance data from the fund it recommended to Mr S to assume higher growth than this could be achieved if he transferred away. I've also noted that CST says *now* that a reasonable growth (above the critical yields) has indeed been achieved. But, of course, this is using the benefit of hindsight. And I'd need to also factor in that even now, Mr S still has over 28 more years left to the NRA, so the investment period between 2017 and him retiring hasn't even reached 'halfway'.

I've also noted that using the NRA of 65, CST's own transfer analysis said that even in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £315,816. This was around two-and-a-half times more expensive than Mr S's CETV – and for a much inferior pension. So, in my view, these costs provide a revealing window into the real value Mr S would lose if he transferred out to a personal pension plan.

Elsewhere in its transfer analysis (TVAS), which I can't say if Mr S saw, CST also made mention of the PPF. It described this as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. It said the critical yield to match the benefits available through the PPF at age 65 was 4.37% per year if Mr S took a pension under the reduced terms of the PPF and 4.13% per year if he opted to take a tax-free cash element and a further reduced pension. But these yields related to the *reduced* benefits available with the PPF and CST itself says Mr S wouldn't have wanted to transfer to this scheme.

I therefore think it's fair to say that from a financial comparison perspective, CST's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr S was more likely to receive lower pension benefits in the longer term.

I've also considered some projections CST used to help show that if he transferred out to a personal plan, the funds could last Mr S well into retirement. Again, as I've said, I think most of these were based on growth projections using past performance, which isn't ever guaranteed. It's also fair to say these were not comparing like-with-like. What CST was showing Mr S were comparisons with plans which lacked the wider guarantees and benefits of a DB scheme.

Of course, according to CST, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, CST said Mr S also had other reasons to transfer away.

I've considered these below.

<u>*Other needs and objectives*</u>

I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier. CST recommended a transfer to a personal pension plan based on what it said were Mr S's wider objectives. In its final response letter about the complaint, for example, CST said Mr S wanted to 'earmark' this part of his retirement provision for his future wife and family and that he'd essentially be able to live off his new TATA (DC) fund in retirement. It also said:

- He'd said he wanted to retire early, at the age of around at 57 – 60. There are several refences to this in the various advice documents I've seen.

- He wanted to take control of the pension funds himself.

- He didn't want the funds to move to the PPF.

Our investigator also summarised the advice CST had set out in the suitability report. Themes in the report included were that Mr S wanted to retire with an income of £18,000 per year. CST said he would be able to take his tax-free lump-sum at age 57 without incurring any penalty, if he transferred under the 'pension freedom' rules introduced a few years before. CST also implied this would be a larger tax-free amount than with the BSPS. It also noted that Mr S could leave a better and more flexible legacy for his wife and family if he died, by transferring to a personal type of pension plan.

I have therefore considered all these issues in depth.

- *Retiring early*

I've taken into account that Mr S approached CST for advice because of the uncertainties he faced with the BSPS. I accept he didn't want to move to the PPF.

However, as I've mentioned above, Mr S was still only 30 years old. In this context, I think CST's adviser saying Mr S had specific uses for his retirement funds lacked any credibility. I think it's important to focus for a moment here on just how young Mr S actually was in pension terms. The evidence I've seen here is that Mr S – understandably - had absolutely no plans whatsoever for his retirement. With over 34 years still left to when he'd be actually contemplating retiring if using his NRA, there's simply no way that what he might possibly use the money for, should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement and which Mr S had no meaningful experience of.

So whilst I'm sure, like most people, Mr S probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been vague retirement aspirations on his part. In reality, there was no plan to retire early.

I therefore think that everything that flowed from predicting Mr S's retirement was flawed. For example, I don't think there's any real credibility behind Mr S estimating how much he'd need to live on each month when he retired as this was so far off. I think it's likely this was instigated by the adviser. But as I've explained, he still had his whole life ahead of him and it's reasonable to assume he'd marry as already planned, and possibly have children. And even if his life did not follow this pattern, there were many years in which his personal and financial circumstances would almost certainly change. The adviser should have seen this very obvious uncertainty and incorporated it into their advice. Likewise, as I've explained, I don't think the adviser could have possibly determined whether or not Mr S might access a lump-sum upon retirement or even how he would access his retirement benefits at all.

I think the adviser should have noted a clear vulnerability here in advising someone so young to withdraw from a guaranteed pension.

I think it's likely CST also promoted to Mr S that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But CST should have been telling Mr S at the time that extra tax-free lump sums being removed from a personal pension, potentially in his mid-fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

- *Flexibility and control*

I also can't see that Mr S required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by CST. I therefore think this was no more than a 'stock' objective used to help justify the recommendation to transfer out to a personal plan. For example, I've seen nothing that showed Mr S required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr S and his employer - 6% and 10% respectively and still had up to 34 years left to run. So, this secondary pension would have afforded Mr S any flexibility he might have needed in the years ahead.

This means I've seen nothing explaining why Mr S wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr S could have been in a very agreeable position. On one hand he'd have a meaningful deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within the BSPS2 and it was underpinned by the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time and it's not unreasonable to say he'd have amassed a substantial six-figure sum in this by retirement. So, if Mr S ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no evidence that Mr S had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr S was being offered the opportunity to move to the BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB-type scheme nonetheless and was run for him by trustees. Mr S himself had no experience of these types of other DC 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £125,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr S would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

CST itself set out the estimated pension he'd get under the BSPS. I'm not going to use up time explaining what these figures were because retirement was so far away in the future as to make these estimates almost completely irrelevant. However, CST accepted without any apparent challenge that Mr S might have needed around £18,000 per year in 'todays' money – something I seriously question given the incredibly distant timescale. What the adviser was accepting here was that Mr S could estimate how much he'd need each month in around 34 years' time.

However, I don't think there's anything showing Mr S's pension entitlements wouldn't have met his anticipated requirements, without any need to transfer from a DB scheme. I don't think CST adequately explained these things to Mr S as its advice simply discounted him transferring to the BSPS2 to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr S's circumstances here were much more aligned to him moving to the BSPS2 and retiring from that when he felt he was ready to do so.

- *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 BSPS2 contained certain benefits payable to a spouse and children if Mr S died. Mr S wasn't married and nor did he have children.

Once again, I think this shows a significant lack of foresight by the adviser. I think it's obvious, that as a 30-year-old male who was already engaged to be married, there was every reason to assume Mr S's circumstances might change in the years ahead. I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 for example would have been useful to a future spouse and / or children if he predeceased them. I don't think CST made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I can see the adviser probably told Mr S that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. It implied the DB scheme on offer to Mr S (BSPS2) was somehow too restrictive and would 'only' pay a future spouse around half his pension in retirement. So, the lump-sum death benefits on offer through a personal pension were made to look like an attractive feature to Mr S.

But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CST explored to what extent Mr S was prepared to accept a different retirement income in exchange for different death benefits.

Mr S was only 30 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr S had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 57 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 57 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I can't be sure of the extent to which life insurance was discussed in this case. However, at 30 years old, a modest 'term' life insurance policy may have been a reasonably affordable product if Mr S really did want to leave a large lump-sum (rather than annual pension) legacy for a specific relative or someone else. But more so, it doesn't appear that CST took into account the fact that Mr S could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr S already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr S. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr S's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr S, 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 CST said he lacked trust in the company. He'd heard negative things about the PPF and CST said he could have more control over his pension fund.

So, it's quite possible that Mr S was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was CST's obligation to give Mr S an objective picture and recommend what was in his best interests. I think that CST should have reassured Mr S that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr S through the PPF would have still probably provided a significant minority of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his 'true' ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to CST's recommendation to Mr S to transfer out altogether.

Other issues – would the BSPS2 ever go ahead?

In defending this complaint, CST says there was no certainty that the BSPS2 would have ever gone ahead. The implication here, I think, is that CST is saying it couldn't recommend the scheme to Mr S at the time because nothing was known about it or whether it would even be agreed.

But this needs careful explanation as it isn't right, in my view.

We know a great deal about the timeline involved in these cases, and I've seen myself a great many similar cases. And everything I've seen shows that by the time of the advice, which was in mid-October 2017, there was relevant information about the BSPS2 available.

In fact, CST's own suitability report says there was confirmation that the scheme was going ahead. The report also went on to say, *"VERY IMPORTANT CONSIDERATION – The final details of the* [BSPS2] *have now been released"* and it went on to explain the main aspects of it and where it differed slightly from the existing BSPS. I've noted too that CST conducted an analysis of the BSPS2 benefits in its second TVAS document.

So, to imply now that so little was known about the scheme, is simply not correct.

Suitability of investments

CST recommended that Mr S invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr S and I don't think he would've insisted on transferring to a new personal pension if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to move to the BSPS2. This means the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr S was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr S was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think CST ought to have advised Mr S against transferring out of his DB scheme for this reason, particularly given the regulator's clear stance on transferring away from a DB scheme. It also meant that he'd probably be worse off in retirement as a result of transferring away.

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

Mr S still had decades before he intended to retire. Much of the rationale used to justify the transfer-out recommendation was completely irrelevant to Mr S's circumstances and I think the adviser fell a long way short of providing advice that was in Mr S's best interests. The adviser was being paid for this advice, so their job wasn't to simply transact what Mr S thought was a good idea. He was only 30 years old and had no experience of these matters. The adviser's job was to use their experience and training to see that Mr S's personal circumstances were considered and to act in his interests.

I have considered, given the circumstances of the time, whether Mr S would have transferred to a personal pension in any event. I accept that CST disclosed some of the risks of transferring to Mr S, and provided him with a certain amount of information. But ultimately it advised Mr S to transfer out, and I think Mr S relied on that advice. I'm not persuaded that Mr S would have insisted on transferring out of the DB scheme, against CST's advice. I say this because Mr S was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if CST 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 have accepted that advice.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr S, as far as possible, into the position he would now be in but for CST's unsuitable advice. I consider Mr S would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. CST should use the benefits offered by the BSPS2 for comparison purposes.

CST 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.

CST 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 S and our Service upon completion of the calculation.

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 S's acceptance of my final decision.

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

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts CST's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr S's end of year tax position.

Redress paid to Mr S as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, CST 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 S'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.

Our investigator recommended that CST should pay Mr S for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr S in his particular circumstances. This pension at the time represented almost all of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr S. So I agree the recommended payment of £500 for distress and inconvenience. CST should pay Mr S this amount *in addition* to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct CST Wealth Management Limited to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

If Mr S accepts my final decision, the money award becomes binding on CST Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 29 October 2023.

Michael Campbell
Ombudsman