The complaint

Mr R complains that he was given poor advice by County Capital Wealth Management Limited trading as The Pension Review Service ('CC') to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a Self-Invested Personal Pension (SIPP).

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

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

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

Mr R contacted another firm (WW) for advice in October 2017. They completed a fact find and risk profile with Mr R. WW advised Mr R to transfer to a personal pension. However, on 18 December 2017, they informed him they couldn't complete the transfer for him due to restrictions to their regulatory permissions. They explained that if he still wanted to transfer he had to make alternative arrangements. They referred Mr R to CC for advice.

CC completed their own fact find on 28 December 2017. This showed Mr R was 53, married with one dependent child, in good health and was earning around £38,000 per year. He had savings of around £29,000, owned his own home and was mortgage and debt free. He was a member of his employer's new money purchase pension with his contributions being 6% of his salary and employer's contributions of 10%. His risk profile was originally recorded as high medium (risk level 6). However, CC queried this with WW as Mr R had said in his risk questionnaire he would prefer investing in 'portfolio A' which was a cautious approach. WW established Mr R didn't have much experience investing in equities and so it was agreed his attitude to risk would realistically described as 4 out of 10 which was the lowest balanced category. A pension transfer questionnaire recorded that Mr R was considering a transfer to be able to control when and how he could access his benefits.

On 17 January 2018, CC advised Mr R to transfer his BSPS benefits into a SIPP and invest his funds through a discretionary fund management firm (DFM). The same day all other necessary paperwork for the transfer was completed. The suitability report said the reasons for this recommendation were that:

- He wanted to retire at age 60 with the flexibility to retire earlier if he needed to.
- He wanted to achieve a target income of £20,000 per year until he was in receipt of his state pension at age 67. He then required the flexibility to adjust his income accordingly.
- CC's cash flow modelling indicated his financial position would potentially improve in retirement.
- The new arrangement would provide greater death benefits to his wife in the event of his death.

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

Mr R, through his representative, complained in 2019 about the suitability of the transfer advice. After CC rejected his complaint, Mr R referred his complaint to this service. He also made a separate complaint against WW. WW has since gone into liquidation and so this service cannot consider the complaint against them anymore.

An investigator thought the advice CC gave Mr R was unsuitable and asked them to compensate Mr R for the losses he incurred by transferring his DB pension.

CC disagreed but provided calculations to show Mr R had suffered no loss in any event. The calculations contained errors which CC was asked to correct. They agreed to do new calculations and asked for a letter of authority from Mr R to request information from the SIPP provider. As Mr R had changed pension provider since another letter of authority had to be requested which was eventually provided to them with the required information. As the new calculations have not been forthcoming in a reasonable timeframe, the complaint was passed to me for a decision.

In the meantime CC say they have carried out new calculations which they say now include the fund charges and show again that Mr R has suffered no loss. I'll address this further below in the putting things right section.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting assumption when advising on a transfer from a DB scheme is that it is unsuitable. CC should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr R's best interest (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was. I'll explain why.

financial viability

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

The documents from the time of advice show that Mr R was looking to retire at age 60 and possibly earlier. The average investment return required in the new pension to match the benefits available in the PPF at age 60 was 6.54% and 8.22% at age 58.

The closest discount rate to this time which I'm able to refer to was published by the Financial Ombudsman Service for the period before 1 October 2017. It was 3.3% per year for six years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. I've taken this into account, along with the composition of assets in the discount rate.

Having considered the above, there was a real risk Mr R wouldn't have been able to match, let alone exceed his DB benefits in the SIPP if he was invested in line with a medium risk strategy as suggested.

I've also considered CC's cash flow models which they say showed Mr R could have been significantly better off in the SIPP. They compared his existing situation with scenarios where his transfer value grew a) only in line with inflation, b) assuming returns of the recommended investment portfolio based on historic returns and c) a stress test where the transfer value fell by 14% in the first couple of years and then performed in line with historic returns of the asset allocation of the recommended portfolio.

As CC will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. Even when factoring in CC's stress test, I think returns were likely to be lower than the models showed. If returns were only in line with inflation the cashflow model showed that Mr R's financial assets would actually be lower in the long-term than if he kept his DB pension. And there was a risk this could happen.

Overall, I'm satisfied that by transferring his pension it was unlikely Mr R's benefits would match, let alone exceed his existing benefits in the DB scheme. Instead there was a risk he would be worse off in retirement. And the DB benefits represented the majority of Mr R's pension provisions, so I also think he couldn't afford to take much risk with his pension. So based on the above alone, a transfer wasn't in Mr R's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits.

Income needs and flexibility

It was recorded that Mr R was looking for a net retirement income of £20,000 per year from age 58-60 until age 67 and then reduce his income when his state pension was paid.

The transfer analysis reports show that the PPF could provide Mr R with an annual income of £17,027 per year or tax-free cash of £93,356 and a reduced pension of £14,003 from age 58. At age 60, he could receive £18,437 per year or tax-free cash of £99,909 and a reduced pension of £14,986.

I think Mr R could have met his income requirements before 67 by either topping up his annual income with benefits from his employer's money purchase scheme or by choosing to take tax-free cash and a reduced pension which would have allowed him to top up his income from tax-free cash until state pension age. His target income after 67 was £12,000 per year which would have been exceeded by the increasing PPF income. I can't see that any persuasive reasons why Mr R needed more flexibility than this.

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. I'm sure that the idea of leaving a large lump sum to his family in the event of his death sounded attractive.

However, CC should have put some perspective on this subject. His wife would have received a life-long guaranteed 50 % spouse's pension from the PPF which was valuable. Particularly as she didn't much of her own pension provisions and she was nearly 10 years younger than her husband. It also would have paid out a dependant's pension for their son until age 23. Mr R also had generous death in service cover if he died before retirement and his family would have received the value of his defined contribution pension too if he died.

Mr R was in good health and so more focus should have been on his long-term retirement provisions. And if he lived a long life, there might not have been much left in his pension to provide lump sums to his family.

In any event, whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr R about what was best for his own retirement provisions. A pension is primarily designed to provide income in retirement. So there generally shouldn't be a disproportionate emphasis on death benefits compared to someone's own retirement needs.

Overall, I don't think different death benefits justified the likely decrease of retirement benefits.

concerns about financial stability of BSPS

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

From what I've seen CC didn't provide Mr R with an objective picture about the PPF and what this might mean for him specifically. Mr R was interested in retiring early. However, this was possible in the PPF and early retirement reductions were in fact lower in the PPF than in BSPS. They should have reassured Mr R that the PPF was a secure option and remaining in BSPS and moving to the PPF was in his best interest.

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

Summary

Overall, I'm satisfied that the advice given to Mr R was not suitable. He was giving up a guaranteed, risk free and increasing income. By transferring he was risking obtaining lower retirement benefits and there were no other particular reasons which would justify a transfer and outweigh this. I don't think his options with regards to his DB scheme were properly explored.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme and I've fully taken into account that Mr R likely was keen to transfer out as he was worried about his pension and the PPF was seen as a bad option. However, it was the adviser's responsibility to objectively weigh up the options for Mr R. He should have advised him what was best for his circumstances and explain what he was giving up in the DB scheme and that moving to the PPF was not as concerning as he thought.

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

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

WW's involvement

I understand CC say they only performed a bureau service for WW. CC said WW had already advised Mr R to transfer and they were still heavily involved in the advice process throughout.

I can't consider the complaint against WW as they have gone into liquidation. However, based on the information I have seen it seems indeed that WW had previously advised Mr R and continued to be involved. However, notwithstanding WW's involvement, CC had a duty to give Mr R suitable advice and without their advice a transfer couldn't have proceeded. CC is responsible for their own actions here. If CC had given suitable advice, Mr R would have had a positive recommendation from WW as well as a recommendation not to transfer from CC.

It's possible that WW might have continued to persuade Mr R to proceed with the transfer. However, given that WW had not been able to proceed with the advice due to issues with the regulator, I think on balance Mr R would have listened to CC's advice if their reasons why a transfer wasn't in his interest had been explained properly. So in my view CC's unsuitable advice ultimately led to Mr R transferring his DB benefits and so it's fair and reasonable to hold them responsible for any losses this transfer caused Mr R. If they consider WW should also be held liable, CC is free to pursue them directly after having compensated Mr R in full.

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

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

Putting things right

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

CC should undertake a redress calculation in line with the pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. Mr R hasn't retired yet and so usual assumptions for prospective loss cases regarding his retirement age should be taken from FG17/9.

I understand CC have now caried out a further calculation and say there still has been no loss. However, they didn't provide their actual calculations, but referred back to their original calculation they provided in summer last year. They also say they don't have access to Mr R's account/fund information as he's not a customer anymore. They projected the valuation using data provided by the fund manager (TCF investments) and used charges and actual returns from a client who was invested over the same period as a proxy. CC say if Mr R has changed funds this was upon the advice of another adviser and any redress calculations should be based on a comparison with the fund CC actually recommended.

I haven't seen CC's new calculations but I want to be clear that I expect them to carry out a complete new calculation now using the most recent financial assumptions at the date of the actual calculation and include *adviser* charges (which is what they didn't do in their original calculations). For this purpose they need to ask Mr R's pension provider for a current valuation (the last one is already six weeks old again). They need to provide Mr R with a copy of their full calculations and assumptions used in a clear and simple format.

The aim of the loss calculations is to compare the benefits Mr R would have received in his DB scheme and the benefits he'll likely receive in his new plan. Assumptions as set out in FG17/9 should be used where applicable. I appreciate Mr R changed advisers and possibly funds since the transfer. However, CC has been provided with a letter of authority and is able to ask for the relevant information from Mr R's new pension provider. And by transferring out of the DB scheme Mr R was put in a position where funds and advisers could change at any point. CC couldn't expect that Mr R would always stay in the fund they originally recommended and possibly higher charges in future were a foreseeable risk of a transfer. CC should consider Mr R's actual position in his current pension and not hypothetical returns if he had remained invested in CC's recommend funds.

CC may wish to contact the Department for Work and Pensions (DWP) to obtain Mr R's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr R's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr R as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax free cash and 75% would have been taxed according to Mr R's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15%

overall from the future loss adequately reflects this.

In addition CC should pay Mr R £250 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr R within 28 days of the date CC receives notification of his acceptance of any final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 28 day period, that it takes CC to pay Mr R.

It’s possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 28 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 28 day period in which interest won’t apply.

Given that CC has a letter of authority from Mr R’s pension provider and calculations have been outstanding for a while I consider a reduced payment deadline of 28 days is reasonable in the circumstances.

Additional compensation

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late summer 2022.

It's been announced that:

‘When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.’

‘For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.’

The amounts of possible increases are yet unknown. The scheme expects to be able to have information on this by late summer 2022. Mr R would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. I think it’s fair any such increases are taken into account when compensating him.

I don’t think it’s reasonable for CC to delay the compensation calculation in its entirety until the buy-out is completed. Although it is expected to happen in late summer 2022, I’m conscious that this could be delayed further due to its complexity. To give some certainty to the parties, I think it’s fair CC calculates and pays Mr R compensation now as set out above comparing his existing benefits with the PPF. Once the buy-out is completed and more detailed information is available how exactly PPF benefits will increase, CC should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time. They should base their calculations on the benefits Mr R would have been entitled to after the buy-out.

This calculation should be done as soon as possible after the new buy-out benefits are known. CC should keep up to date with developments on this matter, for example any information published on www.oldbritishsteelpension.co.uk. Equally, if Mr R becomes aware further information is available, he should let CC know. If the second calculation results in a higher redress amount than the first calculation, CC must pay Mr R the difference. If the second calculation results in the same or a lower redress amount than the first calculation, no further action should be taken.

The compensation amount of the second calculation must where possible be paid to Mr R within 90 days of the date a public announcement is made that the buy-out has completed. Further interest must be added to the compensation amount at the rate of 8% per year simple from the announcement date of settlement for any time, in excess of 90 days, that it takes CC to pay Mr R.

I'm aware CC disagrees with this approach. They say the ombudsman service is aiming to put Mr R as far as possible into position he would <u>now</u> be in but for the unsuitable advice given. So it's contradictory to then require CC to pay further compensation in the future in relation to an event which may not occur. It's CC's understanding no buy-out deal has been agreed and this leave CC and their insurers in a position of unacceptable uncertainty.
CC say if they had known at the date of the advice that a buy-out would happen, they wouldn't have advised Mr R to transfer. They say CC is being penalised for something that wasn't foreseeable at the time the advice was given and it isn't fair or reasonable to put Mr r in a better position than he could have expected to be in had he remained in BSPS and moved to the PPF.
CC also say that by paying compensation into his pension Mr R is effectively getting 'the best of both worlds'. He has the flexibility of a private arrangement and will receive an uplift to the value of his fund. They also asked for clarification that only one £160,000 award limit would apply.

As explained above, I consider CC's advice to transfer was unsuitable, even if no PPF buy-out had happened in future. So without their advice Mr R likely would have remained in BSPS and moved to the PPF. The situation he would be in now is that his benefits would be reviewed and likely increased after the buy-out. This is relevant information I can't ignore. If I did, Mr R would be disadvantaged compared to someone who did remain in the PPF. Based on the information published there's no reason to believe the buy-out won't go ahead. So I think it's fair and reasonable CC does a second calculation as set out above.

It is evident that Mr R will benefit from flexibility now as well as receive a possible uplift in benefits, but that situation has only arisen because of the unsuitable advice. And ultimately the regulator has set out what they deem to be appropriate redress to put right instances of unsuitable defined benefits pension transfer advice. And I see no reason to depart from this.

The Financial Ombudsman Service's award limit apply per complaint and not per calculation. So the overall limit to this complaint is £160,000.

My final decision

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.

<u>Determination and money award</u>: I uphold this complaint and require County Capital Wealth Management Ltd to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

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

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

If Mr R accepts this decision, the money award becomes binding on County Capital Wealth Management Ltd. My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 26 April 2022.

Nina Walter
Ombudsman