DRN-3375752

The complaint

Mr H 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.

Roberts Boyt Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "RBL".

What happened

In March 2016, Mr H'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 H'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 H 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 RBL 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 H was 40 years old, married and with two dependent children and expecting a third imminently. He was described as being in good health and at the time of the advice he had accrued over 23 years of pension benefits with the BSPS.
- Mr and Mrs H's home was valued at around £110,000 with a mortgage outstanding of £86,000.
- Mr and Mrs H earned around £35,000 and £16,500 per year respectively. They had no other assets but had unsecured lending liabilities of around £14,000.
- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £323,158. The normal retirement age (NRA) was 65.

It seems Mr H had his dealings with RBL over the course of a few months in 2017. There was an initial 'fact-find' dated 8 August 2017 (although I've noted this was not actually signed by Mr H until 17 November 2017). A pension transfer analysis report was produced on 17 November 2017 and a risk profile was completed around the same time.

RBL set out its advice in an "Executive Summary" (a type of suitability report) on 28 November 2017. In this it advised Mr H to transfer out of the BSPS to a type of personal pension plan. RBL said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred out. In 2021 Mr H complained to RBL about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr H referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, RBL said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

As the complaint couldn't be resolved informally, it's come to me for 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 RBL'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, RBL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

Finally, I thought about everything RBL has said in its final response letter to Mr H's complaint and also its responses to our investigator's 'view'. I've not addressed every point but have concentrated on the matters I've considered relevant to the outcome.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr H's best interests.

I don't think it was, so I'm upholding his complaint.

Financial viability

RBL referred in its transfer analysis and Executive Summary 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. In this case, I think RBL used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

This doesn't fundamentally change the outcome, however, before assessing the critical yields in Mr H's case, I think it's important to point out that RBL could have taken time to compare the benefits of the BSPS2 with transferring out, rather than just using the current BSPS for comparisons.

I say this because many weeks before this advice, which was dated 17 November 2017, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. A newsletter had also been put on a microsite that had been set up to support BSPS members and more details of the BSPS2 had emerged by the time RBL produced its Executive Summary.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't really giving Mr H the best opportunity to make an informed decision about what to do. Having said this, I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

RBL said the critical yield required to match the benefits at the age of 65 in the BSPS, was 5.89% if Mr H took a pension without a tax-free lump sum. No critical yield was provided for taking a reduced pension together with a tax-free lump sum. In my view, RBL should have been aware that this critical yield figure was quite high and more likely than not, not achievable.

I say this because 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 published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.6% per year for 24 years to retirement (age 65), which is below the critical yield figure I've referred to above. I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

At the time, RBL assessed Mr H's attitude to risk (ATR) as *"Moderately Cautious / Balanced / Moderately Adventurous"*. In my experience this is a poorly defined ATR, representing as it does, a very broad church of different investor types from cautious to adventurous.

Another way the ATR was described by RBL was at a level 5 out of 7 (with 7 being the highest). In fact, I think a more reasonable and accurate assessment of Mr H's circumstances would have placed him in a lower ATR category, especially as he had no other financial assets or savings other than a mortgaged home he was selling. At the time I also think Mr H faced some challenges and demands commensurate with having a growing family. He was about to become a father for the third time and he was intending to move in with a relative pending buying a new home. He also had what I would describe as fairly high unsecured lending in place. RBL itself said he had little capacity for loss.

But in a wider sense, there were further reasons clearly demonstrating that Mr H could ill afford to take on too much risk. Everything I've seen shows Mr H had absolutely no experience of these types of investments and we know this pension also represented all of his retirement savings thus far in his life, other than a state pension he'd get in due course.

RBL says the ATR of 7/10 was arrived at by using a matrix created by a large fund provider. But RBL's role here was to interpret the answers Mr H gave to certain hypothetical investment questions on the relevant forms and to realistically use these alongside his actual circumstances, experience and knowledge. RBL should have factored in that when answering questions about investments, he had no experience to draw upon and in any event, many of his answers did strongly suggest he was at the more cautious end of the scale. I therefore think he was placed in an ATR category which was too high, the definition of which was also very wide. I think Mr H's realistic ATR was somewhere between low - medium.

Why this matters, is that I think a growth assumption at the middle-to-lower end of the regulator's projections, and probably close to the discount rate, was most relevant when thinking about whether the critical yield was achievable. This was over a percentage point below the critical yield figure for the BSPS which was 5.89%. I've also noted RBL itself assumed a growth rate in the transferred funds of 3.77% after allowing for fees and charges. So, I think this too showed that achieving the critical yield, year-on-year, upon transferring out certainly wasn't looking likely. And there would be little point in transferring out from a financial perspective, only to achieve lower overall returns and therefore lower pension benefits in the longer term than the BSPS2. RBL ought also to have been considering the 'starting point' assumed by the regulator – that transfers from a DB scheme should first be assumed as unsuitable.

In addition to all these things, I've also noted that RBL said that in order to purchase an annuity to provide all the benefits of equal value to the existing scheme at retirement at age 65, the funds required would be around £1,022,167 if taking a full pension. This was much higher than Mr H's CETV, so I think it provides a revealing window into the value of the benefits Mr H was being advised to give up by transferring away.

Elsewhere in its transfer analysis, RBL also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. RBL said the critical yield to match the benefits available through the PPF at age 65 were lower. But it was still 3.92% and this yield related to the *reduced* benefits available with the PPF. RBL said Mr H wouldn't have wanted to transfer to this scheme and I don't think he wanted this either, given his concerns about the pension situation he was in.

I therefore think it's fair to say that from a financial comparison perspective, RBL's own figures, shown in its Executive Summary and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr H would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, RBL should have waited and recalculated the comparisons for Mr H when the situation with BSPS2 became clear – we know this was imminent.

I've also considered some projections RBL used to help show that if he transferred out to a personal plan, the funds could last Mr H well into retirement. It's fair to say these were certainly not comparing like-with-like. What RBL was showing Mr H were comparisons with plans which lacked the guarantees and benefits of a DB scheme and they incorporated other pensions he would build in the years ahead.

Of course, according to RBL, 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, RBL said Mr H also had other reasons to transfer away, so 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.

I've considered these below.

Other needs and objectives

RBL recommended a transfer to a personal pension plan based on a number of objectives and issues. I've taken these themes from the Executive Summary and some of the other documents from the time of the advice, such as the 'fact-find' and the informal notes held by RBL. I've also considered carefully what RBL has said about the advice in its responses to our Service, in the time since Mr H's complaint has been made. I have therefore summarised the following themes as supporting the recommendation to transfer away:

- Mr H apparently said he wanted to start a business. I've also seen evidence of his desire to retire early, at the age of 60.

- Mr H evidently wanted to access a higher tax-free cash element present in the personal plan.

- RBL said he wanted *"to have independent and personal control of the pension fund"* if transferring out and have full control over where the funds were invested as per his ATR.

- It said he wanted a phased flexi-access drawdown to deliver alternative tax efficient income.

- In relation to death benefits, he wanted his pension to provide tax efficient benefits to his spouse and family in the event of his death. The report remarked that Mr H might face a reduced life expectancy due what it called his 'lineage'.

So, it seems the supporting reasons that RBL recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr H. There was also clearly a loss of trust and confidence around what was happening with Mr H's employer at the time.

I have considered all these issues in turn.

- *Flexibility*

I've noted that there was a mention made at the time of Mr H's apparent desire to leave the steel industry and start a business. I've looked carefully at the details of this and what was said at the time. RBL implies Mr H came to it with certain fixed proposals about a business idea; while Mr H himself says this 'idea' was just that, and that RBL exaggerated the extent to which this was a mature plan.

Overall I don't think it was a mature plan. Nor do I think the notion that Mr H was ever wanting to transfer to a personal pension for this specific reason, realistic, given what we know about the circumstances.

I don't think it really matters to the outcome of this complaint who promoted the business idea more. That's because it was RBL which was the regulated financial adviser here. And if Mr H was suggesting he needed to transfer his pension for matters related to a business plan, then I'd have expected to see a far more comprehensive proposal set out on the documents from the time. There's no evidence that I can see showing this was anything more than an idea which may or may not happen. What the initial 'fact-find' actually says is that he was looking to move away from heavy industry and was *"considering setting up a business in the future"*. Given the circumstances, I don't think this in any way constitutes a reason to transfer from a DB pension scheme.

I say this because I don't think Mr H's ideas were fixed. And RBL additionally puts a variety of other, somewhat conflicting ideas forward, supporting its eventual recommendation to transfer out. I've noted elsewhere, for instance, there was also reference to Mr and Mrs H potentially emigrating but like the business idea, I think this was all suggestive of a young family considering its future possibilities. They were not fixed intentions which should have been used to irreversibly transfer away from Mr H's only pension

Even if I were to consider the business as more than the mere idea it appears to have been, Mr H couldn't normally access his transferred pension funds for around 16 more years anyway. So the more obvious route to starting a business, for example, would have been a business loan or other lending: transferring his pension to a different scheme just wasn't shown as directly relevant to any of this. And at the time, this pension represented all of his retirement provision.

I've considered the possibility of him using a Self-Invested Pension Plan (SIPP) or a Small Self-Administered Scheme (SSAS) – a type of bespoke occupational pension scheme used by certain employers – to help buy or mortgage a commercial property. But in my view, these issues did not play a meaningful or genuine part of the advice at the time and have mainly been suggested as reasons to transfer *after* the complaint had been made. These are not straightforward or common issues, and if they were serious proposals at the time I'd have expected to see much more detail recorded in the notes and documents from the advice.

In fact, RBL's recommendation listed *"mortality"* (I explain this later) and an ability to draw *"variable benefits post-minimum retirement age"* as other reasons justifying the transfer advice. These two points, for example, are highlighted as the major transfer rationale at the very end of the Executive Summary, directly beside the overall recommendation to transfer away. So, if starting a business - and using a complex scheme incorporating his pension to do this was the major factor here - then the advice would have been dominated by this proposal, rather than the others.

To be clear then, my findings are that transferring out to start a business was not relevant or suitable in this case.

- *early retirement*

As far as retiring and / or taking retirement benefit early, at the age of 60, this somewhat conflicts with the above. Again, it's my view that these thoughts were no more than Mr H hypothesising what he'd like to do in many years' time. In his case I think this needed to be treated with caution. I say this because whilst I don't doubt that Mr H might have genuinely hoped to retire as early as 60, I've seen nothing that shows this was anything more than something he was aspiring to at that stage. Mr H was only 40 years old at the time and with his current financial resources and family circumstances, it's simply not credible that he had any concrete plans for retirement at that point. I've seen nothing which shows otherwise.

Even if I were to consider the unlikely scenario that Mr H's retirement plans were more fixed - and he really did want to retire or take his benefits early - I think RBL should have assessed the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr H, although this would have meant Mr H's pension benefits would have been somewhat reduced due to him accessing the pension earlier and for longer. But I think this was discounted by RBL as I've seen no evidence it was realistically discussed with a view to assessing whether it was more in Mr H's best interests. The advice negatively portrayed BSPS2, describing it as *"less secure"*, and it focussed on him transferring away completely.

It was also suggested that Mr H could access more tax-free cash if he transferred to a personal pension plan. It's usually the case that more tax-free cash can be accessed from a personal plan when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But RBL should have been telling Mr H at the time that extra tax-free lump sums being removed from a personal pension, potentially from his mid-fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

However, as he was so young, I don't think it was really possible to say what Mr H's financial and income needs were likely to be in retirement. This is despite RBL agreeing with Mr H's proposal that he'd need a certain amount per month at the age of 60. I'm afraid I regard this as no more than conjecture; it just wasn't possible to factor in these types of things at Mr H's current age. With a growing family and at least 20 years ahead of him before he reached 60, life isn't so predictable and so this could only be guesswork.

Nevertheless, I haven't seen anything to persuade me that Mr H wouldn't have been able to meet his likely retirement income needs by accessing his DB pension instead of transferring out to a personal pension plan. RBL said that Mr H's estimated annual pension upon his NRA was £23,136 per year at the age of 65. Or, he could have had a reduced pension of £15,332 together with a tax-free lump sum of £102,219. It's fair to say the BSPS2 figures could have been slightly different to these. But as a DB pension this was guaranteed and index linked.

Also, as well as retirement being a long time away, we know Mr H had already joined his employer's new defined contribution ('DC') scheme and could have been making contributions to it for up to 24 years more, until he retired. Mr H's contributions to this 'second' pension were being added to by his employer and I think there's every reason to say that by retirement – whenever it came – there would have been a substantial amount in this DC pension to complement his deferred DB scheme (in BSPS2).

I think therefore, that by retirement, Mr H could have been in a good position if he'd transferred to the BSPS2. On one hand he'd have had a long-standing, and in my view very satisfactory, DB pension with all the guarantees and benefits this type of scheme brought. And on the other hand, he'd have built up a substantial DC pension over many years, which, if he later found he did require flexibility, this pension could have provided it.

I don't think recommending a transfer-out based on these reasons was suitable because so little was known about what his retirement would look like. As far as desiring 'control' over his funds RBL provides no evidence that Mr H had either the desire or capacity to exercise personal control over his pension. The evidence here is that Mr H's previous exposure to investing was non-existent and he could ill afford risk. So, I think he'd have been likely to need help with exercising any control over these funds. As a consequence of this, he'd incur fees and charges in the years ahead. Alternatively, remaining in a DB scheme – such as the BSPS2 - run by trustees, was the much more suitable option for Mr H.

I can't see that Mr H required flexibility in retirement in the way RBL suggested and as I've said, I think that at his age of only 40, much of what is recorded on the Executive Summary relates to aspirational thinking. A good example of this is that transferring to a personal plan was cited as being useful for housing costs for children. But Mr and Mrs H's children were very young when these discussions commenced.

I think it's fair and reasonable to summarise RBL's response to many of these points by it saying Mr H was told about the risks involved in some of these matters and that following extended discussions with an adviser, he understood those risks. In my view, this somewhat misses the point – RBL's job here wasn't simply to help transact what Mr H thought he wanted or understood. Its job was to really understand his circumstances and to provide advice that was in his best interests. Mr H paid around £7,000 for advice and so I'm sure his expectation would have been that the advice was realistic, achievable and cognisant of his current situation. And having Mr H sign certain documents saying he understood something doesn't in itself abrogate RBL from its responsibilities as an adviser. It's job was to provide advice that was in his best interests.

I therefore think Mr H's circumstances were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so, and then drawing a DB pension. In short, the much more suitable option was for Mr H to access his DB pension in the way it was originally intended.

- *Death and death benefits*

RBL said Mr H's father and grandfather died in their 60s and it suggested this means he too had a reduced life expectancy. For instance, RBL wrote, *"this suggests that life expectancy is lower than the normal for his lineage who worked at the steelworks".*

This is a completely different reasoning for transferring from RBL, to that described above. But in my view, the adviser wasn't qualified to make such a judgement. There was no reason I'm aware of to suggest hereditary illnesses were involved and no account seems to have been taken of life expectancy through the generations or indeed, the lifestyles of Mr H's father and grandfather. So, I think this too was another comment to help drive the overall rationale for transferring out. The facts from the time clearly show that Mr H was in good health and if there was any suggestion his life expectancy was somehow shortened; this should have been evidenced. Using a perceived reduction in life expectancy here was unwarranted.

RBL says that death benefits were discussed at the time and the personal pension would better enable the retention of the value of the funds if Mr H died.

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 probably made to look like an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H 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 RBL explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr H was only 40 and was married. So, I think the likely death benefits attached to the DB scheme were substantially underplayed. The spouse's pension provided by the BSPS2 would have been very useful to Mrs H if Mr H predeceased her. I don't think RBL 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 also can't determine the extent to which life insurance was discussed in this case. But at 40 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr H really did want to leave a legacy for Mrs H or someone else such as their children. But more so, it doesn't appear that RBL took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his other DC scheme. So, to this end, Mr H already had plenty of options ensuring part of his pension wouldn't 'die with him'.

However, a more 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 H had lived a long life there could be nothing left at all in his personal pension plan.

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 H. I think this objective, listed as it was in the suitability letter, was no more than a generic comment and not meaningful to Mr H's situation.

- *Control or concerns over financial stability of the DB scheme*

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

So, it's quite possible that Mr H 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 RBL's obligation to give Mr H an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that RBL should have reassured Mr H that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr H through the PPF would have still probably provided a significant portion 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 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 RBL's recommendation to Mr H to transfer out of the DB scheme altogether.

Summary

I don't think the advice given to Mr H 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 H 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 RBL ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

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

I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr H still had a few more years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr H would have 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.

On this basis, I think RBL should have advised Mr H to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr H would have transferred to a personal pension in any event. I accept that RBL disclosed some of the risks of transferring to Mr H, and provided him with a certain amount of information. But ultimately it advised Mr H to transfer out, and I think Mr H relied on that advice.

I'm not persuaded that Mr H would have insisted on transferring out of the DB scheme, against RBL's advice. I say this because Mr H was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if RBL 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.

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

In light of the above, I think RBL should compensate Mr H 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 H, as far as possible, into the position he would now be in but for RBL's unsuitable advice. I consider Mr H would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. So, RBL should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've asked Mr H whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published. He says he doesn't want to wait for the new guidance to come into effect. I am therefore satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr H.

RBL must undertake a redress calculation in line with the current methodology. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr H'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 H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr H within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and RBL has received notification of Mr H's acceptance of my decision.

Income tax may be payable on any interest paid. If RBL deducts income tax from the interest, it should tell Mr H how much has been taken off. RBL should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

I have also considered the impact on Mr H of the unsuitable advice and transfer. Our investigator recommended that a sum of £250 should be paid to Mr H by RBL for what he referred to as the trouble and upset caused by this unsuitable transfer. I've taken into consideration Mr H's age and circumstances and also that by retirement this DB pension would still have been a significant part of his overall pension entitlement, So I think the thought of losing benefits would have negatively impacted Mr H. I therefore agree that RBL should also pay Mr H £250 for the distress and inconvenience caused by the unsuitable advice which has likely had an impact on his retirement planning

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 am upholding this complaint and I now direct Roberts Boyt Limited to pay Mr H 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 Roberts Boyt Limited to pay Mr H any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Roberts Boyt Limited to pay Mr H any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Roberts Boyt Limited pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts my final decision, the money award becomes binding on Roberts Boyt Limited.

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

Michael Campbell
Ombudsman