DRN-3499982

The complaint

Mr M complains about the advice given by Chequers Wealth Management Limited ('CWML') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

On 7 November 2017, the BSPS provided Mr M with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £112,526.98.

Mr M says he had concerns about the BSPS given everything that was happening, and colleagues had been discussing transferring their pensions. So, he sought advice and says he was introduced to CWML by another adviser.

CWML recorded some information about Mr M's circumstances and objectives. It noted that he was 52, married with one son. Mr M was employed earning approximately £35,000. He was also drawing an income from another pension which provided roughly £3,700 per year. He owned his own home, without a mortgage and had approximately £20,000 in savings. He had a loan for approximately £10,700 which was due to be repaid in 2021. His income exceeded his outgoings.

CWML also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'balanced'.

It appears that CWML met with Mr M on 28 November 2017. During that meeting Mr M signed its terms of business as well as application forms to transfer the benefits he held in the BSPS to a SIPP. Mr M has said during this meeting CWML told him transferring was the best thing to do. He says CWML told him, as he had other pensions in place he "*didn't need this one*" could afford to risk it and would be better off and he says it didn't indicate there were any negatives associated with transferring.

CWML then issued a letter summarising its recommendation (a suitability report) on 5 December 2017. This said Mr M was hoping to retire at age 60 but might wait until 65. CWML said Mr M was in receipt of one pension already, paying £246 per month. And he had another defined benefit pension that it was anticipated would pay £3,250 per year from age 60. It said Mr M felt these *"along with your existing British Steel pension and the state pension will provide sufficient secure income for later life".* But it then said that Mr M wanted to transfer so that he had flexibility in when he could take benefits and tax-free cash and not be limited by the structure of the BSPS2 or PPF. It also said Mr M was interested in the alternative death benefits on offer through a SIPP.

CWML recommended that Mr M transfer his pension as this would provide him flexibility. It also indicated that DB pension benefits and even the safety net of the PPF was not guaranteed. CWML recommended a SIPP provider and said the recommended product was in line with his attitude to risk.

Mr M complained to CWML in 2021 about the suitability of the transfer advice. He didn't think the advice to give up a guaranteed pension income was suitable for him.

CWML didn't uphold Mr M's complaint. It said Mr M had wanted flexibility to be able to access his pension benefits in a way which suited him and his plans. And it said he'd also been keen on the alternative death benefits provided by a personal pension.

Mr M referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable as Mr M wasn't likely to improve on the benefits he was due under the DB scheme – either through the BSPS2 or the PPF. He also didn't think there was any evidence that Mr M needed flexibility or that this was a genuine motivation for transferring. And he didn't think the alternative death benefits available through a transfer meant it was in Mr M's interests. The Investigator thought the objectives were generic and were not pressing needs that had to be addressed.

CWML disagreed. It said the Mr M had indicated he wanted to access funds at the earliest possible opportunity, from age 55. And noted he'd taken similar action with his pension that was already in payment at the time of the advice – accessing this as soon as he could. So, it felt the advice was suitable.

The Investigator wasn't persuaded to change their opinion, noting that the information from the time didn't reflect that accessing his pension benefits from age 55 was one of Mr M's objectives. And he didn't think Mr M having accessed another of his pensions already meant he would always have done this. So, he still didn't think the advice was suitable.

The complaint was subsequently referred for a final decision.

The regulator, the Financial Conduct Authority ('FCA') has developed a BSPS-specific redress calculator. Although the calculator has been developed specifically for the BSPS consumer redress scheme, the FCA has encouraged firms to use the calculator for non-scheme cases, such as Mr M's complaint with our Service. Our Investigator informed both Mr M and CWML, in May 2023, that if the Ombudsman considering the case decided to uphold it, they may require CWML to calculate any redress due using the FCA BSPS-specific calculator.

CWML responded acknowledging this and said it had carried out a loss assessment using the FCA's redress calculator. It said, having done so, the calculation showed that Mr M had not incurred a financial loss and so he was not owed any redress. A copy of this calculation was sent to Mr M and our service.

We explained we'd reviewed the calculation and were satisfied it had been completed appropriately in line with the regulator's rules and guidance. Mr M noted that the calculation had been run based on a retirement age of 65, but at the time of the advice, retiring at age 60 had been discussed. We explained that, as benefits from age 65 would've been higher, the cost of replicating these was usually more. So, using a retirement age of 65 was actually likely in Mr M's favour. And because, even factoring in this higher cost, the calculation showed no loss, we felt CWML was correct with its conclusion about the calculation.

Mr M remained unhappy as he said other BSPS members had received significant compensation, so he said it didn't feel right.

In light of Mr M's remaining concerns, I'm now providing 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 understand CWML is still disputing that unsuitable advice has been given. However, nonetheless it has carried out a loss calculation in line with how the Investigator believed matters should be resolved. So, I don't see the need to address the suitability of CWML's advice to Mr M in detail.

However, I would like to note that I agree with the Investigator's view that the advice was unsuitable for largely the same reasons.

- The transfer value analysis ('TVAS') report, that CWML was required to carry out by the regulator, said that the critical yield - how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.5% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 7.71%. To match the full pension the PPF would've paid from 65 the critical yield was 6.95% and to match the tax-free cash and reduced pension the PPF would've offered, it was 6.49%.

- Despite the fact it was known by the point CWML instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr M, the analysis was based on the BSPS benefits. And CWML didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available. I think it should've done. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Given Mr M's balanced attitude to risk, the discount rate of 4.0% for 12 years to retirement and the regulator's middle projection rate, I think Mr M was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And given what the TVAS noted about the critical yields for retirement at age 55 – that these were significantly higher – I think he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early. And indeed the suitability report noted that it was *“unrealistic to expect the transfer option to provide a secure income equal to or better than the existing scheme”.*

- CWML has said that Mr M wanted to access his pension benefits from age 55. But this isn’t supported by the information from the point of sale and notably this wasn’t referenced in the recommendation. The information from the time said Mr M was hoping to retire at 60 but might not do so until he was 65. And there was no recorded need or expected expenditure which would require access to a lump sum. In any event, if this had been a genuine objective – which for the avoidance of doubt I don’t think it was - benefits could be accessed from age 55 under the PPF or the BSPS2.

- I can’t see that anything was recorded about Mr M’s expected income needs in retirement – which the primary purpose of a pension is to address. But the suitability report said that his other pensions, along with his BSPS pension, was expected to be enough to meet his income needs. So, I can’t see that he needed to transfer to address his income needs. And I can’t see that he had a genuine need for the ability to vary his income. This seems to be a ‘nice to have’ rather than something he needed.

- Based on what was noted in the recommendation, I think Mr M was unsure exactly when he would retire. I don’t think this is surprising - Mr M was 52 at the time, still eight years from the first point he thought he might retire. So, there was still plenty of time for his plans to change. And as a result, I don’t think it was in his interests to make an irreversible decision to transfer just to obtain flexibility he didn’t need.

- CWML said Mr M was interested in the ‘better protection’’ a transfer offered to his family by way of alternative death benefits. But the priority here was to advise Mr M about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse’s pension, that could’ve been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would’ve also been reduced by any income Mr M drew in his lifetime. And given CWML’s advice seems to have been given on the basis Mr M would make larger withdrawals in the early years of retirement and there is nothing to suggest Mr M wasn’t in good health, it appears likely the fund would’ve been significantly depleted or eroded entirely by the time it came to be passed on. And so may not have provided the legacy that Mr M may have thought it would.

- If Mr M had wanted to leave a legacy for his family, CWML could’ve explored life insurance as an alternative. This could’ve been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence it did so.

- Overall, I don’t think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr M. I don’t think that insurance was properly explored as an alternative. And ultimately CWML should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- Mr M may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was CWML's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr M with guaranteed income and the option of accessing tax-free cash. Mr M was unlikely to improve on these benefits by transferring. And if he retired early, the benefits available to him through the PPF may have exceeded those under the BSPS2. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr M received from CWML was unsuitable for him.

Putting things right

As Mr M has raised concerns about the method of redress, I've considered this here.

The aim is to put Mr M back in the financial position he would have been in at retirement had he remained in the DB scheme. CWML carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by CWML which are personal to Mr M. These include Mr M's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65 (although the calculation also produced details of the cost of replicating benefits under the PPF). Mr M has said retiring at 60 was discussed when he received advice and was something he hoped for. But as I've explained, I don't think his plans were confirmed at the time of the advice. And, as the benefits from age 65 would've been greater (so would cost more to replicate) I think using this assumption, in line with the FCA's guidance was appropriate and hasn't disadvantaged Mr M with regard to the calculation.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr M's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. I'm satisfied that Mr M has not suffered a financial loss by transferring his pension.

Mr M has said that he is aware of other BSPS members who transferred their benefits receiving compensation, so he doesn't think it feels right. But my role is to look at the individual circumstances of his complaint and whether he has been caused a loss due to any error by CWML. The regulator has set out what it considers the appropriate method of compensation to be in instances of unsuitable pension transfer advice and this is also based on the approach a court would take in similar cases. I'm satisfied the regulator's redress method puts Mr M back, as far as possible, into the position he would have been in had he not transferred his BSPS benefits. And CWML has completed a calculation appropriately, using this methodology, showing he hasn't suffered a loss. So, CWML has done what I would've required it to do and, in my view, has acted fairly to put things right. As a result, I don't require it to take any further action.

My final decision

I uphold this complaint as I consider Chequers Wealth Management Limited provided Mr M with unsuitable advice. But, as it has taken appropriate steps to put matters right, I don't require it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 November 2023.

Ben Stoker
Ombudsman