DRN-3514782

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 2018.

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

Mr H also has a representative bringing the complaint on his behalf. However, I'll refer any comments and views as coming from Mr H himself.

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 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 H was 49 years old, married and with two dependent children. Mr and Mrs H owned their own home with a small mortgage outstanding.

- Mr H was described as being in good health and working full-time in the steel industry. Mrs H was 48 and had some health conditions. She was retired on medical grounds and also received some state benefits.

- Mr H earned around £36,000 per year. After expenses he and Mrs H had some reasonable disposable income left over each month. They had joint savings of £20,000 and no other major assets or liabilities.

- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £40,240. He'd accrued over 4 years' service. The normal retirement age (NRA) was

65.

- Mr H had also joined the new TATA Steel defined contribution (DC) pension scheme as a consequence of the BSPS closing to ongoing contributions.

CST set out its advice in a suitability report on 15 January 2018. In this it advised Mr H to transfer out of the BSPS and invest the funds in a type of personal pension plan. CST 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 CST 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, CST said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

However, CST has since said it would like to settle the complaint. It said it would do this in full and using a specific redress calculator which the financial regulator has established for these cases. So, CST has asked for Mr H to supply details of his transferred pension value so it can begin the process of establishing if there has been a loss. CST has said if there is a loss, then it will pay what is due under the guidelines issued by the financial regulator.

However, Mr H still hasn't provided these details. This is unfortunate as we've asked for the value several times now and I'm satisfied that Mr H is aware of what is needed to start the redress process.

So, even though I can see CST is apparently willing to settle this complaint using the approach we endorse, it can't evidently be resolved informally. It's therefore 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 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 H's best interests.

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

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

Introductory issues

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2. We know that if no choice was made then the member would eventually move to the PPF if they didn't transfer away to a personal pension type arrangement. I've seen evidence that Mr H was minded to make the choice to transfer to the BSPS2, if only as a precaution whilst he was seeking wider financial advice.

However, as I can't be completely sure he signed up for the BSPS2, I'll explain a little more about the timeline of events. If he did make a choice, he'd have only remained signed up for the forthcoming BSPS2 for a short time. This is because we know that by 15 January 2018 CST had advised him to transfer to a personal pension arrangement. CST confirmed to the BSPS on 19 January 2018 that it had provided regulated financial advice. And on 22 January 2018 it sent pension discharge forms to the trustees to begin the transfer process on Mr H's behalf.

I can also see a 'service proposition' form and 'fact-find' were produced by CST on 16 November 2017. This, of course, was several weeks ahead of the 'hard' deadline of 22 December 2017 I've mentioned above and where members of the BSPS needed to make a choice.

I therefore think by 16 November 2017 there is clear evidence that CST had started to advise Mr H. There were also some other documents and questionnaires that Mr H and CST worked together on to complete as part of what was clearly a pension transfer advice process. I therefore think the advice process was substantially underway throughout November 2017 with CST committing substantial resources to analysing Mr H's financial situation and a firm commitment to advising him about whether or not to transfer his DB pension.

I should say that none of this really matters to the actual *suitability* of the advice. Nevertheless, if Mr H hadn't formally made a choice before the 22 December deadline, it may matter to the redress that could be due for providing an unsuitable recommendation to transfer away from a DB scheme: redress would be measured against as if the member would have joined the BSPS2, rather doing nothing and entering the PPF. But in my view, CST had plenty of time to issue its suitability report ahead of the deadline as its advice process commenced in early November. At the very least, CST could and should therefore have reinforced the deadline issue of 22 December 2017 to Mr H and he could have signed up for the BSPS2 as a precautionary measure. It could have advised Mr H that he'd have still been able to change his mind and he'd have been able to later transfer away from BSPS2 rather than from the PPF.

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. And in my view, these all point one way – that Mr H was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

The critical yield required to match the existing benefits at the age of 65 in the BSPS2, was 6.6% if Mr H took a full pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.55%. However, CST also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr H had apparently expressed a desire to retire early. I explain more about this issue later. But for the age of 60, the critical yields came out at 8.76% (no tax-free cash) and 7.27% (with tax free cash) respectively.

CST acknowledged that achieving the critical yields would be ambitious because it said they were *"not guaranteed to be achievable".* I think that's right as the yields we should focus on here were showing that to make the transfer worthwhile from a financial perspective, the growth would need to exceed somewhere in the regions of 6.55% -to- 7.27% per year. It would also have to do this year after year – for up to 16 years.

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 was only 4.3% per year for 16 years to retirement (age 65), which is below all of the critical yield figures I've referred to above. For a retirement at the age of 60, the discount rate was only 3.8%. These figures imply Mr H wouldn't see growth rates above, or probably even close to, the critical yields.

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% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

CST assessed Mr H as a "medium" risk investor. But I think even this was too high. The evidence I've seen shows Mr H was not a risk taker and he didn't like the idea of his capital, if transferred to a fund, going down as well as up. It's clear Mr H had no experience of wider share-buying or 'money market' investments more commonly found in personally managed pensions and so he had no past experience to draw upon. I've taken into account that he had a new company DC pension. However, there's no evidence the investment approach was anything other than an 'off the shelf' strategy which involved no direct input from Mr H.

I've also noted that using the NRA of 65, CST's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was £85,266. Even 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 £55,858.

To reiterate, these figures are found in CST's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr H's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr H could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, CST 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. CST said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and CST itself says Mr H wouldn't have wanted to transfer to this scheme. 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 H, would have further reduced the likely growth.

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 H well into retirement. I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What CST was showing Mr H were comparisons with plans which lacked the guarantees and benefits of a DB scheme. And some of the scenarios showed him running out of funds at a certain age whereas his DB pension was guaranteed for life.

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 H would likely receive lower pension benefits in the longer term.

Of course, according to CST, its recommendation that he should transfer out to a personal pension was not based on the financial comparisons with his current scheme alone. Rather, CST 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

In the suitability report the reasons for recommending the transfer to a personal pension were listed in a table of advantages and disadvantages. The report said transferring would:

- Allow Mr H to achieve his goal of retiring at age 60, allowing him to withdraw more of an income if he wished, to support him through retirement.

- Provide control over the pension and how it is invested.

- Have better death benefits for his wife and children should he die prematurely.

- Potential better returns although this wasn't guaranteed.

Other issues listed within the report referred to a higher tax-free cash element within a personal pension plan and the ability to move money tax efficiently between income tax bands. The report also said he'd be able to avoid encountering problems with the pension lifetime allowance (LTA). And he was also told a personal pension could more flexibly bridge any gap between an early retirement and reaching the state pension age.

I have therefore considered all these issues in turn.

Retiring early and flexibility

When issuing the suitability report and the recommendation to transfer away from the DB scheme, CST said Mr H wanted to begin reducing his working hours from around the age of 56 and then retire at the age of 60. CST said transferring and using his pension flexibly would enable him to draw more of an income in certain years, to support him through the earlier stages of retirement.

I think it's fair to say that this was all partly influenced by Mrs H's health concerns of the time. Of course, this is an emotive subject. And I certainly wouldn't want to in any way imply that Mrs H's health wasn't a very important matter. Nor would I wish to minimise the demands on Mr H's time and / or their overall family life caused by the health concerns Mrs H was facing.

However, I've looked carefully at the notes from the time the actual advice was given. There's no suggestion from the time that Mrs H needed full time care or that there was a requirement for Mr H to stop working because of her health.

So, the reality as of early 2018 was that Mr H was still only 49 years of age. By pension / retirement standards this is still relatively young and however much Mr H aspired to reduce his hours or stop working completely, the simple fact was that these were not concrete retirement plans. Mr H had only expressed an interest in retiring early and as our investigator pointed out he'd ticked a box on the pension questionnaire saying, *"I do not anticipate retiring early but would like the flexibility to do so should my circumstances change"*.

In my view, if looked at realistically, Mr H's circumstances didn't yet support having fixed retirement plans and the adviser shouldn't have based any recommendations on this. Mr H had limited knowledge of what lay ahead for him – and limited financial resources with which to credibly consider early retirement. We know, for example, he still had two dependent children at the time. So, I think it's fair to say he and Mrs H would have wanted to first see their children successfully gain employment in the years ahead and then leave home before these types of decision could be made. I also think that whilst Mrs H was enduring a medical condition which was clearly impacting her quality of life, the longer-term prognosis wasn't clear enough. Mr H's CETV was also 'only' £40,240. His new DC pension also comprised of only around £21,581. And although there was one other very small historic pension in his portfolio, the above was effectively Mr H's retirement provision thus far, other than the state pension.

In this context, I don't think irreversibly transferring away from a DB scheme was in Mr H's best interests at the age of 49. He and Mrs H had speculated that in retirement they'd like an index-linked income of around £24,000 per year. But again, because retirement was so far off I think this was no more than an educated guess. And if their preference was for index-linked retirement funds, then transferring away from the BSPS2 – an index-linked scheme - doesn't seem to me to have been based on their preference.

I accept Mr H probably went into the advice sessions with an idea of what sounded good. However, CST's job here wasn't to simply transact what Mr H might have thought was a good idea. CST was being paid for the advice and so its job was to provide advice that was right for him. At only 49 years old, I think the discussions on retirement at the age of 60 were premature and no more than aspirational.

Even if I were to consider these plans were more than the mere aspirations I've mentioned above, I've seen nothing that showed Mr H required changing how his retirement benefits ought to be paid.

I say this because we know Mrs H already received some state benefits and her own pension which jointly comprised around £16,000 per year; the evidence suggests these were index-linked to a degree. So in my view, this implies they were already some way towards achieving the annual retirement income of £24,000 they'd said they could comfortably live on. I've also already mentioned that Mr H had signed up to 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 H and his employer - 6% and 10% respectively. It still had up to 16 years left to run (almost 11 years if he did eventually manage to retire early, at the age of 60). So, this secondary pension would have provided him with any flexibility he might have needed in the years ahead and it could have bridged the income gap between his early sixties for example, and when his state pension would be payable. I don't think the adviser took enough account of this.

CST itself set out the estimated pension he'd get under the BSPS2. If retiring at 65, Mr H could expect an annual pension of around £2,805 per year or £1,936 per year together with a tax-free lump sum of £12,912. Even if I were to only use the estimated pension calculated for the earlier retirement, at aged 60, the reduced pension was £1,552 per year and a tax-free lump-sum of £10,352. And it certainly isn't unreasonable to say Mr H could have built up his new DC fund to around £100,000 assuming only low growth. As Mr H appeared to have significant disposable income at the time, there's also no obvious reason why he shouldn't have been advised to increase his pension contributions thus building a much greater DC pension in the TATA fund. I therefore don't think there's anything showing Mr H's pension entitlements wouldn't have met his income requirements, without any need to transfer from his DB scheme. He'd also said he was willing to use some or all of his £20,000 in savings to help 'kick start' retirement.

So, I think Mr H's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. The evidence pointed to him still being able to retire perhaps a little earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, this supported that strategy in my view.

All this means I've seen nothing explaining why Mr H 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 H could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of moderate 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 BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a DC scheme over a reasonable period of time – up to 16 years. So, if Mr H 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 H had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr H was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr H himself had absolutely no experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing his transferred funds to be onerous in the years ahead. What I've seen tends to show Mr H would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

Death benefits

Death benefits are also 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 H died. Various useful benefits existed pre-accessing the pension and also post-accessing the pension. Mr H was married and had children so I think the benefits found in BSPS2 would have been of great value and reassurance to Mr H. In particular, I think it would have brought Mr H some comfort knowing that Mrs H could get at least half his pension if Mr H happened to pre-decease her, not least because she was unable to work and also had only a small pension of her own.

I think the adviser told Mr H that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr H. But this needed carefully explaining. 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 CST explored to what extent Mr H was prepared to accept a lower retirement income in exchange for different death benefits.

Mr H was only 49. 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 H 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 60 was at least mentioned – CST's defence of this complaint is partially predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 60 would likely have quite a few years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone. It also doesn't appear that CST took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr H already had 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 H. I think this objective, listed as it was in the suitability report, 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 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 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 CST'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 CST 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 attitude to risk 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 H to transfer out of the DB scheme altogether.

Other issues

- *Tax-free cash*

CST also implied to Mr H that he could access more tax-free cash if he transferred to a personal pension plan (item 3.5 of the suitability report). 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 often 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 H at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

- *The lifetime allowance (LTA)*

Similarly, CST said Mr H would have the opportunity to defer and minimise the impact of the LTA if transferring away. However, I think this and the issue above are issues unrelated to Mr H's situation. Mr H was nowhere near the LTA.

I think they basically represent a 'cut and paste' from general pension information and are somewhat misleading in his case.

Suitability of investments

CST recommended that Mr H 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 H and I don't think he would've insisted on transferring out of the scheme 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 remain in the DB scheme and so 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 H was suitable.

He was giving up an opportunity of 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 CST 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 quite a few 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 CST should have advised Mr H to opt into the BSPS2 (or remain in it if he had very recently done so).

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 CST 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 CST'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 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.

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

Redress paid to Mr H 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 H'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.

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.

Our investigator recommended that CST should pay Mr H for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr H in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr H. So I agree the recommended payment of £250 for distress and inconvenience. CST should pay Mr H this amount in addition to the redress I've set out above.

My final decision

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

Recommendation: If the compensation amount exceeds £160,000, I also recommend that CST Wealth Management 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 CST Wealth Management 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 17 October 2023.

Michael Campbell
Ombudsman