DRN-3537852

The complaint

Mr G 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 personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr G'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 G'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 16 October 2017, the BSPS provided Mr G 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 £300,746.41.

Mr G says some of his colleagues had already transferred their pensions and there was a lot on uncertainty and concern at work about the pension scheme. So, he sought advice and was introduced to CWML by another adviser.

CWML recorded some information about Mr G's circumstances. It noted that he was 54, married with three children. Mr G was employed earning approximately £34,500. His wife was also employed and earned around £25,000. And they received some rental income from a second property they owned. They had a mortgage on their home of approximately £44,000 which had a remaining term of eight years. The rental property was also mortgaged on an interest only basis for over £150,000. They also had two loans, totalling around £8,000 with four years left to run. Mr and Mrs G's combined income exceeded their outgoings with CWML's notes saying they had just under £1,900 surplus disposable income per month.

CWML issued a letter summarising its recommendation (a suitability report) on 5 December

2017. This said Mr G intended to continue working until age 65 or 67. It said he didn't have a repayment vehicle for the mortgage on his second property, from which he received rent. So, he was interested in accessing tax-free cash from his pension to reduce that mortgage. This would reduce the monthly interest cost and allow him to potentially repay the remaining outstanding capital before retirement. And he'd continue to benefit from rent in retirement. CWML said Mr G favoured the flexibility of a personal pension, wanted control over how his pension was invested and to be able to invest in line with his 'balanced' attitude to risk and was interested in the alternative death benefits on offer through a personal pension.

CWML recommended that Mr G 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 pension provider and fund that it said was in line with Mr G's attitude to risk. The suitability report also noted that ongoing advice was recommended and agreed to, which would come at a further cost.

Mr G 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 G's complaint. It said Mr G had wanted flexibility to access tax-free cash at age 55 to reduce his outstanding mortgage indebtedness but hadn't wanted to take an income. And so, the flexibility provided by transferring was important to Mr G. It also said the regulator, the Financial Conduct Authority ('FCA'), had previously reviewed the advice and believed it was suitable.

Mr G referred his complaint to the Financial Ombudsman Service. He says CWML met with him at his home. When it did so, all of the documents to apply for a transfer were already prepared and he was just told that transferring was a good idea. Mr G denied that he'd wanted access to tax-free cash to reduce the mortgage on his rental property as he was attempting to sell that property at the time of the advice and had since done so.

One of our Investigators looked into the complaint. He thought the advice was unsuitable as Mr G wasn't likely to improve on the benefits he was already guaranteed by transferring. And he didn't think accessing tax-free cash for the reason CWML had stated was a genuine objective of Mr G's.

CWML disagreed. It reiterated it understood Mr G had wanted to clear his mortgage on his rental property and alleviate the pressure to meet the repayments, which it said rent was not covering. So, CWML still felt the advice was suitable, that Mr G had benefited from the flexibility this provided and reiterated the FCA also believed the reason for transferring to be reasonable.

The Investigator wasn't persuaded to change their opinion. They noted that the information from the time said rent was meeting the mortgage payments on the second property. So, there was no immediate need to pay off this mortgage. And the tax-free cash wouldn't have been enough to clear the mortgage so the purported extra income this would provide was not at the level CWML suggested. And Mr G would still have had to find a large sum to eventually clear the mortgage, if he had in fact wanted to retain the property as a source of income. So, he still didn't think a transfer was in Mr G's best interests, even if this had been a genuine objective.

The complaint was subsequently referred for a final decision.

CWML has explained that it has carried out a loss assessment using the FCA's BSPS-specific redress calculator. It said, having done so, the calculation showed that Mr G had not incurred a financial loss and so he was not owed any redress. A copy of the calculation was sent to Mr G and our service. Although it disputed that Mr G had incurred distress or inconvenience, CWML said it would make a payment of £300 to address this and to settle matters.

I emailed Mr G and explained we'd reviewed the calculation and were satisfied it had been completed appropriately in line with the regulator's rules and guidance. And I asked if he was therefore willing to accept the offer of £300 made.

Mr G did not respond to my email and therefore I've assumed he has not accepted the offer. In light of this, 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. But 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 G 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.

- I've taken on board what CWML has said about the FCA having already reviewed this advice and I've looked at the summary it has provided. It would appear though that the review by the FCA only involved the input of one of the parties. And I don't know how much information it had access to or considered. In addition, the Financial Ombudsman Service and the FCA have different roles and remits. Unlike the FCA our role is not a regulatory one. We are tasked with looking beyond simply whether a firm has complied with its regulatory requirements. Instead, we consider information from both parties and decide, while having regard for relevant law and regulations, what we consider to be fair and reasonable in the circumstances of the complaint. So, I don't think the FCA having undertaken a separate review prevents me from reaching my findings independently of the FCA's considerations.

- The transfer value analysis ('TVAS') report, that CWML was required to carry out by the regulator, said that the critical yield - how much Mr G's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.9% 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 7.82%. To match the full pension the PPF would've paid from 65 the critical yield was 5.87% and to match the tax-free cash and reduced pension the PPF would've offered, it was 5.36%.

- 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 G, 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 G's recorded 'balanced' attitude to risk, the discount rate of 3.8% for 10 years to retirement and the regulator's middle projection rate, I think Mr G 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 and 60 – 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 G wanted to access tax-free cash from his pension at age 55 to reduce his mortgage on his rental property. Mr G has said that this was not correct, and his intention was to sell his second property, which he has since done.

- This goal was recorded in the written recommendation. And may have been discussed at the time. But it wasn't CWML's role just to put in place what Mr G might've thought he wanted. Its role was to advise him on what was in his best interests. And even if Mr G indicated this was something he was considering, I don't think this meant a transfer was in his best interests.

- The information recorded at the time of the advice indicated the rental income from the property was covering the mortgage repayments. And I can't see that CWML gathered any information which suggested that Mr G was either behind or struggling to meet the repayments. In fact, CWML recorded he had a surplus monthly income of almost £1,900. And I don't think giving up his guaranteed pension benefits to reduce a debt that he could afford, was in his best interests.

- Part of the rationale seems to have been that clearing the mortgage on the rental property would provide an income stream in retirement for Mr G – by way of the rent being received. But the tax-free cash available from a transfer would not have cleared the recorded mortgage as the available sum was less than half of the outstanding balance. So, Mr G would've had to continue to meet repayments, even if these were marginally reduced. And he'd have also had to find a way to clear the remaining balance, or he'd have still likely have been required to sell the property when the mortgage term ended – which would mean he had no ongoing income from it. And even if he had found a way to clear the balance in full, rental income could fluctuate and was not guaranteed. Whereas, contrary to what CWML seemed to suggest in its recommendation, the pension under the BSPS2 or PPF was guaranteed. And appears to have been a more appropriate way to meet Mr G's income needs in retirement – which is the primary purpose of a pension.

- Overall, as Mr G had no plans to stop working prior to age 65 and he didn't have a pressing need to clear any of his outstanding debt as this appears to be affordable, I don't think transferring to obtain flexibility was in his best interests.

- CWML said Mr G 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 G 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 G drew in his lifetime. And so may not have provided the legacy that Mr G may have thought it would.

- If Mr G had wanted to leave a legacy for his family, CWML could've explored life insurance as an alternative. It recorded that he had significant disposable income through which he could've met the associated premiums. And 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 CWML did so.

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

- I think Mr G's desire for control over how his pension was invested was overstated. I can't see that he an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr G – it was simply a consequence of transferring away from his DB scheme.

- Mr G 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 G with guaranteed income and the option of accessing tax-free cash. Mr G was unlikely to improve on these benefits by transferring. 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 G'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 G 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 G received from CWML was unsuitable for him.

Putting things right

As Mr G has not responded to the offer made, I've assumed he does not accept it. So, I'll focus in this decision on how to put things right.

The aim is to put Mr G 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 G. These include Mr G'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 replicating benefits under the PPF).

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 G's case shows that there is no shortfall to his pension and that the value of his pension and the benefits he has already received are sufficient to be able to replicate his DB benefits in retirement. I'm satisfied that Mr G has not suffered a financial loss by transferring his pension.

CWML has still offered to pay £300 for the distress and inconvenience this matter has caused Mr G to settle the matter

I think the calculation carried out by CWML is appropriate in the circumstances and no redress for financial losses is due to Mr G. While the loss assessment has determined that Mr G hasn't been financially disadvantaged by the unsuitable advice, I accept that finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice – is likely to have caused him concern. And that this will have caused him worry, whilst the matter remained unresolved. So, I think CWML's offer to pay him £300 for the distress and inconvenience caused is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and require Chequers Wealth Management Limited to pay Mr G £300 for the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 November 2023.

Ben Stoker
Ombudsman