DRN-3563704

Financial Ombudsman Service

The complaint

Mr B has complained that Dobson & Hodge Limited (D&H) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Self Invested Personal Pension (SIPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

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

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr B's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the PPF or into a private arrangement, such as a SIPP.

Mr B held preserved benefits in the BSPS arising from 26 years and 10 months' service. His preserved pension as at 24 September 2017 was £19,467 pa with the cash equivalent transfer value (CETV) confirmed as being £520,233.

Prior to receiving advice from D&H, Mr B initially opted to transfer to the BSPS 2. Mr B initially met with D&H on 18 October 2017. Having completed a fact find, the file notes recorded that he was 46, married and in good health. He had two financially dependent children. He was employed, earning approximately £2,200 net pm. His wife earned around £900 net pm, but this was expected to rise to around £1,300 and she expected to work until state pension age.

Joint monthly expenditure was around £1,250 (food not included). No emergency cash fund existed.

Mr B wanted to retire at age 55 but recognised that if he had to work longer, he'd be willing to do so, as long as he had some flexibility with his pension. He was also a member of his employer's defined contribution scheme held with Legal and General. He anticipated taking approximately £60,000 tax-free cash at 55 and wanted an income of £1,500 pm until his state pension age.

Mr B initially said his attitude to risk was low, or level "3" on a rising scale of "1 to 10". The adviser recorded that, given the time horizon, *"a cautious to moderate approach is sensible – albeit perhaps nearer to cautious than moderate"*.

A transfer value analysis (TVAS) report was produced on 19 October 2017 based on the BSPS benefits. The critical yield was 5.81% for a full pension at age 65, with a capital value of £1,140,750 required to buy an annuity to mirror the BSPS benefits. The critical yield to age 55 was 7.63%, and the capital value was £880,844.

The critical yield to match the full Pension Protection Fund (PPF) benefits was 3.29% (at age 65) or 4.41% (at age 55).

An illustration was produced on 7 November 2017 that projected a fund value of £1,080,000 at retirement age using a mid-growth rate of 4.24%.

A suitability report was produced on 8 November 2017 which confirmed Mr B's objectives as follows:

- *"You intend to retire prior to your normal retirement date and you are seeking the ability to draw your retirement benefits in a flexible manner*
- *You have explained that having greater flexibility as to how you draw your benefits and, specifically, the ability to draw a higher amount of income in the early years of your retirement is more important to you than having a secure and ever increasing pension for the rest of your life.*
- *You feel that, in later life, the British Steel Pension will be surplus to your necessary income once your Basic State Pension is in payment (and therefore you expect to want to reduce your private pension income at that time).*
- *You specifically intend to draw more income from your pension arrangements that would be available from the British Steel Pension."*

D&H recommended a transfer to a James Hay SIPP for the following main reasons:

- *"You would be unable to take tax free cash and a flexible income under the BSPS.*
- *You would be unable to reduce your BSPS pension once you reach your State Pension Age (however, as outlined above, the expectation is that benefits would, by then, be in the NBSPS or the PPF). The latter does not offer the ability to reduce income however at present details of the NBSPS are unknown.*
- *We anticipate the BSPS to be surplus to your necessary income and therefore if the BSPS benefits were exhausted, you could still meet your minimum income requirements.*
- *You place more importance on flexible benefits in the early stages of retirement than the guarantees of the BSPS providing more income over the course of your retirement.*
- *You are willing to take risk with the private pension and we feel that you are able to*

take this risk given that the BSPS is not an important part of your retirement 'necessary income'.

- *If you live into old age (i.e. above average life expectancy) you accept that the drawdown fund is likely to be exhausted and you are happy to take that risk. You are also aware that this risk increases if investment returns are lower than assumed. You are therefore willing to take the risk of you living beyond the average life expectancy and the impact this may have on your finances.*

- *We are of the view that in the event of the death of either of you, you feel that the reduction in household income as a result would not jeopardise your standard of living given that you would anticipate your expenditure to broadly reduce by a similar amount."*

D&H recommended the invested funds be split - £190,000 in a Prudential Trustee Investment Plan and £315,000 in a separate investment portfolio. The initial adviser charge was 1.0% with additional annual charges totalling 1.64% inclusive of an ongoing advice charge of 0.5%.

Due to delays with the BSPS trustees, Mr B's defined benefits were initially transferred to the BSPS 2 but were later transferred to James Hay and invested as recommended by D&H.

In February 2022, Mr B complained about the advice to transfer and the full implications of losing guaranteed benefits. In response, D&H said it had been agreed to take the transfer value in 2017, when the transfer value was being valued on the full BSPS benefits.

It further said that, although Mr B planned to draw £60,000 tax free cash at age 55, and withdrawing £18,000 pa income would mean the pension would probably run out in his mid-70s, Mr B had said this didn't concern him.

In addition, D&H said Mr B had signed to confirm he understood the risks and that guaranteed benefits would be lost in favour of flexibility and choice. Overall, D&H said, the advice to transfer had been *"…the most suitable option for your needs and circumstances at the time"*. And it further noted that, when the adviser from D&H moved to a new business, Mr B himself transferred the ongoing servicing of the plan to follow his adviser.

Having assessed the complaint, our investigator thought that it should be upheld. In summary, the investigator considered that it was unlikely that Mr B would be financially better off by transferring, given the critical yield just to match the scheme benefits.

He also wasn't persuaded that objectives such as flexibility of income were a sufficient reason for Mr B to have transferred. Mr B was a member of the defined contribution scheme, which could afford him the flexibility he required, but Mr B didn't in any case need to make any irreversible decision to transfer at the time of the advice, the investigator said.

The investigator recommended that D&H undertake a loss calculation in accordance with the regulator's guidance (FG17/9) for such complaints.

He said that any redress should in the first instance be paid to Mr B's pension plan, but if this wasn't possible, it should be paid directly to Mr B, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He also said that D&H should pay Mr B £300 in respect of the anxiety the matter would have caused him over is retirement plans.

D&H didn't agree with the investigator's findings, and asked that the matter be referred to an ombudsman for review.

The investigator then noted the regulator's consultation on a revised methodology and enquired of Mr B as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Mr B confirmed that he would like the redress calculation to be undertaken in line with the existing methodology.

D&H then confirmed that it had undertaken the recommended loss calculation and determined that Mr B had suffered no loss as result of the transfer. It did, however, offer to pay Mr B £500.

Mr B rejected this outcome, however, saying that he considered he would suffer significant losses as a result of the unsuitable advice – and that he faced an extremely uncertain future because of it.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require D&H to use the FCA's BSPS-specific calculator to determine any redress due to Mr B.

The investigator said that if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr B's complaint, they should let him know by 6 June 2023.

D&H then undertook the loss calculation on the new basis.

The (further) investigator considered the calculation and wrote to Mr B confirming his view that it had been carried out appropriately. He noted that the calculation had assumed that Mr B would have transferred to the BSPS 2 and that he would have taken benefits at the normal retirement age of 65.

The investigator concluded that Mr B had sufficient funds in his pension plan to replicate the defined benefits in retirement. And so no redress was therefore due.

But he noted that D&H had agreed to comply with his recommendation to pay Mr B £300 in respect of the distress and inconvenience caused to him.
Mr B requested that the matter be referred to an ombudsman, however, saying the following in summary:

- The fund value used by D&H in the calculation was inclusive of a terminal bonus.
- His primary concern remained around the guaranteed benefits he felt he'd lost, the ongoing charges he'd paid, and those he would continue to pay in the future.
- He'd also trusted that he would be given the right advice, and felt that he may now be left with less than half of what his original pension would have been worth.

- He'd paid in excess of £26,481 in fees to date to manage the pension fund, which he shouldn't have done.

- The yearly charges were also forecast to be 0.5% for the adviser fee, Prudential charges of 1.25%, portfolio charges of 0.37% and further fund charges of £1,220.

- By the time he came to retire, he would have paid fees in the region of £100,000.

As agreement hasn't been reached on the matter, it's been referred to me for review.

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 that D&H didn't accept the investigator's findings relating to suitability. However, it has nevertheless carried out a loss calculation. So I don't see the need to address the suitability of its advice to Mr B in detail.

Suffice to say, however, that I agree with the investigator's view that the advice was unsuitable for largely the same reasons.

Overall, I can't see persuasive reasons why it was in Mr B's best interest to give up his defined benefits.

Putting things right

I'll focus in this decision on how to put things right for Mr B as agreement hasn't been reached on the outcome.

The aim is to put Mr B back in the financial position he would have been in at retirement had he remained in the defined benefit scheme. Dobson & Hodge Limited has carried out a calculation using a specific BSPS calculator provided by the FCA, which is what I would expect it 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 BSPS 2 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 Dobson & Hodge Limited which are personal to Mr B. These include Mr B's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his pension plan. The calculation also assumes that if he hadn't 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.

Overall, based on what I've seen, I think 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.

I've noted Mr B's ongoing concerns about his loss of guaranteed benefits in the future. And I understand this, but the redress methodology is designed to determine whether there is a likelihood that the loss of these guarantees will result in overall financial loss. And it's been determined that, on the basis of the value of those guarantees, compared to the value of the pension plan, the latter has the higher value – and by some margin. And even if the terminal bonus is stripped out, this remains the case.

I've also noted the comments relating to the fees which Mr B has needed to pay in the replacement pension plan, and those which he'll pay in the future. In terms of those historically paid, this is reflected in the value of the replacement pension plan – so their deduction has resulted in a proportionately lower plan value, but this is still higher than the value of the scheme benefits.

And in terms of those which Mr B might need to pay in the future, the allowance for these is included within the calculator as set out above. Mr B has said that the actual fees he'll need to pay will be higher. But the charges in the calculator are set by the FCA at that level as it considers consumers can reasonably obtain a pension plan and ongoing advice at these levels in the market. If Mr B anticipates that he'll be paying above these levels in the future, I'd recommend that he speaks to his adviser to discuss the possibility of moving to a lower charging product.

As set out by the investigator, I think Mr B will have been caused some anxiety over his retirement plans as a result of this matter. As such, Dobson & Hodge Limited should pay him the recommended amount of £300.

My final decision

My final decision is that I uphold the complaint and direct Dobson & Hodge Limited to pay Mr B £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 February 2024.

Philip Miller
Ombudsman