DRN-3565098

The complaint

Mr B complains that he was given unsuitable advice by Richard Carew Independent Financial Advisers Limited to transfer deferred benefits from his Defined Benefit (DB) pension with British Steel (BSPS) to a personal pension. He says he might have lost out as a result.

The adviser firm was an appointed representative of Cambrian Associates Limited (CAL) who are responsible to deal with this complaint. I'll refer to CAL throughout my decision for ease of reading.

What happened

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 pension 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 BSPS2.

In October 2017, members of 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 22 December 2017.

Mr B met with CAL for advice on his pension in September 2017. A fact find and attitude to risk questionnaire were completed during this visit. They showed:

- Mr B was 55, married with two non-dependent children, and in good health.
- He earned £36,000 per year. He and his wife owned their house and were mortgage free. Mr B and his wife had savings of £23,000 and a car lease agreement costing £170 per month. Mr B had disposable income of £1,784 per month. His wife was also working and earned £20,000 per year.
- Other than the BSPS pension, Mr B had joined the new company defined contribution (DC) pension scheme in April 2017 with 10% employer and 6% employee contributions being paid into it.
- He expected a state pension of around £7,000 from age 67.
- Mr B wanted to retire at 56 or more likely 57.
- His attitude to risk was recorded as balanced and his capacity for loss as moderate
- Mr B was concerned with the security of his employer and wanted to know whether a transfer was in his and his family's best interest.

- He wanted £2,000 per month income in retirement. Early retirement from scheme would be unaffordable as early retirement factors would bring down income to £15,000 per year
- He wanted flexibility to pay for any life changing events when and if they arose
- He wanted to leave his benefits to his wife and children and didn't want his pension to die with him

A financial planning report dated 11 October 2017 shows CAL recommended Mr B to transfer his BSPS benefits worth just £594,257 to a personal pension.

Mr B complained to CAL in 2020 about the advice he received. He said he complained after he received a letter from the regulator telling him they believed many customers had received unsuitable advice with regards to their BSPS pensions. He used the regulator's attached "advice checker" and felt the advice given to him was poor. He said he didn't know whether he was worse off as a result, but if he was he wanted to be compensated.

CAL rejected his complaint and Mr B referred it to this service. One of our investigators upheld his complaint. He agreed CAL had given unsuitable advice.

As CAL disagreed with this outcome, Mr B's complaint was referred 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.

The starting assumption for a transfer from a DB scheme is that it is unsuitable. CAL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interest. (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interest. I'll explain why.

financial viability

CAL acknowledged in their suitability report that the growth needed to match Mr B's DB benefits in the personal pension (critical yield) was not achievable. They said if Mr B's decision was only based on trying to achieve a better income in retirement they would advise against a transfer.

I agree with CAL's assessment here and I think it was highly likely Mr B would end up with overall lower pension income in retirement by transferring his DB pension.

CAL say Mr B had other objectives which were more important to him and could only be achieved by transferring so I considered their arguments.

Early retirement

Mr B told us he was looking to retire maybe around 60. He only ended up retiring shortly before his 57th birthday due to personal circumstances. However, looking at the contemporaneous evidence from the time of sale it looks like Mr B was looking to retire at 56 or more likely at 57. It's recorded in the fact find and is mentioned a couple of times in the suitability report. I think if Mr B was looking to retire later he more likely than not would have queried this. So I think it was reasonable to see whether early retirement at 56 or 57 was feasible.

It's recorded that Mr B was looking for a retirement income of £24,000. He would need this amount until 67 and then it could then be reduced by the amount of the state pension thereafter (so to around £17,000).

First of all I think the income requirements weren’t properly discussed. It’s unclear where the figure of £24,000 comes from. It’s possible that Mr B had this figure in mind or that CAL based it on Mr B’s outgoings at the time. However, even if this is what Mr B thought he needed, I would have expected the adviser to challenge this figure and explore with him what his plans were in retirement and what outgoings were expected in retirement.

I can’t see evidence that this is what happened here. I also note that the fact find uses Mr and Mrs B’s joint income and their joint outgoings. So I would have expected CAL to ask about Mrs B’s circumstances, for example when she was looking to retire and how much pension income she was expecting. I don’t accept CAL’s argument that because Mrs B wasn’t present and they addressed their advice to Mr B alone, his wife’s income and retirement plans are irrelevant. As said above the income and outgoings as well as assets were recorded as joint. And to fully understand Mr B’s income requirements and plans in retirement I consider his wife’s details just as important. They should have been considered.

I can’t see that CAL explored whether early retirement could be achieved through the DB scheme. Early retirement penalties in the DB scheme were mentioned and on a pension transfer questionnaire it was noted that early retirement from the scheme wasn’t affordable as the scheme would only pay £24,000 from 65. It seems to me the early retirement option from the DB scheme was quickly discounted without detailed discussion.

CAL was aware of the time to choose exercise which was happening around the time of the advice. So I would have expected them to take into account the available options or, if Mr B’s pack had not been issued to him yet, to wait for this to happen before they gave their advice. By the time Mr B turned 56 or 57 the BSPS scheme was expected to have moved to the PPF. Given that Mr B was looking to retire early and likely would have wanted tax-free cash (TFC) I think the PPF option would have looked more attractive than BSPS2 due to the better early retirement and tax-free cash commutation factors.

I can’t see that PPF benefits from age 56 were explored at the time of the advice but CAL have helpfully provided a cash flow analysis now which stipulates that Mr B could have had around £102,000 in TFC and an income of around £15,000 per year from the PPF at age 56.

In my view Mr B could have used the TFC to supplement his annual income (which would increase every year) to £24,000 until age 67 and taking his benefits this way would have allowed him some flexibility without paying much income tax. If he waited until age 57 before he took benefits the amounts would have been even higher. At age 67, his income from the PPF and the state pension would have totalled around £22,000 (before applying 10 years’ worth of increases). I appreciate that’s short of £24,000, particularly if I assume this figure was a net income figure (which although CAL have worked on this basis I can’t see that this was clarified in the suitability report or fact find).

However, as set out previously I can’t see that a net income figure of £24,000 had to be met from Mr B’s income alone under all circumstances. In fact CAL in the course of this complaint worked out that to cover essential outgoings an annual income of £16,380 was required (and this would have been for Mr and Mrs B).

The guaranteed and increasing income the DB scheme could provide at early retirement was still significant and it should have been properly considered whether this was sufficient to meet Mr B’s needs. His income from age 67 more than covered the joint essential household income and Mrs B would also receive her state pension. It was also noted she had a pension of her own (although it wasn't recorded how much this was). Mr B also had his DC pension which would have accrued contributions for another year or two and could have been taken flexibly. Overall, I think early retirement from the PPF would have likely met Mr B's income needs.

Flexibility and death benefits

Flexibility sounds attractive to most, but I can't see that Mr B had any concrete need for it other than his wish to retire early. And if he decided to take lump sums from his pension in addition to his income from his personal pension there was further risk he would deplete his funds in retirement.

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die. However, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. And the existing death benefits with BSPS were not to be underestimated. Mr B's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr B predeceased her. The idea of being able to leave the transfer value to Mr B and/or his adult children when he died would have been attractive. However, if Mr B lived a long life or decided to take out more income in earlier years there might be not much left to provide Mrs B with necessary income in retirement.

Mr B was in good health and so more focus should have been on ensuring he would receive the best possible retirement benefits over a long period of time.

concerns about financial stability of BSPS

Lots of Mr B's colleagues at the time were transferring out of the scheme and Mr B said some colleagues said it was a 'no brainer' to get their money away from BSPS. I think it's likely Mr B was worried about the security of his pension and it's quite possible that Mr B was leaning towards the decision to transfer.

However, it was CAL's obligation to give Mr B an objective picture and recommend what was in his best interest. However, even if the scheme went into the PPF, Mr B could have retired early and maintained his guaranteed benefits. I can't see that this was properly explained to him or CAL did enough to alleviate these concerns. And given that it was in his best interest to stay in the DB scheme, the possible loss of opportunity to transfer his pension in future shouldn't have been a significant concern to Mr B.

summary

It's possible that Mr B was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing and he was very concerned about the possibility of his pension falling to the PPF. And I don't doubt that flexibility, control and higher death benefits would have also sounded like attractive features. But CAL wasn't there to just transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interest.
I appreciate CAL included some risk warnings in their suitability report. However, this doesn't replace suitable advice. Mr B's fear about the PPF and the security of his pension should have been put into perspective.

Mr B was able to retire early from the DB scheme and secure a guaranteed and index-linked income and spousal benefits for life which would likely be higher than what he could achieve in his personal pension. By transferring he ran the risk of not being able to sustain his income or even deplete his funds. I can't see that the flexibility to take income differently or receive lump sum death benefits justified taking unnecessary risks with his pension. So I'm not persuaded a transfer was in Mr B's best interest here.

If CAL had recommended him to stay and explained their reasons properly why Mr B would be better off staying in BSPS and that going into the PPF wasn't as concerning as he thought, I think Mr B likely would have followed their advice.

If Mr B had stayed in the BSPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BSPS2. So I carefully considered what Mr B likely would have done nearly a year later had he been given the choice of either the PPF or BSPS2 and placed into an informed position regarding the features, risks and benefits of both options. On balance I think Mr B would've likely opted for the PPF.

I say this because at the time Mr B wanted to retire early. BSPS2 wouldn't have decreased Mr B's initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BSPS2. However, early retirement factors in the PPF were lower and commutation factors for tax free cash entitlement were more favourable under the PPF. So overall, it's likely Mr B's income and tax-free cash entitlement would have been higher in the PPF.

Under BSPS2, the spouse's pension would be set at 50% of Mr B's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So the spouse's pension would likely be lower in the PPF. However, I think on balance his own benefits and higher tax-free cash which he and his wife could benefit from earlier in retirement would have been more important to him.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late summer 2022.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

Mr B has retired and I think he'd done the same if he had gone into the PPF as explained above. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for him. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason I require CAL to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr B accepts this decision, he will be doing so on the basis of my understanding as set out above. It's important that Mr B is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of BSPS and subsequently moved to the PPF. Mr B started taking retirement benefits shortly before his 57th birthday and I think he would have done the same if he had moved to the PPF. So calculations should be made on this assumption.

CAL must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.
This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

CAL may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).
These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition CAL should pay Mr B £300 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr B within 90 days of the date CAL receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes CAL to pay Mr B.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Cambrian Associates Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require to pay Mr B any interest on that amount in full, as set out above.

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

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

If Mr B accepts this decision, the money award becomes binding on Cambrian Associates Limited. My recommendation would not be binding. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 1 August 2022.

Nina Walter
Ombudsman