

The complaint

Mr P complains that he was given unsuitable advice by Chequers Wealth Management Limited ('CWM') 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.

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 P'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 P was referred to CWM by his wife's financial adviser in late September 2017. He met with CWM for advice on his pension in late October 2017. A fact find and attitude to risk questionnaire were completed. They showed:

- Mr P was 46, married with one dependent child, and in good health.
- He earned £52,000 per year. He owned his own house, had savings of £9,000 and had recently inherited a property worth around £125,000. His liabilities were £41,000 which included his outstanding mortgage and car finance.
- Other than the BSPS pension, Mr P had recently joined the new company defined contribution (DC) pension scheme with combined 28% employer and employee contributions being paid into it.
- His wife had her own pension provisions. She had previously transferred her own DB pension.
- Mr P's attitude to risk was recorded as balanced.

His objectives were recorded in the recommendation report as:

- Mr P didn't want to work full time after age 55. He wanted to either reduce working hours or find alternative part-time work. He didn't envisage needing a lump sum in retirement due to his inheritance, so could use flexible income in a tax-efficient way.
- He was concerned steel workers had a lower life expectancy and so thought flexible death benefits would better provide for his family if he died early.

- He intended to fully retire at 60

A recommendation report dated 7 November 2017 shows CWM recommended Mr P to transfer his BSPS benefits worth around £535,000 to a self-invested personal pension ('SIPP').

Mr P complained to CWM 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 said he felt rushed during the advice process and signed all the paperwork in the only meeting he had with CWM.

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

As CWM disagreed with this outcome, Mr P'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.

I've 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. And 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 CWM'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.

The provisions in COBS 19 which specifically relate to a DB pension transfer.

The starting assumption for a transfer from a DB scheme is that it is unsuitable. CWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P'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.

was the advice suitable?

financial viability

CWM ran a transfer analysis which showed that the investment return required to match the DB pension at retirement at age 60 (critical yield) was 8.61% per year if benefits were taken in full or 7.33% if taken at age 65. And CWM acknowledged in their suitability report that it would be unrealistic to expect the SIPP to provide a secure income which was equal or better than Mr P's existing scheme.

So based on the above alone, Mr P would likely receive lower benefits overall by transferring which wasn't in Mr P's best interest. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I considered below whether such other reasons applied here.

flexibility

The main reason why CWM recommended a transfer was that Mr P's DB scheme did not provide the flexibility Mr P required. I think it's clear that Mr P was attracted to a flexible arrangement. He wanted to reduce working hours at 55 and was planning to retire at 60. So he wanted to use a small pension to supplement part-time income from 55, increase this when he retired at 60 and reduce it again when he reached state retirement age. However, Mr P was 46 at the time and so nine years away from being able to take any pension benefits and at least 14 years away from his planned full retirement. Whilst I don't doubt this what Mr P ideally would have like to do, plans can change over such a long period of time. And I can't see that alternatives were discussed with Mr P in a meaningful way.

He was paying significant contributions into a DC scheme which by age 55 could have likely been used to supplement some part-time work income. Mr P also said he likely didn't need any lump sums prior or at retirement because he had received an inheritance, so he also possibly would have had some of these funds to use instead of accessing his pension early.

I can't see that CWM discussed what income Mr P likely would require in retirement or how much he was looking to reduce his hours by at 55. So I don't think his income requirements, whether these were achievable and any alternatives how to meet his objectives differently without giving up guarantees prematurely were properly explored.

CWM mentioned his Mr P's wife considerable pension provisions. However, these were also exposed to investment risk, so giving up Mr P's DB pension meant none of their joint pension provisions were guaranteed anymore.

Death benefits

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. Mr P had also mentioned that his father had died at age 79 and many other steel workers seemed to have a lower life expectancy.

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 P's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr P predeceased her. She had given up her own DB benefits, so this would have provided a guarantee income stream. Mr P was young and in good health and so more focus should have been on ensuring Mr P would receive the best possible retirement benefits over a long period of time.

Summary

I don't think the advice given was suitable for Mr P. I can't see persuasive reasons why Mr P needed to give up his guaranteed benefits so long before retirement and likely end up with lower benefits overall.

By choosing BPS2, he could have retained guaranteed benefits which were expected to be similar to his existing benefits. And once he reached age 55 or 60 and had a better idea of what his exact retirement plans would be he could make a more informed decision at that point.

CWM said the best option if Mr P had not transferred would have been the PPF. They referred to better early retirement and tax-free cash commutation factors which meant if Mr P retired at 60 the PPF would provide better benefits than BPS. And their arguments are valid. For customers who wanted to retire early and wanted to take a higher lump sum, the PPF could have worked out as more beneficial than Mr P's original BPS scheme. However, as I said above I think given Mr P's age his retirement plans were likely subject to change. And he might have decided later on to continue working for longer or to use different means to bridge the time until state retirement age. The PPF would have reduced his initial entitlement by 10% and it wouldn't have allowed him to transfer his benefits later on. So overall, I think BPS2 would have provided him the flexibility he needed whilst not having to prematurely give up his guaranteed benefits.

If advised this way I think on balance Mr P would have proceeded in this manner.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P, 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 chosen BPS2. So calculations should be made on this assumption.

CWM 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 P's acceptance of the decision.

CWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr P'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 P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr P'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 P 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 CWM should pay Mr P £300 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr P within 90 days of the date CWM 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 CWM to pay Mr P.

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 Chequers Wealth Management Limited to pay Mr P 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 Chequers Wealth Management Limited to pay Mr P any interest on that amount in full, as set out above.

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

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

If Mr P accepts this decision, the money award becomes binding on Chequers Wealth Management Limited. My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 28 October 2022.

Nina Walter
Ombudsman