DRN-3585148

The complaint

Mr S complains about the advice given by Sterling Trust Professional Ltd ('STP') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr S is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr S.

What happened

Mr S held deferred benefits in the BSPS from a period of employment between 2003 and 2013.

In March 2016, Mr S' former 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 of the scheme 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').

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 S' former employer would be set up – the BSPS2.

Mr S obtained a summary of the transfer value of his deferred scheme benefits on 9 June 2017. These benefits had a cash equivalent transfer value ('CETV') of £233,731.30.

STP says Mr S approached it in June 2017 for advice about whether to transfer his BSPS benefits.

STP completed some questionnaires with Mr S to gather information about his circumstances and objectives. Mr S was 36, in good health, employed full time, married with three dependent children. Mr and Mrs S had a mortgage with a remaining term of approximately 19 years but no other recorded debts. And their combined household income was recorded as exceeding their outgoings.

In addition to his BSPS benefits Mr S was also a member of his new employer's pension scheme. This was a defined contribution ('DC') pension.

In one of the questionnaires STP noted that Mr S' planned retirement age was 65. And that he was interested in moving his pension because there had been underfunding issues and there was the potential for it to move to the PPF. So, it said Mr S wanted to have this fund under his control. It also said he preferred the option of lump sum death benefits and flexibility was important to him, while saying his membership of his new employer's DC pension mitigated the risk to him.

However, in another of the questionnaires, completed a couple of weeks later, Mr S ticked a statement saying that the BSPS benefits were a major part of his retirement provision and should be protected as far as reasonably possible. Although later in the same form it was indicated he was willing to take risk in the hope of good returns. This questionnaire also noted that Mr S would like to retire at age 60.

STP said that Mr S expected to need an income of approximately £25,000 per year in retirement.

STP also carried out an assessment of Mr S' attitude to risk, which it deemed to be 'high medium' or a six on a scale of one to ten. However, it said Mr S had said he preferred to be considered as having a 'medium' attitude to risk, or a five on the same scale.

On 9 August 2017, STP sent Mr S its recommendation. It advised Mr S to transfer the benefits from the BSPS to an alternative pension. It said this advice was predominantly based on STP's belief that the annual rate of return required to match the benefits the BSPS would provide at retirement, the critical yield, was achievable. And because a higher level of tax-free cash ('TFC') would be available and a move to the PPF, which was a strong possibility, concerned Mr S and would mean his options at retirement were restricted. STP said Mr S preferred the flexibility and control of a personal pension plan, the lump sum death benefits this offered and wanted to access the maximum possible TFC from this pension. It also said he considered the CETV to be good, as it had increased compared to what had been offered previously.

On 11 August 2017 it was formally confirmed that the RAA was progressing.

STP has provided a copy of a letter from Mr S dated 15 August 2017, which said he wished to proceed with a transfer.

STP sent Mr S another letter, dated 22 August 2017. This noted the announcement that the separation of the BSPS from Mr S' former employer would proceed. The letter confirmed STP's recommendation was that Mr S transfer his benefits away from the BSPS. The letter went on to outline that STP recommended that Mr S move to a SIPP with a specific provider. It also recommended that his funds be invested with a named discretionary fund manager ('DFM').

Application forms were signed on the same day to enable the transfer to proceed.

On 25 August 2017, an update was issued by the trustees of the BSPS about transfer values. This said that the trustees expected to be able to provide improved CETV's to members when the steps in the RAA were carried out – including a large lump sum payment into the scheme.

Mr S emailed STP on 1 September 2017, referencing this update, and said he'd like to await this new valuation, as he understood it was likely to increase, before proceeding.

The steps of the RAA were completed, and the BSPS separated from Mr S' employer, on 11 September 2017. With an announcement confirming members would now have to choose between joining the BSPS2 or remaining in the BSPS and moving to the PPF. Updated transfer values were also sent to members.

I understand that Mr S' benefits were transferred to the SIPP provider recommended by STP in November 2017. The amount transferred was £241,352.98.

Mr S complained to STP in 2021, via his professional representative. He said he thought a transfer was unsuitable based on his circumstances at the time and should not have been recommended as it was unlikely his SIPP would be able to match the guaranteed benefits that had been given up.

STP didn't uphold Mr S' complaint. It said a transfer gave the potential for growth, provided Mr S flexibility while securing the transfer value and provided greater death benefits. STP said Mr S could accept the risks involved, made an informed decision to transfer and indeed had wanted to transfer. So, it thought the advice was suitable.

Mr S referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint. He thought the advice was unsuitable as Mr S wasn't likely to improve on the benefits he was already guaranteed by transferring. And he didn't think Mr S had a genuine need for any of the other benefits of transferring STP referred to, such that the reduction in benefits would be in his interests. The Investigator though, if suitable advice had been given, Mr S would've joined the BSPS2. So, he recommended that STP compensate him for any losses the unsuitable advice had led to and pay him £500 for the distress caused.

STP didn't agree. It said it wasn't required to guarantee that the transfer would be in Mr S best interests. Instead, the adviser was simply required to take reasonable steps to ensure the advice was suitable for him. And it said the Investigator had used a significant degree of hindsight, which it thought was unreasonable. STP said the Investigator had placed too much weight on the critical yield. And it said the discount rate which the Investigator had referenced wasn't something it was required to consider. It said it still believed that the advice was suitable, based on Mr S' circumstances. And STP also said Mr S had made a fully informed decision to proceed with the transfer, which the Investigator hadn't considered, and which it felt was crucial.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

I explained to both parties recently that I didn't think the award for distress and inconvenience the Investigator had recommended was fair. And I thought an award of £200 was more appropriate. Mr S' representative disagreed and said they believed the amount suggested by the Investigator was fair.

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. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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 STP'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

STP says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr S. I agree that under COBS, STP was required to take reasonable steps to ensure that its personal recommendation to Mr S was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. And, as I've mentioned above, additional regulations and guidance apply to advising on transferring out of DB schemes. These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that STP should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr S' best interests (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

- The transfer value analysis ('TVAS') report, that STP was required to carry out by the regulator, said that the critical yield was 6.56% to match the benefits Mr S would have been entitled to under the BSPS at age 65. Or, to match benefits the PPF would've paid from 65 the critical yield was 5.02% if he took a full pension or 4.77% if he took the maximum TFC and reduced pension the PPF would've offered. The regulator required STP to calculate this and consider the cost of the guarantees being given up. So, I do think an analysis of the critical yield is a relevant consideration here.

- The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. STP has said it was not required to consider these discount rates. But the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while STP was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And STP was free to consider it.

- I don't agree with STP that the critical yield of 6.56% was likely to be achievable and sustainable for 28 years to retirement. And, while it has referred to past performance of the recommended investment, as STP is aware, this is no guarantee for future performance. And I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

- Given Mr S' recorded 'medium' attitude to risk, the discount rate of 4.7% for 28 years to retirement – if he retired at age 65 – and the regulator's middle projection rate, I think Mr S was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS. And I also think the chances of him exceeding the benefits the PPF would've provided were low and at best it seems more likely he'd have achieved the same level of benefits – which in my view wasn't worth the significant additional risk involved. Particularly as a period of extended poor performance was likely to see him be worse off.

- Despite the announcements made during the advice process, STP undertook no analysis of the benefits the BSPS2 was likely to provide, nor did it revisit its advice when this further information came to light. And I think it should've done, particularly when Mr S asked to wait until he'd received a new valuation of his benefits.

- 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. And so, I also think it was unlikely Mr S would've improved on the benefits the BSPS2 would've guaranteed to provide him at age 65 by transferring.

- STP doesn't appear to have undertaken any analysis of the benefits that Mr S could've been entitled to under the DB scheme, in any guise, if he took early retirement. The BSPS2 and the PPF would've both allowed early retirement. And, given it recorded that Mr S might like to retire at 60, I think this analysis should've been carried out, as this information would've been important to allow Mr S to make an informed decision.

- Critical yields for early retirement were likely to be higher than those for retiring at age 65, given benefits would have to be paid for longer and the investment horizon to retirement was shorter. The discount rate also tends to be lower for a shorter period to retirement. For example, here the discount rate for 23 years to retirement – if Mr S retired at 60 – was 4.6%. So, I think Mr S was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early.

- STP said Mr S was interested in the flexibility transferring would provide him, the alternative death benefits and in having the pension under his control. As I'll explain, I don't think these things meant a transfer was in his best interests. But I'd also add that STP's role wasn't that of wish fulfilment or to put in place what Mr S might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests.

- Mr S was aged 36 at the time of the advice. Two different questionnaires noted two different ages at which he thought he might retire – 65 and 60 – both of which were a significant time away (over 23 years). I think that serves to emphasise that Mr S's retirement plans and what retirement would look like for him were unknown at the time of the advice. Which I don't think was surprising. But because of this I think it was too soon for Mr S to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2 which would've meant he would retain the option to transfer out at a later date if his circumstances required it.

- STP said Mr S wanted access to the maximum possible TFC from his pension. But there was nothing recorded in the fact find to suggest he had a *need* for access to a large lump sum from his pension. So, I'm satisfied access to TFC was a nice to have rather than a genuine need. And in any event, he could've taken TFC under the BSPS2 or the PPF.

- I also can't see that Mr S needed the ability to vary the income he received from this pension in retirement. The expected annual pension the DB scheme was due to provide was less than the annual income he thought he'd need in retirement – although again I'd question how accurate this estimate of his need could be given how far from retirement Mr S was. But Mr S was a member of his new employers DC scheme, in which he expected to build up additional pension benefits. And it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles, until he retired. So, he would've had these and his DB scheme benefits in retirement, to meet his needs. The DC scheme benefits would've been accessible flexibly. So, in my view, retaining his guaranteed DB scheme benefits as a solid base for his retirement income while using his DC scheme flexibly if necessary until he later received his state pension, was a more appropriate way to meet his needs than exposing his DB scheme to unnecessary risk.

- STP has said that the DC scheme meant Mr S could afford to risk his DB scheme benefits. Notwithstanding that in response to the complaint STP seems to have overstated the value of the DC scheme benefits at the time of the advice – as the fact find said Mr S was a recent member and the fund value was only £10,000 at that stage – I don't think this meant a transfer was in his interests. The DC pension was already subject to market risk. And I don't think Mr S holding this pension meant it was in his interests to also put his DB scheme benefits at risk, for flexibility he didn't need. Particularly when, as I've said, he was unlikely to improve on his DB scheme benefits by transferring.

- STP said Mr S was interested in the lump sum death benefits of a personal pension, to ensure that a large sum was left to his family in the event of his death. But the priority here was to advise Mr S 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 S drew in his lifetime. And so may not have provided the legacy that Mr S might have thought it would.

- In addition, the fact-find indicated that Mr and Mrs S already had quite significant life cover in place. And Mr S' DC scheme benefits would've already provided some lump sum benefits. So, it is unclear why further sums were required. But if Mr S had wanted to leave a further legacy for his family, life insurance was an available alternative.

- The recommendation indicated that the cost of a whole of life policy had been discussed but discounted based on cost. But basing the quote on the transfer value essentially assumed Mr S would pass away on day one following the transfer, which isn't realistic. The starting point ought to have been to ask how much more Mr S ideally wanted to leave to his family. 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 STP did so.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr S. And ultimately STP should not have encouraged Mr S to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- I think Mr S' desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been based on a DFM managing it on his behalf – at additional annual cost. So, I don't think that this was a genuine objective for Mr S – it was simply a consequence of transferring away from his DB scheme.

- Mr S may have held concerns about the prospect of his deferred benefits entering the PPF. But it was STP's role to objectively address those concerns. During the course of the advice and before the transfer was completed there were a number of key announcements that all pointed toward the BSPS2 being established. But even if this hadn't happened, the PPF still provided Mr S with guaranteed income and the option of accessing tax-free cash. Mr S 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 S' best interest to give up his DB benefits and transfer them to a personal pension.

STP says that Mr S made an informed decision to transfer. And it has said that the Investigator did not have enough regard for the letter Mr S sent it, dated 15 August 2017, explaining why he wanted to proceed. So, I've thought carefully about whether Mr S would always have looked to proceed with the transfer. But the handwritten letter seems to repeat the stock motives for transferring (flexibility, control, lump sum death benefits) that STP had already listed in its initial recommendation to Mr S. And seems, in my view, to be written as a repetition of those things, which I can't rule out as being at STP's request.

I can see that STP did give information about some of the risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr S to transfer. And I think he relied on that advice. And I haven't seen anything to persuade me that Mr S would've insisted on transferring, against advice to remain in the DB scheme.

As a result, I'm upholding this complaint as I think the advice Mr S received from STP was unsuitable.

STP recommended that Mr S use a DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr S should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

Mr S had over 23 years before he reached the age at which he'd indicated he might like to retire. But his plans were in any event unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr S would've 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. So, I think, had he received suitable advice not to transfer, I think Mr S would've opted into the BSPS2. And I think STP should compensate him on this basis.

Our Investigator recommended that STP make a payment for the distress caused to Mr S. And I agree that STP should compensate Mr S for the distress this has caused. But I don't think the level of award the Investigator suggested is reasonable here.

Mr S' representative has said STP has caused him worry and sleepless nights by putting his entire pension at risk. I accept that Mr S has likely been worried to find, when he first discussed matters with his representative, that the advice might not have been suitable for him. The advice related to Mr S' pension, which will play a part in his longer-term financial planning. And given the circumstances and uncertainty under which he first asked for this advice, I don't doubt he has been concerned.

But I don't think he has been caused ongoing distress from the point of the advice to making the complaint – as that appears to be the first point at which he had, or expressed, any concerns about the advice. I also can't see that Mr S has been caused inconvenience to that point or since, beyond having to complain, which we wouldn't normally make an award for. In addition, Mr S was only 36 at the time he received advice and 40 at the time he complained – so still a long way from retiring. I don't think he was therefore likely to have any concrete plans relating to retirement that could've been thrown into doubt. And, as documented at the time of the advice, this wasn't his only pension provision.

So, while I think the worry and distress he has experienced, which wouldn't have occurred but for the advice that is the subject of this complaint, was likely to be more than the level of frustration and annoyance he would usually experience on a day-to-day basis, I think an award of £200 for this is appropriate here.

Putting things right

A fair and reasonable outcome would be for the business to put Mr S, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr S would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

STP 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.

STP 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 S and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what STP based the inputs into the calculator on.

For clarity, Mr S has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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 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, STP should:

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his SIPP
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts STP's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr S for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr S's end of year tax position.

Redress paid to Mr S as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, STP 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 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.

In addition, STP should pay Mr S £200 for the distress caused by the disruption to his retirement planning.

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

<u>Determination and money award</u>: I uphold this complaint and require Sterling Trust Professional Ltd to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Sterling Trust Professional Ltd pays Mr S the balance.

If Mr S accepts this decision, the money award becomes binding on Sterling Trust Professional Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S 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 S to accept or reject my decision before 17 November 2023.

Ben Stoker
Ombudsman