DRN-3607233

The complaint

Mr P complains about the suitability of the advice provided by CST Wealth Management Limited ("CST") in October 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

In March 2016, Mr P's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded 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 DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

The details of Mr P's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 9 years and 4 months' qualifying service between November 2007 and March 2017;

- The scheme pension provided was based on his final salary, qualifying service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his annual scheme pension was £5,944. The scheme pension would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would also escalate annually by a prescribed amount;

- Payment of benefits before age 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60; and

- The cash equivalent transfer value of his safeguarded benefits was £121,581.13.

In response to the announcement by Tata Steel, Mr P contacted CST for advice. He met one of its advisers in September 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr P:

- He was aged 37 and his wife aged 36. They were both in good health. They had four financially dependent children aged between 2 and 17;

- He was employed full-time by Tata Steel and paid gross annual income of about £44,000;
- Their assets comprised the marital home valued at £145,000. They didn't have any other savings or investments;
- Their liabilities comprised a repayment mortgage of £100,000 on their marital home. They also had credit card debt of about £15,000;
- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full state pension at age 68 and had been a member of Tata Steel's defined contribution ("DC") pension scheme provided by Aviva since April 2017. The total annual contribution into his DC plan was 16% of his gross annual salary. He also had two small DC pensions with Standard Life and Phoenix Life; and
- He didn't have any specific retirement plans at that stage other than retiring around age 60;
- He had a *'High Medium'* risk profile and a *'Medium'* capacity for loss.

In October 2017, while waiting to receive CST's formal recommendation, the BSPS issued its *'Time to Choose'* communication pack to members including Mr P. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

Options 1 and 2 would've enabled Mr P to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. Members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

Issuance of the *'Time to Choose'* pack didn't alter CST's recommendation. It proceeded to issue its suitability report to Mr P on 24 October 2017. It recommended that he transfer the value of his safeguarded benefits in the BSPS to a PPP to achieve his recorded objectives to retire earlier than age 65 and draw flexible benefits.

This complaint

In 2022, Mr P contacted us to express his concerns about the suitability of CST's pension transfer advice it gave to him in 2017. The matter was referred to CST to give it the opportunity to investigate and resolve Mr P's complaint.

CST didn't uphold this complaint. In summary, it was satisfied that the pension transfer to the PPP enabled Mr P to achieve his recorded objectives and was therefore suitable.

One of our investigators considered this complaint and recommended that it be upheld because, in her view, CST failed to demonstrate at the time that transferring to the PPP was clearly in Mr P's best interests. She thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that CST carry out a redress calculation in line with the Financial Conduct Authority's ("FCA") guidelines on the basis that Mr P transferred to the BSPS2, took benefits at age 65 and would be a 20% income taxpayer in retirement. In addition, she recommended that CST pay Mr P £300 compensation for the trouble and upset caused by its unsuitable recommendation.

CST disagreed with our investigator's assessment and provided additional comments in its response. Our investigator considered those comments but wasn't persuaded to change her view and recommendation that this complaint should be upheld. CST requested that this complaint be referred to an ombudsman for review.

In May 2023, while this complaint remained in the queue awaiting allocation to an ombudsman, our investigator contacted Mr P and CST to tell them that the FCA had developed a BSPS-specific redress calculator to calculate redress due under the BSPS consumer redress scheme, as set out in PS22/13. And that the FCA was encouraging businesses to use that calculator for non-scheme cases, such as this complaint made by Mr P. The investigator stated that in the event an ombudsman upheld this complaint that they may direct CST to use the FCA's BSPS-specific redress calculator.

Following this, CST contacted this Service on 3 August 2023 to state that it had changed its mind and accepted the investigator's assessment. It provided evidence that showed it had carried out a loss assessment using the FCA's BSPS-specific redress calculator which showed Mr P's loss, as at 1 July 2023, was £757.09 and that it was prepared to pay this to him to resolve this complaint. The investigator presented CST's offer to Mr P but he declined it because he thought his financial loss was greater – he requested that this complaint remain in the queue and be reviewed by an ombudsman.

This complaint has now been referred to me to review and decide. This is the last stage of our process.

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.

In deciding what's fair and reasonable, I take 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.

Before going any further, I'd like to apologise to the parties for the length of time it's taken for this complaint to be allocated to an ombudsman for review.

I understand that CST is still disputing that it gave Mr P unsuitable pension transfer advice. However, without any admission regarding the suitability of its advice and to bring this complaint to a close, it says that it's now prepared to accept our investigator's assessment and recommended remedy. It's carried out a loss assessment that shows Mr P has suffered a financial loss of £757.09 and has offered to pay this to him.

Given CST's latest position, I don't see the need to address the suitability of its pension transfer advice to Mr P in detail. However, I would like to note that I agree with the investigator's view that the pension transfer advice CST gave to Mr P was unsuitable for largely the same reasons. In summary:

- Mr P's safeguarded benefits, accounting for 9 years and 4 months' qualifying service, represented the backbone of his retirement provision built up by that time. Taking this into account, I think it's fair to say that when Mr P came to retire, he would be reliant, in some part, on the value of his BSPS benefits to generate a minimum level of core retirement income to support his standard of living in retirement. And so I think it was important to ensure that this part of Mr P's retirement provision wasn't exposed to unnecessary risk.

- At the time of the advice, Mr P was aged 37. It was recorded that he wanted to retire early, around age 60. His annual retirement income need was recorded as £24,000 in 2017 terms. The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. And in Mr P's case, I think it would've been difficult to calculate an accurate figure with such a substantial timeframe until age 60. With such a time horizon until pension benefits could be accessed, it makes the case for a pension transfer – for the sake of achieving possible early retirement – more difficult to justify.

- Mr P couldn't access any benefits until age 55 at the earliest under the PPP. So I don't think there was any need to transfer to a PPP at that time and, in doing so, transfer the investment, inflation and longevity risks to Mr P when those risks could've been retained by the BSPS2;

- There's no real evidence that Mr P required the flexibility of irregular lump sums, variable income or staggered income during retirement. But even if he did, I think this could've been provided by the DC pension savings he was building up in Tata Steel's DC pension scheme provided by Aviva, along with his two small DC pensions with Standard Life and Phoenix Life;

- Had CST advised Mr P to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 37;

- A change in the format of death benefits was mentioned by CST as another reason for transferring to the PPP. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr P about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. It's my view that Mr P had no health issues at the time CST advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his family;

- I don't think there was any need to transfer at that time, especially given the critical yield figures attached to the transaction which at age 60 were 6.19% on the basis Mr P took the full pension or 5.41% on the basis he took a reduced pension and tax-free lump sum. I haven't seen any evidence that shows the pension transfer to the PPP led to Mr P gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 at that time; and

- Overall, I don't think the contemporaneous evidence supports the position as to why flexibility and early retirement objectives would've been sufficiently compelling reasons for Mr P to relinquish valuable benefit guarantees at that time by transferring to a PPP.

Putting things right

The aim is to put Mr P back in the financial position he would've been in at retirement had he been given suitable advice. CST has 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 retirement benefits that they would've 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's not enough money in the consumer's PPP to match the BSPS2 or PPF benefits they would've received, the shortfall is the amount owed to the consumer. If the calculation shows there's enough money in the consumer's PPP, 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've checked the inputs that were entered by CST which are personal to Mr P. These include Mr P's personal details, his individual benefits from the BSPS at the date he left the BSPS and the value of his PPP. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BSPS, he would've moved to the BSPS2 and that he would've taken his DB benefits from that scheme at age 65.

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 P's case as carried out on 3 August 2023 shows that there is a shortfall to his pension of £757.09 which he should be compensated for. I think the calculation carried out by CST is fair and reasonable in the circumstances.

Redress paid to Mr P 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, CST 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've been taken as tax-free cash and 75% would've been taxed according to Mr P'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.

If Mr P wants CST to calculate how much of the redress can be paid into his PPP, he should tell them as soon as possible. If this is what Mr P wants, CST should request the necessary information and not charge him 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 P's end of year tax position. The calculation on how much can be augmented should be based on the redress amount already calculated.

Before redress is paid to Mr P or into his PPP, the calculation needs to be finalised by adding additional compensation for the time between valuation and payment as per DISP App 4.3.29 (3).

In addition, and in line with our investigator's recommendation, CST must pay Mr P £300 compensation for the trouble and upset caused by its unsuitable pension transfer advice.

My final decision

I uphold this complaint and require CST Wealth Management Limited to pay Mr P the compensation amount as set out in the steps above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 October 2023.
Clint Penfold
Ombudsman