DRN-3617963

The complaint

Mr S complains that he was given unsuitable advice by BeaconIFA Limited (Beacon) to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension.

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 S's employer would be set up – the BSPS 2.

In January 2018, Mr S met with Beacon for advice on his DB pension.

A fact find and risk profiler were completed which showed:

- Mr S was 50, married, with no dependent children and he was in good health. He earned around £28,500 per year (with shift increases up to £37,000). His wife had a salary of £36,000 which increased with shift work to £47,000.

- He and his wife owned their home worth £110,000. They had an outstanding repayment mortgage of £50,000 with a remaining term of 12 years. Their monthly mortgage repayments were £436 and they were planning to make overpayments to pay off their mortgage before they retired.

- They had a joint disposable income of £3,419 per month. They had emergency savings of £15,000.

- Mr S wanted to retire between 55 to 57 with a net monthly income of £2,000.

- Mr S was also a member of the new company defined contribution (DC) pension scheme with employer and employee contributions totalling 16%. And he had a Self-Invested personal pension (SIPP) worth £44,000 and an ISA worth £11,000. Mrs S had her own DB pension, expected to pay a lump sum and around £11,000 per year from age 60.

- Mr S's SIPP was invested in equities and single shares, but he thought taking the same risk with his DB pension funds was excessive. He wanted to take a cautious approach with his pension funds due to the short term to retirement and the high value of his pension. It was also recorded he had a low capacity for loss.

- In a separate risk profiler his selected risk leal was agreed as lowest medium.

- He had some investment experience through self-investment in his SIPP and he was watching Bloomberg TV most days.

- Under notes on objectives it was recorded that Mr S wanted to retire early and self-manage his pension. He wanted to take control of his pension and questioned why he should be told when and how to access his pension. He wanted to draw a high level of income in the early years of retirement and use his wife's DB pension and both their state pensions to cover their income needs later on. The notes said he could use his pension for discretionary spending and life's luxuries and that he wasn't concerned if his pension benefits from this transfer were exhausted by age 67.

A suitability report was subsequently issued which recommended Mr S to transfer his DB benefits to a personal pension.

Mr S complained to Beacon in 2021 about the advice he received. Beacon rejected his complaint.

Mr S referred his complaint to this service and one of our investigators upheld his complaint. He agreed Beacon had given unsuitable advice.

Beacon disagreed and so the complaint was referred for an ombudsman's 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.

I've considered the very detailed submissions by both parties in full. However, I will focus on what I consider to be the most relevant points.

<u>The applicable rules, regulations and requirements</u>

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 Beacon'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.

COBS 19.1.2R required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

COBS 19.1.3 G

"In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7G:

“When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client’s attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.”

COBS 19.1.7B:

“In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.”

COBS 19.1.8G:

“When a firm prepares a suitability report it should include:
(1) a summary of the advantages and disadvantages of its personal recommendation;
(2) an analysis of the financial implications (if the recommendation is to opt-out); and
(3) a summary of any other material information.”

<u>Did Beacon take reasonable steps to ensure a DB transfer was suitable for Mr S?</u>

The regulator’s guidance is that the starting assumption for a transfer from a DB scheme should be that it is unsuitable. A firm should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr S’s best interests. (COBS 19.1.6G). And having looked at all the evidence available, I’m not satisfied the advice to transfer was in Mr S’s best interests. I’ll explain why.

financial viability

The following benefits were available from the DB scheme at age 57:

An annual pension of £14,400 or tax-free cash (TFC) of £67,132 and a reduced annual pension of £10,069.

From the PPF at age 57:

Annual income of £11,520.74 or TFC of £64,214.96 and a reduced annual pension of £9,652.89.

The transfer analysis showed that the investment return required to match the BSPS at retirement at age 57 (critical yield) was 10.69% if taken as a lump sum payment with a reduced pension. The equivalent critical yield to match the benefits in the PPF at 57 was 6.76%.

Given Mr S’s fairly cautious attitude to risk when it came to this pension I think these yields were unlikely to be achieved and so he would overall likely receive lower benefits by transferring. Beacon in fact acknowledged this in their suitability report, but said this was less relevant as Mr S wanted a drawdown plan and not an annuity.
However, critical yields are an important consideration and illustrate the value of Mr S’s DB benefits. And they show that by transferring his pension it was highly likely Mr S would receive overall lower benefits in retirement. So based on the above alone, a transfer wasn’t in Mr S’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.

Income and flexibility

The advice was mainly based on Mr S's wish for flexibility and control. Beacon said if he took the same income he got from his DB pension from his drawdown he would not run out of money until age 96 (or 108 if he took TFC and a reduced income). However, this assumed investment returns of 5% which could not be guaranteed. The medium projection rate provided by the regulator was 5% at the time and Mr S had a lower than medium attitude to risk. So there was a considerable risk these returns wouldn't be achieved. Also it didn't take into account that higher withdrawals early on would reduce this forecast considerably.

Mr S apparently said he wasn't overly concerned if he exhausted his BSPS funds by age 67 and wanted to use his pension for "life's luxuries". And he was attracted by the generous transfer value. However, Mr S had a low capacity for loss and so I would have expected Beacon to do a properly analysis what income he and his wife really needed over the course of their retirement and what their expected outgoings (basic and discretionary) would be. The BSPS funds were the couple's largest retirement provision. Mr S wanted a monthly net income of £2,000 which Beacon already told him was unrealistic. So simply relying on the fact that his wife's DB pension and their state pensions would be enough after age 67 without further analysis was not in Mr S's best interest.

Mr S did have his DC workplace pension and an existing SIPP which he was able to use to self-invest and use flexibly when he came to retire. The DB benefits would have given him a lower annual income than he said he wanted, however as I said above he also unlikely could have sustainably achieved this through drawdown without the risk of exhausting his funds or significantly reducing his benefits later on. In my view he could have used the TFC from his DB scheme as well as his DC pensions to flexibly top up his guaranteed income when he needed it. This would have provided secure income benefits and flexibility.

By transferring his DB pension, he exposed all his retirement provisions (other than his state pension) to investment risk. And I don't think this was in his best interest. I also note that the adviser knew that Mr S was thinking about self-investing, so I think there was an obvious risk given his attitude towards this pension and comments in this regard that he might withdraw funds quicker than advisable without much regard for his needs in later life.

concerns about financial stability of BSPS

There is no doubt Mr S was concerned about his employer's financial situation and the uncertainty surrounding the BSPS.

Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. So I think it's likely Mr S was worried about the security of his pension which is why he wanted to take control of it. And he was attracted by a high transfer value.

However, it was Beacon's obligation to give Mr S an objective picture and recommend what was in his best interest. Mr S was particularly concerned about BSPS moving to the PPF. He was worried about the security of his pension and that he could lose some of it. However, even if this happened, Mr S was still likely to be better off not transferring. And a perceived good transfer value loses relevance if the consumer was better off remaining in their DB scheme.

summary

It’s likely that Mr S 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 him not being able to retire early. And I don’t doubt that flexibility, control and lump sum death benefits would have also sounded like attractive features. But Beacon wasn’t there to just transact what Mr S might have thought he wanted. The adviser’s role was to really understand what Mr S needed and recommend what was in his best interest.

I don’t think Beacon took reasonable steps to ensure their advice was suitable and in Mr S’s best interest. There was no persuasive reason for him to give up guaranteed benefits and expose all of his pensions to investment risk. In my view they should have recommended him to remain in his DB scheme. And on balance I think Mr S would have listened to his adviser if this had been explained to him properly.

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 he was given. Mr S says he returned the time to choose forms in time and confirmed he wanted to transfer but alternatively move to the BSPS2. I see no reason to doubt his recollections. I therefore consider he would have remained a member of the BSPS and subsequently joined the BSPS2. So calculations should be made on this assumption.

Beacon must 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.

Mr S took his tax-free cash lump sum in December 2022 at age 55 and retired. I think it’s reasonable he would have done the same if he had remained in his DB scheme. So I think the calculations should be based on an assumed retirement age of 55.

Beacon 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 upon completion of the calculation.

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 promptly following receipt of notification of Mr S’s acceptance of my final decision.

I’ve already provided Beacon with some of the details they need to carry out the calculations. I also clarified that Mr S’s SIPP value as of 1 October 2023 should be used as the starting point (DISP APP 4.1.1 (9)) before considering withdrawals and additional contributions as per DISP APP 4.4.12. Mr S consolidated his smaller SIPP and DC pension into his new SIPP in October 2022. Given that Mr S changed his investments regularly and the consolidation only happened a year ago, for ease of calculations I think it’s reasonable for BeaconIFA to deduct the transfer-in amounts from the overall SIPP value without investment returns.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Beacon should:

- calculate and offer Mr S redress as a cash lump sum payment
- explain to Mr S before starting the redress calculation that:

  -their 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 their redress prudently is to use it to augment his DC pension
- 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 Beacon's offer to calculate how much of their 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 will be treated as income for tax purposes. So, in line with DISP App 4, Beacon 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.

Mr S is paying income tax abroad. He currently falls into the 19% tax bracket, but he has confirmed he will likely have to draw more pension benefits in future and he will also receive a state pension at some point which will likely push him into a 24% tax bracket. It's also possible that during his retirement Mr S might return to the UK and pay 20% in income tax again. In the circumstances I therefore consider it's reasonable to assume an income tax rate in retirement for Mr S of 20%. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr S's likely income tax rate in retirement. So making a notional deduction of 15% overall from the loss adequately reflects this.

Mr S is worried about his pension provisions and the uncertainty to his pension has caused him a lot of stress. So in addition I think Beacon should pay Mr S £300 for the distress their unsuitable advice has caused him.

My final decision

I uphold this complaint and require BeaconIFA Limited to follow the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 December 2023.

Nina Walter
Ombudsman