DRN-3626809

The complaint

Mr L complains about the advice given by CST Wealth Management Limited (CST) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr L's 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 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'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

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 L'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 11 December (and was later extended to 22 December 2017). Mr L opted to join the BSPS2 ahead of receiving advice so that he didn't lose the opportunity to join this scheme.

Mr L met with CST in September 2017 to discuss his pension and retirement needs. He also had concerns around the situation with his employer and his DB pension scheme.

CST completed a fact-find to gather information about Mr L's circumstances and objectives. This showed that:

- He was aged 46, married and had four children.
- Had been employed by British Steel for 28 years and was now employed by Tata Steel.
- He had an annual salary of around £40,000 and was a member of his employers new defined contribution (DC) scheme.
- Mrs L was employed with an annual salary of £6,000. She was also a member of her employers DB scheme.
- They rented their home.
- They had loans of around £17,000 and no savings or investments.

CST also carried out an assessment of Mr L's attitude to risk, which it said was 'low'. It said his capacity for loss was 'low medium' for this pension transfer.

On 2 November 2017, CST advised Mr L to transfer his pension benefits into a SIPP and invest the proceeds using a discretionary fund manager (DFM). It recommended investing in one of the DFM's lower risk portfolios. The transfer value was £315,738.62. The suitability report said the reasons for this recommendation, in summary, were:

- The potential to retire early, or to take some tax free cash at age 55, and continue to work. It was noted that Mr L expected to retire at age 65.
- Flexibility and access to his funds so he could clear any debts and withdraw his pension when he needed it, perhaps to help his family.
- Improved death benefits for his wife and children. His pension fund would become a substantial family asset.
- Mr L wanted to break ties with his employer and he was concerned about going into the PPF.
- The SIPP offered improved tax efficiency.
- Transfer values were high at the time of advice.

Mr L complained in 2021 to CST about the suitability of the transfer advice because he felt that the DB pension he gave up wouldn't be matched by the new SIPP. He said that because of this the transfer wasn't suitable for him

CST didn't uphold Mr L's complaint. It said that the advice was suitable for him. In broad terms it said that Mr L was likely be able to meet his income needs from his state pension entitlement and the new employer's DC scheme. So, he could afford to take a small amount of risk with the DB scheme. It also better met his needs for flexibility. Added to this was that the transfer could provide a greater lump sum which would potentially allow him to purchase a property. He could still receive a pension that was above what he needed, even with moderate growth rates from the transfer. It said there was no possibility that Mr L could be worse off due to the DB transfer.

Mr L referred his complaint to our service. An Investigator upheld the complaint and recommended that CST pay compensation. Our Investigator said that, due to the required investment return, Mr L was almost certain to receive lower retirement benefits due to the transfer. That is if he invested in line with his lower attitude to risk. He didn't think that the increased flexibility, or greater death benefits that the transfer potentially offered, were enough to outweigh this. He also said that Mr L didn't need to invest via a DFM.

CST disagreed, saying:

- The industry regulator has reviewed its processes in respect of BSPS transfers and found that there were no problems. And the Financial Ombudsman upholds a significant number of similar cases which may not be right.
- The BSPS2 pension wouldn't form the majority of Mr L's retirement income. The state pension, and his employer's new scheme, would provide greater benefits. It was a minor, and probably superfluous, part of his retirement provision.
- Mr L did not require a guaranteed income.
- It did not have to rely on critical yields and look at discount rates when giving advice, these are blunt tools and too much weight shouldn't be put on them. Mr L didn't want a fixed income anyway. The Financial Ombudsman has focused disproportionately on this kind of analysis.
- Mr L did want to increase the tax free cash he could receive to possibly purchase a property at retirement.
- The BSPS2 was not guaranteed to proceed, and Mr L may have lost his option to transfer if he ultimately joined it. The PPF also wasn't right for Mr L

- It couldn't have provided advice about the BSPS2 as it wasn't certain that it would proceed.
- Mr L made a fully informed decision to transfer.

The investigator wasn't persuaded to change their opinion, I can see there was some further correspondence, but no material new issues were raised. So, the complaint has been referred to me to make 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. This includes the Principles for Business ('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

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 CST'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.

CST says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr L. I agree that under the FCA's Conduct of Business Sourcebook ('COBS') CST was required to take reasonable steps to ensure that its personal recommendation to Mr L was suitable for him (COBS 9.2.1). However, additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr L's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

Financial viability

CST carried out a transfer value analysis report (TVAS) - as required by the regulator - showing how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

CST has said that it wasn't able to give advice on the BSPS2 at the time as it wasn't confirmed. But the TVAS and the suitability letter refer to the BSPS2, and the suitability letter says that it had been confirmed. The comparisons CST provided at the time of sale were based partly on the BSPS2.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr L was 46 at the time of the advice and wanted to retire at 65. The critical yield, based on the BSPS2, required to match Mr L's benefits at age 65 was 6.44% if he took a full pension and 5.24% if he took tax free cash and a reduced pension. The critical yield to match the benefits available through the PPF at age 65 was quoted as 5.12% per year if Mr L took a full pension and 4.8% per year if he took tax free cash and a reduced pension.

It would have been helpful if CST had looked at the situation if Mr L had retired earlier. That said, 65 was the time when Mr L realistically thought he would retire.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, was 4.7% per year for 19 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr L's 'low' attitude to risk and also the term to retirement. There would be little point in Mr L giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 4.8%, I think Mr L was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with his low attitude to risk. And this is especially the case if he moved over to the BSPS2 as he had elected to do. In this case he needed to receive of returns somewhere at, or above, a medium risk investment.

And the TVAS did provide a good illustration of the cost of this. It showed that. on the day of the transfer, Mr L would need an increased fund vale of £102,000 to provide the benefits he had just given up.

I note this was acknowledged to some degree in the suitability report which said *'in our opinion these critical yields are not guaranteed to be achievable year on year'*. And it acknowledged that if Mr L wanted to take a fixed income from his funds, along the same lines, the DB scheme was best placed to do this. But overall, I think it's clear Mr L was giving up a significant benefit that he was unlikely to be able to replicate in the SIPP.

CST has provided cashflow models which it says shows Mr L would've been able to meet his needs despite the high critical yields. I've considered these, but the information about CST's models that was included in the suitability letter show that if Mr L withdrew the similar amount as the DB scheme, and using a 3% rate of growth, the fund would run out between his ages 94 to 101. The sustainable income from the fund was less than the DB scheme. So if the fund had period of poor performance, or Mr L lived for a long time, there may not be a lot left in his fund.

Also, as CST will know, past performance is no guarantee for future performance and so 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.

CST says that the critical yields are of limited relevance as Mr L didn't want to use his funds on the same basis as the benefits provided by the DB scheme. Essentially CST is saying Mr L didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required CST to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here.

And Mr L wasn't realistically expecting to retire for about another 20 years. Aside from the state pension his only other pension was a money purchase arrangement, so that was already subject to investment risk. So, I think it's entirely possible that Mr L would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

CST has questioned the use of the discount rate as a means of considering whether the critical yields were achievable. But under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr L's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

For this reason alone, a transfer out of the DB scheme wasn't in Mr L's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as CST has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits.

CST has said that Mr L didn't want, or need a fixed income from this pension, and he wanted to take his benefits flexibly. He was also concerned about the future of the DB scheme and what form it would take going forward. I've considered these below.

Flexibility and income needs

One of the main reasons that CST recommended this transfer was for the flexibility and control it said it offered Mr L. But having considered the evidence, I don't think Mr L needed to transfer his DB scheme to a SIPP in order to have flexibility in retirement.

It's evident that Mr L could not take his DB scheme benefits flexibly. Although he could choose to take tax-free cash and a reduced annual pension, Mr L had to take those benefits at the same time. But I'm not persuaded that Mr L had any concrete need to take tax-free cash and defer taking his income, or to vary his income throughout retirement. This doesn't seem to have been really discussed in any detail at the time of sale.

The suitability letter was clear that Mr L was expecting to retire at age 65. Of course, he might've wanted to retire earlier, but most people would express a preference for this, and it seems the discussions didn't go much beyond this. There was no detailed analysis of Mr L's retirement needs either in the fact find or the suitability letter. This is understandable given how remote his actual retirement was. But it does make it difficult to say what Mr L really needed.

It was recorded that the DB scheme would provide an income of just over £12,000 at the date of leaving. This would be revalued up to just under £18,000 a year within the BSPS2. Mr L would also receive his state pension of around £9,000. It was estimated that his new employers DC scheme would have a value of just over £260,000 at age 65. Mrs L also had some private provision herself and she would also receive her state pension.

There is a file note of a conversation Mr L had with CST at the time of sale that shows it was discussed that Mr and Mrs L wanted around £30,000 a year at retirement. It said his DB scheme provision would fall short of this as it would only provide £12,000 and so he had a potential shortfall in his income. But looking at the amounts above, this doesn't seem to have taken into account the revaluation of the DB scheme and his other potential provisions. So, I don't think this analysis was correct.

Even though the information recorded at the time of sale is sparse. I think it's reasonable to say that it's very unlikely that Mr L would have an income shortfall at retirement. But even if he did, then making a transfer which would reduce his income would be the wrong thing to do.

And, in contrast to this in its final response to the complaint, CST said that Mr L would probably have too much income in retirement. So, the DB scheme would be surplus to his requirements. Obviously, both can't be correct.

But the advice was given on the basis that the money from the DB transfer could potentially be used flexibly to enable Mr L to retire early. But Mr L already potentially had this flexibility. He could use his DC scheme benefits to top up any income he would receive from the DB scheme to meet his needs if he wanted to retire early or until the state pension became payable. Or he could use the lump sums for something else if this was not needed.

And if Mr L did have surplus income, he could put this to one side for his family, for example using a tax efficient trust arrangement. And use this income he had to enjoy his retirement fully.

CST has said that Mr L wanted to maximise the amount of tax free cash he could obtain. And I agree that the transfer to a SIPP could potentially do this. It said that Mr L may have wanted to purchase a property at his retirement.

I can't see that this was discussed at the time of sale, and it didn't form part of the recommendation made in the suitability letter. And it's not clear that any other method of house purchase, at any other time, was discussed. But even so Mr L would have access to a significant amount of cash at retirement if he needed to repay any debts or make a significant purchase. I don't agree that transfer was needed for this reason.

Overall, I think the transfer reduced his flexibility as he could have used his DB scheme to provide a strong foundation for his income needs. This option is now not available to him. Mr L could also have waited until nearer retirement and properly assessed how he could fund his early retirement if this is what he wanted to do. And attempting to achieve his retirement objectives by transferring out of the scheme meant Mr L would be taking on all the investment risk, when he didn't need to. His existing arrangements already met his identified needs, vague though these were.

As I've set out above, Mr L was unlikely to obtain benefits of the same value at retirement if he transferred his funds to a personal pension. So, I still think Mr L had a better chance of achieving his retirement aims by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension.

Overall, based on the evidence I've seen, I don't think Mr L had a genuine need to alter the arrangements he already had in place.

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. The lump sum death benefits on offer through a SIPP were likely an attractive feature to Mr L. It's clear that Mr L did want to provide for his family by giving them potential access to his pension fund while he was still alive and after his death.

That said I note he was not overly concerned with leaving a legacy. And the fact that his pension fund would pass to his family on his death in the SIPP was described at the time of sale as a 'no cost added benefit'. His family would get four times his salary on death from the new DC scheme which it was noted may have met his life cover needs anyway.

And whilst I appreciate death benefits are important to consumers, and Mr L might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr L about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CST explored to what extent Mr L was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr L was married and all of his children were noted as being dependent, although two were older and one was past the age where the DB scheme would pay a pension to them on his death.

But even so, the spouse's and dependent's pension provided by the DB scheme would've been useful to his dependents if Mr L predeceased them. I don't think CST made the value of this benefit clear enough to Mr L. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, the fund may have been depleted particularly if Mr L lived a long life. In any event, CST should not have encouraged Mr L to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr L genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CST should've instead explored life insurance in more detail. But, as I said earlier, this seems to have been quite far down the list of Mr L's priorities.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr L.

Control or concerns over financial stability of the DB scheme

It's clear that Mr L, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme, and he was worried his pension would end up in the PPF. He'd clearly heard negative things about the PPF. A note from the discussions Mr L had about this show that he was deeply concerned about the situation with his employer and the DB scheme.

So, it’s quite possible that Mr L was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was CST’s obligation to give Mr L an objective picture and recommend what was in his best interests.

As I’ve explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. Mr L had opted to join the BSPS2. So, this should’ve alleviated Mr L’s concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn’t go ahead, I think that CST should’ve reassured Mr L that the scheme moving to the PPF wasn’t as concerning as he thought. The income available to Mr L through the PPF would’ve still provided a reasonable portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. And if Mr L took tax free cash, it could’ve actually produced a better outcome for him.

I recognise that CST noted in the suitability report that Mr L wanted to ‘break ties’ with his employer. But it’s evident that he still worked for the same employer. And he hadn’t suggested he intended to find alternative employment. He was also a member of the new DC pension scheme via his employer. So, he wasn’t going to be able to break ties with it by transferring, as he would remain tied to the employer in other respects. I think it also should’ve been mentioned that his employer and the BSPS2 trustees were not entirely one and the same.

So, I don’t think that these concerns should’ve led to CST recommending Mr L transfer out of the DB scheme altogether.

Use of DFM

CST recommended that Mr L 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 for Mr L, it follows that I don’t need to consider the suitability of the investment recommendation. This is because Mr L 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.

Summary

I don’t doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr L. But CST wasn’t there to just transact what Mr L might have thought he wanted. The adviser’s role was to really understand what Mr L needed and recommend what was in his best interests.

Ultimately, I don’t think the advice given to Mr L was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr L was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr L shouldn’t have been advised to transfer out of the scheme just to perhaps increase his flexibility or death benefits. I’m not persuaded he had a shortfall in the amount of income he would receive in comparison to his retirement needs.

I appreciate that there was perhaps some uncertainty around the BSPS2 when the advice was given, but I think it was clear to all parties that it was likely to be going ahead as CST in fact said. Mr L had around 20 years before he expected to retire and his plans were not concrete. So, I don't think that it would've been in his interests 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 L would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, Mr L was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr L chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think CST should've advised Mr L to opt into the BSPS2.

Of course, I have to consider whether Mr L would've gone ahead anyway, against CST's advice.

I've considered this carefully, but I'm not persuaded that Mr L would've insisted on transferring out of the DB scheme, against CST's advice. I say this because Mr L was an inexperienced investor with a low attitude to risk and this pension accounted for the majority of Mr L's retirement provision so far. So, if CST had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr L's concerns about his employer and the scheme were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If CST had explained that Mr L could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr L would have insisted on transferring out of the DB scheme and he would have ultimately joined the BSPS2.

In light of the above, I think CST should compensate Mr L for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We’ve previously asked Mr L whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his complaint. I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr L.

A fair and reasonable outcome would be for the business to put Mr L, as far as possible, into the position he would now be in but for CST’s unsuitable advice. I consider Mr L would have most likely remained in his DB scheme if suitable advice had been given.

CST must therefore 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.

For clarity, Mr L has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 L’s acceptance of the decision.

CST may wish to contact the Department for Work and Pensions (DWP) to obtain Mr L’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 L’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr L’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 L 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.

The payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Mr L within 90 days of the date CST 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 CST to pay Mr L.

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.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect CST to carry out a calculation in line with the updated rules and/or guidance in any event.

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

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

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

If Mr L accepts this decision, the money award becomes binding on CST Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 10 March 2023.

Andy Burlinson
Ombudsman