DRN-3661874

The complaint

Mr L's representative has complained, on his behalf, that CST Wealth Management Limited (CST) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Self Invested Personal Pension (SIPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

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

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr L joined the BSPS in December 2004. His projected benefits were:

- An annual pension of £15,712 pa at age 65 or a reduced pension of £10,699 pa and a tax free lump sum of £71,330.
- An annual pension of £10,057 pa at age 57 or a reduced pension of £7,280 pa and a tax free lump sum of £48,539.

- Death benefits were a return of member contributions, valued at £32,778 at the time of the transfer, a 50% spouses pension, and dependants' pensions up to age 23.

Members were provided with personal information and illustrations in October 2017 to help them make their choices.

As the scheme was closing, the funds could be transferred to either:

- The BSPS 2 which was being proposed
- The PPF
- A PPP or SIPP

A defined benefit cash equivalent transfer value (CETV) quotation was issued on 11 August 2017 outlining what benefits Mr L had with the now closed scheme. The transfer value was £234,105.38, however this then increased to £241,739.24. The date of leaving the scheme was recorded as 31 March 2017. He had 12 years and 6 months of pensionable service. The scheme allowed for early retirement at age 55 with actuarial reductions.

Mr L was sent a fact find form and risk questionnaire on 18 July 2017 and asked to complete as much as possible and return them. These documents were returned and noted his circumstances at the time of advice as follows:

- He was 41, married, with children aged 12 and 16.
- He was employed earning approximately £39,000 pa including overtime and bonuses.
- He owned his property valued at £120,000, with a mortgage of £68,000
- He had £5,500 in unsecured loans and £1,200 in credit card balances
- He had no other investments apart from making payments of £50 per month into a deposit account
- He was a member of the employer's defined contribution scheme
- He was in excellent health
- His plans for retirement were to go travelling
- He had £100 monthly disposable income
- Both he and his wife had death in service benefits

The "Dynamic Risk Profiler" recorded that Mr L had never invested in any investments, including cash based investments. However he did answer when asked about investment experience that he understood the basics - but still wanted some things explained. There were a mixture of answers about his attitude to risk, as follows:

"Compared to the average person I would say I take more risks – Disagree.

I have been extremely cautious in my past financial investments – Agree.

When I am faced with a financial decision I am generally more concerned about the possible losses than the probable gains – Agree.

I would rather get a guaranteed rate of return than be uncertain about my investments – Strongly Agree."

There was also a handwritten note as follows:

"Fear of pension fund plummeting. Not Gambling"

Mr L was rated as having a risk profile of "6 out of 10", where "1" was low risk and "10" was high risk – this equated to a "high medium" categorisation.

Within the Pension Transfer Questionnaire completed on 4 September 2017, Mr L selected the following statement under "risk and reward":

"I do not consider it appropriate to expose my pension benefits to anything other than a minimal amount of risk"

The Financial Planning Report dated 30 October 2017 did note that Mr L had made previous investments after receiving advice and was comfortable investing. It was also noted that there were inconsistencies and it was agreed that it would be best to invest more cautiously with regards to the BSPS benefits.

In a document submitted in the business file entitled 'Key Considerations [Mr L]' the answers given in the risk profiler and questionnaire were noted and with regards to his stated desire for a guaranteed income, it was recorded that *"this was just a preference and he realises he could not achieve his goal of early retirement without a transfer".*

Mr L's capacity for loss was categorised as "medium" based on his intended retirement date of 57. The report said that this was in 14 years' time. The report recorded that Mr L was contributing to the defined contribution scheme, that he was in stable employments and that there were plans in place to pay debts off by age 50.

The Financial Planning Report also highlighted that Mr L was paying 8% contributions to his pension scheme and his employer was contributing an additional 10%. The report recommended paying in more.

In the final response letter dated 17 December 2021, CST noted that, at age 57, the defined contribution plan was likely to have a fund worth £203,766 and at age 65 it was likely to be £478,209. This was used to support Mr L's capacity for loss. It was also noted that Mr L expected to inherit £150,000 from his parents, which was also noted by Mr L in the fact find.

A file note dated 4 September 2017 noted that Mr L had met with the adviser as he wished to break ties with BSPS and also wanted to transfer the capital so he could afford to retire early.

The Financial Planning Report dated 30 October 2017 confirmed that Mr L was exploring options because:

- He would like to retire earlier than the scheme's normal retirement age
- In the event of his early death, there would be very little to leave as a legacy for his family other than a return of contributions of £32,778
- Taking the scheme benefits at 57 would reduce his retirement income
- He would like a sustainable but flexible income of £18,000 net pa

The Financial Planning Report set out the terms of the new BSPS2 scheme and explained the income options available and the critical yield and hurdle rate. The hurdle rate showed what investment growth return an alternative contract would need in order to purchase a level lifetime annuity – but which excluded a spousal pension and escalation.

The report highlighted the following figures which were also provided in more detail in a Pension Transfer Report. The table below summarises the critical yields and hurdle rates for the BSPS and PPF and the potential income.

	Pension (and lump sum if reduced pension selected)	Critical Yield	Hurdle Rate
BSPS at 65	£15,712 pa	6.83%	3.94%
BSPS at 65	£10,699 pa and £71,330 lump sum	5.83%	3.38%
BSPS at 57	£10,057 pa	8%	3.2%
BSPS at 57	£7,280 pa and £48,539 lump sum	6.83%	2.48%
PPF at 65	£14,163 pa	5.73%	N/A
PPF at 65	£11,167 pa and £74,450 lump sum	5.4%	N/A
PPF at 57	£10,746 pa	7.63%	N/A
PPF at 57	£8,911 pa and £59,413 lump sum	7.21%	N/A

The report contained the following statement in red:

"In our opinion these critical yields are not guaranteed to be achievable year on year between transfer and your planned retirement age of 57".

A cash-flow model was also produced which calculated that an investment return of 3% would be required to mirror the existing scheme benefits until age 101.

The Financial Planning Report gave the following reasons as to why CST recommended that Mr L consider transferring:

- A transfer would become a substantial family asset.
- Because of gilt prices current transfer values were high.
- A transfer offered total flexibility as to how and when Mr L would withdraw his pension.
- Pension flexibility would allow Mr L to access funds to clear mortgages and/or debts, help his children should he wish to do so and generate tax efficient income.
- A transfer to a personal arrangement would remove the life expectancy gamble
- Mr L could improve tax efficiency with CST's financial advice within a personal arrangement by drip feeding out tax free cash and limiting the pension income to match his personal income tax allowance
- Mr L had the opportunity within a personal arrangement to defer or avoid any potential lifetime allowance tax charge

The SIPP product was recommended as it provided flexibility. A Discretionary Fund Manager (DFM) was recommended as it provided benefits including regular portfolio management following an investment mandate.

Brewin Dolphin was recommended as the DFM and the Brewin Dolphin Income Return was the recommended strategy as he was categorised as a "cautious risk" investor.

The charges associated with the transfer were as follows:

Initial product charge	£100
Ongoing product charges	£250 pa
DFM AMC	£0.84% pa

DFM underlying portfolio charge	0.5% pa (dependent on the assets held)
Initial adviser charge	1% (£2,417)
Ongoing adviser charge	0.5% pa

Within the document entitled 'Key Considerations [Mr L]' it was explained that because Mr L was only entitled to £8,911 pa at age 57 he would be in deficit until he and his wife received their state pensions. It was therefore considered that the transfer would allow Mr L to "front load" his pension benefits to satisfy his income needs that could be reduced once he and his wife were in receipt of their state pensions, Mrs L's final salary pension and any family future family legacies.

Mr L complained to CST in September 2021. CST responded to Mr L's complaint on 21 December 2021, declining to uphold it.

Dissatisfied with the response, Mr L referred his complaint to this service.

Having considered the complaint, our investigator thought that it should be upheld. He said the following in summary:

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- There were inconsistencies in Mr L's answers to the risk profiling questions, with indications that he was concerned about possible losses and that he had a fear of his pension fund "plummeting". Mr L's focus seemed to be on receiving a guaranteed rate of return.

- It was clear that, although Mr L had said he had some previous experience of investing, he didn't have a "high medium" risk rating. The report also reflected this – recording Mr L as having a more cautious risk attitude. The lowest risk option, which would have been suitable for Mr L, was to retain his defined benefits.

- CST had said that Mr L couldn't achieve his early retirement goal without transferring, but he would have had around £200,000 in defined contributions by age 57. Mr L could therefore have used his defined contributions to provide pension benefits, or a combination of this and the income provided by the scheme. He didn't need to transfer to achieve his objective.

- The wording that the critical yields couldn't be guaranteed to be achieved to age 57 implied that they could be to age 65. But there was no such guarantee.

- Mr L may have been concerned about his employer and the prospects for the BSPS, but CST should have explained the valuable guaranteed benefits which he'd still have either through the BSPS 2 or the PPF.

- The advice had been after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate was 4.5% pa for the number of years until Mr L's retirement at age 65. The regulator's standard projections were 2%, 5% and 8% for low, mid and high band growth. The required critical yields to match the scheme benefits were therefore higher than the discount rate and the regulator's lower growth rate projection.

- Given this, the opportunity to improve upon the scheme benefits was limited, especially given Mr L's attitude to risk. Although Mr L said he wanted to travel when he retired at age 57, with an income of £18,000 pa, these weren't fixed objectives at the time. And as Mr L was only 42 at the time of the advice, he didn't need to make any decision about transferring at that time.

- It was also unclear as to whether Mr L would have needed tax free cash when he retired. It was anticipated that he would have repaid his debts by then, and so it couldn't be known, 15 years in advance, as to whether Mr L would in fact withdraw tax free cash.

- Flexibility may have been appealing to Mr L, but this didn't constitute sufficient reason for him to relinquish valuable guaranteed benefits – and flexibility could have been achieved by accessing his defined contributions. By retaining his scheme benefits, and either transferring into the BSPS 2 or the PPF, Mr L would have had a secure foundation for his pension benefits.

- In terms of death benefits, Mr L was described as being in excellent health, and his wife would have received a 50% spouse's pension, along with a dependants' pension for his children. Mr L also had death in service benefits of four times' his salary. The file didn't demonstrate that there was a need for the lump sum death benefits which would have been produced by the transfer. And the advice needed to be given in Mr L's best interests rather than providing death benefits for his family.

- Mr L wasn't the type of investor who required DFM, and this only added costs to his arrangement.

The investigator recommended that CST undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr L would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr L's pension plan, but if this wasn't possible, it should be paid directly to Mr L, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He also said that CST should pay Mr L £250 in respect of the stress and anxiety that he would have been caused over his retirement planning.

Mr L's representative agreed with the investigator's findings, but said that he should be explicit about the assumption being in any redress calculation that Mr L would have retired at age 65.

It further said, with regard to the notional deduction of income tax, that this assumed that the whole amount would have been withdrawn as income. Also, as a result of the advice, Mr L was paying unnecessary charges, and so the reduction should only be applied to the redress once the part of the redress intended to compensate for the product/adviser charges had been disregarded.

CST didn't agree with the investigator's conclusions, however. I've read the entirety of its submissions, but summarise the main points as follows:

- It needed to take reasonable steps to ensure that the transfer was suitable, and exercise reasonable skill and care in advising Mr L - not provide a guarantee that it would work out to be in Mr L's best financial interests.

- In terms of Mr L's attitude to risk, the adviser correctly identified that he had a more cautious attitude than had been determined by the risk profiler, and recommended that he invest accordingly, Mr L had himself then elevated that risk in 2019. Mr L had also indicated in the pension transfer questionnaire that he was prepared to risk some benefit in the hope of good returns.

- The defined contribution fund would only provide £13,100 pa from age 57 until Mr L was 63, at which point his wife would begin to receive her final salary pension of around £9,000 pa. The addition of either the BSPS 2 or PPF income at age 57 wouldn't have met his income needs.

- Disproportionate emphasis had been placed on the critical yield, which was a blunt tool, especially given that Mr L didn't intend to replace the guaranteed scheme income with annuity income.

- It acknowledged that Mr L would have liked a guaranteed rate of return, but he couldn't achieve his required level of income by retaining his BSPS benefits. This was why he was prepared to take an investment risk. And Mr L would have been significantly worse off financially had he transferred either to the BSPS 2 or the PPF.

- It had demonstrated that Mr L was almost certainly going to receive a higher pension income as a result of the transfer.

- It couldn't be known whether the qualifying conditions for the BSPS 2 would be met, and a transfer into the PPF would represent a reduction in overall benefits - members quite understandably viewed this prospect negatively.

- Most people take the tax free cash and, had Mr L done so, the scheme benefits wouldn't have supported Mr L's retirement at age 57.

- The harsh environment of the steel industry meant that life expectancies were low. The prospect of any remaining pension reverting to the BSPS after death was unpalatable to employees. The death benefits in the event of premature death would be higher as a result of the transfer, and these would have been important to Mr L and his family.

- The use of the DFM enabled the management of the "sequencing risk" and the rapid adjustments which might need to be made to the portfolio in the event of market shifts.

- Mr L made a fully informed decision to transfer. He didn't at any time suggest that his circumstances or objectives had been misunderstood, and the risks and disadvantages of the transfer were conveyed to him.

- There was no evidence that Mr L had suffered a financial loss as a result of the transfer.

- There was no evidence that Mr L would have remained in the scheme and transferred to the BSPS had he received different advice.

As agreement couldn't be reached, the investigator said that the complaint would be referred to an ombudsman for review.

The investigator then enquired of Mr L's representative as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Mr L's representative confirmed that he would like any redress to be calculated on the existing basis.

The investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require CST to use the FCA's BSPS-specific calculator to determine any redress due to Mr L.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr L's complaint, they should let him know by 5 June 2023.

In response, CST confirmed that it would be using the BSPS-specific redress calculator if an ombudsman upheld the complaint.

The complaint has now been referred to me for review.

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.

And having done so, I've reached similar conclusions to the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time CST advised Mr L were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like CST, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, CST needed to gather the necessary information for it to be confident that its advice met Mr L's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 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."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"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 19.1.7 also said:

"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."

And COBS 19.1.8 set out that:

"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."

I've therefore considered the suitability of CST's advice to Mr L in the context of the above requirements and guidance.

CST's rationale for transferring

Mr L wasn't categorised as an "execution only" or insistent client, and CST was taking him through the advice process. Therefore, CST could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr L and his circumstances and objectives were recorded – as I've noted above.

As with the investigator, I've noted above that the FCA's guidance was that the starting assumption for an assessment of Mr L's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr L would be better off financially as a result of the transfer.

The financial case to transfer

CST obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr L's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but I agree that they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.5% pa. And the mid band growth rate set out by the regulator for growth assumptions was 5% pa.

The critical yields to both age 65 and 57 (assuming tax free cash was taken), at 5.83% and 6.83% respectively, exceeded both the discount (or growth) rate deemed achievable, and the mid growth rate set out by the regulator – the latter of which might perhaps be a reasonable assumption for a "medium" risk investor (although Mr L was advised to invest in a more cautious manner).

From a purely financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr L's best interests.

CST itself noted in the suitability report that the critical yield required to match the scheme benefits at age 57 weren't guaranteed to be achievable. I'd go further – given Mr L's attitude to risk, I think it was unlikely that this yield would be achievable, year on year, for the period of time until Mr L was 57. And I think the same applies to the required critical yield to match them at age 65.

I also agree with the investigator's view on the way that section within the suitability report was worded – by setting out in bold red font that the critical yield to age 57 couldn't be guaranteed, but then remaining silent on that required to age 65, Mr L might reasonably have formed the impression that the latter was in fact guaranteed to be, or was at least eminently achievable. But given the actual yields required, and Mr L's attitude to risk, I disagree on both counts.

But I think it's also worth noting that the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B. And so I've then considered the overall suitability of the transfer, taking into account other considerations.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that CST did provide warnings on the guarantees which would be relinquished, but as CST will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. CST needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr L.

I'd initially say that I do acknowledge that Mr L may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

I also think it's quite possible that Mr L had a "medium" risk rating, given his age and number of years to retirement. But I also think, given the answers provided in the risk profiling exercise, CST was right in recommending that he take a more cautious investment approach.

But I don't think Mr L needed to take the risks of transferring his BSPS pension at all to achieve his objectives of flexibility of income. As set out by CST, Mr L had joined the replacement defined contribution scheme, and so would likely have accrued a significant amount of money purchase benefits given the overall contribution rate (if he remained with the same employer) by retirement. But other than the state pension, the defined benefits accrued through the BSPS were still likely to have been his only source of *guaranteed* income. Through transferring, Mr L was effectively putting all of his eggs – barring the state pension - in one "money purchase basket".

And I just can't see why Mr L needed to take the associated additional risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr L would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy potentially changing income needs.

But other than concerns around the employer and associated scheme, which I'll address further below, it's unclear as to why Mr L would have wanted or needed such additional flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind his likely more cautious attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

And so, if Mr L wished to retire early (in 15 or so years' time), he could do so whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF.

But on the specific matter of early retirement, I agree with the investigator that financial advice should be more than simple "wish fulfilment". And if such a plan isn't credible, then the client should be advised of this.

In its response to the investigator's view, CST has repeatedly said that Mr L couldn't afford to retire at age 57 by taking the scheme benefits at that age – and it may have a point. But the most likely course of action which might have enabled him to do so would have been to retain his scheme benefits, access his 15 years' defined contributions flexibly from whatever age from 57 onwards that the pension fund might feasibly have allowed the commencement of withdrawals, and then begin taking his BSPS benefits at either the normal retirement age, or earlier if required.

And so it wasn't the case that the only way by which Mr L could afford to retire at 57 with the income he required was through transferring. The actual level of overall pension benefits couldn't feasibly be matched by the transfer (as evidenced by the critical yield), and if Mr L accessed his defined contributions pension fund flexibly until his wife's defined benefit pension, and both their state pensions, began, Mr L could likely have achieved the required level of income he needed and then taken the BSPS benefits as and when that additional income was required.

If, on the basis of an income requirement which outstripped this over the years left to age 65 (for example if his circumstances changed) – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr L could then have begun to take the scheme benefits early if needed.

Mr L may then ultimately have been in the fortunate position of receiving an income which was higher than his actual needs, especially when his and Mrs L's state pensions began, but he could have simply reinvested any excess as he saw fit, or, to provide a legacy for his family, immediately gift it away to avoid it being subject to inheritance tax.

Mr L may have been willing to accept a measure of risk for the sake of improving his income in retirement, and as I've said above, although Mr L didn't have any particular financial experience, I think he may have understood the principle of risk/reward, and risk warnings were provided by CST.

But as I've also noted above, Mr L was accruing further benefits in his defined contribution scheme, and given the likely accumulation of funds in that scheme, compared against the benefits accrued in the final salary scheme, at the normal scheme retirement age, around 24 years of his pension accrual at age 65 (or 16 by age 57) would likely be derived of the defined contribution scheme. As such, Mr L would already by necessity have been taking investment risk through the replacement scheme.

In light of this, and given that in the 12 years up to that point Mr L had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of some significant value as a foundation of stable, escalating income to hedge against uncertain returns in the defined contributions scheme, especially for a cautious-medium risk rated individual, and shouldn't have been relinquished lightly in favour of a flexibility which was loosely defined around the apparent desire for early retirement (some 15 years before this would be even be possible) and concerns around the employer/scheme.

And on the particular note of Mr L's concerns about the employer and the scheme, as with others in his position, I think it's fair to say that Mr L would have been concerned about the future of the BSPS and his associated benefits. But Mr L's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

There was no prospect of the BSPS funds being lost to the employer, even if Mr L had concerns about it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the point of the "Time to Choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative.

It's fair to say that there were still conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

And so I think that, had Mr L's concerns been better managed, a seeming key driver for having control over his pension benefits would also have diminished.

Mr L therefore didn't need to make any decisions about transferring out his defined benefits at that point. The prospect of Mr L's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

Mr L's plans, including retirement, may in any case have changed significantly in the 15 intervening years between then and him reaching age 57. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr L's retirement – and Mr L would have been able to transfer out of the BSPS 2 if needed.

There may have been lower CETVs offered in the future if gilt yields and other market factors changed, but for the reasons given, I think that Mr L could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he did ultimately decide that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr L or his adviser could then assess at that point whether a transfer represented good value.

And so on the basis of what I've said above, it follows that I don't think the mooted early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr L to transfer his deferred benefits.

Death benefits

It's fair to say that the lump sum death benefits offered by the transfer would likely be more beneficial to Mr L's extended family.

But I have several concerns about this as a reason for transferring Mr L's benefits. Firstly, Mrs L would have received a 50% spouse's pension in the event of Mr L's death in retirement, and would have received the death in service benefits and the return of Mr L's contributions had he died before retirement. There was also a dependants' pension should Mr and Mrs L's children still be dependent in the event of Mr L's death.

Mrs L was also recorded as having her own defined benefit pension provision, along with her state pension.

Further, Mr L had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

And accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for the wider family. The recommendation needed to be given in the context of Mr L's best interests.

And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual's best interests. The desire to leave a legacy for his family cannot reasonably have subjugated Mr L's own personal requirement to benefit from his accrued pension benefits. The wish to leave any such legacy should have been properly weighed against the guaranteed benefits Mr L was relinquishing, and CST should have advised him that his own financial benefit took priority here.

There was also no suggestion as to why a lump sum, beyond the death in service lump sum payment which would be paid if he remained in the same employment, and the value of the defined contribution scheme, would have been important to Mr L's family in the event of his death. It seems that debt repayment was scheduled to be completed by age 50. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr L compromising the security of his own financial future.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr L's extended family by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr L personally.

<u>What should CST have done – and would it have made a difference to Mr L's decision?</u>

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr L. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr L to make any decision about his BSPS benefits at this point in time and it was the responsibility of CST to explain to Mr L why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr L's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr L was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr L, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And I've noted the following statements in the "summary viewpoint" section of the suitability report in which the supporting reasons for the transfer were set out. One of these was as follows:

"Benefits including tax free lump sum can be accessed at age 57 as opposed to 65 under the existing scheme without penalty".

This is in my view misleading. Although there would have been a reduction in the scheme benefits payable at an earlier age, this reflects the longer period over which those benefits would likely be payable. And had Mr L begun accessing his PPP benefits early, there would have been a commensurate effect on the value of his pension fund in terms of taking early withdrawals (and for longer) and the knock on impact on the residual fund and its capacity for growth.

That section also said:

"You want to leave a legacy to your wife and family. Any remaining capital balance could be inherited by your family should you die at a relatively young age compared to nothing from the final salary scheme".

This, again, was misleading. Mrs L wouldn't receive "nothing" from the scheme. She would receive the return of contributions and a 50% guaranteed, escalating, spouse's pension for the rest of her life.

It further said:

"Personal choice to want to flexibly access the fund, which will give you the ability to vary your income in line with your lifestyle requirements".

But as set out above, the accrued defined contributions would have likely amply catered for this, with the defined benefits then providing a foundation of guaranteed income upon which Mr L, as a cautious-medium investor, could rely.

For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr L's income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr L to relinquish valuable benefit guarantees – especially at the age of 42.

My further view is that, if properly discussed, Mr L's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP.

Taking account of Mr L's circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that CST should have advised against the transfer.

And I think that, had this happened, given that Mr L would have been reliant on the advice given to him, he would have followed that advice and not transferred his benefits to the SIPP.

Further, as I don't consider that, suitably advised, Mr L would have transferred to the SIPP, I don't think I need to consider the investment advice to use DFM once transferred.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to the conclusion that the recommendation to transfer wasn't suitable for Mr L, nor was it in his best interests. The key contributing factors here are: the lack of a comprehensive and balanced portrayal of Mr L's options, especially given his attitude to risk, and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr L were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him.

My view is that, taking account of the critical yields, Mr L's attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely, albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.

As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out by COBS 2.1.1R and COBS 19.1.6, CTS would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr L's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

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 the unsuitable advice.

In terms of the option Mr L would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr L's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement.

The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

One of Mr L's recorded objectives was the ability to retire early. And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF.

But for the reasons set out above, even if Mr L - at the age of 42 - envisaged retiring early, I think it's likely that, properly advised, he could have accessed his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which given the overall pension resources available to Mr and Mrs L, could likely then have been deferred until normal scheme retirement age. The advantages of early retirement through the PPF wouldn't therefore have applied.

I'd also refer to my comments as set out above about the likelihood at the time of the BSPS 2 being implemented, over the likelihood of the scheme benefits needing to enter the PPF.

And so, for the reasons given, my view is that it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

I therefore consider that Mr L would most likely have remained in the occupational pension scheme and opted to join the BSPS 2 if suitable advice had been given. And as I've set out above, given the amount of time left to retirement, I don't think it could be assumed that Mr L would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions flexibly if required.

CST Wealth Management Limited 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.

CST Wealth Management Limited 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 L and our service upon completion of the calculation.

Mr L hasn't yet retired, and cannot do so for many years. So, given my comments above about not in any case likely needing to access the defined benefits before age 65, 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 L'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, CST Wealth Management Limited should:

- calculate and offer Mr L redress as a cash lump sum payment,

- explain to Mr L before starting the redress calculation that:

- its 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 their defined contribution pension

- offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr L accepts CST Wealth Management Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

Redress paid to Mr L as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses 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 L'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.

I've noted what Mr L's representative has said about the notional deduction, but the 15% doesn't assume that all of the pension funds will be drawn as income – as set out by the investigator, this factors in a withdrawal of tax free cash. Further, any product or adviser charges will be reflected in the value of the SIPP used within the calculation. And if Mr L wishes to pay reduced charges in the future, he may do so by transferring to a different product.

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.

Determination and money award: I require CST Wealth Management Limited to pay Mr L the compensation amount as set out above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I would also recommend that CST Wealth Management Limited pays Mr L the balance.

If Mr L accepts this final decision, the award will be binding on CST Wealth Management Limited.

My recommendation wouldn't be binding on CST Wealth Management Limited. Further, it's unlikely that Mr L could 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 my final decision.

I also agree with the investigator that Mr L would have been caused a not inconsiderable amount of concern by the matter, and the impact it might have on his retirement planning. As such, CST Wealth Management Limited should also pay Mr L £250.

My final decision

My final decision is that I uphold the complaint and direct CST Wealth Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 December 2023.

Philip Miller
Ombudsman