DRN-3666496

The complaint

Mr B complains about the advice given by CST Wealth Management Limited ('CST') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') 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 B'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.

Mr B was concerned about what the recent announcements by his employer meant for the security of his pension, so around August 2017 he approached CST for advice. CST completed a fact-find to gather information about Mr B's circumstances and objectives. Amongst other things this recorded that Mr B was 44; he was married with one dependent child (he also had a step child); he jointly owned his home which had an outstanding mortgage of around £58,000 with a remaining term of 12 years; he had a loan of around £8,000; he had no savings or investments to speak of; and he wanted to retire between 57 and 60. CST also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'medium' although Mr B appears to have been amended this to 'moderately cautious' - the ultimate investment recommendation was deemed to be a 'cautious' approach.

In October 2017, members of the BSPS were 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 choice was 11 December 2017 (and was later extended to 22 December 2017).

Around the same time Mr B met with CST again and shortly afterwards, on 31 October 2017, CST advised Mr B to transfer his pension benefits into a SIPP and invest the proceeds using the services of a discretionary fund manager ('DFM').

In summary, the suitability report said the main reasons for this recommendation were to provide Mr B with flexibility – the opportunity to withdraw income and/or lump sums in a tax-efficient manner as and when required – and to improve death benefits by enabling Mr B to leave the residual balance of his pension fund to his beneficiaries.

CST also recommended that Mr B invest his excess income into his personal pension to provide tax efficiency and the potential for a larger capital sum.

Mr B accepted the recommendation and in March 2018 around £339,600 was transferred to his new SIPP.

Mr B complained to CST in 2022 about the suitability of the transfer advice, using the services of a representative. Mr B said he believed he should not have been advised to transfer his pension benefits to a private arrangement as he was unlikely to be able to match the benefits he was giving up by transferring.

CST didn't uphold Mr B's complaint. It provided a substantive 12-page response. While I have read it in full, I haven't set everything out here. But it included detailing its regulatory requirements at the time, the background to the BSPS, a detailed account of Mr B's circumstances and objectives at the time, including how Mr B wanted to be able to gradually reduce his working hours adopting a phased retirement stage and a detailed account of the investment strategy recommended. It also provided cashflow modelling to demonstrate that, in its view, the recommendation could meet Mr B's income need based on the annualised growth rate the portfolio had achieved. It said Mr B couldn't achieve the flexibility to vary his pension income, take a cash lump sum and defer taking an income or provide for his daughter by remaining in the DB scheme – whether the BSPS2 or the PPF.

CST also set out why it believed the advice was suitable for Mr B. In summary it said Mr B could withdraw a lump sum of £100,000 at age 57, withdraw flexible amounts to facilitate a phased retirement and potentially reduce his withdrawals from age 67 by transferring. It said if Mr B wanted to reduce his pension income in favour of providing a legacy for his family, at age 80 the sum would be around £980,000. It said the cost of insurance cover to provide this amount would be around £1,300 a month. It said there is no evidence Mr B has suffered a loss as a result of the transfer.

Dissatisfied with its response, Mr B referred his complaint to our service. An investigator upheld the complaint and required CST to pay compensation. In summary they said the transfer wasn't financially viable because the growth rate required to match Mr B's DB scheme benefits wasn't likely achievable. They said Mr B was likely to receive lower retirement benefits as a result. They also said there were no other compelling reasons to justify the transfer as being suitable: Mr B was 44 at the time, so his plans for retirement weren't set – there was no need for him to make an irreversible decision to give up his guaranteed benefits; he didn't need flexibility albeit he already had flexibility in retirement because he was contributing to his workplace Defined Contribution ('DC') pension scheme, which would've provided flexibility to retire early if that's what he ultimately decided; death benefits shouldn't have been prioritised over his income need in retirement; and they expressed concerns about the accuracy and reliability of the attitude to risk assessment carried out because there were too many inconsistencies in Mr B's responses to the questions posed, some of which indicated he wasn't willing or comfortable investing. They said if suitable advice had been given, Mr B would've likely remained in the DB scheme and moved to the BSPS2.

CST disagreed. It provided a detailed response, which again while I have read it in full, I haven't set it all out here. In summary it said, Mr B's highest priority was maximum tax-free cash and the lowest was a guaranteed income for life. It said Mr B wanted access to a lump sum at age 57 and to have continued to work until age 60. It said the BSPS2 was not guaranteed to go ahead at the time, so this might have been the only opportunity Mr B had to transfer. It asked if the investigator had used the FCA's Defined Benefit Advice Assessment Tool ('DBAAT') guidance in reaching their assessment.

It said it believed its cash modelling demonstrates a strong financial outcome, which it says the investigator has ignored.

It provided various examples referring to the analysis it provided in its final response letter including, at an annual growth rate of 4.68% (less than the average annualised return of the portfolio) Mr B could match his scheme benefits and at age 80 still have a pension pot of over £900,000. Or based on a growth rate of 1.38% - what it described as a bank account rate – Mr B's DB scheme benefits could be matched until age 90.

It also said it disagreed with the investigator's point about death benefits. It said if Mr B died before age 75 his wife would've received 50% of his scheme pension which would've been taxable compared to inheriting the whole of Mr B's pension without payment of tax. It said it would've cost over £900 a month to provide similar death benefits through a whole of life policy. It said it also wanted to appeal against the use of the BSPS2 as a comparator in calculating compensation because it was not in existence at the time – the PPF should be the basis of any redress calculation.

Mr B's representative accepted the investigator's opinion. They added that it should be made clear that the loss calculation should be based on Mr B taking his retirement benefits at age 65. And they said the 15% deduction in the redress payable, to take into account the tax Mr B would've paid had this been taken as income, is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time.

The investigator wasn't persuaded to change their opinion. They replied to CST saying they wanted to clarify that, the financial projections didn't automatically make the transfer suitable or mean it was in Mr B's best interests. They said there were key reasons why they thought Mr B should've retained his safeguarded benefits, including the fact Mr B didn't have other major assets, his answers on the attitude to risk assessment indicated he wanted the security and guarantee of income and flexibility could've been provided by his DC scheme. They said the FCA's advice checker was a useful tool, but they'd also considered things more broadly. They also said in their opinion the information available at the time indicated the BSPS2 would go ahead, so they thought it was appropriate to use it as the redress comparator.

CST replied. They again provided a lengthy response. They repeated many of the points they'd already made. And in addition they said, it's not evident that the investigator determined the case by reference to whether CST took reasonable steps to ensure its recommendation was suitable for Mr B – COBS 9.2.1R. They said the investigator failed to place adequate weight on the fact Mr B made a fully informed decision. They said unfounded assumptions about causation were made and there is no evidence Mr B has suffered a loss. They also said the investigator placed disproportionate weight on the critical yield and reference to the discount rate was not a requirement at the time.

Because things couldn't be resolved informally, the complaint was passed 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').
And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of 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. My reasons are set out below.

For the sake of clarity, I can see CST has referred on several occasions to its requirement to take reasonable steps to ensure the advice it gave was suitable for Mr B. And I agree that under COBS, CST was required to take reasonable steps to ensure that its personal recommendation to Mr B was suitable for him (COBS 9.2.1). But additional regulations apply to advising on transferring out of DB schemes. These are set out in COBS 19.1.6G in which the regulator, the FCA, states that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CST should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

CST carried out a transfer value analysis report (as required by the regulator) showing how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). I can see that, despite what CST has said about the BSPS2 not being guaranteed to go ahead at this time, its analysis was based on the benefits that would be available to Mr B through the BSPS2. At the time of the advice Mr B would've received his 'Time to Choose' information and because in my view all of the available information from the scheme trustees was positive that it would go ahead, I think including the BSPS2 benefits in the analysis was a fair and reasonable approach for CST to take and would allow Mr B the necessary information to help him make an informed decision.

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 B was 44 at the time of the advice and it was recorded in the advice paperwork that he wanted to retire between 57 and 60. The critical yields required to match Mr Bs benefits at age 57 were set out in the TVAS report of 29 October 2017 – these were 7.96% if Mr B took a full pension and 6.68% if he took a cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 57 was quoted as 7.05% per year if Mr B took a full pension and 6.59% on a reduced pension basis.

CST also produced figures based on the BSPS2's normal retirement age of 65 – these were 6.23% and 5.4% respectively. The critical yields to match the benefits available through the PPF at age 65 were 5.19% and 4.85% respectively.

I'd add here that, given Mr B indicated he wanted to retire between 57 and 60, I think it might have been helpful to Mr B if CST had also produced critical yield figures based on the benefits available to him at age 60, so he was able to make a fully informed decision.

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, and was 4% per year for 12 years to retirement (age 57). 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 B's 'cautious' approach to investment risk given the ultimate recommendation and also the term to retirement. In my view, there would be little point in Mr B 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, the lowest critical yield was 6.59% based on Mr B taking a cash lump sum and a reduced pension through the PPF at age 57. The rate was marginally higher - 6.68% - assuming Mr B took the same benefits at 57 through the BSPS2. These were more than 2.5% higher than the discount rate and still some way above the regulator's middle projection rate. So I think it was clear that Mr B was likely to receive benefits of a lower overall value than those provided by either the BSPS or the PPF at retirement (57) as a result of transferring and investing in line with that attitude to risk. In my view, to have come close to consistently achieving the level of growth needed, it would have required Mr B to take a higher level of investment risk than I think he indicated he was prepared to take.

I can see CST has said there was no regulatory rule or guidance requirement to refer to the discount rate. And I accept businesses didn't have to refer to it. But while I haven't based my findings solely on this, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. 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, like CST, were free to use the discount rate as this was considered a reasonable assumption of the likely returns. And in any event, I've considered this in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr B'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.

I can also see that CST has questioned the weight the investigator placed on the critical yield figures, It considers it is a 'blunt tool' because it assumes Mr B would purchase an annuity on the same basis as the benefits provided by the DB scheme and he wasn't contemplating that. But I don't think the importance of the critical yield figure should be downplayed here. I still consider it gives a good indication of the value of benefits Mr B was considering giving up. It's also the case that the regulator required CST to provide it and so deems it a necessary and important part of the decision-making process.

So CST needed to provide an analysis based on the critical yield and I think it is a relevant consideration here. And crucially I think it is still relevant, particularly given Mr B's circumstances and the fact that I don't think he could realistically say with any certainty whether he would want to take a fixed regular income at retirement or not. Mr B wasn't expecting to retire for at least another 12 years or more – so it's entirely possible that he would want at least some guaranteed income in retirement, which he could achieve by taking benefits from the DB scheme.

CST has provided a number of cashflow model examples, which it also provided in its final response to Mr B's complaint and referred to the drawdown analysis in the TVAS to support its view that Mr B would've been able to meet his needs despite the high critical yields. And I've considered these.

Firstly, I can see that in two of the scenarios (and the TVAS drawdown analysis) these are based on Mr B taking the same level of benefits as he was entitled to under the DB scheme at age 57 – an annual income of around £10,000 and a cash lump sum of around £66,000. But I'm mindful, as I said above, that I consider there would be little point in Mr B transferring just to have the same level of benefits outside the scheme (at risk) as he could have had by remaining in it. By remaining in the scheme Mr B's benefits were guaranteed and they were payable for life.

Secondly CST's analysis here assumes both a consistent level of return and annual inflation rate. For example it has demonstrated that with an annual return (net) of 4.68% Mr B's pension (assuming he took the same level of benefits as the DB scheme) would last until age 777, while at a lower rate of 1.38% (net) his pension wouldn't run out until he was 90. I can see CST has likened this lower return to a bank account rate of return. Despite the fact that I don't think it is appropriate to compare the lower rate of return with a bank account – Mr B's pension was not in a bank account where the capital was guaranteed, it was invested in risk- based assets where the capital value could fall and fall below the original invested sum – the modelling does not include any stress testing of the scenarios. I think it would've been good practice and helpful to show differing scenarios - for example including periods where growth was lower than expected and/or inflation was higher, to show the impact this would have on the ability of Mr B's pension fund to sustain the level of withdrawals during his life expectancy. I think the same would've been useful for the other modelling scenarios CST produced, including the one where Mr B took his tax-free lump sum at age 57 and then deferred taking his income at a higher level of £33,000, which shows it was sustainable until age 60 assuming a 4.68% consistent net annual return.

Without some kind of stress testing of the model, I'm not persuaded the analysis demonstrates that Mr B would've been able to meet his needs despite the high critical yields.

Notwithstanding the above, I'm not persuaded that Mr B had the attitude to risk and the capacity for loss to accommodate drawdown. I say this because, while CST has argued that Mr B's lowest recorded priority was for a guaranteed income for life, I'm not persuaded this fairly or accurately reflects Mr B's attitude when looking in detail at Mr B's answers to what I consider were key questions CST posed at the time in assessing Mr B's attitude towards investing. I also think there were inconsistencies in the views Mr B expressed in his answers – some of which I think were likely driven by the nature and wording of the questions. But, looking at the key questions, in the risk profile questionnaire Mr B indicated that he had no experience of investing and that he was not very comfortable with investing. He also agreed that he did not feel comfortable with financial uncertainty and disagreed that he was prepared to accept potential losses to pursue long-term investment growth.

In addition to this, in the retirement options questionnaire Mr B was asked to tick a box that best reflected his income requirements. I can see the first box has been ticked *"This pension fund will be an important source of income. I need to be sure that the income it provides is secure and will be guaranteed."* It appears from what I can make out that the tick has been crossed through in favour of another answer – *" For the foreseeable future the income that I* *receive from this plan is not important to me. I want the pension fund to grow for my future benefit."*

But despite this apparently being crossed through, Mr B then goes on to tick an answer in another section of this document – *" This pension fund is an important source of income to me. I would not be happy if external factors caused it to fluctuate and would like to consider the option of a built-in guarantee."*

Furthermore, the answer Mr B gave in another document Mr B completed – a Pension Transfer Questionnaire – would also in my view support Mr Bs' preference for a guaranteed income. He said here that his pension benefits should be protected as far as reasonably possible.

In my view, individually and collectively these were important answers CST ought to have taken careful note of. In my view, when viewed alongside Mr B's capacity for loss, which I consider was low given his DB pension was the primary source of his private retirement income at the time and he didn't have other cash or investment-based assets to support his retirement (his DC scheme at this stage had not long begun) I don't think Mr B had the true attitude to risk or capacity to accommodate drawdown in any event.

Overall, even if the BSPS had moved to the PPF and Mr B's benefits were reduced, he was unlikely to be able to improve on those benefits by transferring to a personal pension. By transferring his pension, it was in my view likely Mr B would be financially worse off in retirement. So based on this alone, I don't think a transfer was in Mr B's best interests. But I accept that financial viability isn't the only consideration when giving transfer advice, as CST has argued in this case. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

One of the key reasons CST recommended the transfer was to provide Mr B with flexibility – the ability to decide how and when he would withdraw his pension.

But I'm not persuaded that Mr B knew with any certainty whether he required flexibility in retirement. And in any event, I don't think he needed to transfer his DB scheme benefits at this stage to achieve flexibility, *if* that's what he ultimately required.

Mr B was 44 at the time of the advice. And while I accept it's possible he might have given some thought to his retirement, given it was still at least 12 years away, I don't think he had anything that could reasonably be described as a concrete retirement plan. And I think the evidence supports this. The suitability report said Mr B wanted to retire between 57 and 60 "*depending on the workplace conditions and your health at the time*." I can also see in the fact-find document there are handwritten notes – presumably from the adviser – which also reflect what the suitability report said and in addition they say: *"? days, ? reduced hours. Options open. Closer to home better."* In my view this indicates Mr B did not really know at this stage what his retirement would look like or crucially precisely when – it appears it would be dictated by circumstances at, or nearer the time.

Nevertheless, I accept Mr B liked the idea of retiring early and before the scheme's normal retirement age. But Mr B already had this option available to him – he didn't have to transfer out to achieve this. I also accept that Mr B couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr B had to take those benefits at the same time. But I'm not persuaded that Mr B had a strong need to take a cash lump sum and defer taking his income or that he needed variable income throughout retirement.

I can see in the suitability report it said Mr B wanted the option of accessing his tax-free lump sum whilst continuing to work. But having 'the option' does not automatically translate to a need. As I said above, it doesn't appear Mr B had a firm retirement plan. It strikes me the reference to this was simply a feature or consequence of transferring to a personal arrangement rather than a real objective of Mr B's. Mr B didn't for example have debts he needed to repay prior to his normal retirement age, which would've given him a need to access his lump sum benefits and not income – Mr B's mortgage was due to be repaid prior to his target retirement age. His other debt would also have long been repaid. I can see from the advice paperwork and CST's final response letter to Mr B's complaint that Mr B wanted access to a lump sum to help his daughter on the property ladder, go on holiday and buy a car. But again, none of these things demonstrate a strong need to access a lump sum and defer taking an income. As I said above, I don't think Mr B knew with any certainty this is what he wanted to do - it was still some 12 years or more in the future. I'm mindful too that Mr B's daughter was only seven years old at the time of the advice, so I don't think he was in a position at this time to say with any certainty what his daughter's needs might be in 12- or 13-years' time let alone know that she'd want to purchase a property at this time.

I can see CST has talked much about Mr B's need or desire for a phased retirement between 57 and 60 – reducing his hours / working part-time and supplementing his income from his pension. And it has produced modelling and analysis to demonstrate, in its view, how Mr B could only achieve this with his personal pension arrangement – it wasn't something he could do if he remained in the DB scheme. But I cannot see that this is what the advice was based on at the time. I've indicated above what the advice paperwork recorded at the time, including the handwritten notes with question marks against them, which I think demonstrates Mr B did not know at the time what his retirement looked like or precisely when. I've not seen clear evidence of a discussion about a phased retirement approach. It's possible a phased retirement approach is something Mr B has subsequently discussed with CST – but because I'm not persuaded this is what the advice was predicated on at the time, I don't think it is necessary to engage with this point further.

In any event, it seems to me that Mr B already had flexibility, which could be provided by his workplace DC pension. As CST documented at the time, Mr B was contributing to his workplace pension, which along with his employer's contribution amounted to 16% of his salary. I can see CST recommended Mr B increase his contribution rate by 4% to achieve a total of 20%. But without this increased rate, CST's own analysis recorded that Mr B could expect somewhere in the region of around £140,000 or more based on his increasing salary and expected investment growth.

The nature of a DC scheme means this already provided Mr B with flexibility – he wasn't committed to take these benefits in a set way. Mr B could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr B retained his DB pension, this combined with his new workplace pension, would've likely given him the flexibility to retire early, or indeed adopt a phased retirement approach - if that's what he ultimately decided.

So in any event, Mr B didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. But if Mr B did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age. By opting into the BSPS2, Mr B would've retained the ability to transfer out nearer to retirement, if indeed it was required. I think CST could've explained this more clearly to Mr B.

Turning to Mr B's income need – it was recorded that given Mr B's expenditure would reduce in retirement, his income need was £15,000 (as at 2017 prices), so around £20,000 at age 57. And based on this, I've seen nothing to indicate that the income from the BSPS2 or the PPF (if the new scheme didn't go ahead) wouldn't have provided Mr B with a solid guaranteed income foundation upon which his other provision could supplement, to likely meet his overall income need.

For example, CST's analysis showed that at age 57, the BSPS2 would provide Mr B with a full pension of just under £13,700 a year, or if Mr B did want access to a lump sum (his entitlement was around £66,000) his reduced income was around £10,000 a year. Although this alone wouldn't meet Mr B's income need, I think he could've used his workplace DC pension to supplement things – at least until his state pension became payable at age 67, which was forecast to be around £14,000 a year. Mr B's DC pension would've likely had a not insignificant amount at this stage, as CST noted, that he could draw on flexibly as and when needed, to top up his income or take a lump sum. And if Mr B delayed his retirement to age 60 or beyond, his DB scheme income would be greater still (as would his tax-free cash entitlement) meaning that the gap he needed to fill using his DC scheme would've been smaller. Either way, I still think Mr B had a better chance of achieving his future retirement and income needs by remaining in the DB scheme and opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension to achieve things.

If the BSPS2 hadn't gone ahead, Mr B would've moved with the scheme to the PPF. And while the income Mr B would receive was likely lower than the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower such that it would've made a difference to the recommendation. As I've said above, Mr B's retirement plans weren't formulated and he would've had his DC scheme to draw on flexibly until his state pension became payable.

So overall, I think Mr B could've likely met his income needs in retirement through the BSPS2 or the PPF and I don't think it was in Mr B's best interests for him to transfer his pension at this time just to have flexibility, that I'm not persuaded he really needed.

Death benefits

CST also recommended the transfer to provide better death benefits – to enable Mr B to pass on what remained of his pension fund to his family in the event of his death. CST said that leaving the benefits within the BSPS would mean Mr B's nominated beneficiaries would potentially receive nothing from the scheme.

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 personal pension was likely an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement - not as a legacy provision tool.
And I don't think CST really explored to what extent Mr B was prepared to accept a lower retirement income in exchange for higher death benefits. Much of what CST has said in its defence of the advice, indicates that Mr B could either prioritise his income or prioritise death benefits for his family – he couldn't do both.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr B predeceased her. I don't think CST made the value of this benefit clear enough to Mr B. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, CST should not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Anyway, Mr B already had lump sum death benefits available. CST knew that Mr B had death-in-service benefit of four times his salary through his employer if he died before retirement. And it also knew that Mr B was paying into his DC scheme and he would've been able to nominate his spouse as beneficiary of this if he hadn't already done so.

But if Mr B genuinely wanted to leave a legacy for his wife / daughter over and above that which was already available, and which didn't depend on investment returns, I think CST ought to have explored and ultimately recommended, additional life cover. I can see CST has argued that the cost of providing the alternative option of a whole of life policy for the equivalent amount of benefit it said Mr B's pension pot could be worth, would be in the region of £900 a month (I believe based on a sum assured in excess of £600,000.)

But I don't think this is a balanced way of presenting this option. Ultimately, Mr B wanted to leave whatever remained of his pension to his spouse/daughter. And as CST's own analysis shows, if Mr B chose to prioritise a higher income in retirement, or if he took the same benefits as he would be entitled to under the DB scheme and he lived a long life and investment returns were poor, the sum remaining could be significantly less than in the more optimistic scenario CST refers to. So, I think the starting point ought to have been to ask Mr B how much he would ideally like to leave to his family to provide for their needs and this could've been explored on a whole of life or term assurance basis, which in my view was likely to be cheaper and affordable to provide given Mr B's circumstances.

Overall, I don't think different death benefits available through a transfer to a personal pension arrangement justified the likely decrease of retirement benefits for Mr B. And I don't think that insurance was properly explored as an alternative.

Suitability of investments

CST recommended that Mr B use a DFM to manage his pension funds. And while I have some concerns about this and whether in the circumstances it was appropriate for Mr B, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr B, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr B 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 accept that Mr B was likely motivated to transfer out of the BSPS given the circumstances at the time. And 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 B. But CST wasn't there to just transact what Mr B might have thought he wanted.

The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income at a time when I don't think he needed to. By transferring, Mr B 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 B didn't in my view have any firm retirement plans, so he shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I don't think it was in Mr B's best interests for him to transfer his DB scheme to a personal pension arrangement at this time when he had the opportunity of opting into the BSPS2.

I can see that CST says the 2017 CETV may have been the only opportunity to transfer out and at a time of near zero interest rates. But that in itself does not in my view clearly demonstrate that it was in Mr B's best interests to transfer out of his DB scheme altogether.

So, I think CST should've advised Mr B to opt into the BSPS2.

While Mr B indicated he might want to retire at 57, as I've already explained this was more than 12 years away and Mr B's plans could've changed. So, I don't think that it would've been in his best interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr B would've retained the ability to transfer out of the scheme nearer to his retirement age - if his needs later demanded it. Mr B 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 B chose to do so). The annual indexation of her pension when in payment was also more advantageous under the BSPS2.

As I said earlier on, CST believes it couldn't advise on the BSPS2 because there was no certainty it would come into existence – it wasn't an option at the time. I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time. But as I've already said, I think everything pointed to it going ahead, so this ought to have been the position CST adopted – I think it is fair and reasonable for it to have done so. In any event, CST based its TVAS analysis on the BSPS2 benefits, so it seems its advice did take into account the benefits available through the new scheme.

Of course, I have to consider whether Mr B would've gone ahead anyway, against CST's advice. CST argues this is the case saying Mr B was attracted by the beneficial characteristics of the personal pension and the alignment with his objectives.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the BSPS against CST's advice. I say this because, while as I've already said Mr B was likely motivated to transfer when he approached CST, on balance, I still think he would've listened to and followed its advice if things had happened as they should have and CST had recommended he not transfer out of the scheme. Importantly, Mr B was an inexperienced investor, so I'm not persuaded he possessed the requisite skill, knowledge or confidence to against the advice he was given, particularly in complex pension matters. Mr B's pension accounted for all of his private retirement provision at the time and I think his attitude to risk was on the cautious side.

So, if CST had provided Mr B with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I appreciate this circumstances surrounding the BSPS at the time – but I'm not persuaded that Mr B's concerns about his employer or 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. And if CST had explained that Mr B could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would've insisted on transferring out of the BSPS if CST had given suitable advice that he not do so and that he should opt into the BSPS2.

In light of the above, I think CST should compensate Mr B for the unsuitable advice, in line with the rules for calculating redress for non-compliant pension transfer advice. And for the reasons I've already explained, it is the benefits available to Mr B through the BSPS2 that should be used for comparison purposes.

I've thought about Mr B's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr B would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances. The only way to achieve this would be to put Mr B back into the scheme as if the transfer out hadn't happened – but that isn't possible. So, overall, I remain of the view that the redress proposed fairly compensates Mr B for the impact of the unsuitable advice he received.

For the sake of clarity, I can see that in CST's submission in defence of its advice, it referred to the FCA's DBAAT tool and asked whether the guidance here had been taken into account in our determination of the case. While this is a tool for businesses to use and it is not the only means by which a business can assess the suitability of DB transfer advice, I'm satisfied it is based on existing regulatory rules and guidance, which as I said at the outset, I have taken into account in deciding what I think is fair and reasonable in all the circumstances.

Finally, I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr B. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish CST – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr B. Taking everything into account, including that I consider Mr B's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

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

CST 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 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 B and our Service upon completion of the calculation.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B'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 should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B 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 their DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts CST's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, CST may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B'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.

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 B the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that CST Wealth Management Limited pays Mr B the balance.

If Mr B 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 B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 18 August 2023.
Paul Featherstone
Ombudsman