DRN-3744447

The complaint

Mr P complains that he was given unsuitable advice by AJH Financial Services Ltd ('AJH') to transfer the benefits from his defined benefit (DB) scheme with British Steel ('BSPS') to a personal pension.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr P's employer would be set up – the BSPS2.

In October 2017, members of BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017.

Mr P met with AJH in December 2017 for advice as he was worried about his pension. AJH recommended him to transfer his BSPS benefits to a personal pension and Mr P followed this recommendation.

In 2021 Mr P complained about the advice he was given. Mr P says he is unsure whether he has been given the correct advice. AJH rejected his complaint and subsequently one of our investigators considered Mr P's complaint and upheld it. He thought Mr P had been given unsuitable advice and asked AJH to compensate Mr P accordingly.

The investigator recommended AJH should calculate redress using the Financial Conduct Authority's ('FCA') redress methodology for DB transfers which was in place at the time and pay Mr P an additional £250 for the distress and worry this matter had caused him.

AJH disagreed and asked for the complaint to be referred to an ombudsman for a decision.

Subsequently, AJH decided to complete the calculations as recommended by the investigator to bring this matter to a close. These calculations showed Mr P had not suffered a financial loss by transferring his DB benefits.

AJH carried out another calculation based on updated rules by the FCA on how to calculate redress for non-compliant DB transfer advice. They used a BSPS redress calculator which was provided by the FCA and provided evidence on what information they based their inputs into the calculator. Again this calculation showed that Mr P had not suffered a loss.

The complaint was passed to me for a final decision. I've written to Mr P explaining that I thought the calculations were correct and that he had not suffered a loss with the aim to resolve this informally. However, Mr P didn't respond to my email and so I'm issuing my final decision on this complaint.

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.

AJH are still disputing the advice to transfer was suitable for Mr P. Nonetheless they have carried out loss calculations and have offered to pay the award for distress and inconvenience of £250 that the investigator recommended. So I see no need to address the suitability of their advice to Mr P in great detail.

However, having reviewed the complaint I would like to note that I agree with the investigator's that the advice was unsuitable. In summary my reasons for this are:

Mr P was 45 and it was recorded he wanted to retire at 55 with a gross monthly income of £2,000. This couldn't be achieved if he took DB benefits at age 55.

A retirement modeller showed that if Mr P used benefits from his defined contribution pension for a year or two, then took 12% tax free cash and income of £2,000 per month - reducing this when he and his wife were in receipt of their state pensions-, he would deplete his funds at age 87 (if he started drawing benefits at 56) or at age 90 if he started taking benefits at age 57. However, this model also assumed investment growth of 6% which given Mr P had a low medium attitude to risk was unlikely to be achieved in my view. So I think there was a significant risk that Mr P could deplete his pension during his lifetime, even if he only took benefits in the way set out above.

Other than his newly created defined contribution workplace pension, Mr P and his wife had no other savings or assets and Mrs P wasn't working. So the couple was heavily reliant on Mr P's pension and in my view had no capacity to take such a risk with his pension.

I also don't think his recorded objectives of flexibility and being able to provide different death benefits were more than stock motives. His DB scheme would have provided a guaranteed and valuable spouse's pension which his wife could have benefitted from. And if he achieved lower investment returns, took out more money from his pension than planned or lived longer than average which were all real possibilities, she might not be left with any benefits upon his death.

I appreciate Mr P was concerned about his employer's financial situation and the uncertainty surrounding the BSPS. Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. So I think it's likely he was worried about the security of his pension which is why he wanted to take control of it. However, it was AJH's obligation to give Mr P an objective picture and recommend what was in his best interest. Even if he did end up in the PPF, Mr P was still likely to be financially better off not transferring.

I can't see that AJH did enough to alleviate Mr P's concerns in this regard. I don't think they made it clear enough how valuable the benefits he had were and that he couldn't really afford to risk his pension by transferring out of his DB scheme.

Overall I can't see persuasive reasons why it was in Mr P's best interest to give up his DB benefits. And I think if this had been properly explained to him, I think he would have listened to his adviser.

Putting things right

The aim is to put Mr P back in the financial position he would have been in at retirement had he remained in the BSPS. AJH carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the redress amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by AJH which are personal to Mr P. These include Mr P's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65. This would provide the highest benefits for Mr P and are fair assumptions.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr P's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. I'm satisfied that Mr P has not suffered a financial loss by transferring his pension.

AJH has still offered to pay £250 as recommended by our investigator for the distress and inconvenience this matter has caused him. This award is in line with what I would recommend.

I think the calculation carried out by AJH is appropriate in the circumstances and no redress for financial losses is due to Mr P. I think their offer to pay him £250 for the distress and worry he experienced is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and require AJH Financial Services Ltd to pay Mr P £250 for the worry this matter has caused him as soon as possible.

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

Nina Walter
Ombudsman