DRN-3801825

The complaint

Mr R complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

Mr R originally and primarily dealt with a firm called Eadon & King. At the time this firm was an appointed representative of Tuto Money Limited. Tuto Money Limited is therefore responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Tuto Money".

What happened

In March 2016, Mr R's employer 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, 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 personal pension arrangement.

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

In around October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr R was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Tuto Money which is responsible for providing the pension advice. Information gathered about his circumstances in November 2017 were broadly as follows:

- Mr R was 54 years old, married and with grown up children. Mr and Mrs R owned a home with a £58,000 mortgage with around 10 years left to pay.

- Mr R earned around £37,800 per year and Mrs R earned £7,200. After expenses he and Mrs R had a reasonable amount of disposable income left over each month. They had savings of £2,000.

- The cash equivalent transfer value (CETV) of Mr R's BSPS was approximately £133,019. The normal retirement age (NRA) was 65.

- Mr R had also recently joined the TATA defined contribution (DC) pension scheme which had come about as a consequence of the BSPS closing to new contributions. This had around £4,000 in it at the time, but significant contributions were going into this every month from both Mr R and his employer. Mr R also two other historic pensions with values which were around £34,000 and £16,000 respectively. None of these pensions are being complained about here.

Tuto Money set out its advice in a suitability report dated 23 January 2018. In this it advised Mr R to transfer out of the BSPS and invest the funds in a type of personal pension plan. Tuto Money said this would allow Mr R to achieve his objectives. Mr R accepted this advice and so transferred out several weeks later. In 2022 Mr R complained to Tuto Money about its advice, saying he shouldn't have been advised to transfer out to a personal pension. However, Tuto Money didn't uphold his complaint.

Mr R later referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, Tuto Money said it hadn't done anything wrong and was acting on the financial objectives Mr R had at the time.

I'm sorry it's taken so long for this complaint to reach this stage. Given the delay, I recently contacted both parties. Tuto Money, whilst still not accepting it acted unsuitably, has agreed to carry out a redress calculation. It says it has used the FCA calculator as instructed by the regulator and come to the conclusion that, in any event, Mr R hasn't lost any money. Tuto says this is because his personal pension now is worth more than the redress which would likely be applicable under the calculator the FCA has been directing firms to use.

Tuto also now accepts that the calculation should be as if Mr R had joined the BSPS2, instead of transferring away, and also that the age of 65 should be the comparator as this was the NRA of Mr R's DB scheme. A retirement age of 65 was also mentioned in Tuto's own documents from the time of the advice. I make these things clear because I don't think our investigator explained them very well. I've also updated Mr R about these issues.

However, as the complaint hasn't thus far been resolved informally, it's time for 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 also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

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

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Tuto Money'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Tuto Money should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr R's best interests. I have also carefully considered the final response letter from Tuto Money. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr R's complaint.

Introductory issues

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2.

However, I've noted in this case, that although the suitability report was from 23 January 2018, there's plenty of evidence showing the appointed representative of Tuto Money was engaging with Mr R well ahead of the deadline. For example, many of the key documents are dated at various points in late 2017, with the 'fact-find' and meeting notes being dated 20 November 2017. There was also a transfer analysis document ("TVAS") which was dated 12 December 2017. In my view, what this means is that many of the dealings Tuto Money had with Mr R were in 2017 and so before the 'hard' deadline of 22 December 2017.

I don't have any direct evidence which shows Mr R made a specific choice about what he wanted to do about his pension before the 22 December 2017 deadline. But as Tuto Money was involved in the advice process ahead of the date, I think it could and should have advised Mr R to make a choice and nominate moving to the BSPS2. This should have been done if only even as a precautionary measure, until its formal advice had been provided to him.

I should say that none of this really matters to the actual *suitability* of the advice – the advice to transfer away, as I'll explain below, wasn't suitable. But to be clear, redress is therefore due to Mr R as if he'd transferred to the BSPS2 and the NRA of 65 should be used.

Why I'm upholding the complaint

Because I now know Tuto Money has agreed to carry out a loss calculation in line with the approach being promoted by the FCA, I therefore don't see the need to address the suitability of Tuto Money's advice to Mr R in quite the same detail as I would normally. Tuto Money's transfer advice was unsuitable for the following reasons:

- At the age of 65, which in this case was the NRA, the critical yield (the investment return required to replicate the benefits available to him through the BSPS2) was 8.92%. If using the PPF as a comparison, and still assuming a retirement at 65, the critical yield was 7.89%. Conversely, the discount rate was only 3.7% (for around 10 years to retirement). So, I think this was already showing that by transferring away from the DB scheme, Mr R was unlikely to be able to grow his pension to a degree which made transferring financially viable.

- I've kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. I've also considered the higher costs associated with a personal pension and that Mr R's limited knowledge of investing would have probably required on-going support and management from a professional adviser. I think these additional costs would have reduced potential growth even further. So, everything I've seen shows – that when viewed from the point of advice – Mr R would likely receive lower pension benefits in the longer term as a result of transferring away from the DB scheme.

- I've noted too, that the transfer analysis said that in order to buy an annuity to provide benefits of equal value to those estimated by the existing DB scheme, the estimated fund required would be £222,747. Even to purchase an annuity to provide benefits of equal value to the estimated benefits of his existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the analysis said the fund required would still be around £149,184. In my view, these figures provide a revealing window into the value of the scheme Mr R was being advised to give up.

- I've also considered some projections Tuto Money used to help show that if he transferred out to a personal plan, the funds could last Mr M well into retirement. It's fair to say these were not comparing like-with-like. What Tuto was showing Mr M were comparisons with plans which lacked the guarantees and benefits of a DB scheme. These also ran out at certain points, whilst his DB pension was for life.

- I've also seen nothing that showed Mr R required changing how his retirement benefits ought to be paid. He already had a new and more flexible DC pension with his existing job. This DC pension was being significantly contributed towards by both Mr R and his employer. There's no reason why by retirement this DC pension couldn't have contained a significant sum. He also had two other DC pensions from previous jobs of reasonable values (£34,000 and £16,000). So, these other pensions would have afforded Mr R any flexibility he might have needed including his desire for some short-term family spending and some home improvements. These could be accessed in less than a year from the point of the advice. Mr R also seemed to have the ability to borrow short-term if he really needed to or borrow more on his mortgage. As interest rates were extremely low, these were much better options than irreversibly giving up a DB scheme.

- This means I've seen nothing explaining why Mr R wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr R could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of reasonable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he had three other DC pensions. So, if Mr R ever found he needed any flexibility, then he'd be able to use the latter, rather than transferring away from the former.

- I've also seen no evidence that Mr R had either the capacity or desire to exercise control over his funds. I think he would have found the complexity, scale and responsibility of managing over £133,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr R would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- Death benefits - the BSPS2 contained certain benefits payable to a spouse and children if Mr R died. Mr R was married so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs R if he predeceased her. Her own pension was modest, so I don't think Tuto Money made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

- I think the adviser told Mr R that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr R. But this needed carefully explaining; the priority here was to advise him about what was best for his retirement provisions. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr R had lived a long life there could be nothing left at all in his personal pension plan. It also doesn't appear that Tuto Money took into account the fact that Mr R could have nominated a beneficiary of any funds remaining in his other three DC schemes. He could also have taken out a modest 'term' life insurance policy if he wanted to leave a lump-sum legacy to his wife or children. At 54 this would still have been affordable. So, to this end, Mr R already had options ensuring part of his pension wouldn't 'die with him'.

- It's clear that Mr R, like many employees of his company, was concerned about his pension. However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Tuto Money should have reassured Mr R that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr R through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out.

Summary

I don't think the advice given to Mr R was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr R was likely to obtain lower retirement benefits. Flexibility was not defined and in my view it was no more than a 'stock' objective used to help justify the transfer. Valuable death benefits were being lost by transferring away and I don't think there were any other particular reasons which would justify the transfer and outweigh this.

I think Tuto Money ought to have advised him against transferring out of his DB scheme for these reasons, particularly as it meant he'd be worse off in retirement. So I don't think it was in Mr R's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

On this basis, I think Tuto Money should have advised Mr R to opt into the BSPS2. In light of the above, I think Tuto Money should compensate Mr R for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for Tuto Money's unsuitable advice. I consider Mr R would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Tuto Money should use the benefits offered by BSPS2 for comparison purposes.

Tuto Money 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.

Tuto Money 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 R and our Service upon completion of the calculation.

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

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

Redress paid to Mr R as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Tuto Money 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 R'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I am upholding this complaint and I now direct Tuto Money Limited to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Tuto Money Limited pays Mr R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

If Mr R accepts my final decision, the money award becomes binding on Tuto Money Limited.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 20 December 2023.

Michael Campbell
Ombudsman