DRN-3835314

The complaint

Mr P complains about the advice given by CST Wealth Management Limited ('CST') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr P's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) 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 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.

Mr P sought advice from CST about his pension, in light of the uncertainty around it. CST completed a fact-find to gather information about Mr P's circumstances and objectives. It also assessed his attitude to risk ('ATR'). He was 31, in good health, single and employed, earning approximately £33,000 per year. His ATR was deemed to be 'high medium'. In addition to the benefits held in the BSPS, Mr P was also a member of his employer's new defined contribution ('DC') pension scheme, to which he and his employer were making combined contributions equivalent to 16% of his salary.

Mr P was a long way from retirement and so noted he didn't know what income he'd require in retirement, although retiring early, around age 60, was something that potentially appealed to him. He also noted that he was unmarried and had no dependents but did think this was likely to change in the medium term. CST recorded that Mr P was concerned with his employer's handling of his pension and was looking to potentially transfer for this reason.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. Updated transfer valuations were provided by the BSPS trustees to qualifying members in September 2017. And in October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

On 31 October 2017, CST advised Mr P to transfer the cash equivalent transfer value ('CETV') of his BSPS benefits (£56,157.43) into a personal pension with a named provider and invest the proceeds in one of its managed portfolios. Mr P accepted this advice.

CST set out the reasons for its recommendation in a suitability report which said Mr P had made no plans for retirement but would like the option of retiring early without restriction. So, it said he wanted to explore the option of transferring because:

- he would like flexibility in respect of his income,
- he was concerned about the scheme entering the PPF,
- his income needs between retiring and state pension age were greater than the benefits the DB scheme offered and
- in the event of his death there would be little legacy for his family.

CST said a personal pension gave him flexibility, control and access to alternative death benefits so it recommended he transfer. CST also recommended that he take ongoing advice from it on his pension, at a further cost.

Mr P complained in 2022 to CST about the suitability of the transfer advice. He said he felt he'd been given bad advice to transfer out of the scheme rather than join the BSPS2 or the PPF and had lost valuable guaranteed benefits and was likely to be worse off.

CST didn't uphold Mr P's complaint. It said Mr P had considered the BSPS fund of low value when he contacted it and had wanted to take the risk of investing it. And CST had agreed that he was unlikely to need to rely on the BSPS benefits in retirement.

Mr P referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. He felt Mr P was unlikely to improve on the benefits that he could've taken via the scheme at retirement by transferring. And he didn't think, particularly given how far away retirement was for Mr P, that there were any other reasons that meant transferring was in his best interests. So, he recommended that CST compensate Mr P for any losses caused by the unsuitable advice and pay him £300 for the distress he'd incurred.

CST disagreed. It said it was required to take reasonable steps to ensure the advice was suitable for Mr P, which it thought it had done, not guarantee that it would be suitable. It said the Investigator had placed too much weight on an assessment of the critical yield and it was under no obligation to consider the discount rates the Investigator had referenced. CST didn't agree that Mr P would've joined the BSPS2 had he been given alternative advice and indicated it felt he'd have still looked to transfer given the atmosphere at the time. And it said that the BSPS2 was not a confirmed option at the time of the advice anyway.

The investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision.

I note, more recently, CST has indicated that, despite not agreeing that the advice was unsuitable, it would look to carry out a calculation to see if Mr P was worse off. But as it continues to dispute the Investigator's opinion and the matter is not resolved, in fairness to all parties, I'll now make a 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.

CST has said that the regulator, the Financial Conduct Authority ('FCA'), has undertaken a review of its advice process in relation to members of the BSPS and didn't highlight any concerns. It has therefore questioned how our service can come to a different conclusion – that transfer advice was unsuitable. But our role is different to that of the FCA. It is to look at the individual circumstances of a complaint and decide what we consider is fair and reasonable. That is what I've done here.

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.

CST says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr P. I agree that under COBS, CST was required to take reasonable steps to ensure that its personal recommendation to Mr P was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. And, as I’ve mentioned above, additional regulations and guidance apply to advising on transferring out of DB schemes. These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that CST should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr P’s best interests (COBS 19.1.6G). And having looked at all the evidence available, I’m not satisfied it was in his best interests. I’ll explain why.

- CST was required, by the regulator, to produce a transfer value analysis (‘TVAS’). This included calculating critical yields which showed how much Mr P’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.

- The critical yield to match the full starting pension the BSPS2 would’ve paid from age 65 was 5.1%. And to match the maximum tax free cash (‘TFC’) and reduced starting pension the BSPS2 would’ve provided it was 4.56%. To match the full starting pension the PPF would’ve provided at age 65 the critical yield was 4.46% and to match the maximum TFC and reduced pension from the PPF was 4.21%. The critical yields were though the estimated returns required just to replicate the benefits being given up, not improve on them.

- 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. CST has said it was not required to consider these discount rates. But the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while CST was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And CST was free to consider it. The relevant discount rate at the time was 4.7% for 33 years to retirement – relevant if Mr P retired at age 65.

- CST said that Mr P's attitude to risk was 'high medium' (although the suitability report suggested that his capacity for loss was less than this and only 'medium'). In CST's risk profile report, an explanation was included that said the target portfolio for a 'high medium' risk profile investor had an estimated annual growth rate of 3.25%.

- There would be little point in Mr P giving up the guarantees available to him through his DB scheme and take on the associated risks only to achieve, at best, the same level of benefits outside the scheme. And by transferring Mr P would have to pay annual fees and charges for the personal pension, which would reduce any gains the funds made. And those are not charges he would have had to pay if he didn't transfer.

- Here given Mr P's recorded attitude to risk, what CST's report said about the expected returns for a portfolio for someone with that profile, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low ,medium and high rate returns respectively, I think there was very little scope for Mr P to improve on the benefits he'd have received under either the PPF or the BSPS2. And, if his fund had an extended period of poor performance or suffered losses then he would likely find himself worse off in retirement.

- In fact, in respect of the benefits the BSPS2 would've offered, I think Mr P was always unlikely to achieve the critical yield required to match the benefits being given up. And indeed, in the suitability report, CST said in its opinion the critical yield could not be guaranteed to be achievable year on year.

- CST has referred to the past performance of the recommended fund in its response to the complaint, as well as the performance since the advice was given. But what has happened since was neither known nor guaranteed at the time of the advice. And, as CST will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

- CST has said we have placed too much weight on an analysis of the critical yield. But the regulator required CST to calculate critical yields and consider the cost of the guarantees being given up. So, I do think an analysis of the critical yield is a relevant consideration here. And the critical yields aren't the only thing that, in my view, indicates Mr P would potentially be worse off in retirement by transferring. The TVAS said that to purchase an annuity at age 65 to match the TFC and reduced pension the BSPS2 would've offered would cost an estimated £175,029.73. And to match an annuity paying equivalent benefits to the full pension, this figure would be £207,914.40. A personalised illustration from the personal pension provider said though that if the mid-rate of growth was achieved until age 65, after accounting for fees and charges, the value of the pension was likely to only be £83,300.

- CST has said that its models indicate that Mr P was unlikely to need to rely on the BSPS benefits in retirement, given he'd be building up other provisions in the time until retirement. And it said he wanted to transfer to try and exceed the rate at which the DB scheme benefits would revalue. CST's role wasn't that of wish fulfilment or to put in place what Mr P might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests. Exceeding the revaluation rate wouldn't mean Mr P would improve on the benefits he had. And, even if he was expected to have other provisions, that doesn't mean it was in his interests to give up the guaranteed benefits – particularly considering those expected other provisions were already subject to investment risk and gave him the option to influence how they were invested.

- CST said Mr P was interested in potentially retiring before the normal retirement age of the scheme without there being restrictions on his pension income and that the scheme benefits alone wouldn't have met his expected income needs. But Mr P was only 31 at the time of the advice, a significant amount of time away from when he'd be able to access his pension benefits. I think, when asked, most people would say they would like to retire early. But Mr P was too far away from retirement to decide this. And the information recorded in the fact-find reflects this.

- The BSPS2 and the PPF would've allowed him to access benefits prior to the normal scheme retirement dates. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age. This reduction was not a penalty.

- Mr P was a member of his employer's new workplace pension. And it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles, until he retired. These benefits were likely to be significant by the time he reached potential retirement age and could've been accessed flexibly. So, I don't think Mr P needed flexibility in terms of how he could access his DB scheme benefits.

- And I think it was too soon for Mr P to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2, because by joining it he would retain the option to transfer out at a later date if his circumstances required it. CST has said that the BSPS2 was not confirmed at the time of the advice so was not a genuine option for Mr P. But I think it is overstating the chance of this. The restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a significant lump sum payment into the BSPS which enabled the provision of improved transfer value quotations. Members had been sent "time to choose" letters, with opting into the BSPS2 one of the options offered to them. And CST's analysis of Mr P's benefits was based on the BSPS2 going ahead. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead.

- The fact-find suggested that the death benefits were not an important consideration to Mr P as he was not married. But the suitability report referred to a transfer providing him access to lump sum death benefits. And the complaint response has suggested that this was a positive for Mr P.

- Mr P was still young at the time of the advice. His circumstances could've changed, and the fact-find indicated he expected them to in the medium term. So, the spouse's pension the DB scheme provided could've become useful.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum death benefit, the sum remaining on death following a transfer was always likely to be different. Mr P held death in service benefits through his employer. And Mr P was in good health and expected to build benefits in his employer's new pension scheme, which would provide lump sum death benefits. So overall, I don't think different death benefits available through a transfer meant it was in Mr P's best interests.

- I don't doubt that Mr P was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But I don't think, based on what I've seen, that he was committed to that course of action. And again, CST's role was to give impartial, objective advice. Mr P's employer and pension scheme were not one and the same. And Mr P intended to continue in his job and was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.

- Mr P may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr P the option to transfer closer to retirement. But even if this hadn't happened, the PPF still provided Mr P with guaranteed income and the option of accessing his benefits early. Mr P was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

- And I can't see that Mr P had any investment experience or an interest in or the knowledge to be able to manage his pension funds on his own. Indeed, the recommendation to transfer was on the understanding he would take ongoing advice about how his pension was invested from CST, at a further cost. So, I don't think that having control over his pension was a genuine objective for Mr P – it was simply a consequence of transferring away from his DB scheme.

Overall, I can't see persuasive reasons why it was clearly in Mr P's best interest to give up his DB benefits and transfer them to a personal pension, particularly given how far from retirement he was.

CST says that Mr P made an informed decision to transfer and his unhappiness with his employer meant he'd have always looked to transfer. As I've explained I don't think, based on what I've seen, that Mr P's mind was made up about this. I can see that CST did give information about some of the risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr P to transfer. And I think he relied on that advice. If CST, a professional adviser whose expertise he had sought out, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr P received from CST was unsuitable.

Mr P had over 25 years before he could access any pension benefits. And, as I've said, I don't think his plans for retirement were known. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't necessarily be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr P would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think, had he received suitable advice not to transfer, Mr P would've opted into the BSPS2.

Our Investigator recommended that CST make a payment for the distress caused to Mr P. I accept that Mr P has likely been worried to find that the advice might not have been suitable for him. And given the circumstances and uncertainty under which he first asked for this advice, I don't doubt he has been concerned. This wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £300 is fair and reasonable.

Putting things right

A fair and reasonable outcome would be for CST to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would have most likely 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 P and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what CST based the inputs into the calculator on.

For clarity, Mr P has not yet retired, and he has no 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 P's acceptance of the 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 P redress as a cash lump sum payment,
- explain to Mr P 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 his DC pension
- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts CST's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

Redress paid to Mr P as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. 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 P'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.

In addition, CST should pay Mr P £300 for the distress caused by the disruption to his retirement planning.

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

<u>Determination and money award</u>: I uphold this complaint and require CST Wealth Management Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that CST Wealth Management Limited pays Mr P the balance.

If Mr P 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 P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 13 December 2023.

Ben Stoker
Ombudsman