DRN-3869668

The complaint

Mr K complains about the advice Lowes Financial Management Limited ('Lowes') gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this might have caused a financial loss.

What happened

Mr K was a deferred member of his former employer's DB scheme, known as the British Steel Pension Scheme ('BSPS').

In March 2016, Mr K's former 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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr K's former employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

Mr K was concerned about what the recent announcement would mean for the security of his pension; so he approached Lowes for advice.

The BSPS provided Mr K with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £501,619.

Lowes completed a fact-find with Mr K recording details of his circumstances and objectives. In brief it noted that Mr K was 46 years old, married to Mrs K with two non-dependent children. Both Mr and Mrs K were working. He didn't have any concrete plans for retirement and didn't know at what age he might retire. He believed he would need an income of £14,000 a year in retirement.

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.

After obtaining a transfer value analysis report Lowes gave Mr K a suitability report setting out its analysis and recommendations. It recommended Mr K should transfer his DB pension to a named personal pension. Amongst other things, Lowes said that transferring to a personal pension would:

- Prevent Mr K's DB pension from moving into the PPF.
- Allow him to leave any residual pension funds to his family on his death.
- Meet his income needs of £14,000 a year in retirement.

Mr K accepted Lowes' recommendation and transferred his DB scheme funds to the named personal pension.

Following media reports Mr K became concerned that the advice to transfer out of the DB scheme might not have been suitable for him. He complained to Lowes via the Financial Ombudsman Service. Lowes didn't uphold his complaint. In short it said its advice was suitable as it enabled Mr K to meet his objectives.

Mr K asked us to consider his complaint. One of our Investigators looked into it. In brief he felt that Lowes' didn't do enough to address Mr K's concerns about his pension moving to the PPF. The Investigator felt Mr K was likely to be worse off by transferring and he didn't think there would be any other reasons that would mean a transfer was in Mr K's best interests. So the Investigator said Lowes should establish if Mr K had suffered a financial loss as a result of its unsuitable advice and if so pay him compensation. The Investigator also recommended Lowes pay Mr K £300 to address his distress and inconvenience arising from learning he might have compromised his security in retirement by transferring.

Lowes didn't initially accept our Investigator's assessment of the complaint. So, as it couldn't be resolved informally it was referred for an Ombudsman's determination.

While the complaint was awaiting an Ombudsman's review Lowes contacted us. It said that since our Investigator sent his complaint assessment it had reviewed some of its other BSPS cases and concluded that the regulator would deem those 'non-compliant' or unsuitable. It said it had applied the same standards when giving Mr K advice. It said it was "highly likely" his case would also be "deemed non-compliant and unsuitable". So, in the interest of fairness it was prepared to do the appropriate calculation to establish if Mr K had suffered a loss.

We replied and advised Lowes to contact Mr K directly in order to obtain the required information to make the calculation.

The matter has now been 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 regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Lowes should have only considered recommending a transfer if it could clearly demonstrate it was in Mr K's best interests.

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.

Reasons for my decision

In Lowes' recent correspondence with the Financial Ombudsman Service it has recognised that it was "highly likely" that the regulator would find its advice non-compliant and so unsuitable for Mr K. I agree with its analysis. So, it appears the parties to the complaint are agreed that Lowes' advice wasn't suitable for Mr K. In other words a transfer wasn't in his best interests. In those circumstances I don't intend to do an in-depth analysis of all the relevant considerations when Lowes gave its advice. Save to say that:

- I think Lowes should have done more to challenge Mr K's concerns about his pension potentially moving to the PPF. At the time all signs pointed toward the BSPS2 being established so he could have moved his pension to another DB scheme. But I understand he was also concerned that the BSPS2 might also move to the PPF at some point in the future. But even if that had happened the PPF would still provide Mr K with a guaranteed income, the possibility of early retirement and the option of accessing tax free cash.

- Further Lowes' transfer analysis showed that the PPF would pay Mr K a full yearly pension at age 65 of £24,598, or a reduced pension of £19,448 together with a tax free cash lump sum of £139,492. So, the income the PPF guaranteed for Mr K was comfortably above the £14,000 a year he said he'd need in retirement. That income was index linked and was guaranteed for life. It follows that I don't think any concerns he held about this meant that transferring was in his best interest. I think Lowes should have made this apparent to him.

- Lowes also said transferring would allow Mr K to leave any residual pension funds to his family on his death. But Lowes's priority should have been to advise Mr K about what was best for his retirement, not what was the best vehicle to leave a legacy on his death. And the spouse's pension from the DB scheme would pay could have been valuable to his wife in the event of his death. That didn't rely on how much was left in Mr K's fund or investment performance, whereas any death benefits from his personal pension did. And there may not have been a large sum left in the personal pension if Mr K lived a long life, he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event, Lowes should not have encouraged Mr K to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

- A personal pension was unlikely to meet the growth rates required to match the DB scheme income, whether that was from the BSPS2 or the PPF. So Mr K would most likely be worse off in retirement by transferring.

Overall I can't see persuasive reasons why it was in Mr K's best interest to give up his DB scheme guarantees.

I also think that Mr K learning he might have put his security in retirement at risk unnecessarily would have been a source of distress and inconvenience for him. To address that I think it's fair that Lowes pays him £300 compensation.

Putting things right

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

I recognise that Lowes has already begun the process to enable it to establish if Mr K has suffered a financial loss as a result of its advice. But, for the avoidance of doubt, I require Lowes to 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.

Lowes 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 K and our Service upon completion of the calculation together with supporting evidence of what Lowes based the inputs into the calculator on.

For clarity, Mr K has not yet retired, and 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 K'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, Lowes should:

- calculate and offer Mr K redress as a cash lump sum payment,
- explain to Mr K before starting the redress calculation that:
    - his 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 his personal pension
- offer to calculate how much of any redress Mr K receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr K accepts Lowes' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr K 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 K's end of year tax position.

Redress paid to Mr K as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Lowes 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 K's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

I also think Lowes should pay Mr K £300 to address the distress and inconvenience he experienced as a result of its unsuitable advice.

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 uphold this complaint and require Lowes Financial Management Limited to pay Mr K 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 Lowes Financial Management Limited pays Mr K the balance.

If Mr K accepts this decision, the money award becomes binding on Lowes Financial Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr K can accept my decision and go to court to ask for the balance. Mr K 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 K to accept or reject my decision before 30 November 2023.

Joe Scott
Ombudsman