DRN-3881401

The complaint

Mr P complains about the advice given by Quantock Analytical Ltd ('Quantock') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') and another DB pension, to a personal pension arrangement. 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 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'). 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 P's 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 P was concerned about what this announcement by his employer meant for the security of his pension. So he sought advice and was introduced to Quantock by another adviser in July 2017.

Quantock recorded some information about Mr P's circumstances. It noted that he was 46, married with two children. Mr P was employed earning approximately £43,000. His wife was also employed and she earned around £19,000. And they received some rental income from a number of properties they owned (it was recorded they jointly owned four properties, but Mr P said it was three.) They had a mortgage on their home of approximately £17,000, which they were making overpayments to with the aim to reduce the term to around seven years. The rental properties were also mortgaged on an interest only basis for around £210,000. Mr and Mrs P had around £10,000 in savings / cash-in-bank and their combined income exceeded their outgoings by around £1,400 a month.

On 18 September 2017, the BSPS provided Mr P 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 £161,040.89. Mr P's other DB scheme had a CETV of £41,450.

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.

Quantock issued a letter summarising its recommendation (a suitability report) on 2 November 2017. This said Mr P's reasons for wanting to transfer, and Quantock's advice, was the sum of a number of benefits. These included the high transfer value; the comfort of moving his pension benefits under his control; the flexibility or timing of taking benefits, which could improve the prospects for retiring earlier; to provide for his wife in the event of his premature death; and to provide a 'reservoir' of capital and the security this could provide.

Quantock recommended that Mr P transfer both his DB pensions for the reasons above. It said the prospect for sustaining a sufficient income in retirement was good with better prospects for early retirement and having the choice to place more emphasis on the early years of retirement. It said Mr P was burning fewer bridges taking this option as he could always use his pension fund to buy a guaranteed income if he wanted to. Quantock recommended a pension provider and fund that it said was in line with Mr P's attitude to risk.

Mr P complained to Quantock in 2022 about the suitability of the transfer advice. In essence he didn't think the advice to give up a guaranteed pension income was suitable for him.

Quantock didn't uphold Mr P's complaint. It provided a lengthy response. But, in summary it said its advice was suitable. It said the recommendation to transfer was essentially made because Mr P's future income needs were met from other sources and his objectives of wanting to retire early and/or buying a property abroad were better served by building a pot of capital. It said this would improve the balance of his overall household finances between security of income and security of capital. It said Mr P's objectives and the wisdom of giving up a guaranteed pension in exchange for an injection of capital were the same for both his DB pensions.

Dissatisfied with its response, Mr P referred his complaint to us. He said he believes the advice was flawed and as a result he's suffered a significant financial loss.

One of our Investigators looked into the complaint. They upheld the complaint because they thought the advice was unsuitable. They said Mr P wasn't likely to improve on the benefits he was already guaranteed by transferring. They said they didn't think Mr P was a 'moderate' risk investor given the answers he'd given in the risk assessment. They said Mr P indicated here that his risk appetite was *'careful'* and *'small'*. They said while Mr P had rental income, the guaranteed benefits provided by his DB schemes should've been retained to ensure a guaranteed base level of income. They didn't think Mr P needed to risk his pension benefits.

They said Mr P had no clear intention of retiring early, but if he wanted to retire at 60 he could've done so without transferring. They said if he later wanted to benefit from a drawdown arrangement he could've transferred at this point. They said Mr P had no need for flexibility; lump sum death benefits wasn't a suitable reason to transfer; and any concerns he had about the BSPS wasn't a sufficient reason to transfer either. They said if suitable advice had been given, Mr P would've retained his DB schemes and moved his BSPS benefits to the BSPS2.
While Mr P's representative agreed with the Investigator's conclusion to uphold the complaint, it said that as a point of fact, Mr P had three investment properties and not four. And it asked the Ombudsman to consider increasing the distress and inconvenience award of £250 to better reflect his concerns about not being able to enjoy a happy and comfortable retirement.

Quantock disagreed. It again provided a lengthy response, which while I've read in full, I haven't set everything out here. In summary it said Mr P was more secure in retirement with the capital from the transfer of his pensions than with the extra income because his income needs were already met from other sources. It said Mr P's objectives were better met by a capital fund. It said the Investigator had ignored Mrs P's pension. It said had they taken this into account, they would've identified that Mr P had a high capacity for loss. They said the Investigator's conclusion that he had a low capacity for loss flowed through their analysis and as a result they ignored his clear objectives and referred to assumed inappropriate objectives, such as death benefits and Mr P's concerns about the BSPS and his employer's financial security, regardless of the content of the advice paperwork.

Because the Investigator wasn't persuaded to change their mind, the complaint was referred to me for 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 Quantock'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.

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, Quantock should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P'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. My reasons are set out below.

- Quantock carried out two transfer value analysis ('TVAS') reports, as required by the regulator, for each of Mr P's DB schemes. For the BSPS, this said that the critical yield - 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 – was 6.15% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 4.71%. To match the full pension the PPF would've paid from 65 the critical yield was 5.08% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.7%.

- For Mr P's other DB scheme, the critical yield was 9.69% to match the full pension he'd have been entitled to under the scheme at age 60. And to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 8.35%.

- Given Mr P's recorded 'moderate' attitude to risk, the discount rates of 4.4% for 18 years to retirement (65), and the regulator's middle projection rate, I think, at best, the opportunity to improve on the pension benefits he'd have been entitled to under the BSPS2 or the PPF from age 65, by transferring and investing in line with that attitude to risk was limited. And given what the TVAS noted about the critical yields for retirement at 60 for his other DB scheme – that these were significantly higher at 9.69% and 8.35% respectively – taking the same things into account (the discount rate was slightly lower at 4.1% for 13 to retirement) I think he was always likely to receive pension benefits, from age 60, of a lower value that those he'd have been entitled to under the scheme by transferring and investing in line with that attitude to risk. And indeed I note Quantock in a discussion note referred to the critical yields as being: "*A tall order, and that's just to break even.*"

- In my view, for this reason alone, I don't think it was in Mr P's best interests to transfer his DB pensions to a personal pension arrangement.

- Notwithstanding my finding above based on Mr P's recorded attitude to risk, I have some concerns about how Quantock ultimately deemed he was prepared to adopt a 'moderate' risk approach with his pension benefits. I say this because of the answers he gave to what I consider were key questions asked of him in Quantock's risk assessment questionnaire. For example, Mr P described his typical risk attitude as *'fairly cautious',* he said he felt he'd previously taken a "*small"* amount of risk with past financial decisions and friends would describe his attitude to taking risks as *"careful".* I'm mindful too that Mr P's answers to several other questions showed a neutral stance – i.e. neither agreed or disagreed or 'in between.'

- I think Mr P's answers reasonably describe someone who was only prepared to take at best a low or cautious risk approach with his pension benefits. So, any modelling Quantock produced to demonstrate to Mr P how he could sustainably provide the income he needed through drawdown wasn't in my view appropriate here – I don't think in the circumstances it was a suitable route for him to take. I don't think he was truly prepared to take the level of risk this approach required.

- In further support of this, Quantock's 'Investment Risk and You' document described Mr P's primary objective as: *"...to achieve a comfortable lifestyle in retirement without having to feel concerned about running out of income or capital."* I think this reasonably describes Mr P as someone who would be better off retaining their DB scheme benefits. I think a guaranteed escalating income for life provided by a DB pension clearly satisfies this objective.

- I can see Quantock has argued that Mr P's capacity for loss was high because his income needs were met from other sources, which included his wife's pension - something the Investigator ignored. But I disagree with Quantock's assessment here. Firstly, reliance on state pensions does not, in my view, in and of itself demonstrate Mr P had a high capacity for loss. Secondly, I don't think Mr P's rental income can reasonably be considered guaranteed. He also had a significant outstanding buy-to-ley interest-only mortgage, which meant he was subject to interest rate risk. Furthermore, he had no apparent means or vehicle in place for its ultimate repayment. Mr P might have been able to extend the term of the debt – but at some point the lender would require full repayment. And without the means to do so, it could mean he'd have to sell the properties thus ending this income stream.

- Mr P had no significant savings at this stage. And while he had a small existing personal pension and he'd hopefully build the value of his workplace DC pension over time, his two DB pensions accounted for the majority of his private retirement provision at this time. So, even accounting for his wife's DB pension, I'm not persuaded he could afford losses. I think he'd likely rely on both DB scheme pensions as a solid foundation to support his future retirement income needs. Overall, it is my view that Mr P's capacity for loss was not high as Quantock argues and that it was in fact low as the Investigator concluded.

- It seems the primary rationale for Quantock's recommendation to transfer was to enable Mr P to build a capital fund in lieu of extra income. It says Mr P's objectives were better met by a capital fund than with extra income and the transfer would therefore provide him with greater security in retirement. But the fundamental purpose of a pension is to provide an income in retirement – that's what it is designed to do. I'm not persuaded how relinquishing two pension which provided a guaranteed and escalating income for life increased Mr P's security in retirement – in my view it did the opposite.

- Mr P already had an existing personal pension valued at around £50,000. And he and his employer were contributing a combined 20% of his salary to his workplace pension. Over the next 15- or 20-years of work Mr P was *"good for"* as recorded in the advice paperwork, this had the potential to create a not insignificant capital fund. Likely around £124,000 at age 60 not accounting for growth, salary increases or increases in contributions. So Mr P was already building a capital fund in any event towards his future retirement. But if further building of capital was a priority, then given Mr P had significant monthly disposable income after essential household expenses and some discretionary spending, then Quantock could've advised him to build his cash-based savings. This could further support his future retirement needs. Again, with 15-20 years of work ahead of him, his capacity to save and build capital was high. I'm not persuaded Mr P needed to transfer his DB pensions at this time, some 15-20 years prior to his retirement for the purpose of building capital.

- Mr P's objectives included wanting to retire early, adjust the shape of his income and have access to a higher tax-free lump sum. But Mr P had no firm plans to retire early – he was prepared to continue working as documented at the time.
  I'm certain Mr P liked the idea of retiring early. But he already had this option available to him – he didn't have to transfer to achieve things. And no doubt he was attracted to the flexibility a personal pension provided – the ability to adjust or shape his income. But I think this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr P's. I don't think at 46 Mr P really knew what his income needs would be. There's nothing to show he had a strong need to vary his income. And nothing indicates he had an apparent need for a cash lump sum and defer taking an income.

- Mr P might also have been attracted to the potential for a higher cash lump sum a transfer could provide. But again, no need was clearly identified as to why this was important. It was recorded that Mr P liked the idea of buying a property abroad. But Mr P had no timescale for this and I'm not persuaded it was a concrete plan. In any event, Quantock didn't understand what capital amount Mr P might need for this to demonstrate how he could better achieve things by transferring or indeed whether it was even realistic.

- While Mr P had no apparent need for flexibility, he already had this through his workplace pension. Because this was a DC scheme it already provided flexibility in how and when he could access his benefits. And as I said earlier on, given the contribution rate being made to this, this had the potential to be a not insignificant pension pot at retirement. I think this could've given Mr P the flexibility and ability to retire early - *if* that's what he ultimately decided. So I don't think transferring to obtain flexibility was in his best interests.

- Mr P's retirement income need was recorded as being £30,000. But with 15-20 years to go until his retirement became a reality, I'm not persuaded he could reasonably know at this time what he'd need when he retired. It seems the £30,000 figure was based on what he was comfortably living off now. But this included £500 a month towards holidays, £320 a month for fuel costs and £400 a month for car leasing. I think it's likely this would reduce at retirement – I think most consumers would expect to retire on less income than when they were working. And Quantock said Mr and Mrs P's lifestyle wasn't extravagant.

- Without a clear understanding of Mr P's true needs in retirement, I don't think it was in his best interests to transfer at this time. Mr P's BSPS pension was estimated to be around £10,358,000 a year at 65 and his other DB scheme around £2,447 a year from age 60. Both provided a guaranteed and escalating income for life, neither of which was likely to be bettered by transferring. I think both would've provided a solid income foundation upon which Mr P's other means, including his DC scheme, rental income, his existing personal pension and his wife's DB pension could supplement to likely meet their income needs and objectives in retirement – at least until their state pensions became payable. Indeed Quantock noted in the suitability report that: *"Your British Steel pension scheme would provide about £7,200 pa of inflation protected pension from age 65. This is not to be sniffed at and, with other state, private pensions and rent on top, would more than cover your essential outgoings in retirement."* In the circumstances, I think this was a more appropriate way for Mr P to meet his future retirement needs rather than risking his guaranteed benefits in an attempt to do so.

- Quantock says death benefits were only a potential fringe benefit and weren't a significant motivator for the transfer. It said the Investigator brushed aside Mr P's clear objectives in favour of inappropriate and assumed objectives, such as death benefits, regardless of what was in the advice paperwork.
  But Quantock nevertheless quoted the death benefits available through a personal pension as a reason for recommending he transfer. It said: *"You also preferred to secure the death benefits sooner rather than later*." And: *"The availability of the whole fund to [Mrs P] should you not enjoy a normal life expectancy, is a significant benefit."*
  So whether they were only a fringe benefit, the transfer was still recommended for this reason.

- But the priority here was to advise Mr P about what was best for his retirement. And the existing schemes offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death. And while the CETV's would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr P drew in his lifetime. And so it may not have provided the legacy that Mr P may have thought it would.

- If Mr P had wanted to leave a legacy for his family, Quantock could've explored life insurance as an alternative. Mr P had sufficient disposable income through which he could've met the associated premiums. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr P. And I don't think that insurance was properly explored as an alternative. And ultimately, whether as Quantock argues it was only a fringe benefit, it should not have encouraged Mr P to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Overall, I can't see persuasive reasons why it was clearly in Mr P's best interest to give up his DB pension schemes and transfer them to a personal pension at this time. The transfer value might have looked high compared to historical values as Quantock noted and Mr P might have approached it motivated to transfer and had a preference to transfer for the sum of the range of benefits it would provide. But Quantock's role wasn't just to facilitate what Mr P wanted – its role was to provide suitable advice and act in his best interests. And for the reasons above I'm not persuaded it did.

Also, I haven't seen anything to persuade me that Mr P would've insisted on transferring, against advice to remain in the DB schemes. I consider he had little investment knowledge or experience and nothing suggests to me that he otherwise had the requisite confidence or skill to do so, particularly in this complex area of financial advice.

So, I'm upholding the complaint as I think the advice Mr P received from Quantock was unsuitable for him.

I can see the Investigator also recommended an award of £250 for the distress and inconvenience the matter has caused Mr P. 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 Quantock – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr P. Taking everything into account, including what he's said about the anxiety caused worrying about whether he'll be significantly worse off in retirement as a result of the advice he received, I think the unsuitable advice has caused him some distress. So I think an award of £250 is fair in all the circumstances.

I can see Mr P's representative has asked for a higher award to better reflect Mr P's concerns about the possibility of not being able to enjoy a happy and comfortable retirement. But I'm satisfied that, taking everything into account, including Mr P's age and that he's still some years from retirement, an award of £250 is fair in the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P**,** as far as possible, into the position he would now be in but for the unsuitable advice. If things had happened as they should have, I consider Mr P would most likely have remained in both the occupational pension schemes. And with his BSPS benefits, I think he would've opted to join the BSPS2.

Quantock 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.

For Mr P's BSPS benefits, Quantock 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 Quantock 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 schemes' normal retirement ages, 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 my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Quantock should:

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P 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 P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Quantock's offer to calculate how much of their 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 their 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 will be treated as income for tax purposes. So, in line with DISP App 4, Quantock 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.

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 Quantock Analytical Ltd to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £170,000.

Quantock Analytical Ltd should also pay Mr P £250 for the distress and inconvenience the matter has caused.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Quantock Analytical Ltd pays Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on Quantock Analytical Ltd.

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 21 December 2023.
Paul Featherstone
Ombudsman