DRN-3889850

The complaint

Mr G complains that he was given unsuitable advice by AJH Financial Services Limited ('AJH') to transfer deferred benefits from his Defined Benefit ('DB') pension with British Steel ('BSPS') to a personal pension. He says he might have lost out as a result.

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 G's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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.

Mr G returned the necessary forms to the DB trustees electing to transfer to the BSPS2. He also noted on the form that he was in the process of transferring his pension.

Mr G had sought advice from a different adviser in 2017 who advised him to transfer his pension. This firm wasn't able to complete the transfer as their relevant permissions were revoked by the regulator and so Mr G approached AJH in early January 2018. He wanted them to simply complete the transaction for him instead. In order to be able to transfer he had to meet a deadline of 16 February 2018.

AJH informed him they would have to do their own fact find and advice process and satisfy themselves whether a transfer was suitable. And they told him they might not be able to meet the deadline.

A fact find, risk profiler and questionnaires about the transfer and Mr G's investment experience were completed. The documents show:

- Mr G was 44, married with three dependent children, and in good health.
- He earned £37,000 (plus £6,000 in overtime payments) per year. His wife, who was around the same age, was earning £9,000 per year.
- The couple owned their own home valued at £92,000 with an outstanding repayment mortgage of £83,000 with a remaining term of 17 years. They also had a mortgage protection policy of £250,000.
- They had £5,000 in emergency savings.

- Other than the BSPS pension, Mr G had recently joined the new company defined contribution (DC) pension scheme with generous employer and employee contributions being paid into it.
- Mr G would like £20,000 annual retirement income in 'today's terms'.
- Mr G had no previous investment experience.
- His attitude to risk was recorded as medium risk. On the risk questionnaire he said he could stand to suffer no or very limited losses to his pension.

It was recorded that:

- Mr G wanted to retire at 60.
- He wanted control over his pension.
- He had no faith in his employer and the pension scheme and wanted to break all ties with them.
- He wanted his family to receive the full benefits of his pension in the case of his death.
- He wanted to protect his pension benefits as much as possible.
- He had already made up his mind about the transfer. He didn't want to leave his money with British Steel and would transfer regardless of the advice given.

A further meeting was held on 29 January 2018. The notes recorded Mr G still wanted to transfer before the advice was even discussed. A transfer value analysis report (TVAS) was issued on that day comparing BSPS2 and PPF benefits with a personal pension. AJH recommended Mr G to transfer his DB benefits with a transfer value of around £324,000 to a personal pension. They issued Mr G with the necessary confirmation that he had received advice and application forms for the new pension were completed.

A written recommendation report was issued on 26 February 2018 and Mr G's benefits were received in the personal pension in mid March.

Mr G complained to AJH in 2020 about the advice he received.

AJH rejected his complaint and Mr G referred it to this service. One of our investigators upheld his complaint. He thought AJH had given unsuitable advice and recommended that AJH should compensate Mr G. As AJH disagreed with this outcome, Mr G's complaint was referred to me for a final decision.

In January 2023 AJH asked for an up-to-date pension value from Mr G to see whether he had suffered a loss by transferring. They undertook a calculation in February 2023 and found there was no loss. However, they offered to pay the award of £300 the investigator had recommended for distress and inconvenience.

I asked AJH for some more detail on their calculations which they provided. Mr G's representative said any redress offer should be calculated based on assumptions at the time of the investigator's view which was in January 2022. They said AJH shouldn't be allowed to pick and choose when to make an offer and wait until market conditions have changed in their favour.
I have previously explained to Mr G's representatives that AJH are free to make an offer at any stage before a final decision has been issued on the complaint and that assumptions used should be the most current in these circumstances.

AJH still maintain that their advice has been suitable. However, to bring this complaint to a close, they undertook a loss calculation on 7 June 2023 using the BSPS specific redress calculator which was released by the Financial Conduct Authority (FCA) in April 2023. And they reiterated their offer to pay the award of £300 for distress and inconvenience.

This is exactly what I would ask them to do if I upheld Mr G's complaint and I consider this a fair and reasonable resolution.

However, the complaint has been with this service for a long time. And given Mr G's representatives' ongoing insistence that different calculation dates should be used and their arguments that a higher award for distress and inconvenience should be paid, I decided it's best to issue a final decision at this point to bring matters to a close for everyone.

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. 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 AJH'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 2.1.1*R: 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.

The provisions in COBS 19 which specifically relate to a DB pension transfer.
The starting assumption for a transfer from a DB scheme is that it is unsuitable.

AJH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr G's best interest. (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interest. I'll explain why.

was the advice suitable?

financial viability

AJH ran a transfer value analysis (TVAS) which showed that the investment return required to match the DB pension at age 60 (critical yield) was 6.8% per year if benefits were taken in full or 5.8% if a tax-free lump sum and a reduced annual pension income was chosen. This was the basis on what the advice was given. AJH thought matching these critical yields *may be achievable.*

I note that the TVAS was based on DB benefits being £15,201 per year if taken in full or £73,264 in tax-free cash plus an income of £10,982 per year. I'm not entirely sure where these figures come from. AJH said in their report they referred back to early retirement factors published by BSPS. However, these were just indications and Mr G did have a time to choose letter from the DB trustees which estimated Mr G's DB benefits in BSPS2 at age 60 to be £17,098.72 or £12,342.71 plus £82,284.74 in tax-free cash. Given that these were estimated by the scheme for Mr G's personalised situation, I would have thought these figures were more reliable. And if those figures had been used, critical yields would have been higher than quoted.

A second TVAS was produced which showed critical yields at age 60 of 5.89% if benefits were taken in full and 4.89% if taken as tax-free cash and reduced income. This was based on the receiving scheme being the pension Mr G ended up transferring to, so is more meaningful in my view. However, the DB benefits used here are still not the ones in the time to choose letter and therefore I think the real critical yields were higher. The critical yields compared to the PPF were 5.16% and 4.84% respectively.

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. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and is 4.3% per year for 15 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr G's medium attitude to risk and also the term to retirement. Even based on the lowest critical yield in the second TVAS (4.84% compared to the PPF), I think there was a real risk Mr G would not be able to match his DB benefits and it was unlikely he could improve on his benefits by transferring.

I think Mr G was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with that attitude to risk. So based on the above alone, the advice to transfer wasn't in Mr G's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I considered below whether such other reasons applied here.

Flexibility

There is no doubt that Mr G wanted to retire early and being able to take his benefits flexibly would have looked attractive. However, Mr G was 44 at the time and so still many years away from retirement. And I don't think alternatives how to meet his objectives were properly explored.
Early retirement would have been possible by staying in the scheme. He was paying significant contributions into a DC scheme which by age 60 could have provided him with some flexible income to help bridge any time between early retirement and state pension age. So this would have likely allowed him to defer his DB income for some time. Or he

could have taken his DB benefits at 60 and topped up his income with his DC pension if necessary.

The suitability report noted Mr G didn't want his DC pension to be considered. However, in order to provide him with full advice on his pension provisions and give him a detailed overall picture, I don't think it was reasonable for AJH to not discuss this. Even if Mr G ended up not working for his employer anymore in the future he could have built up further flexible pension provisions with any new employer. In my view there was no need for Mr G to give up guaranteed benefits to have some flexibility when he retired.

Death benefits

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die.

However, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. And the existing death benefits with BSPS were not to be underestimated. Mr G's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr G predeceased her. Mr G was young and in good health and so more focus should have been on ensuring Mr G would receive the best possible retirement benefits over a long period of time.

concerns about financial stability of BSPS

In my view AJH's key justification for the transfer was that Mr G was really concerned about his employer's financial situation and had lost trust in the scheme and therefore wanted to take control over his pension.

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. I think it's clear Mr G was concerned about the security of his pension and I have no doubt that Mr G was leaning towards the decision to transfer for this reason.

However, it was AJH's obligation to give Mr G an objective picture and recommend what was in his best interest. As the figures above show, even if BSPS moved to the PPF, Mr W was still likely to receive overall higher benefits by not transferring. And if he moved to BSPS2, which whilst not fully guaranteed was fairly probable at that point, he would retain similar benefits as before. Also, his pension wasn't under his employer's control as he perceived it. It was independently controlled by trustees to protect members' interests.

I can't see that this was properly explained to him or AJH did enough to alleviate these concerns. And given that it was in his best interest to stay in the DB scheme, the possible loss of opportunity to transfer his pension in future or for a lower transfer value shouldn't have been a significant concern to Mr G.

Would Mr G have insisted on a transfer if advised against it?

Mr G had received advice to transfer before he got in touch with AJH. He was keen to transfer and originally wanted AJH to simply finish the transaction the former firm wasn't able to complete. AJH says he was relived when he was told AJH would advise him and arrange the transfer. And the notes show that Mr G said he wanted to transfer whatever the advice was when he met with AJH.

I carefully considered whether this means Mr G would have insisted on proceeding regardless of AJH's advice. However, I'm not persuaded on the balance of probabilities that proper advice against a transfer would have been ignored.

At the point he contacted AJH he had been recommended by a financial adviser to transfer his DB benefits. And given the concerns and discussions between colleagues at the time, this was likely what Mr G expected and maybe even hoped the advice to be. When his first adviser suddenly couldn't proceed with the transfer and with a deadline looming, I understand why Mr G simply wanted AJH to bring the process to an end as quickly as possible. If an execution only process had been possible (which it isn't for DB transfers), I agree that at this point Mr G likely would have proceeded. I don't doubt that Mr G came to AJH with a strong desire to transfer and that he said he had made up his mind.

However, AJH correctly informed Mr G they needed to go through the complete advice process again and come to their own conclusions whether the advice was suitable. They couldn't rely on what he had been told previously by a firm which had just lost their permissions due to FCA concerns.

For the reasons set out above their advice should have been not to transfer. And I think if they had explained that Mr G was better off financially even if BSPS moved to the PPF and that he could meet his objectives without giving up the security of his pension, I think he more likely than not would have listened.

Instead he was again recommended to transfer which would only have confirmed that this was the correct action.

Summary

I don't think the advice given was suitable for Mr G. I can't see persuasive reasons why Mr G needed to give up his guaranteed benefits so long before retirement and likely end up with lower benefits overall.

By choosing BSPS2, Mr G could have retained guaranteed benefits which were expected to be similar to his existing benefits. And once he reached age 60 and had a better idea of what his exact retirement plans would be he could make a more informed decision at that point.

It's likely that Mr G was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing and he was very concerned about the possibility of his pension falling to the PPF. And I don't doubt that flexibility, control and lump sum death benefits would have also sounded like attractive features.

But AJH wasn't there to just transact what Mr G might have thought he wanted. The adviser's role was to really understand what he needed and recommend what was in his best interest. Mr G's fear about the PPF and the security of his pension should have been put into perspective.

Mr G was able to retire early from the DB scheme and secure a guaranteed and index-linked income and spousal benefits for life which would likely be higher than what he could achieve in his personal pension.

I can't see that the flexibility to take income differently or the possibility to receive lump sum death benefits justified taking unnecessary risks with his pension. He could achieve his objectives by using his DC pension. So I'm not persuaded a transfer was in Mr G's best interest here.

If AJH had recommended him not to transfer and explained their reasons properly why Mr G would be better off staying in BSPS and that going into the PPF wasn't as concerning as he thought, I think Mr G likely would have followed their advice.

Distress and inconvenience

In addition to calculating Mr G's financial losses, the investigator recommended in his view in December 2021 that AJH should pay Mr G £300 compensation for the distress and inconvenience caused.

A year later, in December 2022, Mr G's representatives passed on comments from him about the distress and inconvenience this matter has caused him which he asked me to consider when deciding on any award for distress and inconvenience. He said a couple of weeks after complaining to AJH (which was in spring 2020) they threatened to sue him and make him bankrupt. He said this had a massive impact on him and caused him sleepless nights and stress which led him to being off work. He said he thought he had not only lost his retirement, but also might lose his home and he remains worried about his future prospects.

I carefully considered Mr G's additional comments. I'm mindful that these comments were only put forward a year after the investigator issued their view, rather than being mentioned when Mr G says these threats happened, which would have been in 2020. Whereas in his complaint statement which was provided in March 2021, under the heading 'current situation' Mr G simply said he felt upset and let down by the adviser.

In any event, the concerns raised here relate how Mr G says AJH reacted to his complaint. This would fall under complaint handling which isn't a regulated activity and so I can't consider this further.

I can look at the distress and inconvenience that the advice to transfer his DB benefits caused Mr G. I think it's reasonable to assume that until more recently he likely would have had no concerns with the transfer. I've taken into account that Mr G is not yet of an age where he can even take retirement benefits, so any impact on his pension isn't imminent. And despite Mr G possibly having lost out financially compared to if he stayed in the DB scheme, he by no means "lost" his pension. His pension statement in January 2023 showed that his pension had increased from around £324,000 in March 2018 to over £402,000.

I think it's reasonable to assume that Mr G would have been happy with the transfer for a while until he found out there might be an issue at which point his complaint was handled by a representative and a resolution was in sight. I appreciate that finding out there was an issue with the advice he was given might have been worrying. However, I think the award suggested by the investigator is fair and reasonable in these circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have chosen the BSPS2 as this was his preference on the time to choose form he submitted to the BSPS. The assumed retirement age from the DB scheme should be based on the DB scheme's normal retirement age of 65.

AJH has already undertaken 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.

AJH has used the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the calculations has been provided. The offer was made on 7 June 2023 and is valid for three months which means it is still valid now.

The calculation shows that Mr G has suffered no loss. The majority of assumptions which are built into the calculator are provided by the FCA and can't be changed by AJH. Having reviewed the calculation, I'm also satisfied that the inputs personal to Mr G that have been used in the calculation are accurate.

As explained before, I don't think it's reasonable to ask AJH to use outdated assumptions from the date the investigator's view was issued. FCA rules and guidance are clear about how any DB transfer loss needs to be calculated and this is based on up-to-date assumptions at the point of calculation. The loss calculation shows that Mr G holds more than sufficient funds in his pension today than he needs to be able to replicate his DB benefits at age 65. So he hasn't suffered a financial loss.

I won't be asking AJH to do anything further with regards to the loss calculation.

AJH should pay Mr G £300 for the distress and inconvenience their unsuitable advice has caused him if they haven't already done so.

My final decision

I uphold this complaint and require AJH Financial Services Limited to pay Mr G £300 (if they haven't already paid it).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 29 September 2023.

Nina Walter
Ombudsman