DRN-3898008

The complaint

Mr J complains about the advice Dobson & Hodge Limited gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). 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 J'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.

In September 2017 the BSPS provided Mr J 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 £470,195.

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.

Mr J approached Dobson & Hodge for pension advice. It conducted a fact-find with him and an assessment of his attitude to risk. Amongst other things it recorded that Mr J was 54 years old and married to Mrs J who was 53. They were both working. They had two non-dependent children. They owned their own home subject to a mortgage which was due to be repaid within two years. They had savings with a value of around £26,000. They were adding around £500 each month to their savings with £200 earmarked for holidays. Mr J had started paying into his employer's defined contribution ('DC') pension scheme. Dobson & Hodge assessed Mr J as having a "cautious to moderate" attitude to risk.

After obtaining a transfer value analysis report ('TVAS') Dobson & Hodge gave Mr J a "Financial Report" setting out its analysis and recommendations. Such documents are often known as suitability reports and that's the term I've used in this decision. In short Dobson & Hodge recommended that Mr J should transfer his DB scheme funds to a named SIPP. It noted he wanted to retire early preferably between ages 57 and 60 with a target income of

£20,400 a year. Dobson & Hodge noted that a transfer would not be in Mr J's "financial best interests". It added that:

"I would suggest that our recommended portfolio is unlikely to achieve the Critical Yield and therefore, on that basis you are likely to receive less income from a private pension than you would otherwise receive from the BSPS"

However, Dobson & Hodge recommended the transfer, in brief, because it would allow Mr J to take early retirement while having flexible access to his funds. And so he could take more in the early years of retirement and reduce his drawings from his SIPP once his state pension became payable.

Mr J accepted Dobson & Hodge's recommendation and transferred his DB funds to the named SIPP.

Mr J complained to Dobson & Hodge in 2022 that the advice to transfer wasn't suitable for him. Dobson & Hodge didn't uphold his complaint. In brief it said that transferring allowed him to achieve his objectives.

Mr J asked us to consider his complaint. One of our Investigators looked into it. He didn't think a transfer was in Mr J's best interests. Our Investigator recommended that Dobson & Hodge calculate if Mr J has suffered a loss as a result of its unsuitable advice and if so pay compensation, including £250 to address Mr J's distress and inconvenience.

Dobson & Hodge didn't reply to the Investigator's complaint assessment. So we have assumed it did not agree. As we couldn't resolve the matter informally the complaint's been passed to me to make a final determination.

Mr J has since told us that he retired in April 2023 at age 60.

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 Dobson & Hodge'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, Dobson & Hodge should have only considered recommending a transfer if it could clearly demonstrate it was in Mr J's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave.

Reasons for my decision

The regulator required Dobson & Hodge to obtain a TVAS report. That said the critical yield – how much Mr J's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.06% to match the full pension he'd have been entitled to under the scheme at age 65. The critical yield to match the PPF benefits was 4.66% at age 65. At age 57, the critical yield was 27.72% to match the DB scheme benefits and 13.96% to match the PPF benefits.

Dobson & Hodge didn't produce figures for precisely how much tax free cash ('TFC') Mr J would be entitled to under the DB scheme or how much taking a TFC lump sum would reduce his yearly pension by. Similarly it didn't show critical yields if Mr J took TFC and a reduced pension at any age from the BSPS scheme. It did produce a TFC estimate in its suitability report, saying that Mr J might be entitled to TFC of £41,500. But it also noted that this is below the figure of £60,605 produced by the scheme administrators. So I'm not persuaded that Dobson & Hodge's figure for TFC is reliable. Also the suitability report doesn't give TFC figures if Mr J chose to retire early. I think that information would have been useful to him as he might have wished to take TFC and use that money to supplement his pension income until his state pension became payable.

Further, Dobson & Hodge referred to the "time to choose" exercise in its suitability report. So it was clearly aware that was happening and it must have known it would have included Mr J's likely entitlement from the BSPS2. But Dobson & Hodge doesn't appear to have obtained a copy of that. Its TVAS analysis was based on the BSPS benefits. But the BSPS wasn't an option for Mr J. He would have had to either allow his pension to move to the PPF or opt to join the BSPS2. But as Dobson & Hodge didn't show BSPS2 figures, or the critical yields required to match those sums, I don't think it gave Mr J all the information he needed to make an informed decision.

Given what we know about the BSPS2, I think the critical yields to match the benefits it would have provided from age 65 were likely to be between those of the BSPS and the PPF. At age 57, the critical yields to match the full pension from the PPF – 13.96% – was roughly half that of the BSPS scheme – 27.72% – so the appropriate critical yield for the BSPS2 was again likely to be somewhere between the two figures. But as Dobson & Hodge didn't set that out I don't think it gave Mr J all the information he needed.

From the information we do have I've thought about whether or not Mr J could meet the growth rates required. A reasonable method of looking at likely growth rate is a measure called the discount rate, which we used to publish on our website. For Mr J the appropriate discount rate was 2.7% for retirement at age 57 and 3.8% for retirement at age 65. So given the lowest critical yield was 4.66% – for Mr J taking his benefits from the PPF at age 65 – and considering Mr J's cautious to moderate attitude to risk, there was no real prospect of those yields being met.

Indeed it's notable that Dobson & Hodge has recognised that fact. It said that transferring was not in Mr J's "financial best interests" and that Mr J would likely receive less income from a private pension than he would from the DB scheme. In other words Dobson & Hodge was aware that transferring would most probably mean Mr J would be worse off in retirement by doing so. I agree with Dobson & Hodge analysis here. But I don't think it did enough to make it clear to Mr J that he was, most likely, making himself poorer in retirement by transferring.

For example Dobson & Hodge said that, after Mr and Mrs J's state pensions became payable Mr J's DB income would be surplus to requirements. But – at 2017 levels – their state pension income was £14,360 a year. That was around £6,000 below their target income of £20,400 a year in retirement. So any other income would not be "surplus" as Dobson & Hodge said. In fact it would be essential to meet their target income. And while the DB scheme pension would almost certainly have taken Mr and Mrs J's income above their target level, that simply means that they'd be better off. In other words they'd have more money to enhance their lifestyle with.

Also there was no prospect of Mr J's DB scheme benefits ever being depleted. They were guaranteed for life and would escalate to provide some protection against inflation. The same could not be said for Mr J's pension fund once invested in a SIPP. That's because any withdrawals he made from it would reduce the overall fund. That in turn would reduce the amount left to benefit from investment growth. So, if Mr J took large withdrawals from it in the early years of his retirement, there was a sustained period of poor performance or the investments suffered losses then there was a very real chance that Mr J's fund would grow at a slow rate or not at all. If that happened he could deplete the entire fund within his lifetime and be unable to meet his target income levels in later years. So I don't think transferring was in his best interests.

A key reason Dobson & Hodge gave for recommending the transfer was that it would allow Mr J to retire early, while taking higher sums from his pension in the early years and then reducing his withdrawals once his state pension became payable. But Mr J could have taken early retirement from the DB scheme. The TVAS shows Mr J would have had a yearly DB pension of around £15,000 at age 57. And that amount would increase if he deferred taking his pension until he was older (as we now know that he did). And while that sum (£15,000) was around £5,400 less than his target income of £20,400, Mr and Mrs J would have income from other sources.

Mrs J had told Dobson & Hodge she planned to continue working until age 60. So that would have been for an extra four years if Mr J had retired at age 57. And her income could have helped to support them for that period. Further they had savings of £26,000, which they were continuing to build up by around £3,600 a year. So, by the time Mr J turned 57 their savings could have been in the region of £36,000. Also, according to the suitability report, Mr J's DC pension was growing by around £5,000 a year. So he would also have those funds to help support him in the early years of retirement. It follows that I don't think he needed to transfer in order to be able to retire early.

That said it's true to say that Mr J couldn't have had the same level of flexible access to his DB funds as he could from a SIPP. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. In contrast the SIPP would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect for him, I’m not persuaded that Mr J had any concrete need to vary his income throughout retirement. So I don't think it was in his best interests to potentially make himself worse off just to have flexibility that he didn’t need.

I've noted that Dobson & Hodge did point out to Mr J that by transferring there was a risk his pension fund could be depleted during his lifetime. It also said Mr J was prepared to accept that risk. But pointing out a risk doesn't make unsuitable advice suitable. Mr J had asked Dobson & Hodge to give him the benefit of its expertise. And its role wasn’t simply to transact what Mr J might have thought he wanted. The adviser’s role was to really understand what Mr J needed and recommend what was in his best interests. So, regardless that Mr J might have said he was prepared to accept a risk of lower income, this doesn't mean it was in his best interests for Dobson & Hodge to recommend he take that risk.

Overall, I can’t see persuasive reasons why it was clearly in Mr J’s best interest to give up his DB benefits and transfer them to a SIPP. I also haven’t seen anything to persuade me that Mr J would’ve insisted on transferring, against advice to remain in the DB scheme. So, I’m upholding the complaint as I think the advice Dobson & Hodge gave to Mr J was unsuitable for him.

Also, as I'm aware that learning that he might have compromised his security in retirement has been a source of distress and inconvenience for Mr J, I think Dobson & Hodge should pay him £250 to address that.

Putting things right

A fair and reasonable outcome would be for Dobson & Hodge to put Mr J, as far as possible, into the position he would now be in but for the unsuitable advice. I'm aware that the year-on-year pension increases from the BSPS2 were higher than from the PPF. So I consider Mr J would most likely have remained in the DB scheme and opted to join the BSPS2 if Dobson & Hodge had given suitable advice.

Dobson & Hodge 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.

Dobson & Hodge 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 J and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Dobson & Hodge based the inputs into the calculator on.

For clarity, Mr J retired in April 2023. So, I think Dobson & Hodge should use that date when calculating compensation.

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 J 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, Dobson & Hodge should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr J receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr J accepts Dobson & Hodge's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr J 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 J's end of year tax position.

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Dobson & Hodge 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 J'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.

Also, I think Dobson & Hodge should also pay Mr J £250 to address his is arising from the 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

<u>Determination and money award</u>: I uphold this complaint and require Dobson & Hodge Limited to pay Mr J 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 Dobson & Hodge Limited pays Mr J the balance.

If Mr J accepts this decision, the money award becomes binding on Dobson & Hodge Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 5 December 2023.

Joe Scott
Ombudsman