DRN-3904723

The complaint

Mr B complains about the advice given by CST Wealth Management Limited ('CST') to transfer the benefits from his 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 B'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 B'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.

On 21 July 2017, the BSPS provided Mr B with a summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of £486,291.16. The CETB was later updated to £502,148,25.

Mr B was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice and he met with CST in August 2017.

CST recorded some information about Mr B's circumstances. It noted that he was 50, married with two children. Mr B was employed earning approximately £45,000. His wife was also employed and she earned around £24,000. They had a mortgage on their home of approximately £45,000. They had around £17,000 in cash / savings and outstanding credit card debt of around £3,000. Mr and Mrs B's total monthly expenditure was around £2,050 - £1,800 of which was deemed normal domestic expenditure.

CST also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'lowest medium'.

CST issued a suitability report detailing its recommendation on 6 October 2017. This said Mr B wanted to explore the options available to him because he wanted to retire earlier than the scheme's normal retirement age; in the event of his death his wife would only receive 50% of his pension; taking benefits at 60 would significantly reduce his income; and he wanted a sustainable income of £2,500 per month net if possible from age 60.

CST recommended that Mr B transfer his pension because it said the transfer would provide him with flexibility to withdraw income and or lump sums, which the scheme couldn't provide. And it would enable him to secure much higher death benefits. CST also recommended a pension provider and a discretionary fund manager to manage his investment strategy, which it said would broadly follow his attitude to risk.

During the same month and shortly after CST's recommendation letter, 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 B complained to CST in 2022 about the suitability of the transfer advice. He said he received a letter from the Financial Conduct Authority ('FCA') that said some of the advice given to members of the BSPS by certain firms had been unsuitable, so he asked CST to review the advice he received.

CST didn't uphold Mr B's complaint. It said at the time of the advice the only safeguarded option was the PPF, which wouldn't have supported Mr B retiring at age 60 – it wasn't affordable for him to do so – while the personal pension arrangement was likely to provide the income he needed. It said although the primary use of the pension was to provide for Mr B's retirement, the fund should also provide an income for his wife of three times greater than the scheme would've provided upon his death. It said while the level of benefits would vary, Mr B was prepared to take a limited amount of risk to provide the potential for enhanced pension benefits. It said it protected his pension fund by investing his funds in a relatively low risk portfolio and further protected by putting in place structured products through the use of a DFM. It said the transfer has significantly increased the value of Mr B's potential pension benefits, so the transfer was therefore appropriate for him and in his best interests.

Mr B referred his complaint to the Financial Ombudsman Service. He says he now feels he would've been in a more secure position had he remained in the DB scheme and either opted for the BSPS2 or the PPF.

One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr B wasn't likely to improve on the benefits he was already guaranteed by transferring. They said they didn't think Mr B was prepared to take a 'lowest medium' risk approach given the answers he'd given on the risk profile assessment – they thought at best he was a low-risk investor. For this reason they said the drawdown analysis was overly optimistic in terms of the expected returns and they didn't think it was necessary for Mr B to need the services of a DFM. They said it was for CST to establish whether retiring early was feasible for Mr B based on his circumstances and to clearly explain the reasons why this wasn't realistic. And they said the DB scheme's death benefits were underplayed and CST shouldn't have prioritised death benefits over his security in retirement. They said CST should've recommended Mr B retain his DB scheme benefits. And if suitable advice had been given, they said Mr B would've had the option of moving to the BSPS2.

CST disagreed. In summary it said that, while it believes the advice was suitable and that Mr B hasn't lost out based on the value of his pension fund, it was nevertheless prepared in the interests of drawing a conclusion to things, to carry out a redress calculation.

Mr B declined CST's offer to produce a loss calculation and he asked for his complaint to be decided by an Ombudsman.

Because things couldn't be resolved informally, 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 Business ('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.

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, CST should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B'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.

- The transfer value analysis ('TVAS') report, that CST was required to carry out by the regulator, said that the critical yield - how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 8.91% to match the full pension he'd have been entitled to under the scheme at age 60 – his target retirement date. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 6.3%.
  To match the full pension the PPF would've paid from 60 the critical yield was 6.81% and to match the tax-free cash and reduced pension the PPF would've offered, it was 6.17%.

- Despite the fact it was known by the point CST instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr B, the analysis was based on the BSPS benefits. Given the timing of the written advice, I think CST should've waited for the details of the BSPS2 so it could include this in its analysis to put Mr B in an informed position. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 60 were likely to be between those of the BSPS and the PPF.

- Given Mr B's recorded 'lowest medium' attitude to risk, the discount rate of 3.7% for nine years to retirement and the regulator's middle projection rate, I think Mr B was always likely to receive pension benefits, from age 60, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And indeed the suitability report noted that *"...these critical yields are not guaranteed to be achievable year on year."*

- While this doesn't alter my decision given what I've said about Mr B being worse off in retirement based on his recoded attitude to risk, I want to highlight that I have some concerns about the level of risk CST concluded Mr B was prepared to take with his pension benefits. In the initial fact-find Mr B indicated that: *"I will not accept any degree of risk and require maximum guarantees."* And in the risk profile assessment he agreed to various statements, including that he would rather put his money in a bank account than invest in shares and that he did not feel comfortable when taking a financial risk or with financial uncertainty. All of these things, in my view, reasonably describe someone who was not prepared to take any risk with their pension. At best I think he was only prepared to take a very low degree of risk. So, any cashflow models CST produced showing how Mr B's retirement income needs could be met sustainably by drawdown were not in my view appropriate – I don't think this was a suitable or appropriate method for Mr B to access his pension benefits.

- So based on financially alone, I don't think it was in Mr B best interests to transfer his DB pension benefits to a personal pension arrangement.

- CST recommended the transfer to enable Mr B to flexibility access his benefits and says it would enable him to meet his objective of wanting to retire at 60. While at 50, Mr B might have given some thought to his retirement, there's nothing in the advice paperwork to indicate he had any firm retirement plans at this stage. I'm sure Mr B liked the idea of retiring early, but he already had this option available to him – he didn't have to transfer to achieve this.

- While he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement. And there was no apparent need for a lump sum and defer taking an income – indeed he indicated that he had no need for a lump sum at retirement. Mr B might have been attracted to the flexibility a personal pension provided – but I think this was simply a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective of Mr B's.

- In any event, Mr B already had flexibility. He was contributing to his workplace pension scheme – a defined-contribution scheme, which did provide flexibility in how and when he could access his benefits. Given the recorded 20.8% contribution being made to this (employer and employee total contribution) this had the potential over the coming 10 years or more to be worth around £100,000 and perhaps more. I think if Mr B retained his DB scheme, this would've likely given him the flexibility to retire early - *if* that's what he ultimately decided. So, I don't think transferring to obtain flexibility was in his best interests.

- CST recorded that Mr B wanted a retirement income from age 60 of £2,500 (net) a month. But CST doesn't appear to have carried out a detailed income and expenditure in retirement analysis to support or interrogate this figure. Or to determine whether it was really what he needed or realistic. Given nothing was recorded about Mr B's plans for retirement and what he wanted to do, I don't think he was in a position to fully understand what his income need in retirement was.

- But if this income figure was a true reflection of what Mr B needed, I still think it's likely he could've met - or stood a better chance of doing so - by retaining his DB scheme benefits. According to CST, at age 60 through the existing scheme, he was entitled to a pension income of just over £20,000 a year (likely a little less under the BSSP2.) And while this wasn't sufficient alone, he would've likely had a sizeable fund in his DC scheme he could use to supplement this and plug any shortfall - at least until his state pension became payable. His wife's state pension would also further support their household income need.

- I think in the circumstances Mr B stood a better chance of meeting his needs by remaining in his DB scheme. It provided a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. I think this was a more appropriate way for Mr B to meet his future retirement income needs.

- CST said a transfer would secure a much higher level of death benefits. But the priority here was to advise Mr B about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death. I think CST downplayed the value of this benefit.

- While the CETV figure 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 B drew in his lifetime. And so it may not have provided the legacy that Mr B may have thought it would.

- Mr B already had lump sum death benefits in the form of death-in-service benefit and his DC workplace pension. But if Mr B had wanted to leave a legacy for his family, CST could've properly explored life insurance as an alternative. I can see reference was made to a quote for a term assurance policy with a sum assured of £160,000 over 10 years (the shortfall CST said existed to the capital value required to match the scheme's death benefits on day one following the transfer), which was around £20 a month. This was discounted in favour of the transfer. But, given it appears Mr B had sufficient surplus disposable income through which he could've met the associated premiums, I think this is what CST ought to have been recommended to meet any need.

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

- While not given as a reason for the recommendation to transfer, I'm mindful that Mr B may have had legitimately held concerns about how his employer had handled his pension. He was also likely concerned about the prospect of entering the PPF. But it was CST's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. And if CST had waited for details of the BSPS2, which I think it ought to have done given the timing of the advice, this might have allayed some of the concerns Mr B might have had about this. But even if the BSPS2 didn't go ahead, the PPF still provided Mr B with guaranteed income - and the option of accessing tax-free cash. Mr B was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought or been led to believe. So I don't think any concerns he held about this meant that transferring was in his best interest.

- For the sake of clarity - CST recommended that Mr B use a DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for him, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr B should have been advised to remain in the DB scheme, so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

Overall, I can't see persuasive reasons why it was clearly in Mr B's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr B would've insisted on transferring, against advice to remain in the DB scheme – he had no real investment knowledge or experience and nothing suggests to me that he had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr B received from CST 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 B. 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 CST – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr B. Taking everything into account, including Mr B's age and his retirement plans, I think the unsuitable advice has caused him some distress. So I think an award of £250 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for CST to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would most likely have 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 B 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, while its recorded that Mr B's plan at the time of the advice was to retire at age 60, he's told us that his plans have changed. He's taken the decision to retire earlier and he intends to start drawing his benefits this month at age 56. Because of the reason behind Mr B's decision to retire early, I think it's more likely than not he'd have started drawing his DB scheme pension benefits at the same time had he received suitable advice to remain in the DB scheme. So, as I notified Mr B prior to issuing my final decision, compensation should be based on him taking his scheme benefits at the same age.

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 B'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, CST should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B 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 B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts CST's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B 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 B's end of year tax position.

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. 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 B'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

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

CST Wealth Management Limited should also pay Mr B £250 for the distress and inconvenience this matter has caused.

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

If Mr B 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 B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 14 December 2023.
Paul Featherstone
Ombudsman