DRN-3992067

The complaint

Mr T complains about the advice given by CST Wealth Management Limited ('CST') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme ('OPS') to a personal arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) 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 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 T's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr T approached CST in August 2017 to discuss his pension and retirement needs. He was concerned about the situation with his employer and the DB scheme.

CST completed a fact-find to gather information about Mr T's circumstances and objectives. This showed that he was aged 52 and married. He had two non-dependent children who were aged 21 and 23. He was employed earning £38,000 a year. Mrs T was employed and earning £6,000 per year. She was a deferred member of a DB scheme. They owned their own home which had a value of around £150,000. It was subject to a mortgage that had twelve years left to run. They had around £5,000 on deposit and they had borrowed £7,000 in credit.

In respect of his pension arrangements:

Mr T received a cash equivalent transfer value ('CETV') from the BSPS in July 2017. This showed that he had just over 10 years' service and his pension at the date of leaving was £6,186.38. The CETV was £127,323.27.

Mr T had also joined his employers new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%. He had death in service benefits of four times his salary as part of the scheme.

Mr T also had deferred OPS DC scheme benefits valued at roughly £160,000 from a period of work with a previous employer.

CST also carried out an assessment of Mr T's attitude to risk, which it said was 'high medium'. But he agreed that a cautious approach was more appropriate for his BSPS pension benefits. This was because he had a low capacity for loss.

On 14 November 2017, CST advised Mr T to transfer his pension benefits into a personal pension and invest the proceeds in funds that it said matched his attitude to risk. The suitability report said the reasons for this recommendation were, in summary, that Mr T wanted to:

- Secure the generous transfer value as he was concerned about the DB scheme moving into the PPF.
- Take some tax-free cash at age 55 to repay some debts and help his children with life events such as an upcoming marriage.
- To be able to distribute his pension to his family on his death.
- To work until 60 and the DB scheme would reduce his benefits if he took them early.

On 24 January 2018 CST recommended Mr T consolidate his deferred OPS DC benefits into the new personal pension. This was to improve the investment opportunities.

And in March 2018 CST again recommended that Mr T transfer all of this new personal pension to another third-party SIPP provider and used a discretionary fund manager to manage the investments.

Mr T complained in 2022 to CST about the suitability of the transfer advice because he'd received information that led him to think that he may have lost out due to the transfer.

CST didn't uphold Mr T's complaint. It said that the advice was suitable for him as he wanted to withdraw larger amounts early on and then vary the amount of income he may receive, for example taking less when the state pension became payable. And he did want greater amounts of tax-free cash than the DB scheme would have provided.

Mr T referred his complaint to the Financial Ombudsman Service. An investigator upheld the complaint and recommended that CST pay compensation. He thought that the advice to transfer wasn't right as Mr T would likely receive lower pension benefits and he didn't really need the flexibility of the personal pension. And the new SIPP arrangement was more expensive than the DC arrangement he gave up so that wasn't likely to be suitable either.

CST disagreed although it didn't provide any commentary about the merits of the complaint. It did comment on the redress the Investigator had proposed but this redress has now been superseded by the industry regulator's new guidance and its new BSPS-specific compensation calculator. I've looked at what is appropriate compensation later on in this decision.

In any event, the investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I’ve taken into account relevant law and regulations, regulator’s rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses (‘PRIN’) and the Conduct of Business Sourcebook (‘COBS’). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The 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.

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.

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 T’s best interests. And having looked at all the evidence available, I’m not satisfied it was in his best interests. This is because:

- The transfer value analysis (‘TVAS’) report, that CST was required to carry out by the regulator, calculated the critical yield. This is how much Mr T’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the BSPS2 in this case). This was 7.78% to match the full pension he’d have been entitled to under the scheme at age 65. Or 6.33% to match the maximum tax-free cash and reduced pension the scheme would provide at 65. The same calculations at his age 60 were 12.2% and 9.76% respectively. To match the full pension the PPF would’ve paid from 65 the critical yield was 6.02% and to match the tax-free cash and reduced pension the PPF would’ve offered, it was 5.59%.

- It was agreed that Mr T wanted to take a ‘lower’ risk for this transfer (even though his attitude to risk was assessed as ‘high medium’). The discount rate was 3.9% for eleven years to retirement (his age 65) and 3.3% for six years. And the regulator’s low and middle projection rates were 2% and 5%. Because of these I think Mr T was always likely to receive pension benefits, from age 60 or 65, 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 if Mr T retired any earlier this calculation would probably be higher, so I think he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered. And this was noted in the suitability report which said that *‘in our opinion these critical yields are not guaranteed to be* *achievable year and year'*. And gave warnings that he may not be able to secure the same, or same type of income, as the DB scheme would have provided.

- CST has said that Mr T wanted to access tax-free cash from his pension at age 55 to repay some debt and help out his children. It seems established that this was the case and Mr T did go on to do this. CST thought it was reasonable to use the transferred-out funds for this as he had indicated that he and his wife could live off their state pensions, providing just over £8,500 each, and a DB scheme that Mrs T had that would provide £4,500 per year. So, he could use the BSPS transfer value, and his other DC funds, and take the maximum tax-free cash to help out his family and withdraw a flexible income if he wanted to retire early.

- But it wasn't CST's role just to put in place what Mr T might've thought he wanted. Its role was to advise him on what was in his best interests. And even if Mr T indicated that he was considering drawing from his pension early, I don't think this meant a transfer was in his best interests to do this.

- CST's notes from the time of sale show, Mr T could have met his income needs at age 60 from the BSPS2. Which would mean using his existing DC scheme flexibly was a realistic option for him. Mr T had a significant amount in this, around £160,000, that he could have accessed. I note he took as much tax-free cash as he could from the combined DB transfer and DC schemes value (around £75,000). And he wouldn't necessarily have been able to take all of this from the DC scheme as tax-free cash. There may be a tax burden at some point depending on Mr T's circumstances at the time. So, there was a potential cost to obtaining the money this way.

- But Mr T was giving up a guaranteed and increasing income to withdraw these sums. And there was a significant risk that he would have lower retirement benefits because of this. I don't think it was right to say this lower income wasn't important due to Mr and Mrs T's other provisions. I'm not persuaded it was in his best interests to give up this guaranteed income.

- Whilst Mr T's aim for tax free cash was clearly important to him. I don't think that CST should have advised him to alter his retirement provisions, at a significant potential overall cost, without fully exploring any alternatives could have used to meet these aims. I don't think transferring to obtain flexibility in this way was in his best interests.

- CST said Mr T was interested in the improved death benefits a transfer offered to his family and the transfer could become an asset for them rather than just providing for his pension. But the priority here was to advise Mr T 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.

- 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 T drew in his lifetime. And so may not have provided the legacy that Mr T may have thought it would.

- If Mr T had wanted to leave a legacy for his family, CST could've explored life insurance as an alternative. It recorded that he had significant 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. But there's little evidence CST did so.

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

- I think Mr T's desire for control over how his pension was invested was overstated. I can't see that he an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension, particularly when it moved into the more complex investments in the SIPP. So, I don't think that this was a genuine objective for Mr T – it was simply a consequence of transferring away from his DB scheme.

- Mr T may have legitimately held concerns about how his employer had handled his pension and 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. But even if not, the PPF still provided Mr T with guaranteed income and the option of accessing tax-free cash. Mr T was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

- Overall, I can't see any persuasive reasons why it was clearly in Mr T's best interests 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 T would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr T received from CST was unsuitable for him.

- Mr T was later advised to transfer his deferred DC benefits into the new DC arrangement. And then to transfer all of these into a SIPP. As our investigator detailed the new arrangement had higher costs than the DC pension he transferred from. And I don't think Mr T would have made this transfer without being given advice to transfer the DB scheme. So, I don't think the advice to do this was in Mr T's best interests either.

- Our investigator recommended that CST pay Mr T £250 for distress and uncertainty this matter has caused. Mr T was concerned that his pension benefits could be lower due to the advice. This would particularly be the case given the uncertainty that surrounding his employment and pension planning at the time of advice. And he's also felt that the complaint process has been difficult as he didn't want to affect the relationship with his adviser. Mr T wouldn't have had these issues if CST had advised him properly, so I think this amount is fair compensation for this.

Putting things right

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

I also think he would have retained his existing DC OPS arrangements.

What should CST do?

To compensate Mr T fairly, CST must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

fair value – step one

If Mr T had been given suitable advice, I think he would've most likely joined the BSPS2. CST must therefore calculate the value of the benefits Mr T lost as a result of transferring out of his DB scheme 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 T 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, Mr T has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 PS22/13 and 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 T's acceptance of the decision.

fair value – step two

CST must use the benchmark shown below to determine the fair value of Mr T's SIPP if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of Mr T's original DC OPS	Still exists	Notional value of original pension plans to be obtained from Mr T's DC OPS.	Date of investment in the personal pension that preceded the SIPP	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

Any additional sums paid into the personal pension or SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if CST totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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

Redress paid to Mr T as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. 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 T'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.

The payment resulting from all the steps above is the 'compensation amount'.

In the event that it isn't possible to obtain any notional value from the providers involved then CST will need to determine a fair value for Mr T's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. This is a suitable method of compensation because:

- Mr T wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr T's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr T into that position. It does not mean that Mr T would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr T could have obtained from investments suited to his objective and risk attitude.

CST should pay Mr T £250 for the distress and inconvenience the poor advice caused him.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require CST Wealth Management Limited to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that CST Wealth Management Limited pays Mr T the balance.

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 17 November 2023.

Andy Burlinson
Ombudsman