DRN-4064072

The complaint

Mr N complains about the advice given by The St. David's Partnership 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 N'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.

Mr N was concerned about what this announcement by his employer meant for the security of his pension, so he opted out of the scheme and obtained a cash equivalent transfer value ('CETV'). Mr N's benefits had a CETV of £269,362.51. He then sought advice and met with The St. David's Partnership.

The St. David's Partnership recorded some information about Mr N's circumstances in a fact-find dated 4 August 2016. It noted that he was 52, married with two non-dependent children. Mr N was employed earning approximately £45,500. His wife was also employed and she earned around £22,000. And they received some rental income from two investment properties they owned of around £9,600 (gross) a year. They had a buy-to-let mortgage of approximately £50,000 and their home was unencumbered. They had no other liabilities and they had around £10,000 in savings. Mr and Mrs N's combined income exceeded their outgoings giving them around £1,300 surplus disposable income per month.

The St. David's Partnership also carried out an assessment of Mr N's attitude to risk, which on the fact-find was deemed between 'below average risk' and 'average risk'. In the subsequent suitability report it was referred to as being 'above average'. But the ultimate investment strategy recommended by The St. David's Partnership was deemed by it to be a 'medium' risk approach.

The St. David's Partnership issued a letter summarising its recommendation (a suitability report) on 4 August 2016. This said Mr N was concerned about his DB scheme, and while he recognised the PPF was there, it would not provide for the full value of his pension and there was no certainty the PPF would remain in its current form. It said Mr N considered the scheme's death benefits were inferior; he wanted flexibility and choice of how his pension was invested; he felt it was the right time to move given the transfer value; and it was highly likely he required flexibility of income and capital access.

The St. David's Partnership initially recommended that Mr N should not transfer his pension because the guarantees were too valuable, the potential loss was too great and the returns required were not potentially achievable. But it nevertheless then immediately went on to recommend the transfer on the basis of Mr N's wider objectives as it said it would be suitable for his long-term retirement income needs - so long as a guaranteed income was not the most important feature of his retirement planning alongside his express need for flexibility and the ability to retire at 55.

Mr N complained to The St. David's Partnership in 2022 about the suitability of the transfer advice. Mr N received a letter from the Financial Conduct Authority ('FCA') telling him that some of the advice given to BSPS members by certain firms was unsuitable, so he asked The St. David's Partnership to review the advice it had given him.

The St. David's Partnership didn't uphold Mr N's complaint. It said it was apparent that Mr N's decision to leave the scheme was something he was adamant about. It said its advice was clear that he shouldn't transfer if he felt guaranteed income was his primary concern. It said Mr N's wider circumstances indicated this wasn't his main concern as he had other forms of income due in retirement. It said it fairly examined all of the options available. It said it considered its advice was suitable as it met his needs and objectives despite the risk, which he was made fully aware of and accepted.

Mr N referred his complaint to the Financial Ombudsman Service. He says he's unhappy with the loss he's suffered as a result of transferring.

One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr N wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think there were any other compelling reasons to support the transfer. They said Mr N didn't need to transfer to retire early at 55; his income objective could've been met by retaining his DB scheme benefits; he didn't need flexibility and there's no evidence to support the need to access a lump sum greater than the DB scheme would provide; different death benefits wasn't a suitable reason to transfer; and any concerns about or distrust with his employer didn't justify a transfer. They said if suitable advice had been given to retain his DB scheme benefits, Mr N would've likely later made the decision to move with the existing scheme to the PPF because of the more favourable early retirement factors.

In the interests of trying to resolve things, The St. David's Partnership said it was willing to carry out a loss calculation to determine if Mr N had lost out as a result of transferring and it asked Mr N to provide it with some necessary information to carry things out.

Mr N said he hasn't heard anything more from The St. David's Partnership. So, as things couldn't be resolved informally it is necessary for me to bring the matter to a formal conclusion and issue 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 The St. David's Partnership'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, The St. David's Partnership should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr N'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 The St. David's Partnership was required to carry out by the regulator, said that the critical yield - how much Mr N's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 52.2% to match the full pension he'd have been entitled to under the scheme at age 55 (the age he said he intended to retire.) Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 41.6%. To match the full pension the PPF would've paid from 55 the critical yield was 49.8% and to match the tax-free cash and reduced pension the PPF would've offered, it was 47.7%.

- I have some concerns about how The St. David's Partnership ultimately categorised Mr N's attitude to risk as 'above average' given the fact-find recorded he was between 'below average' and 'average' risk.

  But even if I thought he was prepared to accept the 'medium' risk approach, which The St. David's Partnership deemed was the level of risk in its recommended investment strategy, given this, the discount rate of 2.7% for two years to retirement and the regulator's middle projection rate, I think Mr N was always likely to receive pension benefits, from age 55, of a lower value that those he'd have been entitled to under the BSPS or the PPF by transferring and investing in line with that attitude to risk. And indeed the suitability report noted that "...*the critical yield is significant and beyond any reasonable investment expectation."* Furthermore, The St. David's Partnership first recommended that Mr N should not transfer out of the scheme for this reason. It said: *"The guarantees are too valuable. The potential loss to you and* *your widow could be considerable. The returns required are not potentially achievable*."

- For this reason alone, I don't think it was in Mr N's best interests to transfer to a personal pension arrangement. I think The St. David's Partnership should've stopped here and stood by its initial recommendation. But it didn't. It immediately undermined the recommendation not to transfer by recommending that Mr N should transfer - if a guaranteed income wasn't the most important factor to him - because it said it was suitable for his long-term retirement needs and would meet his express need for flexibility and to retire at 55. So I've considered whether these other objectives justified a transfer despite providing lower overall retirement benefits.

- At 52 I think it was likely that Mr N had given his retirement some thought and that he wanted to retire early at 55. But he already had this option available to him – he didn't have to transfer to achieve things. I can see The St. David's Partnership said that if Mr N remained in the scheme he'd incur *a "penalty for early retirement at 55 ...around 50%."* But I don't think it was fair for it to describe an actuarial reduction for early retirement as a penalty. I think it implied there were no similar consequences for Mr N's retirement income if he transferred to a personal pension, which wasn't the case. In the same way Mr N couldn't reasonably expect the same income from his DB scheme he'd be entitled to at 65 from age 55, his transferred pension fund could not sustainably support that level of income from age 55.

- The St. David's Partnership said Mr N wanted flexibility. And while he couldn't take his DB scheme benefits flexibly, nothing indicates he had a strong need to vary his income throughout retirement. Also there was no apparent need for a lump sum and defer taking an income. And nothing to support a need for a cash lump sum larger than his DB scheme would provide. Mr N 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 rather than a genuine objective of Mr N's.
So I don't think transferring to obtain flexibility was in his best interests.

- Mr N said that he wanted a retirement income of £12,000 a year. The St. David's Partnership doesn't appear to have carried out a detailed income and expenditure in retirement analysis to interrogate this figure or determine whether it was realistic. But on the basis that Mr N's wife would continue to work and their rental income would continue, I think this figure appears reasonable. And on this basis, I think Mr N could've met his income need by retaining his DB scheme benefits. According to The St. David's Partnership's analysis, at 55 Mr N was entitled to a full pension of around £16,300 or a reduced pension of around £11,300 a year.

- While the reduced pension wouldn't have met Mr N's need in full, it wasn't a significant shortfall.

  He could've supplemented his income from his cash lump sum and importantly The St. David's Partnership recorded that he might seek part-time work. So I think Mr N could've reasonably made up for any shortfall this way.

- Overall I think in the circumstances Mr N 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 retaining his scheme pension was a more appropriate way for him to meet his future retirement income needs rather than risking his guaranteed benefits to attempt to do so, which I'm not persuaded he needed to do.

- Mr N believed the scheme's death benefits were inferior and that the value of the fund was more advantageous to him and his family. But the priority here was to advise him 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 The St. David's Partnership 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 N drew in his lifetime. And so it may not have provided the legacy that Mr N may have thought it would.

- If Mr N had wanted to leave a legacy for his family, The St. David's Partnership could've explored life insurance as an alternative. Mr N appears to have had 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 The St. David's Partnership did so.

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

- The St. David's Partnership recorded that Mr N wanted greater flexibility and choice over his pension and how it was invested. But I think this apparent desire for control was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr N – it was simply another consequence of transferring away from his DB scheme.

- Mr N may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was The St. David's Partnership's role to objectively address those concerns. I accept at this time establishing a new pension scheme was only a possibility. But even if that didn't go ahead, the PPF still provided Mr N with guaranteed income and the option of accessing tax-free cash. Mr N 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 interest.

Overall, I can't see persuasive reasons why it was clearly in Mr N's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen enough to persuade me that Mr N would've insisted on transferring, against advice to remain in the DB scheme. I can see that Mr N chose to opt out of the scheme shortly after the March 2016 announcement by his employer I referred to at the start. So I accept he was was likely motivated to transfer when he met with The St. David's Partnership. And it has referred to his 'motivating factors'.

But The St. David's Partnership wasn't there to simply facilitate what Mr N thought was in his best interests – its role was to provide him with advice and determine what was in his best interests. Mr N was an inexperienced investor and nothing suggest to me he had the requisite skill or confidence to go against the advice he was given, particularly in complex pension matters. I think he relied solely on the advice he was given by The St. David's Partnership. So if things had happened as they should have and he'd been advised to retain his DB scheme benefits I think, on balance, he would've accepted that advice.

So I'm upholding the complaint as I think the advice Mr N received from The St. David's Partnership was unsuitable for him.

Putting things right

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

The St. David's Partnership 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.

The St. David's Partnership 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 N and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what The St. David's Partnership based the inputs into the calculator on.

For clarity, Mr N has retired and he started drawing his pension benefits at age 56. So, compensation should be based on him taking benefits at this 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 N 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, The St. David's Partnership should:

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

Redress paid to Mr N as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, The St. David's Partnership 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 N'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 The St. David's Partnership to pay Mr N 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 The St. David's Partnership pays Mr N the balance.

If Mr N accepts this decision, the money award becomes binding on The St. David's Partnership.

My recommendation would not be binding. Further, it's unlikely that Mr N can accept my decision and go to court to ask for the balance. Mr N 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 N to accept or reject my decision before 19 December 2023.
Paul Featherstone
Ombudsman