DRN-4068676

## The complaint

Mr D complains about the advice given by CST Wealth Management Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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, 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 D's employer would be set up – the BSPS2.

Mr D met with CST in September 2017 to discuss his pension and retirement needs. He was also concerned about the situation with his employer and the DB scheme.

CST completed a fact-find to gather information about Mr D's circumstances and objectives. This showed that he was age 31 and his partner was age 29. They had two children aged seven and two. He was employed at Tata earning around £38,000 per annum. He also had a second, part time, employment. His partner was also employed part time. They owned their own property which was valued at £70,000 and had an outstanding mortgage of £55,000. Mr D had a modest amount of other debt, and he had some cash savings. He didn't have any investments.

CST also carried out an assessment of Mr D's attitude to risk, and it said he was *'a moderate risk taker with an adventurous risk profile of eight on a scale of one to ten'.*

In respect of Mr D's pension arrangements:

- Mr D had received a cash equivalent transfer value ('CETV') from the BSPS in August 2017. This showed that he had just over six years service. He was entitled to a pension of about £3,400 per year at the date of leaving the scheme. The CETV was about £67,500.
- Mr D had also joined his employer's new defined contribution ('DC') scheme. He was contributing 6% of his salary into this and his employer was contributing 10%.
- Mr D also had a DB scheme membership in his part time employment.

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. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

On 31 October 2017, CST advised Mr D to transfer his pension benefits into a personal pension and invest the proceeds. The suitability report said the reasons for this recommendation were that Mr D wanted:

- The option to retire earlier than the scheme's normal retirement age without a reduction of his benefits.
- His family to benefit from the higher death benefits a personal arrangement had in the event of his early death
- To receive a sustainable but flexible income
- To break all ties with his employer in relation to his pension and bring the funds under his control.
- To address his concerns about his BSPS benefits moving to the PPF.

Mr D accepted CST's recommendation and transferred his DB scheme funds to a personal pension.

Mr D complained in 2022 to CST about the suitability of the transfer advice. He said that he was not told that he should have stayed in the BSPS2 and his investment would cost him a lot of money because of the charges. There were no cash flow models or discussions about what would happen on his death. This has all caused him a lot of worry and distress.

CST didn't uphold Mr D's complaint. It reconsidered the advice in detail and said that it was very unlikely that Mr D would be worse off in retirement. Any annuity he purchased in the future was likely to be greater than the pension he gave up from the BSPS2. And it was also likely to enable Mr D to retire early and it gave him the flexibility that he wanted. He wouldn't have had this with the PPF or the BSPS2. CST didn't see any grounds to uphold Mr D's complaint.

Mr D referred his complaint to the Financial Ombudsman Service. An Investigator recommended the complaint be upheld and recommended that CST pay compensation, including £300 to address Mr D's distress and inconvenience. He said that the BSPS2 and the PPF were viable, and these options should have been explained to Mr D. He was relatively young and he had a long time to build up benefits in the DB scheme. So, he would already have some flexibility. And the growth rates required to match the DB scheme benefits (the critical yields) showed that Mr D was likely to receive lower benefits than the DB scheme. And whilst the death benefits were important, they weren't a good reason to transfer the funds from the DB scheme. And so, the transfer wasn't in his best interests.

CST disagreed, saying that the industry regulator the Financial Conduct Authority (FCA) has reviewed this advice and found that it was suitable for Mr D. It said that if an Ombudsman were to uphold the complaint it would like clarification on the technical aspects of why their opinions about the advice differ.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

The FCA has since developed, and now provides, a BSPS-specific redress calculator. Both parties to the complaint have been informed that I will likely award compensation based on this. And as no agreement has been reached, I'm now issuing 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 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 recommending a transfer if it could clearly demonstrate that it was in Mr D's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

- The transfer value analysis ('TVAS') report, that CST was required to carry out by the regulator calculated the critical yield. This showed how much Mr D's pension fund would need to grow by each year to provide the same benefits as his DB scheme. The critical yield was 4.85% to match the full pension he'd have been entitled to under the BSPS2 at age 65 and 4.31% if he took a reduced pension and tax-free cash. The same calculations for his age 57 were 5.83% and 5.15% respectively. To match the full pension the PPF would've paid from 65 the critical yield was 4.21% and again if he took a reduced pension and tax-free cash this was 4.01%.

- It was recorded that Mr D had a relatively high attitude to risk, and I can accept that, given the longer time he had until retirement, that he would be prepared to take some risk. But as he had not invested before I'm not persuaded that it was in his best interests to take a significant risk with his pension benefits. Or that he really understood the implications of this.

- I've thought about whether it was likely that Mr D could match the benefits from his DB scheme by transferring. In doing so I've compared the critical yield against the discount rate. The discount rate is a measure of what is a reasonable growth assumption over time. This was 4.7% to Mr D's age 65 and 4.6% to his age 57. It wouldn't have been in Mr D's best interests to transfer to, at best, match the benefits that he was giving up in the DB scheme. Given the risk of lower benefits that he was taking. The discount rate is above the critical yield if Mr D took tax-free cash and a reduced pension. So that would indicate a potential for him to be slightly better off by transferring particularly if he took tax-free cash at age 65.

- But the scope for any gains were marginal. It seems unlikely that Mr D would materially improve on his pension benefits at 65 due to the transfer. And I think Mr D was likely to receive pension benefits 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 funds that had a reasonable risk if he wanted to retire early, for example at age 57.

- And the suitability report noted that transferring to a personal pension was not likely to achieve the relevant critical yields in order to match the benefits of the DB scheme. CST said that, *'In our opinion these critical yields are not guaranteed to be achievable year on year between transfer and your planned retirement age of 57'*. In other words CST recognised that transferring may not likely mean that Mr D would be better off in retirement by doing so. So, I think the transfer wasn't in Mr D's best interests for this reason.

- CST said the transfer was suitable for Mr D as it allowed him to potentially retire early and to access his pension flexibly. It is true to say the personal pension could be more flexible, as from the DB scheme Mr D would have to take any tax-free cash he wanted at the same time as he took an income. He wouldn't have had to do this in the personal pension.

- But the first problem with this is that Mr D was only 31 at the time of the advice, and based on what I've seen he, understandably, didn't have fully defined retirement plans, other than wanting to retire early if possible. So, I don't think it was a suitable recommendation for Mr D to give up his guaranteed benefits now when he didn't know what his needs in retirement would be. I think it was too soon to make any kind of decision about transferring out of the DB scheme.

- And if CST had advised Mr D to join the BSPS2 and he decided he needed greater flexibility than the scheme provided later on, then he could have chosen to transfer from that scheme nearer to his retirement age.

- Secondly, I understand that Mr D and his employer had begun contributing to a recently set up DC pension scheme. Mr D and his employer were together contributing around 16% of Mr D's salary to that pension. Given the amounts that were being invested, that his salary and contributions would likely increase over time and investment returns would increase all of this, Mr D would likely build up a significant amount of money in the DC scheme.

- This would provide Mr D with flexibility – he wasn't committed to take the benefits in a set way. Mr D could have taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr D retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early, if that was what he ultimately decided to do. Overall, I'm not persuaded that Mr D needed to transfer to increase the flexibility in how he took his pension benefits at this time.

- It was documented at the time of sale that Mr D wanted to improve on the death benefits that he had. This may have been because as he wasn't married the spouse's pension the DB scheme had may not pass to his partner. But the priority here was to advise Mr D about what was best for his retirement.

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

- If Mr D had wanted to provide a lump sum for his family, CST could've explored life insurance as an alternative. But it was noted that Mr D and his partner already had life cover arrangements (in addition to other insurances) and so it's not clear what other provision he would need.

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

- I think Mr D's desire for control over how his pension was invested 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. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr D – it was simply a consequence of transferring away from his DB scheme.

- Mr D 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 and Mr D had elected to join this. But even if not, the PPF still provided Mr D with guaranteed income and the option of accessing tax-free cash. Mr D 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 persuasive reasons why it was clearly in Mr D'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 D 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 D received from CST was unsuitable for him.

CST has noted that the FCA has reviewed this advice and found that it's suitable. It hasn't provided any detail about the investigation the FCA did at the time. So, I can't really comment on what the FCA said.

But, in any event, my role isn't to provide an analysis of the regulator's actions and we don't have the same function. Unlike the FCA our job is not a regulatory one. I need to look beyond whether a firm has complied with its regulatory requirements. Instead, we consider information from both parties and decide, while having regard for relevant law and regulations, what we consider to be fair and reasonable in all the circumstances of the complaint. So, I don't think the fact that the regulator has made a separate review impacts on my consideration of this complaint. Nor, does it prevent me from reaching my findings independently of the FCA's considerations. And having done so, for the reasons set out above, I'm satisfied that CST's recommendation that Mr D should transfer wasn't in his best interests and so wasn't suitable for him.

Our Investigator recommended that CST also pay Mr D £300 for the distress caused by the unsuitable advice. Mr D said that finding out that he may be worse off in retirement has caused him a lot of worry and distress. I don't doubt that Mr D has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

## Putting things right

A fair and reasonable outcome would be for CST to put Mr D, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D 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 D and our Service upon completion of the calculation together with supporting evidence of what CST based the inputs into the calculator on.

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

Redress paid to Mr D 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 D'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.

CST should pay Mr D £300 for the distress caused by the poor 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**

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

Recommendation: If the compensation amount exceeds £170,000, I also recommend that CST Wealth Management Limited pays Mr D the balance.

If Mr D 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 D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 1 December 2023.

Andy Burlinson
**Ombudsman**