DRN-4150000

## The complaint

Mr P complains about the advice given by CST Wealth Management Limited ('CST') to transfer out of the British Steel Pension Scheme ('BSPS') and invest the funds in a personal pension. He says the advice was unsuitable for him which has resulted in him suffering a financial loss.

## What happened

In March 2016, Mr P'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 ('DB') scheme. Alternatively, members 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 said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new DB pension scheme sponsored by Mr P's employer would be set up – the BSPS2. The Pensions Regulator approved the RAA on 11 August 2017.

Mr P was concerned about what the announcement by his employer meant for the security of the defined benefits he held in the BSPS. Mr P was unsure about what to do with his pension. So, he approached CST for advice in September 2017 and it gathered information about his circumstances and objectives. It noted Mr P was aged 29 (almost 30) and was engaged to be married – he didn't have any children. That Mr P and his fiancé were in the process of buying a house and the savings they had were going to be put towards this.

CST recorded that Mr P had a 'high-medium' attitude to risk (6/10) and that he wanted to retire early if possible, at around 58 to 60 years old with an income of around £14,000 per year, which CST estimated would be the equivalent of £28,000 once inflation was taken into account. CST noted that Mr P and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £5,000 per year.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options - to 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 choice was 11 December 2017 (and was later extended to 22 December 2017).

On 30 October 2017, CST advised Mr P to transfer out of the BSPS to a personal pension. This was on the basis that it gave him the potential to improve on the benefits he could obtain through the PPF or the BSPS2 and it would give him the flexibility he desired. Mr P accepted the advice and, in December 2017, £132,617.55 was transferred to his new pension.

Mr P complained, via a representative, in 2021. He now thought the advice to transfer out of the BSPS was unsuitable for him as he would most likely be worse off in retirement.

CST didn't uphold the complaint. It thought the advice was suitable for Mr P as he'd said he wanted to retire early and it believed he could've achieved this and his other objectives by transferring out of the BSPS. It added that Mr P had the capacity to take a risk with his DB pension because he'd be building up further pension provisions over the next 30+ years.

Mr P referred his complaint to our service. He said there was no need to transfer out of the scheme when he had the option of joining the BSPS2 and his anticipated retirement was so far away.

Our Investigator didn't uphold the complaint. He didn't think Mr P's objective of greater flexibility and the ability to pass on his pension on his death were good reasons to transfer, particularly in view of his age. However, the Investigator thought Mr P had a reasonable prospect of improving on his benefits, so overall he didn't think the advice to transfer was unsuitable.

Mr P didn't agree. He said he could've met all of his objectives by joining the BSPS2 as the funds he'd be building up in his DC scheme over the next 30+ years would give him flexibility. And he would also be able to pass these funds on to any beneficiaries of his choosing on his death.

The Investigator didn't change his opinion so the complaint was passed to me to decide.

In February 2023 I issued a provisional decision upholding the complaint. I didn't think the advice to transfer out of the BSPS was suitable for Mr P. While I acknowledged Mr P could've possibly exceeded the benefits he would be entitled to under the scheme at age 65, this was less likely if he retired early, and Mr P had expressed a preference to do so. Overall, I didn't think it wasn't in his best interest to give up his guaranteed pension when he was so far away from his expected retirement age and he had the option of joining the BSPS2. Ultimately, I thought Mr P could've met all of his objectives by joining the BSPS2 and that he should've been advised to do so.

I recommended Mr P should be compensated for the unsuitable advice in line with the Financial Conduct Authority's ('FCA') Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension ('FG17/9'). However, I stated that the FCA had issued a policy statement on 28 November 2022 which set out the new rules and guidance for calculating redress (https://www.fca.org.uk/publication/policy/ps22-13.pdf) and that these rules would come into effect on 1 April 2023. So, I gave Mr P the choice to have his redress calculated under FG17/9 or to wait until the new rules came into effect. But I said that if the complaint hadn't been settled in full and final settlement by the time the new rules came into effect, I expected CST to carry out a calculation in line with the updated rules and guidance in any event.

Mr P accepted the provisional decision and chose to have his redress calculated in line with FG17/9.

CST didn't accept my provisional decision and made the following points:

- It wasn't required to consider the discount rate when giving the advice to transfer.
- The regulator's Defined Benefit Advice Assessment Tool ('DBAAT') said the advice wouldn't be unsuitable if the consumer wasn't going to be reliant on the DB scheme income at retirement because he could produce the same income via a suitable alternative. It said Mr P's circumstances reflected this.

- Following the transfer, Mr P's funds would last him beyond age 100 if they experienced a return of 3%, inflation was 3% and Mr P withdrew the same income he'd be entitled to under the BSPS2. CST said this was clearly achievable.
- It wasn't appropriate to speculate on Mr P's fiancé's pension entitlement.
- I hadn't taken into account that Mr P's BSPS benefits were only safeguarded against inflation to a certain point. Since October 2021 inflation had exceeded 10% so the value of his pension would've reduced in real terms.
- Mr P had genuine concerns about his ability to continue working at the steel works beyond age 58 but didn't anticipate retiring fully. Transferring allowed him the flexibility to take funds to top up income he may receive from other employment until he fully retired.
- It wasn't reasonable to delay transferring his BSPS benefits because if Mr P wanted to transfer closer to his retirement age he would've likely received a much lower transfer value.
- Mr P's attitude to risk assessment in 2017 was accurate and Mr P's risk appetite increased in 2021.
- Mr P had a reasonable capacity for loss – he and his fiancé would be able to maintain a satisfactory standard of living in retirement irrespective of the performance of the transferred funds.
- Passing on his pension was not important to Mr P, he already had some health problems and intended to enjoy life to the full.

As there is still disagreement, I'm now providing my final decision on the matter.

**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.

Having done so, I'm maintaining my decision to uphold it. I've considered the points made by CST in response to my provisional decision. But overall, I don't think the advice to transfer out of the BSPS was suitable for Mr P, for essentially the same reasons I gave in my provisional decision. However, I will address CST's points as appropriate below.

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.

Under COBS, CST was required to take reasonable steps to ensure that its personal recommendation to Mr P was suitable for him (COBS 9.2.1R). However, additional regulations and guidance applies to advising on transferring out of DB schemes. And COBS 19.1.6G says the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr P's best interests.

So, I've considered all of the applicable regulations here. And having looked at all the evidence available again, I'm not satisfied CST took reasonable steps to ensure the advice to transfer was suitable for Mr P, or that it was in his best interests. I'll explain why.

*Financial viability*

CST carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). As details of the BSPS2 had been released by this time, it was based on the likely benefits available to Mr P through the BSPS2.

According to the fact-find and suitability report, Mr P expressed the desire to retire early, possibly between the ages of 55 and 60. However, CST estimated that by the time Mr P would be approaching retirement, it was likely the minimum retirement age would be around age 58. So, it based its advice on Mr P retiring at age 58 at the earliest. The TVAS dated 29 October 2017 set out the relevant critical yields; at age 65 it was 4.96% if he took a full pension or 4.44% if he took tax-free cash ('TFC') and a reduced pension and at age 58 it was 5.59% for a full pension and 4.98% if he took TFC and a reduced pension.

The critical yield required to match the benefits provided through the PPF at age 65 was 4.35% if Mr P took a full pension or 4.12% if he took TFC and a reduced pension. At age 58 the critical yields increased to 5.20% for a full pension and 4.96% if he took TFC and a reduced pension.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.7% per year for 28 years to retirement (age 58) – the discount rate to age 65 was also 4.7%. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

CST assessed Mr P's attitude to risk as 6/10 or high-medium. In my provisional decision I said that I thought this was most likely because Mr P answered the majority of questions as 'neither agree or disagree', which I said had the effect of increasing the overall risk score. CST disagreed with this statement, saying only answering positively or negatively affected the risk score. While Mr P answering the questions in this way may not have directly affected his score, to my mind it still meant that Mr P's risk assessment was based on him answering fewer questions in a way which actually contributed to his risk score. And I maintain that it's notable Mr P said he agreed he took lower financial risks than the average person. CST says that is incorrect and says Mr P answered this question as 'neither agree or disagree'. But that isn't right, I think CST is referring to the statement, 'compared to the average person, I would say I take more risks' – Mr P answered this statement as 'neither agree or disagree'. Nevertheless, assessing a customer's risk profile is not simply a tick-box exercise. The assessment should take account of Mr P's whole circumstances.

Mr P had very little investment experience. And to my mind, a customer with a genuine high-medium attitude to risk would be experienced in investment matters, as I think they would need such experience and knowledge in order to understand the risks such an investment strategy would pose. CST makes the point that Mr P chose to increase his risk profile in 2021 – but I don't think that is relevant to my consideration of his circumstances in 2017. And while Mr P may have wanted to take a higher risk, that doesn't necessarily mean it was suitable for him to do so.

I also think a high-medium investor would have a moderate capacity for loss. I appreciate that Mr P was expected to work for another 30 years or so, and as such would be expecting to build significant further pension funds. But I still don't think he could afford to take a higher level of risk with these pension funds just because he had the capacity to build more in future. However, given the time to retirement, I accept Mr P could afford to take some risk and he did have some capacity for loss. So, I overall, I think a fair assessment of his attitude to risk was most likely 'medium' or 'balanced' which isn't substantially different to the risk level CST reached.

I've taken the discount rate into account, along with the composition of assets in the discount rate, Mr P's medium attitude to risk and also the term to retirement. The highest critical yield was 5.59% which was based on Mr P taking a full pension through the BSPS2 at age 58. If Mr P decided to take a reduced pension and TFC at that age, which I think is likely, the critical yield reduced to 4.98%. So, on the face of it, it seems to me that Mr P had a good chance of matching the benefits available to him through the BSPS2 or the PPF, even if he retired at age 58. And if he deferred his retirement closer to age 65, then there was a good chance he could exceed those benefits. However, I'm mindful that this would require returns at a consistent level of around 5% over a period of 30 years, which can't be guaranteed. This is something CST acknowledged in the suitability report. And if there were losses or sustained periods of lower returns, Mr P could have received lower overall retirement benefits, particularly if he did retire before age 65.

CST says that this is nonsense because its cash flow analysis shows Mr P's funds would last beyond age 100 if he achieved a return of 3% and took the same income he'd be entitled to under the BSPS2 adjusted for inflation at 3%. While I agree that it is reasonable to say Mr P could've most likely achieved this rate of return, CST isn't comparing like with like here. The critical yield relates to the rate of return required to produce a fund large enough at retirement to purchase the equivalent benefits Mr P was entitled to through the BSPS2, and this contained a spouse's and dependent's pensions. Whereas the 3% CST has quoted is the return required to cover the BSPS2 income Mr P would be entitled to alone.

Although CST says Mr P didn't want an annuity, the regulator still required CST to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. In any event, I don't think Mr P could realistically say with any certainty whether he would want to take a regular income at retirement or not – he wasn't expecting to retire for another 30 years. I'm also mindful that most people, if asked, would express a preference for flexibility. But that doesn't mean it was in Mr P's best interest to prioritise flexibility over a guaranteed income in retirement for him and his spouse (which he could achieve by taking benefits from the DB scheme).

CST also says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. But I haven't based my findings on the discount rate on its own. Nevertheless, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would've been considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers *were* required to refer to. And it is this combination, along with Mr P's attitude to risk, which leads me to be believe he'd wasn't likely to be better off in retirement if he transferred out of the DB scheme.

I also note that in the 'Retirement Options Questionnaire' Mr P was asked to rank his priorities. Although he only seems to have ranked the listed priorities between C and F (when the scale given was A - highest priority to F - lowest priority), Mr P chose the following as his equal highest priorities:

- Provision of an increasing pension
- A guaranteed pension payable for life
- Maximum pension possible.

So, although I accept Mr P wanted the maximum pension possible, it seems to me that a guaranteed, increasing pension was just as important to him. And this is what the BSPS2 and the PPF would've provided him with.

Overall, I accept that by transferring Mr P had a good chance of improving on the benefits available to him through the BSPS and PPF at age 65. But this wasn't without risk, and Mr P could have received lower overall retirement benefits if he retired earlier than this, particularly if investment returns weren't as expected. While the transfer could have been financially viable, that isn't the only consideration when giving transfer advice. And I don't think that the other objectives CST identified were good enough reasons to transfer out of the DB scheme. That's because I think Mr P had other ways of meeting them without risking his guaranteed pension. I've explained why below.

*Flexibility and income needs*

It seems one of the main reasons why CST recommended this transfer was for the flexibility and control it offered Mr P. CST says Mr P thought he wouldn't likely be able to continue working at the steelworks beyond age 58, but he wasn't likely to retire fully. It says Mr P would've sought other employment and therefore may have needed to take funds out of his pension as and when, which transferring his pension would allow him to do. But I think it's important here to say that Mr P's anticipated early retirement was still some 30 years away and could've been subject to change. So, I don't think Mr P had a need for flexibility at the time of the advice. Nevertheless, I've considered whether Mr P needed to immediately transfer out of the DB scheme to meet his objective to retire early in the way he described.

CST's suitability report presented early retirement from the DB scheme as being something to be avoided because of the 'penalty' that applied when doing so. Whereas it said if Mr P transferred his pension he could retire early without 'penalty'. But the 'penalty' that CST referred to was in fact actuarial adjustments. Those adjustments reflect that, by taking a pension earlier, it's likely that the pot to pay for that pension will have to last longer. As such the scheme's actuaries calculate a reduction in the yearly pension to allow for the fact that the pensioner will claim the pension – most likely – for a longer period. That is not a 'penalty' for taking the pension early, it's simply a compromise for having the benefits of that pension paid over a longer period. And I think describing early retirement factors as a 'penalty' wasn't providing Mr P with information that was clear, fair and not misleading.

While I've taken on board what CST has said about Mr P most likely semi-retiring at age 58 rather than retiring fully, even if those plans were followed to the letter, I'm not persuaded he needed to transfer out of the BSPS to achieve this. CST noted that Mr P wanted an income of £14,000, possibly from age 58, although with inflation this was likely to amount to £28,000 per year. However, given that CST has said Mr T still intended to keep working in some capacity that figure might have been lower. In any event, it seems to be no more than a best guess – in reality, Mr P had little idea of what his needs in retirement would be given it was so far away.

Under the BSPS2, CST estimated that Mr P could take an annual pension of £12,080 or TFC of £55,697 and a reduced annual pension of £8,354 at age 65. At 58, this was a full pension of £8,413 or TFC of £40,904 and a reduced pension of £6,135. Under the PPF the benefits at age 65 were not substantially different, but at age 58 both the annual pension and reduced pension with TFC were higher than under the BSPS2. It's clear that whatever scheme Mr P joined, the income he could take at age 58 wouldn't have met his full income needs, although it may have been sufficient if Mr P was still earning an income. But regardless, I think it would've provided a solid foundation of guaranteed income, to which Mr P could add his earned income or extra income from his DC scheme – a fund he'd be building up over the next 30 years or so. Alternatively, Mr P could've deferred taking his BSPS2 benefits until age 65, instead relying wholly on his DC funds to meet his income needs until his state pension became payable. Either way, Mr P's expected retirement funds at age 58 could already provide him with flexibility.

In the suitability report CST said Mr P intended to take more of his fund in early retirement and would likely reduce this when his state pension became payable. And it was this feature of a personal pension that drove his desire to transfer out of the DB scheme. But the income Mr P was entitled to under the BSPS2 wasn't going to be enough on its own to meet his income requirements once he fully retired, even when taking into account his likely state pension entitlement. So, I don't think that Mr P would've needed to reduce this aspect of his income – instead, he could've simply reduced the amount he was taking from his DC pension to top this up. So, CST ought to have known Mr P already had a way to meet this objective at retirement, instead of assuming a transfer was needed now to meet it.

As I've said, Mr P would be building up further retirement funds over the next 30 years or so through his employer's DC scheme. While I appreciate Mr P couldn't be certain his employment with British Steel would continue for that long, it's more likely than not that if he did change employers in the meantime, both he and his employer would be contributing to a pension. And I think it's reasonable to assume those contributions would continue at a similar rate, particularly given most people choose to increase their pension contributions as they get older. The fact-find says Mr P was contributing around £5,000 per year to his DC pension. Even without taking increases in salary or investment growth into account, this pension could be worth over £140,000 after 28 years. And by assuming modest net growth of 2% over the same period, the funds could be worth in the region of £200,000 by the time Mr P said he planned to semi-retire.

Mr P's fiancé also had her own workplace pension. However, no details of this were recorded. So, I don't know what pension Mr P's fiancé was expecting to have or from what age. CST says it didn't need to consider Mr P's fiancé's pension arrangements because they were not yet married and it says it doesn't know whether they are married today. But CST gathered personal information about Mr P's fiancé and considered their joint assets and liabilities, including a mortgage they were about to take on. So, I still think this information ought to have been obtained so that CST could take a reasonable view on whether transferring Mr P's pension was needed in order to meet their household income need in retirement.

Nevertheless, even if I assume Mr P semi-retired at age 58, he would likely have access to at least £200,000 in his DC scheme (25% of which would also be tax-free). This could've been added to the £40,904 TFC and reduced pension of £6,135 he could've taken from the BSPS2. And overall, I think that these provisions, as well as whatever income Mr P earned, would've given him a sufficient degree of flexibility to meet his income need of £28,000 per year until his state pension became payable – around nine years later. At that point, I think Mr P's BSPS2 pension and state pension and his future wife's state pension would've most likely been sufficient to cover their income needs. This meant any remaining funds in the DC scheme could've been left to continue growing.

So, I don't think Mr P had a genuine need for flexibility at the time of the advice. But, even if he did, I don't think he needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

Overall, I'm satisfied Mr P could have most likely met his income needs in retirement through a combination of taking his benefits under the BSPS2 (or the PPF) and taking flexible drawdown from his DC scheme. So, I don't think it was suitable or in Mr P's best interests to advise him to transfer his DB pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't need. That's particularly the case given Mr P's DC scheme would provide him with a degree of flexibility and would already be exposed to investment risk.

*Death benefits*

In response to my provisional decision, CST said that passing on his pension was not important to Mr P as he was already experiencing health problems and he intended to use his funds to enjoy his retirement. However, CST's suitability report said that Mr P wanted to leave a legacy to his family and that this was a supporting reason to transfer his pension. Several key points of its recommendation related to the 'higher level of death benefits' the personal pension provided compared with the scheme.

So, I maintain my view that CST also recommended Mr P should transfer his BSPS benefits to 'enhance' his death benefits. However, while I'm mindful that in the Retirement Options Questionnaire Mr P said he preferred that his pension fund didn't die with him, he also said he didn't want the opportunity to leave part of his pension fund to his estate on his death. And that his partner had an adequate income and it shouldn't be a significant factor in his decision. So, I don't think that leaving a legacy was as important to Mr P as CST's suitability report suggested.

Nevertheless, I can see that the lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr P. But, whilst I appreciate death benefits are important to consumers, and Mr P might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr P about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr P was due to be married and so the spouse's pension provided by either the BSPS2 or the PPF would've been useful to his spouse if Mr P predeceased her. I don't think CST made the value of this benefit clear enough to Mr P. The spouse's pension was guaranteed and it escalated – and under the BSPS2 the spouse's pension would be calculated as if no TFC had been taken. Furthermore, this benefit was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. This pension, when added to Mr P's spouse's own workplace pension and state pension would've most likely met her own income needs should Mr P pass way early. In any event, CST should not have encouraged Mr P to prioritise the potential for higher death benefits through a personal pension over his own security in retirement.

In addition, I've explained above that Mr P's DC pension could've likely been worth at least £200,000 by the time he retired. And while Mr P would've been reliant on this fund to meet his income needs in the early years of his retirement, particularly if he semi-retired at age 58, there would still most likely have been a sum remaining that he could've left to continue growing beyond his retirement. And Mr P could've nominated any beneficiary/beneficiaries of his choosing to receive the remaining funds in this pension on his death.

So, I think it's clear Mr P already had valuable death benefits through the DB scheme and he could've made other arrangements (in the ways I've set out above) to ensure that a part of his pension didn't die with him. And had CST explained to Mr P that he could meet his objectives without giving up his own guaranteed pension or his future wife's spouse's pension, I think Mr P would've been satisfied with this.

Lastly, if Mr P genuinely wanted to leave a legacy for his future wife, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CST could've explored life insurance. This doesn't appear to have been explored in any meaningful way and given Mr P's age, this would've most likely been cheap to secure, either on a whole of life or term assurance basis. The Retirement Options Questionnaire notes that Mr P had some health problems, but no further details were provided so I don't know if this would've had an impact on insurance rates or Mr P's life expectancy. But this should've been explored fully to determine whether taking insurance out was a viable alternative.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr P. And I think Mr P could've provided extra death benefits to family members of his choosing without risking his guaranteed pension.

*Control or concerns over financial stability of the DB scheme*

It's clear that Mr P, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund. So it's quite possible that Mr P was leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF.

It's well documented that this was a period of uncertainty for people like Mr P. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So, CST needed to give Mr P an objective picture and recommend what was in his best interests.

As I've explained, by the time the advice was given details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should've alleviated Mr P's concerns about the scheme moving to the PPF. But even if there was a chance the BSPS2 wouldn't go ahead, I think that CST should've reassured Mr P that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr P through the PPF would still provide a significant amount of the income he thought he'd need at retirement, and if he semi-retired at age 58, it's likely the benefits available under the PPF would've been higher than those under the BSPS2. Furthermore, this income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to CST recommending Mr P transfer out of the DB scheme altogether.

I also think Mr P's desire for control over his pension benefits was overstated. Mr P was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. Indeed, the recommendation letter suggested he would remain reliant on professional advisers. So, I don't think that having control was a genuine objective for Mr P – it was simply a consequence of transferring away from his DB scheme.

*Summary*

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr P. But CST wasn't there to just transact what Mr P might have thought he wanted. The adviser's role was to really understand what Mr P needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). While Mr P could've likely exceeded the benefits available to him at age 65, if he retired early that was less likely. And I don't think Mr P should've been encouraged to take that risk, particularly when there weren't any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr P's best interests for him to transfer his DB scheme to a personal pension when he was so far away from his retirement, not when he had the opportunity of joining the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr P had around 30 years before he expected to semi-retire, and while he liked the idea of retiring early, I think it was too far away in the future for him to say with any certainty this was something he'd definitely do.

For most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. I don't think that it would've been in Mr P's interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Also, Mr P was due to marry, and under the BSPS2 his future wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr P chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think CST should've advised Mr P to opt into the BSPS2. And by doing so, Mr P would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

CST says that if Mr P opted to join the BSPS2 and then transfer out of the scheme closer to his retirement age he was likely to receive a lower CETV. However, I don't think that was a particularly relevant consideration at the point of the advice. Mr P shouldn't have been encouraged to transfer out of the scheme just because it was felt the transfer value offered at the time was high.

CST also says that Mr P's BSPS2 benefits would only be safe-guarded against inflation to a certain point. And since October 2021 inflation has exceeded 10% so the value of Mr P's pension has reduced in real terms. But I don't think the inflation experienced since 2021 could've been anticipated when Mr P was given the advice in 2017. And in any event, joining the BSPS2 would've still offered him a degree of protection against the impact of inflation without him having to take any risk with his pension funds.

CST added that if using the FCA's DBAAT the advice would be found to be suitable. That's because Mr P wasn't going to be reliant on the DB scheme income at retirement because he could produce the same income via a suitable alternative. But whether the consumer is reliant on the DB scheme income is just one of many 'examples of unsuitability' expressed within the tool. And in any event, at the point of the advice, Mr P was reliant on the DB income as he had no other meaningful pension funds available to him. So, I don't think CST could say with any certainty at the point of advice that Mr P wasn't going to be reliant on the DB scheme income in retirement. And as I've set out above, I think he would have been reliant on it even if he built up further pension funds (as expected).

CST also says Mr P made an informed choice to proceed with the transfer and he would've transferred in any event. I accept that CST disclosed the risks of transferring to Mr P, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr P to transfer out, and I think Mr P relied on that advice.

I'm not persuaded that Mr P would've insisted on transferring out of the DB scheme, if CST had advised against it. I say this because Mr P was an inexperienced investor and this pension accounted for all of his retirement provision at the time. So, if CST had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interest, I think he would've accepted that advice.

I'm not persuaded that Mr P's fear about the PPF or his desire for flexibility was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interest. And if CST had explained Mr P was unlikely to significantly improve on the benefits available to him through the BSPS2 or the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, as well as providing extra death benefits, I think that would've carried significant weight.

In light of the above, I think CST should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And it's the benefits available to Mr P under the BSPS2 at age 65 which should be used for comparison purposes. I don't think it's reasonable to say Mr P will retire any earlier than this.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr P**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would most likely have 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 P and our Service upon completion of the calculation.

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

Redress paid to Mr P 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 P'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 £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 P 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 have also recommended that CST Wealth Management Limited pays Mr P the balance.

If Mr P accepts my final decision, the money award becomes binding on CST Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept my final decision.

CST Wealth Management Limited should provide details of its calculations to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 June 2023.

Hannah Wise
**Ombudsman**