DRN-4281561

The complaint

Mr E complains that he was given unsuitable advice by Pensionhelp Limited to transfer deferred benefits from his Defined Benefit (DB) pension with British Steel (BSPS) to a personal pension.

At the time of the advice Pensionhelp was an appointed representative of Pareto Financial Planning Limited, so they are ultimately responsible for this complaint.

What happened

In March 2016, Tata Steel UK Ltd 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 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 2016, Mr E was introduced by another adviser to Pensionhelp for advice on his BSPS benefits.

A fact find, income and expenditure and attitude to risk assessment were completed as well as handover note from the introducing adviser to Pensionhelp. This showed:

- Mr E was approaching 55. He was married and had no dependent children.

- He left his employment with British Steel in 2015 and had since been working for a different employer earning £57,000 per year. His net monthly income was £2,544. His wife had to stop working due to ill health and her benefits had recently reduced to around £87 per month. This had put pressure on the couple's finances and debts were mounting up. The total household income per month was £2,631.

- Their outgoings for mortgage, council tax, utilities, mobile phone contracts, car and caravan insurance and debt repayments amounted to just under £2,000. Food expenditure was £300-400 and money spent on going out was £200 per month.

- The couple had no savings. They owned their home worth around £260,000 with an outstanding mortgage of £121,000 with ten years left on the term. Monthly repayments were £764. They also had the following additional debts:

    - an overdraft of £3,500
    - £4,400 in credit card debt (monthly repayments of £140)
    - £13,107 on a car loan (monthly repayments of £262)
    - £2,697 on a caravan loan (monthly repayments of £150)

- Mr E and his wife were also expecting an HMRC bill of £15,000.

- Mr E wanted to take around £60,000 tax free cash from his pension at age 55 to clear his debts which would free up monthly income. He was planning to retire between age 63 to 65 and wanted to draw an income from his pension then. He thought he would need a monthly income of £1,100 in retirement.

- Mr E was member of another DB scheme at his current employer and Mrs E had accrued 14 years of DB benefits in the NHS from part-time work which would be available from age 60. No further details were recorded. Both were entitled to full state pensions projected to be £8,100 per year each from age 67.

- Mr E had no investment experience and was looking for low risk. His risk profile was recorded as conservative.

A suitability report was subsequently issued which recommended Mr E to transfer his BSPS benefits to a personal pension. The key reasons were that it would allow Mr E to take a tax-free lump sum to pay off debts and alleviate his financial situation but defer taking regular income until retirement. They found he didn't depend on these benefits in retirement as his outgoings could be met through other pension provisions, mainly his and Mrs E's state pensions. A personal pension also would provide lump sum death benefits and it would prevent benefits from falling to the PPF.

Mr E complained to Pensionhelp in 2021 about the advice he received. He said it wasn't suitable. Pensionhelp rejected his complaint.

Mr E referred his complaint to this service and one of our investigators upheld his complaint. He agreed Pensionhelp had given unsuitable advice. He thought alternatives to deal with Mr E's debts and keep his DB benefits intact weren't properly discussed or explored. He thought given the equity Mr and Mrs E had in their home, they could have refinanced and consolidated debts or explored the option of a debt management plan. He also didn't think concerns about the PPF weren't appropriately managed.

Pensionhelp disagreed and so the complaint was passed to me for a 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.

<u>Provisional decision</u>

I previously issued a provisional decision not upholding Mr E's complaint. I said:

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. 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 Pensionhelp'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.

The provisions in COBS 19 which specifically relate to a DB pension transfer.

Was the advice to transfer suitable for Mr E?

A transfer analysis showed that Mr E's personal pension needed investment growth of 11.54% per year to match his BSPS benefits at age 65. The adviser recorded that this was unachievable given Mr E's attitude to risk and the average return for the recommended investments were 4.75%. So it's not in dispute that if Mr E was planning to take benefits from this pension at age 65, it wouldn't be financially viable to transfer out of the BSPS.
So unless there were good reasons for Mr E to transfer out of the BSPS this wasn't in his best interest.

The key reason for a transfer was that Mr E was struggling financially and wanted to pay off debts. I agree with the investigator that alternatives how to deal with these debts should have been explored first in order to try and avoid accessing his pension for as long as possible. Pensionhelp says this would have happened, but there is no record of this and so I'm not persuaded this was done or at least in a meaningful way.

It's possible that some debts could have been consolidated and Mr and Mrs E maybe could have obtained a secured loan against their home. And so there is a possibility that they could have reduced monthly repayments towards their debts. However, I still think finances would have been very tight.

After paying for the expenditures set out in the background of this decision, the household income would have been spent. But this only covered basic costs (other than £200 for "going out" and £100 of savings which I'm assuming went towards the overdraft given they had no recorded savings).

The record didn't include for example costs for household insurance, fuel, maintenance costs, toiletries, clothing and other sundries. So based on what I have seen, I think all expenditure likely exceeded Mr and Mrs E's income by some margin. Even if they were able to reduce debt repayments to a point where their income would meet all their outgoings, they still would have had no emergency savings, an overdraft and a large HMRC bill coming their way. Mrs E had to stop working, so it's understandable that their finances had deteriorated. I also note Mr E ended up paying £26,000 instead of £15,000 to HMRC in September 2016. This might not have been expected, but demonstrates that even if some debt management or consolidation could have been achieved, their financial situation would have remained concerning.

Mr E's representative says he could have perhaps requested a Time To Pay arrangement with HMRC to pay the bill in instalments or taken business advice. However, even if that was possible, it still would have added to Mr and Mrs E's debt load.

Mr E was also still at least eight years away from his planned retirement age and Mrs E would also not be able to access any of her DB benefits for another eight years. So I don't think their financial situation would have significantly improved over the coming years.

So considering access to Mr E's pension wasn't unreasonable in my view to make life more comfortable for them. This of course had to be weighed up against the couple's income requirements in retirement and how these would be met. Mr E said he needed £1,100 per month in retirement. I think this seems low given Mr E's current income and expenditure, even assuming that by then his mortgage and other debts had been paid off (which would reduce monthly outgoings by £1,300). I think £1,100 would at most meet his very basic outgoings. Any income would also need to keep up with inflation. So I think the adviser should have probed this further. Customers often underestimate what they need in retirement.

Having said that, Mr E was a current member of a DB scheme with his new employer which would have provided guaranteed benefits and assuming he would work there until retirement (which given the kind of work he was doing is likely in my view), he would accrue eight to ten years of service. His employer's website shows his DB pension offers 1/60 of pensionable salary for each year in the scheme, so based on his salary of £57,000 this could be around £7,600 per year at age 63 or £9,500 per year at age 65. Mrs E would be able to access her DB pension at this time too. I don't know what her entitlement is, but given she worked in the NHS for 14 years, it's likely this would also amount to several thousand pounds a year, even having worked part-time. From age 67, Mr E's state pension would be paid and three years later they would receive Mrs E's state pension. All of these benefits would be guaranteed and include increases.

So the couple did have guaranteed benefits which would give them a good basis to meet their income needs in retirement and they could use the personal pension to top up their income where needed (for example between Mr E retiring from work and him reaching state retirement age).

Given the couple's other guaranteed benefits, I think they were able to take some risk on Mr E's DB pension in exchange for being able to improve their standard of living in the years before retirement. Taking tax-free cash at age 55 allowed them to repay debts and live more comfortably in the coming years and they would still be financially secure in retirement and have some flexibility.

So given Mr and Mrs E's circumstances I think accessing pension benefits at age 55 to alleviate their financial situation was in their best interest.

I also considered whether the more suitable recommendation would have been to access benefits from the BSPS at age 55. This would have provided a tax-free cash lump sum which would have been lower than from the personal pension, but still enough to repay debts. However, Mr E would have had to take an immediate income which at the time would have been around £8,100 per year. He was still working and a higher rate tax payer, so all of this income would have been taxed at 40%. This wasn't tax efficient and after repaying his debts I don't think he would have needed the additional income until he retired.

Overall, I think a transfer was suitable for Mr E.

This isn't to say that there were flaws in Pensionhelp's advice. I agree that they didn't do enough to alleviate concerns about the PPF and I don't think different death benefits were a plausible reason to give up his DB benefits. I also can't see that alternatives about debt management were discussed appropriately or that his income requirements in retirement were challenged. And advice was given without knowing details of Mr and Mrs E's other DB income which I think was very important in the circumstances.

However, notwithstanding that some aspects of the advice were flawed, I think a transfer was still suitable for Mr E in his particular circumstances.

Responses to my provisional decision and my findings

Mr E's representatives ('R') didn't agree with my decision. They provided a detailed response which I've considered in full. However, having considered their arguments carefully I remain satisfied a transfer was suitable in Mr E's circumstances.

R said Mr E could have re-mortgaged to raise £60,000 and used that money to pay off all his other debts and the HMRC bill and be left with £10,000 in emergency savings. They also suggested Pensionhelp ought to have explored with Mrs E whether she could receive higher welfare benefits and/or accessed her NHS pension earlier without deductions before age 60 due to her ill health. And they suggested Mr and Mrs E could have downsized and used the released equity to pay off their debts and have plenty of surplus. R mentioned that Mr and Mrs E are just in the process of doing this and have put their house up for sale.

I accept, like I did in my provisional decision, that Mr E could have possibly consolidated his debts or might have been able to take out a secured loan or re-mortgaged. Using R's assumptions when using £60,000 from a re-mortgage to pay off all other debts this might have given Mr E at best £270 per month in additional income. And this is based on the assumption that he would be able to get that loan and at the same rate than his existing mortgage at the time.

As I said previously I think Mr and Mrs E's outgoings were understated, so even with this additional income I don't think they would have had much disposable income. And all their debt would have been secured against their home. This is if they would have been even able to secure extra borrowing given their financial situation.

I also don't think it can be assumed that Mr and Mrs E would have wanted to downsize at the time. The fact they have decided to do this seven years later does not in my view support that they would have considered this on short notice to alleviate their immediate financial position.

If every alternative had been explored, I accept that there was *a possibility* that a combination of a secure loan or re-mortgage and additional welfare benefits or early NHS benefits from Mrs E's DB scheme (if available) could have provided the couple with some financial breathing space. And I also acknowledge that Mr and Mrs E could have maybe reduced their outgoings if they wanted to.

However, I don't think this automatically makes a recommendation to transfer out of the DB scheme unsuitable. R quoted provisions from an FCA report in 2018 which gave examples of adviser failings when giving pension transfer advice. One of these was to recommend using a Pension Commencement Lump Sum to pay off debts without obtaining details of the amount needed or exploring alternative options. I already agreed that alternative options should have been explored and I agreed that the adviser seems to have failed her as there wasn't evidence of such discussions. But a failing to do certain things doesn't lead automatically to the conclusion that advice is unsuitable. It depends on the individual circumstances of the customer.

I've considered Pensionhelp's failures, but overall I still think a transfer was suitable. I disagree with R that Mr and Mrs E's other DB pension provisions are irrelevant. They had guaranteed pensions which would securely cover their retirement income from age 63 or 65 if topped up with Mr E's personal pension until state retirement age. This would be possible even if there were significant and prolonged market losses just before they accessed the personal pension. And from state retirement age their entire retirement income would have been provided from guaranteed and increasing pension sources.

So whilst Mr E had a cautious attitude to risk, I don't think transferring out of his DB scheme risked his retirement security. And it allowed him to pay off his debts which in turn would reduce his outgoings significantly. The suitability report and the fact find notes made it clear that Mr E understood taking a lump sum now from his pension would decrease benefits later on in retirement. I think a transfer allowed him the flexibility to have a more comfortable life until retirement and still have a secure pension income exceeding his expected income needs.

For these reasons I still think the advice was suitable.

My final decision

I don't uphold Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 4 September 2023.

Nina Walter
Ombudsman