DRN-4456673

The complaint

Mr B complains about the advice CST Wealth Management Limited ('CST') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr B to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr B's.

What happened

In March 2016, Mr B'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')[1], or a new defined-benefit scheme ('BSPS2'). 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 pension scheme sponsored by Mr B's employer would be set up – the BSPS2.

In June 2017, the DB scheme administrators sent Mr B information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') quotation, which was around £462,800.

Mr B approached CST for advice about his pension. It conducted a fact-find with him. Amongst other things it noted Mr B was 46 years old and single. He was working, earning £36,000 a year. He owned his own home subject to an interest only mortgage of £130,000. He had £11,000 in savings. He had an outstanding loan of £5,000 and was making hire purchase repayments of £90 a month. Mr B and his employer together had started contributing a sum equivalent to 16% of his salary into the employer's recently set up defined contribution ('DC') pension scheme.

After obtaining a transfer value analysis ('TVAS') report in August 2017 CST sent Mr B a Financial Planning Report ('suitability report') setting out its analysis and recommendations. It recommended Mr B should transfer his DB scheme funds to a named SIPP and use the services of a discretionary fund manager to advise on an investment portfolio. In brief it said that doing so would allow Mr B to retire at age 55, pay off his interest only mortgage while maintaining an income of £2,000 a month. It also said he could benefit from accessing his funds flexibly and leave any residual pension to his family on his death.

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays 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.

Mr B accepted CST's recommendation and signed the forms for the transfer to go ahead.

Before the transfer had completed the BSPS trustees provided scheme members with an important update in August 2017. They said the members' employer had made an expected payment into the BSPS of £550 million, as part of its agreement with The Pension Regulator and that was likely to result in an improvement to transfer values. The confirmation that the employer had made the payment referred to was announced on 11 September 2017. Later that month the BSPS sent Mr B an updated CETV which had been recalculated at around £477,900.

In October 2017 CST obtained an updated TVAS report to reflect the new CETV. The transfer was completed later that month.

Mr B complained to CST that its advice wasn't suitable for him. CST provided a comprehensive response in January 2022. It didn't uphold Mr B's complaint. In summary it said its advice was suitable for him as it allowed him to achieve his objectives.

Mr B brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think CST's advice was suitable for Mr B. So she recommended his complaint be upheld. She said CST should establish if Mr B had suffered a financial loss and if so pay compensation. She added that CST should pay him £300 to address his trouble and upset from the impact on his retirement planning.

CST didn't agree with our Investigator's complaint analysis. In a detailed response it maintained that its advice was suitable for Mr B and allowed him to achieve his objectives.

However, without admitting liability it later accepted the Investigator's recommendation. It has since, on more than one occasion and most recently in November 2023, performed calculations to establish if Mr B had suffered a loss as a result of its advice. Those calculations have shown that Mr B did not suffer a loss. And as such no compensation, beyond the £300 trouble and upset amount, is due to Mr B.

In the meantime Mr B told us that he'd been unwell and didn't believe that the £300 compensation CST offered resolved the matter.

The complaint has been referred to me to 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 understand CST is still disputing that it gave Mr B unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr B in detail.

That said, I will comment that I agree with the Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the regulator's (the FCA) guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable. And they should only recommend one where they can clearly show that it was in the consumer's best interests. I don't think that was the case for Mr B. That's because, amongst other things:

- CST identified in its suitability report that the growth rates required to match the benefits from the DB scheme (the critical yields) were "highly unlikely to be achieved". It said his benefits in retirement could be lower if his investments didn't perform as forecast. In other words CST recognised that by transferring Mr B was taking the chance that he could make himself worse off in retirement. I don't think that clearly shows a transfer was in his best interests.

- Mr B was only 46 at the time of the advice. He still had around nine years until his preferred retirement age of 55 and 19 years until the DB scheme's normal retirement age of 65. And, if CST had advised him to defer making a decision about transferring until more about the BSPS2 was known, then he could have opted to join that scheme. Had he done so then if he later decided the BSPS2 didn't meet his needs in retirement he could have chosen to transfer from it at that point. I think this was something he could have explored closer to his intended retirement age. It wasn't a decision he needed to make straightaway. So he had no need to put his otherwise safeguarded benefits at the risk of the financial markets in the meantime.

Overall, I can't see persuasive reasons why it was in Mr B's best interest to give up his DB scheme guarantees.

Putting things right

The aim is to put Mr B back in the financial position he would have been in at retirement had he remained in the DB scheme. CST carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect it to do in the circumstances. The calculator was designed to establish how much a consumer needs in their pension arrangement to secure equivalent retirement benefits that they would have been entitled to under either BSPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs that CST entered which are specific to Mr B. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr B's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr B has not suffered a financial loss by transferring his pension.

CST has previously agreed to pay Mr B £300 as recommended by our investigator for the distress and inconvenience this matter has caused him. Mr B has argued that sum is not enough. He's told us about some ill-health and believes the pension situation has made things worse.

I was sorry to read about Mr B's health concerns. I note there's evidence on file that he advised CST about his health issue in 2020. At that time he told CST his condition wasn't a result of money issues but because of the situation with the pandemic. He also thanked CST's adviser and said "you don't know how much you have helped me". That would indicate that, rather than making Mr B's condition worse CST have helped. So, while I don't wish to downplay the effects of Mr B's condition on him, I haven't seen persuasive evidence it's been primarily caused or made worse by CST's actions. It follows that I don't think the fact that Mr B suffers from a health issue means he should receive higher compensation for his distress and inconvenience.

That said I don't doubt Mr B has likely been caused some distress and concern by finding out the advice may not have been suitable. And I'm conscious this upset wouldn't have happened but for CST's advice. So, in the circumstances, I think the award the Investigator recommended is fair and reasonable.

My final decision

I think the calculation carried out by CST Wealth Management Limited is appropriate and no redress for financial loss is due to Mr B. But, I think CST Wealth Management Limited should pay him £300 as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 December 2023.

Joe Scott
Ombudsman