

The complaint

Mr W complains about the outcome of the review carried out by FB Wealth Management Ltd trading as Forrester Boyd Wealth Management (“Forrester Boyd WM”) in connection with the FCA’s consumer redress scheme for the British Steel Pension Scheme (“BSPS”) – to make my findings easier to follow, I’ll refer to this as the “redress scheme”.

What happened

The sequence of events isn’t in dispute, so I’ve only set out a brief summary of what happened.

Mr W had built up 3 years and 3 months’ pensionable service in the BSPS between June 2008 and September 2011. The BSPS was a defined benefits (“DB”) pension scheme that provided a guaranteed lifetime income to members.

In September 2017, Forrester Boyd WM advised Mr W to transfer the capitalised value of his DB pension in the BSPS to his existing self-invested personal pension (“SIPP”). Mr W accepted the recommendation. The transfer to the SIPP was completed shortly afterwards.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms are required to use the FCA’s BSPS Defined Benefit Advice Assessment Tool (“DBAAT”). The review can lead to one of two outcomes:

- The advice is rated as “suitable” and the case is closed; or
- The advice is rated as “unsuitable” – if so, the case progresses to a calculation and the payment of redress if it’s shown the consumer suffered a financial loss

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service (“FOS”) to look at whether the review was carried out correctly in line with the redress scheme rules.

Forrester Boyd WM’s review of the advice it gave Mr W

In August 2023, Forrester Boyd WM completed its review of the advice it gave to Mr W to transfer out of the BSPS. The DBAAT generated a suggested suitability rating of “potentially unsuitable” based on Forrester Boyd WM’s answers. But it decided that its advice was “suitable” and closed Mr W’s case.

Forrester Boyd WM confirmed the review outcome to Mr W and told him that it wouldn't be taking any further action.

FOS's assessment

Mr W disagreed with Forrester Boyd WM's assessment of his case. So he referred the matter to us.

In December 2023, one of our investigators recommended that this complaint be upheld because he had concerns Forrester Boyd WM hadn't followed the FCA's redress scheme rules. He explained the reasons why in his assessment. To put things right, our investigator recommended that Forrester Boyd WM amend the review outcome on Mr W's case under the redress scheme to "unsuitable" and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Forrester Boyd WM responded and stated that while it didn't agree with our investigator's assessment it was prepared to carry out a loss assessment and settle any redress due to Mr W. It carried out a loss assessment which produced a 'no loss' outcome, details of which were sent to our investigator. Forrester Boyd WM didn't send to Mr W details of its loss assessment or a redress determination letter in line with CONRED 4.4.2R to formally close his case under the redress scheme. So, as it stands, this complaint remains unresolved because Forrester Boyd WM didn't accept our investigator's assessment and hasn't provided a redress determination letter to Mr W. Our investigator told Forrester Boyd WM that for these reasons he would refer this complaint to an ombudsman.

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

I'd like to clarify to the parties that the scope of this final decision is limited only to evaluating the adequacy of Forrester Boyd WM's assessment of Mr W's case under the redress scheme. I've considered the additional information provided by Forrester Boyd WM in response to our investigator's assessment and why it continues to believe that the 'suitable' outcome it reached under the redress scheme is correct.

The FCA's BSPS DBAAT

As noted above, the redress scheme rules require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the

advice is “potentially suitable”. But the tool only provides a suggested rating. It’s for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Forrester Boyd WM’s review of the advice it gave Mr W

In its role as assessor, Forrester Boyd WM answered that one (Example 1) of the 12 examples of unsuitability applied to Mr W’s case. This generated a suggested rating of “potentially unsuitable”. But Forrester Boyd WM finalised the advice rating as “suitable” based on the following rationale:

“Client has sufficient knowledge, attitude to risk and capacity for loss for transfer. He only worked for British Steel for around 3 years, so fund accounts for a relatively small part of his overall retirement planning. He will not need the (relatively low) guaranteed income in view of his other provision, including state pension. Transferring the BPS benefits will give the flexibility to build up the value of his SIPP for liquidity at retirement or purchase additional commercial property within his existing arrangement where the further rental income would accrue within his pension fund.”

I’ve reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator’s view that Forrester Boyd WM didn’t follow the redress scheme rules when it assessed Mr W’s case. In particular, based on the contemporaneous evidence and the redress scheme instructions in CONRED 4 Annex 21, I think Forrester Boyd WM, in its role as assessor, should’ve answered “yes” to the following examples of unsuitability:

Example 1: The client is, or will be, reliant on income from the comparator scheme

When completing the DBAAT, Forrester Boyd WM answered “yes” to this question. For the record, it’s also my opinion that the assessor should’ve answered “yes” to Example 1. Since we share the same opinion, I don’t think it’s necessary to scrutinise Forrester Boyd WM’s reasoning here.

Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member’s death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under this question the assessor is required to consider whether the pension transfer was required to achieve Mr W’s death benefit objective and – if so – whether he was able to bear the risk of the transfer. Under reference 10.5R (3), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

Mr W was then aged 50, married and in good health. He had three children aged between 9 and 16. He was a business owner. He drew around £80,000 a year from his business based on a combination of income and dividends. He didn’t have any debts or liabilities.

In the suitability report it was recorded that he was interested in a pension transfer because he didn’t want death benefits to be limited to only his wife and that a SIPP offered “*superior death benefits for your children*” when compared to the BPS. It was also noted that it was important for Mr W to “*have the flexibility to control the way benefits are paid from your pension fund on your death to ensure they are passed on in the most tax efficient manner to reflect your family’s circumstances at that time, as opposed to being limited to a fixed*

spouse's pension with no ongoing benefit for your children, other beneficiaries or future generations and the current scheme rules do not facilitate this."

Forrester Boyd WM recorded that Mr W had existing life cover of around £225,000 to age 65 with three different providers. So I think it's fair to say that he wasn't averse to the idea of paying for life cover. In addition, his wife was employed by the NHS and entitled to a death in service benefit of around £100,000 at that time. So it's clear that significant lump sum death benefits (relative to what was recorded about their wider financial situation) were available.

There's no contemporaneous evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Forrester Boyd WM:

- using Mr W's disposable income to obtain level or decreasing term assurance – as noted above, he was content to pay for life cover if necessary; and/or
- using Mr W's existing life cover of £225,000 which would be paid to any nominated beneficiary on his death including his children – it's worth repeating here that Mr W didn't have any existing debt or liabilities that would need to be repaid on his death thereby reducing the money available to his family; and/or
- using the value of Mr W's existing SIPP then valued at about £144,000 and into which he was paying ongoing monthly contributions of £800 or his Section 32 plan valued at about £2,000.

This wasn't addressed by the assessor when completing the DBAAT. With reference to 10.5R (4), the assessor is required to decide whether the firm has a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on death met the consumer's investment objectives; and that the consumer is able financially to bear any transfer-related risks consistent with their investment objective.

It's not in dispute that Mr W will be reliant on income from the comparator scheme, as set out in Example 1. It's my view that Forrester Boyd WM failed to demonstrate that Mr W had the requisite capacity for loss to be able to relinquish his safeguarded benefits. I think it's also clear that lower risk suitable alternative options were available to achieve his death benefit objective but Forrester Boyd WM failed to adequately consider these, as noted above.

Since Mr W was aged 50 and in good health at the time, he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the SIPP and for the period until Mr W was able to withdraw retirement benefits, the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the SIPP to meet his income and lump sum needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

Mr W wanted to retire somewhere between age 55 and 57. The TVAS report showed that based on taking a similar level of benefits in retirement as the BPS from age 55, the SIPP fund value (in respect of the element related to the BPS transfer only) would last until age 74 if taken as income only or age 76 if taken as reduced income and the maximum tax-free lump sum. This assumed a medium rate of return which of course wasn't guaranteed.

The suitability report included a section on cashflow modelling which I've reviewed. I cannot see that the modelling took into account inflation, was based on a proper assessment of Mr W's expected expenditure in retirement or took into account the withdrawal of any lump

sums in the future. I note that when completing the DBAAT the assessor stated, “A cash flow model using standard growth assumptions is included in the suitability report and indicates that the fund in the proposed alternative arrangement is projected to last beyond the client's 100th birthday when all sources of income are taken into account. However, cash flow data may have some inaccuracies”. So, overall, I'm not convinced that the cashflow modelling used by Forrester Boyd WM can be relied upon.

In my view, the information in the TVAS report supports the case that Mr W would use most or possibly exhaust his pension savings in the SIPP, particularly if he lived beyond average life expectancy which of course is a possibility. Even based on average life expectancy it's clear that there will be minimal death benefits available to his family on his death. This ought to have been apparent to Forrester Boyd WM.

Taking into account the above, it's my view that Forrester Boyd WM didn't have a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on Mr W's death met his objective or that he was able financially to bear any transfer-related risks consistent with this investment objective.

Under reference 10.6E (1), (2) and (3), the assessor is directed to answer “yes” to Example 2 when the available evidence demonstrates that:

- the consumer didn't have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or
- a lower risk suitable alternative was available to achieve this objective; and/or
- it was likely that the consumer would exhaust their pension savings during their lifetime and so there will be minimal death benefits available.

Given the above points, it's my opinion that the assessor should've answered “yes” to Example 2.

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer “yes” to this question where the following apply:

- (1) the consumer doesn't have the requisite capacity for loss because they weren't able to forego scheme benefits to achieve this objective; and/or
- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BPS scheme.

The suitability report stated that Mr W wanted to transfer away from the BPS to “a money purchase pension plan, to provide greater flexibility when drawing benefits from your pension fund”. It also stated that from age 55 his annual retirement income need was £36,000.

Flexibility and control might sound attractive, but I cannot see that Mr W had any concrete need for it. There's no real evidence that Mr W required the flexibility of irregular lump sums or variable income during retirement. Rather, the evidence indicates that he required a steady and reliable source of income when he retired to achieve his stated income need. But if he did require flexibility, there were alternative, lower risk options available:

- saving some of Mr W's disposable income while he was still working in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees; and/or
- using the value of Mr W's existing SIPP then valued at about £144,000 and into which he was paying ongoing monthly contributions of £800 or his Section 32 plan valued at about £2,000 to provide flexible tax-free cash and or income; and/or
- using the tax-free cash available under the successor scheme to the BPS, the BPS2 (had he been advised to select that option).

Notwithstanding the above, a key point here is that Mr W was then aged 50 and so couldn't access any benefits under the SIPP until age 55 at the earliest. So transferring at that time wouldn't have enabled him to immediately draw benefits flexibly. Rather, he'd need to wait until at least age 55. So I cannot see any compelling reason why it was necessary to transfer at that time to meet the flexible objective and in doing so relinquish valuable guaranteed income.

Overall, it's my view that Forrester Boyd WM failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income.

As explained in Examples 1 and 2 above, it's my view that Mr W didn't have the requisite capacity for loss to be able to relinquish his safeguarded benefits.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk; or (ii) the capitalised value of death benefits (where this is a priority objective) is significantly higher under the comparator scheme(s) than that available from the proposed arrangement.

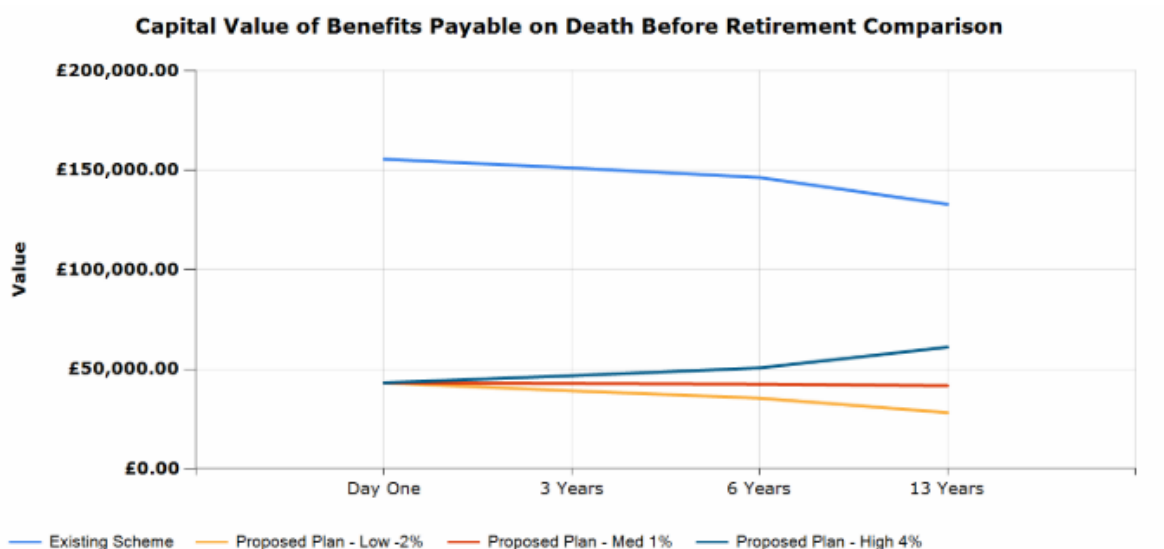
In Mr W's case, he wanted to retire somewhere between age 55 and 57. One of the primary drivers for Forrester Boyd WM recommending the transfer to was to enable him to use the transfer value to provide liquidity and buy commercial property within his existing SIPP.

The critical yield figures at age 55 calculated by Forrester Boyd WM were 21.79% on the basis Mr W took all benefits as pension only or 17.02% on the basis he took a reduced pension and maximum tax-free lump sum. Forrester Boyd WM determined that Mr W's risk profile was 'Highest Medium'. But it was agreed that the transfer value be held in cash following the transfer to the SIPP as Mr W wished *"to invest in cash for the short term as you are thinking about purchasing another property within your SIPP"*. If one of the primary objectives underpinning the recommendation was to buy commercial property then, in order to demonstrate suitability, I would've expected Forrester Boyd WM to have obtained details of the commercial property such as the likely cost, whether borrowing within the SIPP was expected and the cost of this, projected rental income, expenditure costs etc. But there's no

evidence that Forrester Boyd WM obtained these sorts of details. Or that it considered how using the transfer value to buy commercial property might impact his ability to retire from age 55. I think this was a material oversight because without these details it's difficult to see how the transfer to the SIPP at that time led to Mr W achieving a clearly defined advantage compared to the alternative of transferring to the BPS2.

I cannot see a copy of any illustration produced by the provider that showed the assumed growth rates of the transfer value under the SIPP. But I think it's very likely any such illustration would've shown the critical yield figures of 21.79% and 17.02% were likely to be unobtainable under the SIPP.

Furthermore, according to the TVAS report, the capitalised value of death benefits under the BPS were significantly higher than the SIPP at all points over the next 13-year period based on the low, medium and high projection rates as shown in the excerpt below:



I think this analysis showed that it was likely Mr W would be financially worse off as a result of the pension transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 9, particularly given my view that Mr W was reliant on the income (Example 1) and didn't require flexibility with these benefits (Example 3).

Conclusion

Based on the above considerations, it's my opinion that Forrester Boyd WM failed to follow the FCA's redress scheme rules when it assessed Mr W's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 1, 2, 3, and 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Forrester

Boyd WM's non-compliant conduct was the effective cause of Mr W's decision to transfer. This was a complex transaction involving many factors. In my view, Mr W was reliant on Forrester Boyd WM, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views.

Overall, it's my view that Forrester Boyd WM's conduct is more likely than not to have caused Mr W to transfer to the SIPP when this wasn't in his best interests. Given Mr W's reliance on Forrester Boyd WM to provide suitable advice, I think it's unlikely he would've still decided to transfer to the SIPP against its advice had it advised him to opt for the BSPS2 instead.

Putting things right

Forrester Boyd WM must do the following:

1. Amend the DBAAT so that in addition to Example 1, unsuitability Examples 2, 3 and 9 are also marked as 'yes' on the relevant tab and the '*Assessor's suitability rating*' is marked as "unsuitable" – and then update the section covering rationale with appropriate comments to support the conclusion;
2. Calculate and pay any redress due to Mr W in line with the redress scheme rules; and
3. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr W's case.

To be clear, when Forrester Boyd WM completes the loss assessment it should send the appropriate redress determination letter to Mr W in line with CONRED 4.4.2R and settle any redress due in line with CONRED 4.4.9R. This is so that his case is formally closed under the redress scheme rather than remaining open-ended as is currently the case.

My final decision

I uphold this complaint. I direct FB Wealth Management Ltd trading as Forrester Boyd Wealth Management to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 May 2024.

Clint Penfold

Ombudsman