DRN-3599783

The complaint

Mr E complains about the suitability of the advice provided by Vision Independent Financial Planning Ltd ("Vision") in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

The advice complained about was provided by DJW Independent Advice Ltd which was an Appointed Representative of the principal firm, Vision. As the principal firm, Vision remains responsible for the acts and/or omissions of DJW Independent Advice Ltd. To make my decision easier to follow I'll refer to Vision throughout.

What happened

Mr E had built up safeguarded benefits in the BSPS while employed by Tata Steel UK Ltd ("Tata Steel"). The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

In March 2016, Tata Steel 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 safeguarded 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 DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. By that point, Mr E had built up 30 years and 10 months' pensionable service in the BSPS. His annual scheme pension as at the date of leaving the scheme in March 2017 was £17,196.35. This would be revalued over the term to retirement by a prescribed amount.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, the BSPS issued its *'Time to Choose'* communication pack to members including Mr E. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP (the transfer value available to Mr E was £443,006.78)

Options 1 and 2 would've enabled Mr E to retain guaranteed lifetime income, albeit at a lower level than provided by the BSPS. Members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

In response to the announcement by Tata Steel, Mr E contacted Vision for advice and met one of its advisers. The adviser recorded the following information about Mr E:

- He was aged 52, single and in good health. He didn't have any children or other people financially dependent on him;

- He was employed full-time by Tata Steel and paid gross annual income of about £38,500;

- His assets comprised his residential house valued at £70,000, £4,400 in cash savings and about £500 in Tata Steel shares;

- His liabilities comprised a repayment mortgage of about £20,000 on his residential house which was due to be repaid in about nine years' time but he was making overpayments and hoped to repay it sooner. He didn't have any other debts or liabilities;

- He had surplus disposable income of about £450 available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full state pension at age 67 and had been a member of Tata Steel's defined contribution ("DC") pension scheme provided by Aviva since April 2017. The total annual contribution into his DC plan was 16% of his gross annual salary;

- His investment knowledge and experience was recorded as, *"About as much understanding or experience as the next person"*;

- He had a *'Balanced'* risk profile; and

- He had several objectives in connection with his safeguarded benefits in the BSPS. In summary, he wanted to retire early, initially part-time from age 55 and then fully retire from age 60, be able to draw flexible pension benefits, obtain control over his fund to remove the risk of it falling into the PPF, and to pass any unused fund to his brother and sister on his death.

In November 2017, Vision issued its suitability report to Mr E recommending that he transfer the value of his safeguarded benefits in the BSPS to a PPP to achieve his objectives.

This complaint

In 2022, Mr E complained to Vision about the suitability of its pension transfer advice. He was concerned that the advice was unsuitable and had caused him to suffer a financial loss.

Vision didn't uphold this complaint. In summary, it was satisfied that the pension transfer to the PPP enabled Mr E to achieve his recorded objectives and was therefore suitable. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr E with all the necessary information and risk warnings in good time to be able to make an informed decision.

One of our investigators considered this complaint and recommended that it be upheld because, in her view, Vision had failed to demonstrate at the time that transferring to the PPP was clearly in Mr E's best interests to achieve his objectives. Given Mr E's age, she didn't think there was any pressing need to transfer to a PPP at that time. She thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that Vision carry out a redress calculation in line with the Financial Conduct Authority's ("FCA") guidelines on the basis that Mr E transferred to the BSPS2 and would be a 20% income taxpayer in retirement. In addition, she recommended that Vision pay Mr E £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Vision disagreed with our investigator's assessment and provided additional comments in response. Our investigator considered those comments but wasn't persuaded to change her view and recommendation that this complaint should be upheld. Since agreement couldn't be reached, this case was placed in the queue awaiting allocation to an ombudsman.

While awaiting allocation, Vision contacted us in March 2023 to say that it had changed its mind and accepted the investigator's assessment. It stated, *"…Whilst Vision do not agree with the Investigator's Decision for the reasons set out in Vision's Final Response Letter dated 12th April 2022 and email submission of 14th October 2022, Vision is willing to take a pragmatic approach and accept the Investigator's Decision under protest to avoid, in particular, further costs from being incurred".*

Following this, in May 2023, Vision wrote to Mr E to obtain information to enable it to carry out the redress calculation. Mr E contacted us in July 2023 to confirm that he would provide information to Vision.

This complaint has now been allocated to me for review. Since July 2023 no further contact has been received from either party and so it appears this complaint remains unresolved. So I've decided to proceed and issue my final decision to prevent any further delay. 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.

In deciding what's fair and reasonable, I take 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. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Given that Vision previously told us that it accepted the investigator's assessment and recommended remedy, I don't see the need to address the suitability of its pension transfer advice to Mr E in detail. However, I would like to state that I agree with the investigator's view the pension transfer advice Vision gave to Mr E was unsuitable for largely the same reasons. In summary:

- Mr E's safeguarded benefits, accounting for 30 years and 10 months' pensionable service, represented the backbone of his retirement provision built up by that time. I think it's fair to say that when he came to retire, he would be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support his standard of living in retirement. So I think it was important not to expose the value of these benefits to unnecessary risk given his limited capacity for loss and ability to replenish any losses over the short timeframe until he retired;

- Vision recorded that Mr E's knowledge and experience of investments was, *"About as much understanding or experience as the next person".* I'm not sure what this means. From what I can see, it appears Mr E was an inexperienced investor who wasn't used to managing or having large sums of money exposed to investment markets. Transferring to the PPP led to the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to Mr E. Those risks would've been retained by the BSPS2 had he transferred to that scheme. Taking these factors into account, it's my view that there needed to be a compelling reason why it was suitable for an inexperienced investor like Mr E to transfer to the PPP compared to the alternative option of retaining guaranteed lifetime income under the BSPS2;

- At the time of the advice, Mr E was aged 52. He couldn't access any benefits until age 55 at the earliest under the PPP. It was recorded that he wanted to retire early, initially part-time from age 55 and then fully retire from age 60. His annual retirement income need from age 60 was recorded as £22,895 in 2017 terms. The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. There wasn't any certainty that Mr E would be financially able to retire earlier than age 65. I think it would've been difficult to calculate an accurate income figure with the timeframe to age 60. In my view, with such a time horizon until pension benefits could be accessed and the level of uncertainty involved in quantifying objectives, it made the case for a pension transfer at that time – for the sake of achieving possible early retirement – more difficult to justify;

- Had Vision advised Mr E to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 52;

- There's no real evidence that Mr E required the flexibility of irregular lump sums, variable income or staggered income during retirement. Flexibility and control might sound attractive, but I can't see that Mr E had any concrete need for it. He had received guaranteed income all his working life. So I think an element of guaranteed retirement income would've been valuable for an inexperienced investor in Mr E's circumstances. But even if he did require flexible benefits, I think this could've been provided by his DC workplace plan provided by Aviva. He joined that scheme in April 2017 and the total annual contribution was 16% of his gross annual salary. It was noted the value of his plan was then about £4,000 and that he intended to remain employed by Tata Steel. So, by retirement, I think it's likely he'd have access to a DC fund together with any tax-free cash from the BSPS2 to meet any flexible retirement needs, further undermining the case for a pension transfer at that time;

- Vision recommended the transfer to the PPP to remove the risk that Mr E might be transferred to the PPF at a later date. While I understand that Mr E may have been concerned about the security of his safeguarded benefits, I don't consider a transfer to the PPF was an outcome for him to avoid. Under the PPF, Mr E would've received a minimum of 90% of his scheme pension. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. If Mr E was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why, as an inexperienced investor, he would accept the risk of transferring to a PPP and invest on an *'Balanced'* risk basis which exposed him to unlimited downside risks where the loss could be significantly greater than 10%;

- A change in the format of death benefits was another apparent objective for Mr E transferring to the PPP. It was noted that on death he wanted any unused pension funds to be passed to his brother and sister. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr E about what was best for his own retirement provision. Withdrawing money from the PPP to meet income and lump sum needs from age 55 onwards would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mr E. A pension is primarily designed to provide income in retirement. Mr E was then single and didn't have any children or other people financially dependent on him. So it's questionable why it was deemed suitable for him to transfer to a PPP at that time to change the format of death benefits at the cost of losing guaranteed income. It's my view that Mr E had no health issues at the time Vision advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his brother and sister;

- For the reasons stated above, I don't think there was any need to transfer at that time. The critical yield figures attached to the transaction further undermine the case for a pension transfer. These were as follows:

Age	Full pension	Reduced pension and tax-free cash
Normal retirement at age 65	5.72%	4.48%
Early retirement at age 60	8.98%	6.92%

  This compared with discount rates of 3.4% at age 60 and 4.0% at age 65, as explained by our investigator in her assessment. It's my view that the required annual investment return, as shown in the table above, was incompatible with Mr E's *'Balanced'* risk profile, discount rates and the projection rates specified by the FCA at that time. I think these factors showed that it was likely Mr E would be financially worse off as a result of the pension transfer; and

- Overall, I don't think the contemporaneous evidence supports the position as to why Mr E's early retirement, flexibility, control and death benefits objectives would've been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time. I haven't seen any evidence that persuades me the pension transfer to the PPP led to Mr E gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

A fair and reasonable outcome would be for Vision to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mr E would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by November 2017 the risk of the BSPS falling into the PPF had receded by a large extent following the announcement by the PPF in May 2017 that the terms of a RAA had been agreed. I think Vision should've considered the BSPS2 as a viable option. So, in addition to the PPF, I think it's fair to consider the BSPS2 as a potential comparator scheme for redress purposes.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. I'm not convinced that it could be reasonably determined in 2018 that the PPF was the likely better option for Mr E. And so I think, given his age and the lack of clarity surrounding when Mr E would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

Vision 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.

Vision should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent Mr E and our service upon completion of the calculation.

The 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 E's acceptance of this final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Vision should:

- calculate and offer Mr E redress as a cash lump sum payment,
- explain to Mr E before starting the redress calculation that:
    - its 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 the redress prudently is to use it to augment his PPP
- offer to calculate how much of any redress Mr E receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr E accepts Vision's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr E for the calculation, even if he ultimately decides not to have any of his redress augmented; and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr E's end of year tax position.

Redress paid to Mr E as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Vision 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've been taken as tax-free cash and 75% would've been taxed according to Mr E'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.

In addition, Vision should pay Mr E £300 compensation for the trouble and upset caused by its unsuitable recommendation, as recommended by our investigator.

My final decision

Determination and money award: I uphold this complaint and require Vision Independent Financial Planning Ltd to pay Mr E the compensation amount as set out in the steps above, up to a maximum of £170,000. Where the compensation amount doesn't exceed £170,000, I would additionally require Vision Independent Financial Planning Ltd to pay Mr E any interest on that amount in full, as set out above. Where the compensation amount already exceeds £170,000, I would only require Vision Independent Financial Planning Ltd to pay Mr E any interest as set out above on the sum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Vision Independent Financial Planning Ltd pays Mr E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E.

If Mr E accepts this final decision, the money award becomes binding on Vision Independent Financial Planning Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr E can accept this final decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 10 November 2023.
Clint Penfold
Ombudsman