DRN-4511599

The complaint

Mr G has complained about the suitability of the advice provided by AJH Financial Services Ltd ("AJH") in December 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mr G is represented in this complaint by a law firm ("Representative").

What happened

The events leading up to this complaint were set out in detail by our investigator in their assessment. I don't intend to repeat here what our investigator stated but will instead provide a summary.

Mr G 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 G had built up 18 years and 6 months' pensionable service in the BSPS between September 1998 and March 2017. His annual scheme pension as at the date of leaving the scheme was £10,559.67. 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. Members were told that if the re-structure was approved, they would have 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 BSPS offered Mr G a transfer value of £265,936.16)

Mr G was concerned about what the announced changes meant and wanted advice on his options He initially contacted a different financial advisory business who, in turn, introduced him to AJH for pension transfer advice.

In December 2017, AJH issued a suitability report to Mr G in which it recommended that he accept the transfer value of £265,936.16 and invest it in a new PPP in favour of the alternative PPF and BSPS2 options. Mr G accepted the recommendation, following which the pension transfer to the PPP was completed.

This complaint

In May 2022, the Representative, on behalf of Mr G, complained to AJH about the suitability of the pension transfer advice it had given him in 2017. In July 2022, AJH didn't uphold this complaint so the matter was referred to this service.

In March 2023, one of our investigators considered this complaint and recommended that it be upheld on the basis that AJH failed to demonstrate in 2017 that transferring to the PPP was clearly in Mr G's best interests compared to the alternative options. To put things right, our investigator recommended that AJH carry out a redress calculation in line with the FCA's guidelines on the basis that Mr G transferred to the BSPS2, retired at age 65 and would be a 20% income taxpayer in retirement.

The Representative, on behalf of Mr G, accepted our investigator's assessment. AJH initially didn't accept our investigator's assessment and requested that this complaint be referred to an ombudsman for review.

While this complaint was in the queue awaiting allocation to an ombudsman, AJH contacted us again in July 2023 to say it had changed its mind and accepted the investigator's assessment. It stated, *"…whilst we do not agree with the initial case investigator's findings to uphold the complaint, AJH are prepared to accept the decision"*. Following this, AJH obtained relevant information and carried out a redress calculation on 24 October 2023 using a specific BSPS calculator provided by the FCA. This showed that Mr G hadn't suffered a financial loss, meaning redress wasn't due. AJH sent details of the calculation to our investigator to consider.

Our investigator reviewed the calculation output and was satisfied that it had been carried out appropriately and in line with the FCA's guidelines. With the aim of resolving this complaint informally, our investigator expressed his view to the parties that Mr G hadn't suffered a financial loss as a result of the pension transfer. He didn't think that AJH needed to do anything else in response to this complaint.

While AJH accepted our investigator's assessment, the Representative, on behalf of Mr G, didn't. It stated that it didn't accept the "no loss" outcome and set out its reasons why. It also requested that Mr G be awarded a *"very significant"* payment for the trouble and upset it said he had suffered in connection with this matter. It requested that this complaint remain in the queue for an ombudsman to review.

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.

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 AJH previously told us that it accepted the investigator's assessment and recommended remedy to resolve this complaint, I don't see the need to address the suitability of its pension transfer advice to Mr G in detail. However, I would like to state I agree with the investigator's view that the pension transfer advice AJH gave to Mr G was unsuitable for largely the same reasons. In particular, I'm mindful of the FCA's guidance in COBS 19.1.6G that a firm should only consider a transfer to be suitable if it can clearly demonstrate, on the contemporary evidence, it's in the client's best interests. I don't think that was the case for Mr G for the key following reasons:

- The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr G's safeguarded benefits, accounting for 18 years and 6 months' pensionable service, represented his most valuable asset built up by that time. He had limited other assets which could be used to support his retirement income needs. Mr G was aged 36 at the time of AJH's advice. I acknowledge that given his age and substantial investment time frame, it was likely Mr G would build up significant DC pension savings elsewhere by retirement, thereby reducing the reliance on his safeguarded benefits. But that didn't mean it was suitable to relinquish valuable benefit guarantees at that time. In my view, Mr G had a limited capacity for loss at that point. So I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose when he couldn't access benefits for at least 19 years (at age 55) – unless there was a clearly suitable reason to do so;

- According to the suitability report, the primary aim of the pension transfer was so that Mr G could retire early, from around age 58. Mr G was then aged 36 and so couldn't access any benefits until age 55 at the earliest under the PPP. In my view, with such a time frame until pension benefits could be accessed, it made the case for a pension transfer at that time – for the sake of achieving possible early retirement at age 58 – more difficult to justify;

- It's my view that AJH failed to obtain the necessary information relating to Mr G's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer to a PPP to achieve his early retirement objective. It may well have been the case that Mr G's retirement income need could've been met by the BSPS2 but AJH failed to establish this. Ultimately, however, there's insufficient evidence to demonstrate why it was in Mr G's best interests to transfer at that time to achieve his early retirement objective or whether he could in fact retire earlier than age 65;

- At the time of the advice Mr G had limited savings or investments that indicated he had experience of investing. I haven't seen any evidence that persuades me he understood the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to a PPP. Those risks would've been retained by the BSPS2 had he transferred to that scheme – I cannot see that there was any compelling reason for Mr G to take on those risks at that time;

- Had AJH advised Mr G 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 36;

- AJH recorded that Mr G preferred flexible income rather than guaranteed lifetime income. It’s unclear why Mr G apparently didn’t value guaranteed income. He had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BSPS2 before state pension age would’ve been valuable for an individual in his circumstances;

- I’m not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision (built up by that time) in exchange for more risk so that he could access flexible benefits many years in the future. There’s no real evidence that Mr G required the flexibility of irregular lump sums or variable income during retirement. But if he did require it, then any flexible needs could’ve been met by his DC workplace pension. And he’d also have access to tax-free cash under the BSPS2. This doesn’t appear to have been adequately considered by AJH;

- AJH recorded that Mr G had surplus disposable income of about £1,300 available every month. There’s inadequate evidence that AJH considered saving some of these additional monies in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees;

- The suitability report mentioned that Mr G wanted to ensure any unused pension benefits be inherited by his family. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr G about what was best for his own retirement provision. He was in good health at the time. Withdrawing money from the PPP to meet income and lump sum needs would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. It’s my view that Mr G had no health issues at the time AJH 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 family. So I’m not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit at the cost of losing valuable benefit guarantees; and

- The growth rates required to match the benefits payable by the BSPS, particularly if Mr G were to take early retirement at age 58, were too high to show that there was a reasonable prospect he would be financially better off by transferring to a PPP.

Conclusion

Overall, I don’t think the contemporaneous evidence supports the position as to why Mr G’s generic objectives would’ve been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time, especially in view of his age, good state of health and level of reliance on these monies to provide retirement income.

I haven’t seen any evidence that shows the pension transfer to the PPP led to Mr G gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 at that time. As a result, I think it’s fair and reasonable to uphold this complaint.

Putting things right

The aim is to put Mr G in the financial position he would have been in had he been given a suitable recommendation.

Our investigator concluded that, if properly advised, Mr G 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 December 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. So I think AJH 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 2017 that the PPF was the better option for Mr G. And so I think, given his age and the lack of clarity surrounding when he 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, I agree with our investigator's view that the calculation on the basis of entering the BSPS2 should be carried out based on the normal retirement age of 65.

In response to our investigator's assessment, AJH carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances. It shared with this service details of the calculation inputs and output.

The calculator uses economic and demographic assumptions to calculate 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 (as uplifted to reflect the buy-out), had they not transferred out.

If the calculation shows there's not enough money in the consumer's pension arrangement to match the alternative benefits they would've received, the shortfall is the redress 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 (including the impact of the subsequent buy-out) 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.

Like our investigator, I've checked the inputs that were entered by AJH which are personal to Mr G. These include Mr G's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his PPP as at 1 October 2023. The calculation also assumes that if he hadn't 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. This would provide the highest benefits for Mr G and are fair assumptions. The calculation result is valid for the period 1 October 2023 to 31 December 2023.

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 G's case shows that there's no shortfall to his pension and that he has sufficient funds to be able to replicate the BSPS2 benefits in retirement. I'm satisfied that Mr G hasn't suffered a financial loss by transferring his safeguarded benefits to a PPP. I think the calculation carried out by AJH is appropriate in the circumstances and no redress for financial losses is therefore due to Mr G.

I've carefully considered the Representative's latest comments sent on 30 November 2023. I can understand why it's upset by the "no loss" outcome which means Mr G won't receive any redress. But its comments don't change my view. The FCA has set out what it deems to be appropriate redress to put right instances of unsuitable pension transfer advice provided to former members of the BSPS. And, based on what I've seen, AJH has complied with the FCA's requirements in this regard. The FCA's guidance doesn't allow for the matter to remain open-ended or revisited. This is because the whole purpose of the FCA's redress methodology is to draw a line under the matter so that finality is achieved for all parties. I see no reason to depart from the FCA's guidance in the circumstances of this complaint.

The Representative also requested that I award Mr G a *"very significant"* payment for the trouble and upset it says he's suffered. But in its submissions it hasn't articulated how and to what extent Mr G has suffered to justify an award. I've carefully considered the matter. Overall, I don't agree that a non-financial award is appropriate in this case given that the investigator didn't recommend a payment in their initial assessment and I see no reason to depart from that conclusion based on the subsequent submissions received from the Representative.

My final decision

I uphold this complaint. For the reasons I've set out above, I don't think AJH Financial Services Ltd needs to take any further action in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 January 2024.
Clint Penfold
Ombudsman