DRN-3468009

The complaint

Mr W's representative has complained, on his behalf, that CST Wealth Management Limited (CST) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

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 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 2017, the Pension Protection Fund (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 W's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

On 11 August 2017, BSPS scheme benefit information was issued to Mr W, which detailed 6 years, 2 months accrued service and a total pension at the date of leaving of £3,213 pa. The cash equivalent transfer value (CETV) was £61,749, guaranteed for three months.

A Personal Client Questionnaire was completed on 27 October 2017, which recorded the following about Mr W:

- He was 31 and married. Mrs W was aged 32.
- Both Mr and Mrs W were in good health.
- Mr W had an annual salary of £34,000 and Mrs W had an annual salary of £24,000.
- Mrs W had been a member of her own defined benefit scheme for 17 years.
- Mr W was a member of the employer's Group Personal Pension (GPP) with 10% employer and 6% employee contributions.
- The joint main residence was valued at £125,000 with a £105,000 repayment mortgage outstanding.
- An investment property was valued at £85,000, with an £84,000 interest only mortgage outstanding. This produced £396 pm rental income.
- Mr and Mrs W had cash deposits of £2,500.
- A £15,000 loan, £20,000 hire purchase, and £6,000 on a credit card was outstanding.
- Mr W had a "moderately cautious" attitude to risk.
- Mr W wished to break all ties with his employer.
- A major proportion of his overall pension benefits should be protected as far as reasonably possible.
- There was no need to maximise a lump sum at retirement.
- Mr W anticipated retiring early and was willing to accept a lower pension.
- He had no children and his wife would have the death in service benefit which was sufficient for her.
- Lump sum death benefits weren't a priority.
- Mr W wished to maximise his benefits payable, as Mrs W had significant benefits in her own right.

A Pension Transfer Report was produced dated 12 November 2017 which detailed the following:

- An estimated existing annual pension of £6,310 with a critical yield to match those scheme benefits of 5.08%, or a Pension Commencement Lump Sum of £29,067 and a reduced pension of £4,360 with a critical yield of 4.45% at age 65.
- An estimated existing annual pension of £4,201 with a critical yield of 5.83%, or a Pension Commencement Lump Sum of £20.529 and a reduced pension of £3,079 with a critical yield of 5.09% at age 57.
- A PPF estimated existing annual pension of £5,660.66 with a critical yield of 4.74%, or a Pension Commencement Lump Sum of £30,215.81 and a reduced pension of £4,532.37 with a critical yield of 4.56% at age 65.
- A Pension Protection Fund (PPF) estimated existing annual pension of £4,077.63 with a critical yield of 5.71%, or a Pension Commencement Lump Sum of £322,931.74 and a reduced pension of £3, 439.76 with a critical yield of 5.54% at age 57.
- A low to medium attitude to risk.
- Assumed growth rates of 3% (Low), 5% (Mis) and 7% (High).
- An annual PPP charge of 0.50%.
- A single premium transfer charge of £1,250.
- An ongoing "RLP Governed Portfolio" charge of 1%.
- A Default Fund charge of 1%.
- A Portfolio Fund Charge override of 1%.

A Risk Profile Report was dated 13 November 2017 which recorded Mr W as having a moderate/medium risk profile.

A Client Agreement was also produced on the same date, which set out a £1,250 monetary initial charge and an ongoing charge of 0.5% pa, with a minimum fee of £375. A “Service Proposition” document was also produced on the same date.

A “Service Proposition for Investment & Insurance” document was then created on 14 November 2017, which detailed the following:

- A 1% initial charge.
- A 0.5% ongoing charge.

A PPP illustration and Key Facts Document was produced on 17 November 2017 which set out the following:

- A transfer value of £61,748.
- A prospective low growth rate of -0.7%, a medium growth rate of 2.2% and a high growth rate of 5.1% within the PPP.
- The “Governed Portfolio 4” investment fund would be used.
- A total management charge of 0.5% pa.
- A £1,250 transfer payment charge.
- An ongoing charge of £31.25 per month.

On 22 November 2017, CST logged a file note which recorded the following:

- Mr W wanted to move his pension away from the scheme and gain control, given the historic and current issues with the pension fund.
- Mr W wanted to retire earlier than 65 and have a choice about how much he could withdraw.
- Mr W wanted to retire at age 57.
- Mr W did not want to move to the PPF and restrict his options to a set amount of income as well as incurring early retirement discounts in the BSPS 2.
- Mr W’s Aviva fund would grow by at least 16% of annual salary and because of the benefits of salary sacrifice there were incentives to long term savings.
- Mr W was aware that the current CETV may be the only opportunity to move the capital under his control following receipt of the ‘Time to Choose’ booklet.

A cash flow forecast presentation was produced in November 2017 and a Financial Planning Report was issued on 29 November 2017, which recommended that Mr W transfer his BSPS benefits to a PPP and invest within the Governed Portfolio 4.

Mr W’s objectives and considerations were further recorded as:

- The option of early retirement.
- To leave a legacy other than a return of contributions (£14,507) and a spousal pension of 50%.
- Sustainable but flexible income.
- The option to use tax-free cash to repay mortgages without taking an income.
- The income needs between retirement and the state pension were likely to be more than the BSPS would provide.
- Break all ties with his employer.
- Concerns about the pension being placed in the PPF.

The suitability report recorded that Mr W had a ‘medium’ risk attitude and a ‘medium’ capacity for loss.

An updated TVAS was completed on 29 November 2017 which reflected the updated transfer value. The TVAS set out a critical yield of 4.97% based on a full pension at age 65 and 4.35% based on a lump sum and reduced pension. At age 57, the critical yields were 5.7% and 4.96% respectively.

Mr W accepted the recommendation and, on 5 December 2017, he signed the BSPS discharge forms and the PPP application form.

Mr W then raised a complaint, through his representative, about the suitability of the advice given to him. CST responded with its reasons for disagreeing and why it was satisfied that the advice he had received was suitable.

Dissatisfied with the response, Mr W referred his complaint to this service.

Having considered the complaint, our investigator thought that it should be upheld. He said the following in summary:

- At the time of the advice, Mr W had accrued over six years' service within he BSPS and so it would have formed a significant part of his pension planning.

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- The advice had been after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The discount rate was 4.7% pa for retirement at age 65, and 4.65 to age 57. This compared to respective required critical yields to match the BSPS benefits at 65 of 4.97%, and to match them at 57 of 5.7%.

- Given these figures, the opportunity to improve upon the scheme benefits was limited, especially given Mr W's attitude to risk, and the suitability report also said that the critical yield was probably unachievable.

- The suitability report set out critically yields of 4.35% and 4.96% pa for ages 65 and 57 respectively, but this was on the basis of Mr W taking a tax fere lump sum. But although it was recorded that Mr W might use a lump sum to clear debts, maximising his tax free cash wasn't one of his priorities.

- The file note of 22 November 2017 recorded Mr W's risk attitude as being "medium/high", but the TVAS noted it as being "low to medium". The risk report recorded that Mr W had no investment experience, wasn't comfortable with investing, and that he had a "medium" attitude to risk. Mr W's history was largely risk averse, and so the investigator considered that his risk attitude was closer to "cautious" than "medium".

- The file note of 22 November 2017 recorded that CST had made Mr W aware that if he wanted a guaranteed income, he should remain within the BSPS. But CST should have properly assessed Mr W's needs, and of particular importance to Mr W was knowing that he had a guaranteed rate of return rather than be uncertain about his pension benefits. He'd also said that he would rather put his money in deposits rather than invest in shares. Guarantees were therefore important to Mr W.

- Mr W would in any case have a significant amount of risk based pension funds due to the 16% pa overall contribution into his defined contribution scheme. Transferring his guaranteed benefits therefore unnecessarily increased his overall risk exposure.

- In terms of early retirement, Mr W was 31 at the time of the advice. He may have preferred to retire early, as many people would, but it was recorded that Mr and Mrs W wished to focus on building wealth, repaying their mortgages and planning to retire at 57/60. There was no defined or planned retirement age, and there was no need to transfer with some 26 years to go until the earliest envisaged retirement date. The PPP application form also recorded that Mr W wished to take retirement benefits at age 65, rather than 57.

- As to the alternative death benefits, Mr W had pension benefits of her own, but she would also have benefited from the 50% spouse's pension within the scheme in the event of Mr W's death. A death in service lump sum benefit would also be payable. But the fact find in any case recorded that a lump sum death benefit wasn't a priority. And as funds were withdrawn to fund retirement, any such lump sum benefit would reduce accordingly.

- If flexibility of income was a priority, Mr W could have relied on the funds produced by his defined contribution plan to achieve this.

- Mr W may have had concerns about the BSPS and his employer at the time, but the advice had been given in November 2017, when the details relating to the BSPS 2 had been communicated to members. And so reassurances around this and the safety of his pension benefits could have been provided.

The investigator recommended that CST undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr W would have opted to join the BSPS 2.

He said that any redress should in the first instance be paid to Mr W's pension plan, but if this wasn't possible, it should be paid directly to Mr W, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

Mr W's representative agreed with the investigator's findings, but said that he should be explicit about the assumption being in any redress calculation that Mr W would have retired at age 65.

CST didn't agree, however, saying the following in summary:

- It had demonstrated to Mr W's representative in its final response letter that the scheme benefits could be matched by income drawdown to age 785 (although I assume this is a typographical error).

- It didn't consider that the facts supported the position that the BSPS benefits would constitute a significant percentage of his pension benefits.

- Mrs W wouldn't be dependent upon Mr W's death benefits from the BSPS fund. She would have her own defined benefit pension, plus family legacies. But if the PPP was left untouched until Mr W was 82, then this would represent a significant lump sum for Mrs W and/or their children. Had Mrs W predeceased Mr W in retirement, then there would have been no benefits at all to the family.

- The PPP had produced an annualised return of 9.9% before the advice, and so Mr W had more than a reasonable chance of beating the critical yield required to match the scheme benefits at age 57 or 65. That return was also four times' CPI, with the latter in any case being capped for the purpose of revaluation of the scheme benefits.

- It agreed that a transfer would be deemed unsuitable unless it could be demonstrated to be in a client's best interests, but as there wasn't a single aspect of the PPP which would result in Mr W being worse off, it must have been in his best interests. Mr W wouldn't be reliant upon the BSPS income and had capacity for loss on its capital value. He didn't need the "frozen pension" to meet his retirement objectives.

- The DBAAT guidance said that a client may not be reliant on the scheme income if that same income could be produced by the PPP and that, with a sustainable withdrawal rate, and stress testing on returns, the pension funds would last beyond average life expectancy.

- Although the investigator considered the opportunity to improve on the scheme benefits was limited, this wasn't borne out by the actual returns experienced within the PPP, at 7.87% pa, which had exceeded the discount rates and critical yields. Due to more recent financial conditions, the critical yield percentages will have reduced and equity markets had increased in value. This meant that Mr W's PPP would be providing an "all-time high" rate of investment return. And as the revaluation of Mr W's BSPS pension would be capped at 2.5%, the value of his BSPSP benefits would be reducing in real terms.

- The investment outcome demonstrated that Mr W had more than a reasonable chance of improving on the scheme benefits, whilst retaining the flexibility of all options, including income drawdown, or buying an annuity in a higher interest rate climate in 34 years' time.

- If Mr W wished to use his capital to repay debt, then this was his prerogative – and they would in any case need to be repaid at some point, either by a lump sum or through monthly instalments from his pension income.

- Mr W had indicated that he was a moderately cautious investor in the pension transfer questionnaire and the recommended portfolio was consistent with that.

- The cashflow forecast took into account both Mr and Mrs W's income, expenditure and asset wealth. The forecasts had been stress tested on 3% investment growth, an inflation rate of 2.5% and taking into account all tax and national insurance rates. From Mr W's 57th birthday, Mr and Mrs W would be able to meet all of their needs from Mrs W's defined benefit pension, Mr W's defined contribution pension and their state pensions. They had no reliance on the BSPS pension.

- As the BSPS pension wasn't required for income, the potential death benefits were likely to be in excess of £3m through the PPP arrangement when Mr W was 82. A whole of life policy for that amount had been discussed on the basis of affordability.

- At the time of the advice, it wasn't guaranteed that the BSPS 2 would go ahead. Mr W was faced with the decision that a transfer in 2017 may have been the only opportunity for him to gain control of his capital. And if the BSPS 2 did proceed, the booklet made it clear that any future transfer was likely to be lower in value.

In conclusion, CST said that the compelling reason for Mr W to transfer was his lack of reliance on the income which would be produced by the BSPS. Mr and Mrs W's joint pension income at age 65, from just Mrs W's pension and the state pensions, would be £53,000 pa and so Mr W would likely be receiving more income that he needed from the defined contributions plan.

It considered that the investigator's main reasoning for upholding the complaint was that the growth rates were unlikely to be achieved, but they had been historically, and also had been since the transfer.

The cash flow modelling didn't show that certain objectives could be met – it demonstrated that all of the objectives could be met. And so the transfer was in Mr W's best interest, CST concluded.

CST added to these points in a further submission, saying that there was no evidence that Mr W had suffered a financial loss in line with FG17/9. It also said that, in the event of Mr W's death, the BSPS pension would cease, in contrast to the PPP which would provide a lump sum to his family.

The regulator had acknowledged that the critical yield was a blunt instrument and was flawed – and the discount rate was also not relevant as an indicator of the prospects of the critical yield being achieved, given that Mr W neither needed nor wanted a guaranteed income.

Given the beneficial characteristics of the PPP, and its alignment with his objectives, CST considered that, even if the advice had been to transfer into the BSPS 2, Mr W would nevertheless have proceeded to transfer. Mr W transferred on a fully informed basis.

CST also set out its position that, if the complaint was upheld, the PPF should be used as the comparator scheme in any compensation calculation. In support of this, it said that the BSPS didn't exist until the end of March 2018, and until that date it was only a proposal, with conditions needing to be met before its implementation. If members didn't make a decision, they would default into the PPF, CST added.

As agreement couldn't be reached, the investigator said that the complaint would be referred to an ombudsman for review.

The investigator then enquired of Mr W's representative as to whether, if the complaint was upheld, his preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

Mr W's representative confirmed that he would like any redress to calculated on the existing basis.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Grove to use the FCA's BSPS-specific calculator to determine any redress due to Mr W.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr W's complaint, they should let him know by 12 June 2023.

In response, CST confirmed that it would be using the BSPS-specific redress calculator if an ombudsman upheld the complaint.

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.

And having done so, I agree with many of the conclusions reached by the investigator, and for broadly the same reasons.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 (FSMA) and DISP, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The applicable guidance, rules, regulations and requirements

This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.

Within the FCA's handbook, COBS 2.1.1R required a regulated business *to "act honestly, fairly and professionally in accordance with the best interests of its client".*

The FCA's suitability rules and guidance that applied at the time CST advised Mr W were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like CST, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, CST needed to gather the necessary information for it to be confident that its advice met Mr W's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises

a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) *ensure that that comparison includes enough information for the client to be able to make an informed decision;*

(3) *give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*

(4) *take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading *"Suitability"*, COBS 19.1.6 set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7 also said:

"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."

And COBS 19.1.8 set out that:

"When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

I've therefore considered the suitability of CST's advice to Mr W in the context of the above requirements and guidance.

CST's rationale for transferring

Mr W wasn't categorised as an "execution only" or insistent client, and CST was taking him through the advice process. Therefore, CST could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, fact finding was undertaken for Mr W and his circumstances and objectives were recorded – as I've noted above.

As with the investigator, and as agreed by CST, I've noted above that the FCA's guidance was that the starting assumption for an assessment of Mr W's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives.

And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr W would be better off financially as a result of the transfer.

The financial case to transfer

I think it's fair to say that this represents a significant part of CST's argument for the suitability of the advice – that there was a reasonable prospect of Mr W not only matching, but improving upon, the pension benefits Mr W would otherwise have received from the scheme. But also that it wasn't in any case envisaged that Mr W would need to rely upon the benefits produced by the BSPS pension.

CST obtained a transfer report for comparison purposes to determine the viability of the transfer to meet Mr W's objectives from a financial perspective.

The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. But before that, similar rates were published by this service. As noted by the investigator, businesses weren't required to reference these when providing advice on transfers, but I agree that they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.

The discount rate deemed achievable for the number of years left to the scheme retirement age of 65 was 4.7% pa, and to age 60 it was 4.6% pa. And the mid and high band growth rates used to illustrate the benefits which might be payable from a PPP were 2.2% pa and 5.1% pa respectively.

The critical yields to age 65, at 4.97%, and to age 57, at 5.7% therefore exceeded both the discount (or growth) rate deemed achievable over the same periods, and the mid growth rates used by the pension provider – the latter of which might perhaps be a reasonable assumption for a "moderately cautious" or "medium" risk investor.

In the suitability report, CST quoted the lower critical yields of 4.35% at age 65 if the tax free lump sum was taken, and 4.96% at age 57 on the same basis. I've noted what it has said about the prospect of Mr W, as with most others, taking the tax free lump sum. And he may well have done so, as indicated by CST, perhaps to repay debts, if indeed he had any some 30 or so years later.

But it's also CST's position that Mr W didn't need to rely on these assets, and so they could be viewed as non-essential for retirement purposes. As such, it's difficult to reasonably conclude whether or not Mr W would have taken the tax free cash. This is in fact just one of the many problems of addressing a transfer which was recommended some 30 years before Mr W's prospective retirement. So much could change in the intervening period.

From a purely financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr W's best interests.

On the basis of retirement at 65, the critical yield *if* Mr W planned to take the tax free lump sum was below the discount rate, and so may on the face of it have seemed achievable.

But I think it's also worth noting that the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B. And so I've then considered the overall suitability of the transfer, taking into account other considerations.

The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it's firstly fair to say that CST did provide warnings on the guarantees which would be relinquished, but as CST will be aware, and as noted by the investigator, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a recommendation report, this also wouldn't make otherwise unsuitable advice suitable. CST needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr W.

As set out above, CST's further reasoning for the transfer was that Mr W required flexibility of income due to his particular circumstances, objectives (including the prospect of early retirement), and concerns about his employer and the pension scheme. And so I've given this argument careful consideration.

I'd initially say that, even without investment experience or other significant assets, I do acknowledge that Mr W may have understood the principle of risk/reward which would be associated with flexible income drawdown, and that there may have been discussions around such concepts with colleagues who were going through the same process.

I also think it's quite possible that Mr W had an "moderately cautious", or even "medium" as was recorded in the suitability report, risk rating, given his age and number of years to retirement.

CST has repeatedly said that Mr W wouldn't be reliant upon the income from the BSPS in retirement, due to his wife's pension income, his own defined contribution accrual in the GPP, and their state pensions.

But this does then beg the question as to why Mr W needed to transfer his guaranteed benefits at all.

As set out by CST, Mr W had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer) by retirement. But other than the state pension which wouldn't be payable until age 67, the defined benefits accrued through the BSPS were still likely to have been his only source of *guaranteed* income. Through transferring, Mr W was effectively putting all of his eggs – barring the state pension - in one "money purchase basket".

And I just can't see why Mr W needed to take the associated additional risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr W would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown arrangement to satisfy potentially changing income needs.

But other than concerns around the employer, with which Mr W said he wished to break all ties in relation to his pension, and associated scheme, which I'll address further below, it's unclear as to why Mr W would have wanted or needed such additional flexibility at the cost of such valuable guaranteed benefits, given the investment risk associated with the transfer, and bearing in mind what CST has described as his moderately cautious attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

And if Mr W wished to retire early (in 30 or so years' time), he could do so whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. And in my consideration of this, I acknowledge that there was no facility for Mr W to take tax free cash from the BSPS 2 or PPF without also starting to take an income.

But as noted above, by age 65, Mr W would have accrued around 34 years' worth of defined contributions in the replacement scheme, or 26 years by age 57. Given the likely value of this separate pot of money on the basis of the employer and employee contribution rates, this would likely be used to fund the bulk of his retirement needs between age 57, if indeed, as asserted by CST, he needed to do so at all, and his OPS/state pension beginning. It's likely that he could have relied on the proceeds of his defined contribution plan for flexible access to pension benefits, from whatever age after 57, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when (or if) needed.

Alternatively if, on the basis of an income requirement which outstripped this over the years left to age 65 (for example if his circumstances changed) – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr W could then have begun to take the scheme benefits early if needed.

Mr W would also have been able to choose a tax efficient level of income (or lump sum withdrawals if he later decided he wanted them) through the defined contribution accrual, until the point that he either needed, or chose, to begin taking benefits from either the BSPS 2 or the PPF. And so any need for flexibility of income could have been addressed in this way.

Mr W may then have been in the fortunate position of receiving an income which was higher than his actual needs, especially when the state pension began, but he could have simply reinvested any excess as he saw fit, or, to provide a legacy for his family, immediately gift it away to avoid it being subject to inheritance tax.

Mr W may have been willing to accept a measure of risk for the sake of improving his income in retirement (albeit according to CST apparently not needed in any case), and as I've said above, although Mr W didn't have any particular financial experience, I think he may have understood the principle of risk/reward, and risk warnings were provided by CST.

But as I've also noted above, Mr W was accruing further benefits in his defined contribution scheme, and given the likely accumulation of funds in that scheme, compared against the benefits accrued in the final salary scheme, at the normal scheme retirement age, around 34 years of his pension accrual at age 65 (or 29 by age 60) would likely be derived of the defined contribution scheme. As such, Mr W would already by necessity have been taking investment risk through the replacement scheme.

In light of this, and given that in the six years up to that point Mr W had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of some significant value as a foundation of stable, escalating income to hedge against uncertain returns in the defined contributions scheme, especially for a moderately cautious individual, and shouldn't have been relinquished lightly in favour of a flexibility which was loosely defined around the apparent desire for early retirement (some 26 years before this would be even be possible) and concerns around the employer/scheme.

I've also noted what CST has said about the historic performance of the recommended portfolio before the advice, and since. And as impressive as this might have seemed at the time of its response to the investigator's view, I note that this has been somewhat less impressive since then, with a return over the last year of around 1.5%.

And this is rather the point. Even employing the benefit of known performance before the advice, and the benefit of hindsight in terms of performance since, Mr W had 34 years until the scheme's normal retirement date, and whilst looking at fund performance, interest rates and CPI over a few years might suggest that, if that trend continued, the funds would perform well, that trend needed to be sustained for a very long time. And the reasonable likelihood of that kind of stable environment, which would at the very least match the required critical yields (which, blunt instrument or not, were still a reasonable indicator of the required returns) for that length of time was, in my view, low.

And on the particular note of Mr W's concerns about the employer and the scheme, as with others in his position, I think it's fair to say that Mr W would have been concerned about the future of the BSPS and his associated benefits. But Mr W's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. There was no prospect of the BSPS funds being lost to the employer, even if Mr W distrusted it. Further, the whole point of the BSPS consultation, which had resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the point of the "Time to Choose" exercise) the BSPS 2 seemed more likely than not to be a viable alternative.

As noted by CST, there were still conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it's reasonable to say that all indications were to the contrary.

And so I think that, had Mr W's concerns been better managed, a seeming key driver for having control over his pension benefits would also have diminished.

Mr W therefore didn't need to make any decisions about transferring out his defined benefits at that point. The prospect of Mr W's accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65.

Mr W’s plans, including retirement, may in any case have changed significantly in the 26 intervening years between then and him reaching age 57. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr W’s retirement – and Mr W would have been able to transfer out of the BSPS 2 if needed.

There may have been lower CETVs offered in the future if gilt yields and other market factors changed, but for the reasons given, I think that Mr W could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he did ultimately decide that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr W or his adviser could then assess at that point whether a transfer represented good value.

And so on the basis of what I’ve said above, it follows that I don’t think the mooted early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr W to transfer his deferred benefits.

Death benefits

It’s fair to say that the lump sum death benefits offered by the transfer would likely be more beneficial to Mr W’s extended family.

But I have several concerns about this as a reason for transferring Mr W’s benefits. Firstly, Mrs W was described as likely being financially independent of Mr W’s retirement income, which was a stated reason as to why the 50% spouse’s pension would have been of reduced importance to her.

But if that was the case, then she also had no need of the lump sum format of death benefits which could be provided by the PPP. Either Mrs W needed death benefits in one format or another, or she didn’t. I don’t think CST can have it “both ways”.

I’m also concerned about the manner in which the scheme death benefits for Mrs W were conveyed in the suitability report, as follows:

“In the event of your early demise, there would be very little to leave as a legacy for your wife, other than a return of contributions of £14,507.90 and a spousal pension at 50% of that payable to you.”

But I think the way this was couched understated the significance of these potential benefits. The “*very little legacy*” referred to would of course be 50% of a guaranteed, escalating pension which would have been subject to revaluation for around 30 years, rather than whatever was left of a pension pot (subject to any withdrawals) which would be subject to uncertain market performance for the same length of time.

Further, in the event that Mr W did use the funds towards retirement income, he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

And accrued pension provision is intended to provide for an individual’s retirement rather than a desire to leave a legacy for the wider family. The recommendation needed to be given in the context of Mr W’s best interests.

And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual’s best interests. The desire to leave a legacy his extended family (and I note Mr W had no children at the time) cannot reasonably have subjugated Mr W's own personal requirement to benefit from his accrued pension benefits. The wish to leave any such legacy should have been properly weighed against the guaranteed benefits Mr W was relinquishing, and CST should have advised him that his own financial benefit took priority here.

There was also no suggestion as to why a lump sum, beyond the death in service lump sum payment which would be paid if he remained in the same employment, and the value of the defined contribution scheme, would have been important to Mr W's extended family in the event of his death. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential (as noted at the time of the advice), and certainly not of sufficient importance to justify Mr W compromising the security of his own financial future.

So for the reasons given, I don't think the prospect of a lump sum benefit for Mr W's extended family by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr W personally.

What should CST have done – and would it have made a difference to Mr W's decision?

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr W. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've also said above, there was no need for Mr W to make any decision about his BSPS benefits at this point in time and it was the responsibility of CST to explain to Mr W why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr W's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whist I acknowledge it wasn't at that point guaranteed, I think the indications were that the BSPS 2 would more likely than not be successfully implemented.

I've also thought very carefully about whether the service provided to Mr W was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS. Mr W, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options.

And I've noted the following statements in the "summary viewpoint" section of the suitability report in which the supporting reasons for the transfer were set out. One of these was as follows:

"Benefits including tax free lump sum can be accessed at age 57 as opposed to 65 under the existing scheme without penalty".

This is in my view misleading. Although there would have been a reduction in the scheme benefits payable at an earlier age, this reflects the longer period over which those benefits would likely be payable. And had Mr W begun accessing his PPP benefits early, there would have been a commensurate effect on the value of his pension fund in terms of taking early withdrawals (and for longer) and the knock on impact on the residual fund and its capacity for growth.

That section also said:

“You want to leave a legacy to your wife and family. Any remaining capital balance could be inherited by your family should you die at a relatively young age compared to nothing from the final salary scheme”.

This, again, was misleading. Mrs W wouldn’t receive “nothing” from the scheme. She would receive the return of contributions and a 50% guaranteed, escalating, spouse’s pension for the rest of her life.

It further said:

“Personal choice to want to flexibly access the fund, which will give you the ability to vary your income in line with your lifestyle requirements”.

But as set out above, the accrued defined contributions would have likely amply catered for this, with the defined benefits then providing a foundation of guaranteed income upon which Mr W, as a moderately cautious investor, could rely.

For the reasons given above, I don’t think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I’m satisfied that Mr W’s income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn’t support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr W to relinquish valuable benefit guarantees – especially at the age of 31.

My further view is that, if properly discussed, Mr W’s concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn’t need or could in any case access in other ways, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.

Tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, albeit in a different format from those available from the PPP.

Taking account of Mr W’s circumstances, including his recorded attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS 2 or the PPF, my view is that CST should have advised against the transfer.

And I think that, had this happened, given that Mr W would have been reliant on the advice given to him, he would have followed that advice and not transferred his benefits to the PPP.

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to the conclusion that the recommendation to transfer wasn’t suitable for Mr W, nor was it in his best interests. The key contributing factors here are: the lack of a comprehensive and balanced portrayal of Mr W’s options, especially given his attitude to risk, and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr W were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him.

Although the critical yield to age 65 on the basis of Mr W taking tax free cash at retirement may have been lower than the discount rate, as the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as set out by COBS 2.1.1R and COBS 19.1.6, CST would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr W's best interests.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice.

In terms of the option Mr W would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr W's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement.

The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

One of Mr W's recorded objectives was the ability to retire early. And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF.

But for the reasons set out above, even if Mr W envisaged retiring early at the age of 31, I think it's likely that, properly advised, he could have accessed his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age. The advantages of early retirement through the PPF wouldn't therefore have applied.

I'd also refer to my comments as set out above about the likelihood at the time of the BSPS 2 being implemented, over the likelihood of the scheme benefits needing to enter the PPF.

And so, for the reasons given, my view is that it's the benefits offered by the BSPS 2 which should be used for comparison purposes.

I therefore consider that Mr W would most likely have remained in the occupational pension scheme and opted to join the BSPS 2 if suitable advice had been given. And as I've set out above, given the amount of time left to retirement, I don't think it could be assumed that Mr W would take his defined benefits before age 65, especially with the possibility, as outlined above, of accessing his accrued defined contributions flexibly if required.

CST Wealth Management Limited 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.

CST Wealth Management Limited should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr W and our service upon completion of the calculation.

Mr W hasn't yet retired, and cannot do so for many years yet. So, given my comments above about not in any case likely needing to access the defined benefits before age 65, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This 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 W's acceptance of my final decision.

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

- calculate and offer Mr W redress as a cash lump sum payment,

- explain to Mr W 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 their redress prudently is to use it to augment their defined contribution pension

- offer to calculate how much of any redress Mr W receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr W accepts CST Wealth Management Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr W for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr W's end of year tax position.

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

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and money award: I require CST Wealth Management Limited to pay Mr W the compensation amount as set out above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I would also recommend that CST Wealth Management Limited pays Mr W the balance.

If Mr W accepts this final decision, the award will be binding on CST Wealth Management Limited.

My recommendation wouldn't be binding on CST Wealth Management Limited. Further, it's unlikely that Mr W could accept my decision and go to court to ask for the balance. Mr W may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

My final decision is that I uphold the complaint and direct CST Wealth Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 November 2023.

Philip Miller
Ombudsman