DRN-4480208

The complaint

Mr H complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

Creative Benefit Wealth Management Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "CBW".

What happened

In March 2016, Mr H's former employer 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, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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 H's former employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr H was concerned about what the announcement by his former employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to CBW which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr H was 54 years old, married and with two young adult children. He was described as being in good health and at the time of the advice he had accrued a substantial number of years of pension benefits with the BSPS.

- Mr H earned around £35,000 per year and around £13,000 more in overtime. Mrs H earned around £4,500. After expenses they had some disposable income left over. They had savings of around £19,000 in deposit type accounts.

- Mr and Mrs H lived in a home with no mortgage outstanding.

- Mr H still worked in the steel industry had since joined a new defined contribution (DC) pension as a consequence of contributions to the BSPS being closed. This DC pension is not the subject of any complaint.

- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £740,252. The normal retirement age (NRA) was 65.

CBW set out its advice in a suitability report in January 2018. In this it advised Mr H to transfer out of the BSPS and invest the funds in a type of personal pension arrangement. CBW said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred out. In 2022 Mr H complained to CBW about its advice, saying he shouldn't have been advised to transfer out to a personal pension. CBW didn't uphold the complaint.

Mr H then referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. In response, CBW still said it hasn't done anything wrong and was acting on the financial objectives Mr H had at the time.

In October 2023, CBW said it was intending to engage a specialist to ascertain whether Mr H had lost any money as a result of the transfer. Although still not admitting the transfer was unsuitable, it said it would follow the direction of the financial regulator and carry out an assessment using a BSPS-specific calculator that had been created for this purpose. However, as far as I'm aware, no such calculation has been forthcoming and this complaint has been outstanding for many months. So, as the complaint couldn't be resolved informally, I'm making a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also taken 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. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of CBW's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CBW should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

I've used all this information we have to consider whether transferring to a personal pension was in Mr H's best interests.

Having done all this, I'm upholding Mr H's complaint.

Introductory issues

I'd like to start by referring to the timeline of events. It's not entirely clear that the CBW adviser at the time fully understood the various deadline dates. I say this because in its final response letter, CBW seems to confuse the deadline to make a choice about which scheme to move to, with the expiry date for the CETV Mr H was given. These were different issues and they had different deadlines.

I've already described above how members of the BSPS were given until 22 December 2017 to decide whether or not to join the BSPS2. I think it's likely Mr H made a choice about moving to the BSPS2 because he was sent some illustrations about what BSPS2 might look like in terms of a pension.

I can also see CBW actually started its advice process with Mr H in November 2017 which is well before the 'hard' deadline of 22 December 2017. So, in my view, CBW had plenty of time to properly advise Mr H ahead of this particular deadline. For example, we know a 'letter of engagement' was produced by CBW on 6 November 2017. A 'fact-find' interview and the filling out of a form about Mr and Mrs H's financial affairs was done on 14 November 2017. We also know a transfer analysis – a piece of substantial work which was part of the advice process – was produced by CBW on 13 December 2017. So, all these events were before the deadline of 22 December 2017. I think the advice process was firmly underway by November 2017 with CBW committing considerable resources to analysing Mr H's financial situation and giving a firm commitment to advising him about whether or not to transfer his DB pension.

CBW confuses this with a different issue – that of the three-month guarantee of the CETV of £740,252. To be clear, the former issue (above) related to making a choice about what pension scheme to go into, whilst the latter issue (this one) was merely guaranteeing the actual CETV figure until late January.

CBW confuses other matters too. It also implied that so little was known about the BSPS2 that it simply couldn't recommend it. But this isn't right either – we've seen lots of examples where the details of the BSPS2 were known to advisers in the Autumn of 2017 – well ahead of the 22 December deadline. In this case, we also have Mr H's personalised "Time to Choose" pension data showing how much he'd get if he opted for the BSPS2. This was dated October 2017. So CBW had plenty of time to fully consider Mr H's situation and make a recommendation. It was charging him a significant sum for the advice and had a duty to make sure the recommendation was suitable.

Financial viability

CBW referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case however, CBW used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

We know a great deal about the timeline because we've seen many similar complaints to this one. And as the existing scheme (BSPS) was clearly no longer an option, using the existing scheme rather than the new one, to make comparisons with, wasn't giving Mr H the best opportunity to make an informed decision about what to do. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme (BSPS).

Having said all that, CBW said that the critical yield required to match the benefits at the age of 65 in the BSPS, was 9.4% if Mr H took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 7.1%. CBW also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr H had apparently expressed a desire to retire early. The critical yields for this were 14.6% and 10% respectively. In my view, these yields were high and should have clearly flagged that reaching them was highly unlikely.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was only 3.8% per year for just over 10 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. If taking CBW's figures for an early retirement the discount rate for a retirement at 60 was only 3.1% which is also considerably lower than the critical yields. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. It seems CBW ultimately accepted that Mr H had a "balanced" attitude to risk.

In my view, there would be no point in Mr H transferring away from a DB scheme, from a financial perspective, only to get benefits of a similar nature to those if he had remained in a DB scheme. However in Mr H's case, I think all the above figures show that achieving the critical yield(s), year-on-year, upon transferring out was going to be unlikely. There were no metrics or analysis showing how his transferred funds would comfortably exceed annual growth of - say 7.1% for example - for over 10 years (if using he NRA). And if retiring at 60, as set out in CBW's analysis, then his transferred funds would have to exceed 10% growth every year for over 5 years.

Elsewhere in its transfer analysis, CBW also made mention of the PPF, which it described as a compensation scheme providing a safety net for pension schemes when the sponsoring employer becomes insolvent. CBW said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and CBW itself implies Mr H wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr H, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, CBW's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr H would likely receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, CBW should have waited and recalculated the comparisons for Mr H when the situation with BSPS2 became clear – we know this was available at the time.

I've also considered some projections CBW used to help show that if he transferred out to a personal plan, the funds could last Mr H well into retirement. I think most of these were based on growth projections which were unrealistic and essentially based on past performance. It's also fair to say these were certainly not comparing like-with-like. What CBW was showing Mr H were comparisons with plans which lacked the guarantees and benefits of a DB scheme. They relied on investment risk, factored in over many years.

Of course, according to CBW, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, CBW said Mr H also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

Other needs and objectives

CBW recommended a transfer to a personal pension plan based on what it said were Mr H's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away:

- CBW said he wanted to retire at age 60 with greater flexibility than could be afforded within the BSPS. He wanted to alter his income and access ad-hoc lump sums should his situation change.

- CBW said he did not trust the security or management of the BSPS2. He would rather have control over the pension.

- He had no need for a lump sum but wanted to maximise his tax-free cash entitlement for increased tax efficiency.

- He wished to pass on any residual pension funds to his family in the form of a flexible pension. I have therefore considered all these issues in turn.

Retiring early, flexibility and control

Mr H was still only 54 years old and in good health. His NRA was still over 10 years away and I think earlier retirement dates were no more than aspirations on Mr H's part, rather than being part of any concrete plan. In this context, I don't think there was any credible evidence showing that a retirement at the age of 60 was fixed.

Even if I were to accept that early retirement was more than a mere aspiration, I've seen nothing showing he'd need to transfer away from his DB scheme to achieve it. His guaranteed pension as of the date he left the scheme in 2016 was already over £29,000 per year. This pension included guaranteed inflation protection up to certain limits. Mr H had said he thought he might only need around £2,000 per month (net) to maintain a reasonable standard of living after he retired. However, this was evidently based on prevailing prices at the time and I haven't seen that this was based on anything other than a 'best guess'.

But overall, there was no rationale set out by the adviser for transferring to a personal plan because of either a need to retire early, or to achieve his required income level of £2,000 per month in retirement. All the indications were that Mr H could still easily achieve these things by moving to the BSPS2. Even if Mr H had retired early from the BSPS2, he'd be accessing the pension earlier and for longer, but the adviser didn't comprehensively assess whether this was still possible without transferring away and they portrayed BSPS2 in a very negative light, describing early retirement as incurring penalties. This wasn't a fair assessment of what would occur and needed explaining more. And notably, the adviser didn't take into account that Mr H's wife also had a pension of around £4,000 per year which was a defined benefit scheme and that Mr H himself was currently building up a DC pension which would complement the considerable pension provisions he and Mrs H already jointly had.

So, CBW simply didn't demonstrate whether or how he would be somehow falling below his need for £2,000 per month by moving to the BSPS2. I don't think CBW adequately explained these things to Mr H as its advice simply discounted him continuing to the BSPS2 in favour of transferring away completely.

I also can't see that Mr H required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by CBW. For example, I've seen nothing that showed he needed a lump sum or that he required changing how his retirement benefits ought to be paid. As I've said, he already had a new and more flexible DC pension which he'd started. I think it's easy to discount this pension. But even though he'd not long started it, this already had over £4,000 invested and both he and his employer were making reasonable monthly contributions. So, if he'd worked until the NRA then Mr H could have accrued over 11 years' worth of benefits in this second scheme. And I don't think it's unreasonable to say that even if taking retirement much earlier, he could still have accrued a substantial five-figure sum in the DC scheme. Therefore, if Mr H ever found he needed flexibility, then he'd be able to use the DC scheme, rather than transferring away from the DB scheme.

I've also seen no evidence that Mr H had either the capacity or true desire to exercise control over his funds. With his DB scheme, Mr H was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees. Mr H himself appeared to have had very limited experience of these types of investments. I therefore think he would have found the complexity, scale and responsibility of managing over £740,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr H would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

All this means I've seen nothing explaining why Mr H wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr H could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of very considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a moderate DC scheme over a shorter period of time.

I therefore think Mr H's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a second (DC) pension, this supported that strategy in my view.

Death benefits

When asked, most people would like their loved ones to be taken care of when they die. The BSPS2 contained certain benefits payable to a spouse if Mr H died.

I think there was clearly a discussion about this. I think the evidence shows he was told that he'd be more able to pass on the value of a personal pension to anyone he nominated, rather than just Mrs H. I think the discussion focussed on passing wealth potentially to his two children and I understand Mrs H had recently endured a worrying period of ill health. So, I think the lump sum death benefits on offer through a personal pension, potentially payable tax-free, were probably made to look like an attractive feature to Mr H. But I think this needed a careful explanation.

Firstly, the pension available to Mrs H under the BSPS2 if Mr H predeceased her was certainly worth having. It would have effectively paid out half his pension to Mrs H for the rest of her life and there were valuable guarantees and inflation protections. Mrs H didn't appear to have a large income of her own and there was no apparent need for a large cash lump-sum, rather than providing her with a secure income.

Also, as I've said, Mr H was only 54 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr H had lived a long life there could be nothing left at all in his personal pension plan to pass on to anyone.

I also see life insurance was discussed in this case although I think Mr H was given some whole life insurance quotes and these were expensive. But at 54 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product if Mr H really did want to leave a reasonable lump sum legacy for Mrs H. But more so, it doesn't appear that CBW took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his other (DC) scheme. So, to this end, Mr H already had plenty of options ensuring part of his pension wouldn't 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr H's situation.

Concerns over financial stability of the DB scheme

It's clear that Mr H, like many employees of his former company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and CBW said he lacked trust in the company. He'd heard negative things about the PPF and CBW said he could have more control over his pension fund.

So, it's quite possible that Mr H was also leaning towards the decision to transfer because of the concerns he had about his former employer and a negative perception of the PPF. However, it was CBW's obligation to give Mr H an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that CBW should have reassured Mr H that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr H through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his attitude to risk and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to CBW's recommendation to Mr H to transfer out of the DB scheme altogether.

Suitability of investments

CBW recommended that Mr H invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I don't think the advice given to Mr H was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr H was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think CBW ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr H's best interests for him to transfer his DB scheme to a personal pension when he'd had the opportunity of opting into the BSPS2. I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr H still had a few more years before he intended to retire.

On this basis, I think CBW should have advised Mr H to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr H would have transferred to a personal pension in any event. I accept that CBW disclosed some of the risks of transferring to Mr H, and provided him with a certain amount of information. But ultimately it advised Mr H to transfer out, and I think Mr H relied on that advice.

I'm not persuaded that Mr H would have insisted on transferring out of the DB scheme, against CBW's advice. I say this because Mr H wasn't an experienced investor and this pension probably accounted for most of his retirement provision at the time. So, if CBW had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, if a loss has been demonstrated here, I think CBW should compensate Mr H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for CBW's unsuitable advice. I consider Mr H would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. He had no fixed plans to retire and so **compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance**. CBW should use the benefits offered by BSPS2 for comparison purposes.

CBW 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.

CBW 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 H and the Financial Ombudsman Service upon completion of the calculation.

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 H'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, CBW should:

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

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, CBW 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 H'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 £170,000, 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 £170,000, I may recommend that the business pays the balance. However, DB pensions have a relationship with bond yields which have changed significantly recently; this means this maximum figure of £170,000 is just that – in itself it isn't entirely relatable to Mr H's likely redress situation.

Our investigator recommended that CBW should pay Mr H for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr H in his particular circumstances. This pension at the time probably represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr H. So I agree the recommended payment of £200 for distress and inconvenience. CBW should pay Mr C this amount in addition to the redress calculations I've set out above.

My final decision

Determination and money award: I am upholding this complaint and I now direct Creative Benefit Wealth Management Limited to pay Mr H the compensation amount as set out in the steps above.

Recommendation: If the compensation amount exceeds the maximum allowed, I also recommend that Creative Benefit Wealth Management Limited pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts my final decision, the money award becomes binding on Creative Benefit Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 January 2024.

Michael Campbell
Ombudsman