DRN-3889156

Financial Ombudsman Service

The complaint

Mr M complains about the advice given by Punter Southall Wealth Limited ('Punter Southall') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension 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 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 M's employer would be set up – the BSPS2.

Mr M met with Punter Southall in September 2017 to discuss his pension and retirement needs. It was noted that Mr M had received his transfer value from the DB scheme, and he wanted to look at the pros and cons of transferring.

Punter Southall completed a fact-find to gather information about Mr M's circumstances and objectives. This showed that he was married and aged 50, his partner was aged 51. He had two children one of which was dependent and would be for a few more years. At the time he was employed by Tata Steel. Their house was worth £250,000 and was subject to a modest mortgage that had two years left to run. They had two small car loans that would be repaid shortly. Mr and Mrs M had a modest amount of cash savings.

Punter Southall also carried out an assessment of Mr M's attitude to risk, which it said was 'balanced'.

In respect of Mr M's pension arrangements:

- Mr M had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. This showed that he had around 32 years' service. He was entitled to a pension of about £20,250 at the date of leaving the scheme. The CETV was about £519,000.
- Mr M had also joined his employers new defined contribution ('DC') scheme. He and his employer were contributing £240 a month into this. It had a value of around £3,000.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the

BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December (and was later extended to 22 December 2017).

But on 4 December 2017, Punter Southall advised Mr M to transfer his pension benefits into a personal arrangement and invest the proceeds in funds that it said matched his attitude to risk. Mr M accepted this advice.

The suitability report said the reasons for this recommendation were that Mr M was attracted to the greater death benefits that a personal pension would provide as he wanted to leave his family a financial legacy, and not just the spouses pension provided by the BSPS. Mr M also wanted a flexible income and taking a personal pension would allow him to adjust the amount he received to encompass situations such as taking a higher amount just after retirement, or less when he received the state pension. He was considering taking a tax-free lump sum of up to £70,000 to help his children purchase properties.

Mr M complained in 2022 to Punter Southall about the suitability of the transfer advice he received. He said he had recently received a letter from the industry regulator that said he may have received unsuitable advice. And he wanted this looked into.

Punter Southall didn’t uphold Mr M’s complaint. It said the advice was suitable for him as it met his needs for increased flexibility, better death benefits and met his attitude to risk. It said an independent third party had assessed the advice and found that it was suitable for him.

Mr M referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Punter Southall pay compensation. He said that Mr M was likely to receive lower retirement benefits due to the transfer. Whilst he did want to retire early, he had other provision and so he likely could have done this anyway. And Mrs M had said she would still be in work when Mr M retired and her income would be useful. He didn’t have a pressing need for tax-free cash. The different death benefits didn’t outweigh the likely loss in Mr M’s pension provision.

Punter Southall disagreed, saying that, in summary, the advice had been reviewed by an independent third party and they found it to be suitable. And it thought that the lower critical yield of 5.7% might be achievable, given the past performance of the funds the personal pension invested in. The cash flow analysis showed that a sustainable income could be taken. And Mr M did want the flexibility that he gained from the transfer, and he wasn’t looking to replicate the shape, level or frequency of the DB scheme payments.

The Investigator wasn’t persuaded to change their opinion, so the complaint was referred to me to make a final decision.

And after this the regulator has since developed, and now provides access to, a BSPS-specific redress calculator. Both parties to the complaint have been informed that I’m likely to award compensation based on this, if I uphold 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.

I’ve 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’). And 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 Punter Southall'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Punter Southall should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

- Punter Southall was required to carry out a transfer value analysis ('TVAS') report by the regulator. This calculated the critical yield which was how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme. It showed this was 5.8% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 4.7%. The same calculations at his age 58 were 7.9% and 5.7% respectively.

- To match the full pension the PPF would've paid from 65 the critical yield was 4.5% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.0%. The same calculations at his age 58 were 7% and 6% respectively.

- The discount rate, which represents a reasonable assumption about future growth, was 3.7% for 7 years to retirement (his age 58), and 4.2% for 14 years retirement (his age 65). And given this, and Mr M's recorded attitude to risk, and the regulator's middle projection rate, I think Mr M was always likely to receive pension benefits, from age 58 or 65, of a substantially lower value that those he'd have been entitled to under the BSPS2 by transferring and investing in line with that attitude to risk.

- The situation is less clear if he were to move to the PPF where at 65, and if he took the maximum tax-free cash, then it may have been reasonable to say the transfer could have replicated the PPF benefits. But there would be little point in giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. And this seems to be the case here. And at his preferred retirement age of 58 he would likely be worse off.

- And this was recognised at the time of sale when the suitability report referred to the critical yields at age 65 being 'just about' achievable but that Mr M was *'aware that the benefits once transferred may fall short of replicating those that would be available from the BSPS.'* And gave warnings that he may not be able to secure the same, or same type of income, as the DB scheme would have provided.

- One of the primary reasons that the transfer was recommend to Mr M is that he wanted to retire at age 58 and wanted to avoid the penalty that Punter Southall said he would pay if he took the benefits from his DB scheme at this age.

- It was noted that Mr and Mrs M wanted a minimum of £13,200 a year and £25,500 would leave them very comfortable. Mr M had no immediate plans for tax-free cash, but he thought that he might give his children some funds at some point. This wasn't a pressing need, more something that he wanted to do if circumstances allowed.

- The BSPS2 was projected to provide about £28,000 at his retirement age of 65 or tax-free cash of £127,900 and a reduced pension of £19,100. At age 58 it could provide a pension of £19,600 or tax-free cash of £94,000 and a reduced pension of £14,000. All of these met Mr M's stated needs at either 58 or 65. And nearer 65 they were comfortably above what he said he wanted.

- And added to this Mrs M, who was a similar age to Mr M, said she would work go part time when Mr M retired. This was out of choice. And she would receive an income of about £12,000 a year. And both Mr and Mrs M had some modest DC pensions that they could also use flexibly.

- Whilst Mr M's aim to retire early was clearly important to him. I don't think that Punter Southall should have advised him to alter his retirement provisions, at a significant potential overall cost, without fully exploring any alternatives could have used to meet these aims.

- And whilst there were some advantages with a personal arrangement, such as the ability to vary the amount taken, the pension under the BSPS2 or PPF was guaranteed. And appears to have been a more appropriate way to meet Mr M's income needs in retirement – which is the primary purpose of a pension.

- Overall, I'm not persuaded that Mr M needed to transfer to increase the flexibility in how he took his pension benefits at this time. I don't think transferring for this reason was in his best interests.

- Punter Southall said Mr M was interested in the improved death benefits a transfer offered to his family by way of alternative death benefits. But the priority here was to advise Mr M about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr M drew in his lifetime. And so may not have provided the legacy that Mr M may have thought it would.

- If Mr M had wanted to leave a legacy for his family, Punter Southall could've explored life insurance as an alternative. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence Punter Southall did this.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr M. I don't think that insurance was properly explored as an alternative. And ultimately Punter Southall should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- I think Mr M's desire for control over how his pension was invested was overstated. I can't see that he an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from his DB scheme.

- Mr M may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Punter Southall's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr M with guaranteed income and the option of accessing tax-free cash. Mr M was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr M received from Punter Southall was unsuitable for him.

Our Investigator recommended that Punter Southall also pay Mr M £300 for the distress caused by the unsuitable advice. Mr M said that finding out that he may be worse off in retirement left him very stressed at the time. I don't doubt that Mr M has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Punter Southall has provided an investigation that has been made by an independent third party that said this transfer was suitable for Mr M. I have noted this, but I am required to conduct my own investigation into the circumstances of a complaint and reach my own, independent, conclusions as I've done here.

Punter Southall, and the third party, have said that the DB transfer could meet Mr M's needs at age 58, largely on the same basis that it made the recommendation to transfer. It went on to say that that the DB scheme income could be surplus Mr and Mrs M's requirements.

I don't agree with the conclusions Punter Southall and the third party have reached about the suitability of this DB transfer. As I've said above, parts of the transfer could have advantages for Mr M. But I don't think it was right for Mr M to give up what could have been a cornerstone of his retirement, at a cost to him, for the reasons I've given above.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would most likely have remained in the occupational pension and opted to join the BSPS2 if suitable advice had been given.

Punter Southall 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.

Punter Southall 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 M and our Service upon completion of the calculation together with supporting evidence of what Punter Southall based the inputs into the calculator on.

For clarity, Mr M has not yet retired, and he has no firm plans to do so at present. So, 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 M'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, Punter Southall should:

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

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Punter Southall 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 M'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.

Punter Southall should also pay Mr M £300 for the distress and inconvenience the poor advice caused him.

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.

My final decision

Determination and money award: I uphold this complaint and require Punter Southall Wealth Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Punter Southall Wealth Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Punter Southall Wealth Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 12 December 2023.

Andy Burlinson
Ombudsman