DRN-3516207

The complaint

Mr P complains that he was given unsuitable advice by Merlin Financial Services Limited ('Merlin') to transfer the benefits from his defined benefit ('DB') scheme with British Steel (the British Steel Pension Scheme or 'BSPS') to a personal pension. He says the advice was unsuitable for him and has caused him a 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 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 P's employer would be set up – the BSPS2.

In October 2017, members of BSPS were 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 the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr P approached Merlin in November 2017 to discuss his pension and retirement needs. He was also concerned about the situation with his employer and the BSPS.

Merlin completed a fact-find to gather information about Mr P's circumstances and objectives. This showed that Mr P was aged 49 married and had three children. He was employed full time. He owned his own home subject to a mortgage. Mr and Mrs P also owned a second home that was also subject to a mortgage, this was rented out. They held around £10,000 on deposit.

Merlin also carried out an assessment of Mr P's attitude to risk, which it said was 'lowest medium'.

In respect of his pensions Mr P had received a cash equivalent transfer value ('CETV') from the BSPS on 22 September 2017. The pension at the date of leaving was £15,328.26 and the transfer value was £382,406.47.

Mr P was also a member of his employers new defined contribution ('DC') scheme and both him and his employer were contributing a total of 16% of his salary into this. He had some other modest DC arrangements.

Later in November 2017, Merlin advised Mr P to transfer his pension benefits into a personal pension and invest the proceeds in a fund that it said met his attitude to risk. The suitability report said the reasons for this recommendation were to help him to reduce his working hours at age 55 and provide more suitable death benefits. Mr P wanted the flexibility that a personal pension could provide.

Mr P complained in 2021 to Merlin about the suitability of the transfer advice. He said that he didn't think he had been given full information about this option and he should have been advised to join the BSPS2.

Merlin didn't uphold Mr P's complaint. It said that, overall, the advice fitted in with Mr P's requirements and he understood the potential risk of the transfer.

Mr P referred his complaint to our service. An Investigator upheld the complaint and recommended that Merlin pay compensation. He said that he was likely to receive lower retirement benefits due to the high investment returns needed to match the benefits he was giving up in the DB scheme. And the other reasons Mr P wanted to transfer didn't outweigh this. So, it wasn't in his best interests to transfer. Our Investigator thought that Merlin should also pay Mr P £200 for the distress and inconvenience the advice caused him.

Merlin initially disagreed and provided detailed reasons why it thought the transfer was in Mr P's best interests. The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

The regulator has since developed a BSPS-specific redress calculator. And despite initially disagreeing with the view, Merlin performed a loss assessment using the specific BSPS calculator provided by the FCA. This showed that Mr P hadn't suffered a loss. This was subsequently updated to the current calculation quarter date but still showed that Mr P had not suffered a loss due to the DB transfer.

Mr P has seen a copy of the calculations and he's aware that we consider they have been performed correctly. A copy has been provided to this service. Mr P hasn't commented, or accepted the calculations. And, as far as I can see, Merlin hasn't offered to pay Mr P any compensation the distress he was caused.

As this is the case, and as both sides have requested that an ombudsman consider the complaint, I'm now issuing 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 understand Merlin is still disputing that unsuitable advice has been given. However, nonetheless they have carried out a loss calculation. And Merlin hasn't said if it has agreed to pay Mr P £200 for the distress and inconvenience caused as recommended by our Investigator.

However, I agree with the Investigator's view that the advice was unsuitable for largely the same reasons. And these are:

- The transfer value analysis ('TVAS') report, that Merlin was required to carry out by the regulator, said that the critical yield - how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 7.2% to match the full pension he'd have been entitled to under the scheme at age

65. To match the full pension the PPF would've paid from 65 the critical yield was 5.87% and to match the tax-free cash and reduced pension the PPF would've offered, it was 3.3%.

- Despite the fact it was known by the point Merlin instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr P, the analysis was based on the BSPS benefits. And Merlin didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available. In fact the suitability report makes no mention of the impending changes to the BSPS at all which I think is a significant failing. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Given Mr P's recorded 'lowest medium' attitude to risk, the discount rate of 4.3% for 15 years to retirement and the regulator's low to middle projection rates, I think Mr P was likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 by transferring and investing in line with that attitude to risk. And indeed the suitability report noted that due to the transfer *"over the long term you will receive a lower income than that provided by the scheme".* So, for that reason alone a transfer wasn't in his best interests.

- Merlin has said that Mr P wanted to access tax-free cash from his pension at age 55. The overriding aim seems to be that he would reduce his working hours and use the fund to top up his income. This goal was recorded in the written recommendation and was clearly discussed at the time.

- It wasn't Merlin's role just to put in place what Mr P might've thought he wanted. Its role was to advise him on what was in his best interests. Even if Mr P indicated this was something he was considering. But there really isn't enough detail about this aim to say if it was feasible or not.

- What I do know is that Mr P was aged 49. So, he had at least six years before he would even think about accessing these benefits. He did have two properties worth in total around £395,000. But these were subject to mortgages of £345,000 and the fact find notes that one, or both, of the mortgages was interest only. There is no information about the term or the repayments although I note one or the properties was providing a rental income of £6,000 a year.

- These mortgages clearly present a challenge to Mr P's aim of reducing his working hours in the near future. He really needed clear advice about how he would do this and manage his mortgage debt. It needed to be clarified what he would need to be comfortable to live on in retirement, and how he would obtain this. And if he used his pension fund to repay his mortgages (as seemed likely) whether this meant he would be left with enough to live off over the longer term. I can't see that this this kind of planning took place.

- Overall, as Mr P didn't have a clear plan reduce his working hours prior to age 65 and he didn't have a pressing need to clear any of his outstanding debt as it appears to be affordable, I don't think transferring at this time to obtain flexibility was in his best interests. That's particularly the case given that this would likely lead to him having reduced retirement benefits.

- Merlin said Mr P was interested in the *'more suitable death benefits applicable to his circumstances'* that a transfer offered to his family. But the priority here was to advise

Mr P 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 or lump sums Mr P drew in his lifetime. And so may not have provided the legacy that Mr P may have thought it would. Particularly if some of the tax free cash was used to repay his mortgages.

- If Mr P had wanted to leave a legacy for his family, Merlin 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 Merlin did so.

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

- I think Mr P's desire for control over how his pension was invested was overstated. I can't see that he had 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 P – it was simply a consequence of transferring away from his DB scheme.

- Mr P may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Merlin'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 P with guaranteed income and the option of accessing tax-free cash. Mr P 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 P's best interests 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 P 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 P received from Merlin was unsuitable for him.

Putting things right

The aim is to put Mr P back in the financial position he would have been in at retirement had he remained in the DB scheme. Merlin carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much Mr P needs in his pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in Mr P's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to Mr P. If the calculation shows there is enough money in Mr P's pension arrangement, then no redress is due.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by Merlin which are personal to Mr P. These include Mr P's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr P's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr P has not suffered a financial loss by transferring his pension.

I think the calculation carried out by Merlin is appropriate in the circumstances and no redress for financial losses is due to Mr P. However, I do think Merlin should pay Mr P £200. Mr P says that finding out that his pension might not last him in retirement has caused him some distress and he felt under pressure at times during the advice process which shouldn't have been the case. So, I think the amount the Investigator recommended for this is reasonable.

My final decision

I uphold this complaint and require Merlin to pay Mr P a sum of £200 for the worry he says this matter has caused him.

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

Andy Burlinson
Ombudsman