DRN-4784895

The complaint

Mr G complained about Burfield Financial Planning Limited's ('Burfield') review conclusion that it had given him suitable advice to transfer the benefits from the British Steel Pension Scheme ('the BSPS') to an alternative pension. Burfield was required to carry out the review under the terms of the regulator's, the Financial Conduct Authority's ('FCA'), consumer redress scheme ('the redress scheme').

Provisional decision

On 23 April 2024 I issued a provisional decision. For ease of reference I've copied the relevant extracts below. I said:

'*What happened*

Mr G was a deferred member of his former employer's defined benefit ('DB') pension scheme - the BSPS. Mr G had stopped working for the BSPS' sponsoring employer in 2001. The scheme was underfunded and unable to meet its liabilities. In 2017, in an exercise known as "time to choose" members were given three choices:

- *To stay in the BSPS which would move to the pension protection fund ('PPF')[1].*
- *Move to a new DB scheme, the BSPS2, which the employer was in the process of setting up.*
- *Transfer their BSPS benefits elsewhere.*

Thousands of BSPS members like Mr G sought guidance from firms of financial advisers for advice on their pensions. Many of them chose to transfer their BSPS benefits to an alternative pension arrangement.

Subsequently, the FCA found that some advising firms had given BSPS members unsuitable advice to transfer out of the scheme. As a consequence, in February 2023, it instructed firms who had given advice to BSPS members to review that advice under the redress scheme. The FCA set out rules in its Handbook under CONRED 4 that advising firms must follow when reviewing their advice. The FCA also developed a tool, known as the BSPS Defined Benefit Advice Assessment Tool ('DBAAT') which firms are required to use.

The redress scheme reviews have two possible outcomes:

- *The advice is rated as "suitable" and the case is closed.*
- *The advice is rated as "unsuitable" – if so, the firm would be required to establish if the consumer had lost out as a result of the unsuitable advice and if so pay appropriate compensation.*

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

If the consumer disagrees with the outcome of the firm's review they may ask the Financial Ombudsman Service to look at whether the firm carried it out correctly in line with the redress scheme's rules.

In this case, in 2017 Mr G approached Burfield for advice about his pension. It recorded that Mr G wanted to achieve the following:

- *To be able to draw a flexible income from his pension funds, potentially from age 57, on an income of £15,000 a year.*
- *To take control of his pension and avoid the possibility of his BSPS benefits falling into the PPF.*
- *To take advantage of the superior death benefits under a personal arrangement.*

At that time Mr G had a net income of around £27,000 from which he was making overpayments on his mortgage and another secured loan, amounting to £1,090 a month. The outstanding balances on those loans were around £60,000 and £19,000 respectively.

Mr G was contributing to his current employer's DB scheme and Burfield recorded he could expect an annual pension of around £7,000 a year at age 60 from that scheme. Alternatively, it said he might also choose to transfer out of his current employer's scheme at some point in the future. Mr G also had two other defined contribution ('DC') pensions, which together had a total pot value of around £35,300.

Mr G's BSPS pension had a cash equivalent transfer value ('CETV') of £304,899.

Burfield obtained a transfer value analysis report ('TVAS') showing Mr G's entitlement from the BSPS2 at ages 55 and 65. It also showed the growth rates required to meet those sums from an alternative arrangement (known as the critical yield) as follows:

	Age 55	*Age 65*
Tax free cash lump sum	*£38,462*	*£57,881*
Yearly pension	*£5,769*	*£8,677*
Critical yield	*-0.33%*	*2.33%*

Burfield forwarded the TVAS to Mr G along with an initial report including spreadsheets setting out some cashflow models of how he could take an income of £15,000 a year net from age 57. It then spoke with Mr G. Mr G said that, having considered Burfield's figures, while he wanted to transfer his benefits away from the BSPS, he might defer retirement from age 57 to 60 but would consider his position at age 57.

Burfield then gave Mr G its suitability report setting out its analysis and recommendations. In doing so it remained focused on Mr G retiring at age 57. In short it indicated that Mr G transferring his DB scheme funds into a named personal pension would allow him to achieve his objectives.

Mr G accepted Burfield's recommendation and the transfer went ahead.

I understand that, following a change in his circumstances, Mr G retired at age 55.

In May 2023 Burfield wrote to Mr G. It said it had carried out the redress scheme review and found its advice to transfer was suitable.

Mr G had doubts about the review outcome and asked the Financial Ombudsman Service to look into it. One of our Investigators considered it. She didn't think Burfield had carried out the review appropriately.

To put things right the Investigator recommended Burfield change its review outcome to unsuitable and make the appropriate redress calculation in line with the redress scheme's rules.

Burfield disagreed with our Investigator's opinion of its review. It asked for an Ombudsman to make a final determination. The matter has since been passed to me.

What I've provisionally decided – and why

<u>My role and considerations</u>

When considering Mr G's complaint about the outcome of Burfield's review, my role is to decide whether Burfield has followed the redress scheme rules correctly.

CONRED 4 sets out that when reviewing advice firms must use the DBAAT tool. Annex 21 of CONRED 4 includes rules and guidance on how to use the tool.

In essence, the tool helps firms assess the suitability of their pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 'examples of unsuitability' are present. For each example, the firm's assessor (the person or people carrying out the review), should simply answer "yes" or "no" to indicate whether or not the example is present.

If the firm answers "no" to all 12 examples of unsuitability, the tool will rate the advice as "potentially suitable". If the firm answers "yes" to any of the 12 examples of unsuitability, this might indicate that the firm's advice to the consumer to transfer was unsuitable and not in the consumer's best interests. In those circumstances the tool will suggest a rating of "potentially unsuitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain the reasoning for their decision.

In responding to our Investigator's opinion Burfield has made a number of detailed points. I've considered carefully everything it said. But in this decision I don't intend to address each and every point raised. Instead I will focus on what I see as being the key matters and the reasons for my decision.

After careful consideration, as I explain below, I think Burfield's review has generally followed the redress scheme rules correctly.

<u>Why I think Burfield carried out the redress scheme review appropriately</u>

Burfield answered "yes" to two of the examples. It said it did so because there were "information gaps" on its file. But, in essence, it concluded there was enough evidence to say that its advice to transfer was suitable.

Our Investigator found that Burfield should have answered "yes" to a number of examples of unsuitability. So she said it should have concluded that its advice was unsuitable. Burfield objected to our Investigator's analysis and provided further comments. I will focus below on the examples which remain in dispute.

Example 3: the aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

And

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

In Mr G's circumstances the "comparator scheme" is the BSPS2.

Burfield itself, when completing the DBAAT tool, marked example 3 as present. It did so because it had noted that Mr G estimated he would need a net income of £15,000 a year in retirement but Burfield hadn't done a full assessment of Mr G's income needs to test the accuracy of that. So it said there were information gaps. But, it said that at that time Mr G had a net income of around £27,000 a year and was making mortgage and loan repayments of around £13,000 a year. It concluded that, once Mr G had paid off his mortgage and loan, then a net income of £15,000 a year was reasonable to cover his other living costs. I think that assessment is correct.

Mr G was aged 53 at the time Burfield advised him to transfer. He told Burfield that his preference was to retire in four years' time, at age 57. Burfield said Mr G could achieve this by transferring out of the BSPS scheme and reinvesting his CETV sum in a personal pension. He could then draw down the £15,000 a year net he required from the personal pensions from age 57 and adjust the amount required once he accessed the benefits from his current employer's pension at age 60. He could then live on those sums until his state pension became payable at age 67. Burfield said Mr G would need about £100,000 during that period to make up any income shortfall. It said by transferring his BSPS funds he would have enough money from a personal pension to comfortably support his income requirements until his state pension was payable and the funds would sustain him for the remainder of his life.

Our Investigator noted that the guidance at Annex 21 of the CONRED rules said example 3 should be marked present where:

"there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme;"

She said Mr G could have met his objective of retiring early after joining the BSPS2 and supplementing his income from his current employer's DB scheme and other DC pensions. So she believed Mr G could have met his objectives of having flexible access to funds and retiring early after joining the BSPS2. She said this was relevant to both examples 3 and 6. So she said Burfield should have concluded that these were present.

But, as Burfield has since pointed out, the Investigator was mistaken on that point. In order for £15,000 net a year to be a suitable income for Mr G, he would need to draw down around £17,000 a year gross. And to be able to live on that sum he would need to have repaid his mortgage and loan in full. Otherwise the repayments for those alone would take up over £13,000 a year, which would be the majority of his £15,000 a year net income. So, without repaying those loans, he couldn't have retired on that income.

In contrast Burfield's cashflow models, following a transfer, show Mr G taking £50,000 tax free cash ('TFC') from his personal pension fund at age 57 in order to repay his secured debts. However, that TFC figure wouldn't have been available to him at age 57 if he'd remained in the BSPS2. And while he would have had an entitlement to TFC from that scheme, it was unlikely to have been enough to repay his outstanding debts and he would have still owed a significant sum.

However, even if Mr G could have used TFC from the BSPS2 and his DC pensions to pay off his mortgage and loan at age 57, the amount available to Mr G from his current *employer's DB scheme would have been less than his entitlement at age 60. That's because it would have been reduced by three years less contributions and also by what's known as early retirement factors. Those result in a reduction in the pension to account for the fact it would be payable for a longer period. Burfield estimated that, in those circumstances, Mr G's current employer's DB scheme would not have paid him £7,000 a year but most likely would have paid around £4,000 a year. So assuming he received around £6,000 a year from the BSPS2 at age 57, he would have to find around £7,000 a year (gross and without factoring in inflation) each year for ten years until his state pension became payable at age 67. And he wouldn't have had that level of funds available to him. So, he would have an income shortfall that would not sustain him until he claimed his state pension. I agree with Burfield's analysis here. As such I don't think Mr G could have met his income needs at his preferred retirement age of 57 while remaining in the BSPS2.*

Our Investigator pointed out that Mr G told Burfield that he had no need to retire at age 57 and that he might decide to retire until age 60. So while he may not have met his income needs at age 57 he could do at age 60 from the BSPS2. But , assuming that Mr G could have met his income needs from age 60 I don't think, in terms of applying the redress scheme guidance, it's correct to say Mr G's preferred retirement age was 60.

Mr G clearly told Burfield initially that his preferred retirement age was 57. And while he did say he might not retire at that age and could defer until age 60, he said he would assess the situation at age 57. Then, if he wanted to retire at that age he would do so. And Burfield's analysis and suitability report make numerous references to Mr G's preference for retiring at age 57.

So, while retirement at age 57 wasn't in any way set in stone, I think it was reasonable for Burfield to note that this was something Mr G would like to have the opportunity to do, although he would revisit that decision at the appropriate time. The CONRED guidance says that firms should carry out the review based on the consumer's preferred retirement age. The evidence on file indicates that Mr G's preferred retirement age was 57. And as Mr G couldn't have afforded to take early retirement at age 57 after joining the BSPS2, but could have done from transferring to a personal pension, I think Burfield assessed examples 3 and 6 correctly in line with the redress scheme guidance.

Example 9: the firm's transfer analysis does not support a recommendation to transfer

The CONRED Annex 21 guidance says that where a firm is unable to demonstrate that the critical yield is attainable from an alternative arrangement, then it should mark this example as present.

The guidance also says the example should be marked present where a firm had not collected the necessary information to demonstrate a transfer recommendation meets the consumer's objectives.

Our Investigator noted that when producing its TVAS and analysis Burfield only gave figures for Mr G retiring at ages 55 and 65. But, as his preferred retirement age was 57, and Burfield hadn't gathered the appropriate information for Mr G's retirement at age 57 then it should have marked this example as present.

In response Burfield said that, while it hadn't provided the appropriate figures at age 57, it had noted that the critical yield for Mr G taking his BSPS2 benefits (including TFC) at age 55 was minus 0.33% and this figure rose to 2.33% at age 65. Burfield said it could be "interpolated" from those figures that the critical yield at age 57 would be less than 1%; a figure which it said would be attainable.

When thinking about how Burfield has assessed this, with regard to the redress scheme, I've looked at the relevant guidance. What it says is that the assessor must refer to the "available evidence". In this case, while the critical yield and other figures weren't available at age 57, they were at ages 55 and 65. So it's possible to conclude from the evidence on file that the applicable critical yield would fall between minus 0.33% and 2.33%. And given Mr G's preferred retirement age – 57 – was nearer to 55 than 65, I think Burfield's interpolation, that the critical yield at age 57 would be achievable, was most likely accurate.

I'll explain that, one measure we use for establishing how much a pension investment is likely to grow by is called the discount rate. Given that Mr G was 53 at the time of the advice and aimed to retire at age 57, 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 2.8% a year for three full years to retirement. So, given that the critical yield would have been below 2.33% and the discount rate was higher than that, the critical yield should have been attainable.

It follows that, regardless that Burfield didn't provide the exact figures at age 57, I don't think that means that its application of the redress scheme guidance was incorrect.

For completeness I'll add that, since our Investigator issued her view of the complaint, Burfield has supplied the appropriate TVAS figures for Mr G retiring at age 57. And those show a critical yield of 0.1%. So, given that the regulator's lowest growth rate projection rate at that time was 2%, and the discount rate considerably higher at 2.8%, then a critical yield of 0.1% would be considered achievable.

Example 2: the aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.

As it hadn't completed a detailed retirement expenditure analysis Burfield marked this example as present. But, for the same reasons it gave for example 3 believed that this oversight didn't make its advice unsuitable. That is, it felt Mr G could bear the risk of the transfer.

Our Investigator noted the CONRED guidance said that when assessing this example firms should consider whether there were alternative ways for a consumer to meet this objective without transferring out of the BSPS2. The Investigator noted that Mr G had death in service cover from his employer and a decreasing term insurance policy for his mortgage. She added that Burfield should have also considered that Mr G might have been able to meet this objective by taking out whole of life or term assurance cover.

In response Burfield said, amongst other things, that death benefits were not a "primary driver" for Mr G. But I think that contradicts other evidence on file. For example in its suitability report Burfield said that one of Mr G's:

"main drivers for transferring was to take advantage of the superior death benefits under a personal arrangement"

So, not only did Burfield say that one of Mr G's objectives from a transfer was to be able to pass on the residual pension value to his family, it also indicated that transferring was a better value way of achieving that than joining the BSPS2. In other words it used the difference in death benefits as a point to support its recommendation to transfer.

Also, when it completed the DBAAT tool Burfield said that one of Mr G's objectives was "death benefits". If it hadn't intended this as an objective then it need not have considered *this as part of the review. Instead, I would have expected it to omit it with an explanation why. But it didn't. It follows that I'm satisfied that consideration of death benefits was one of Mr G's priorities when thinking about a transfer.*

The CONRED guidance says that when assessing this example firms should identify if there were other ways a consumer could meet this objective without transferring. And the guidance said that firms need to consider things like, death in service cover, whole of life or term insurance. But in this case Burfield did not provide that analysis. For example it didn't set out why the death in service cover might or might not achieve this objective. Also it didn't provide any assessment of what alternative insurance policies may cost Mr G and whether or not they would be affordable. So, as it didn't do those things, I think it should have marked this example as present.

But, for the reasons given below, I don't think that means it needed to mark the entirety of its advice as unsuitable.

Burfield recently provided explanations for why it didn't take the action above. It said that Mr G's death in service cover would only last as long as he worked for his employer. So, if he finished working for that employer at age 57, in four years' time, then his death in service cover would end then. It added that Mr G's decreasing term insurance was connected with his mortgage and was unlikely to be of value to Mr G after he paid that off at retirement. I agree with that analysis and as such I don't think those were viable alternatives as death benefits.

Burfield also said that whole of life cover was unlikely to be affordable for Mr G, particularly after he retired. I agree that whole of life cover is often expensive and was unlikely to be affordable. Similarly, Mr G would need to have found additional funds to pay for any term assurance product he decided to take into his retirement, with no guarantee that his beneficiaries would ever make a successful claim against it. But his BSPS2 and other entitlements wouldn't provide the additional funds he would require to pay for this cover until after his state pension became payable, which is why Burfield didn't believe its advice was unsuitable in this regard. While that appears a fair explanation, in order to have completed the DBAAT tool correctly, it should have provided this reasoning when filling it in.

That said, as I've said above, I think Burfield's shown that Mr G could bear the risks of transferring. That is the transferred funds would sustain him in retirement. So, while it didn't do everything it should have done in respect of assessing example 9 in order to apply the redress scheme rules correctly, I don't think that overall it was required to mark its advice as unsuitable. It follows that I'm satisfied its redress scheme review was appropriate in the specific circumstances of this case.'

Developments

Mr G didn't provide any comment on my provisional decision. Burfield said it had nothing further to add.

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.

As neither Mr G nor Burfield has objected to my provisional decision I see no reason to change it.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 5 June 2024.

Joe Scott
Ombudsman