DRN-3816327

The complaint

Mr L complains about the advice given by Pi Financial Ltd trading as Countrywide Estate Planning IFA (Countrywide) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice may have been unsuitable for him and believes this could have 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 L's employer would be set up – the BSPS2.

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 choices was 11 December (and was later extended to 22 December 2017).

Mr L approached Countrywide in October 2017 to discuss his pension and retirement needs. He was concerned that having seen many changes within the company that his pension may be reduced in the future.

Countrywide completed a fact-find to gather information about Mr L's circumstances and objectives. This showed that Mr L was aged 45 and lived with his partner who was aged 39. They had two dependent children. Both Mr L and his partner were employed full time and their income was above their outgoings. Mr L had cash savings of £5,000 and a loan of about £10,00. Mr L and his partner owned their own home which was subject to a mortgage.

Countrywide also carried out an assessment of Mr L's attitude to risk, which it said was 'low medium'.

In respect of Mr L's pension arrangements:

Mr L had received two cash equivalent transfer values ('CETV') from the BSPS. I've not seen these documents. But I understand that Mr L had two periods of service. Period one was between September 1988 to July 1998 and period two was between September 2002 and May 2016. He was entitled to an annual pension at the date of leaving of about £2,600 from period one and £12,600 from period 2. The total CETV was about £421,150.

Mr L had also joined his employers new defined contribution ('DC') scheme. The fact find shows he was contributing 6% of his salary into this and his employer was contributing 9%.

On 6 November 2017, Countrywide advised Mr L to transfer his pension benefits into a personal pension and invest the proceeds in line with his attitude to risk. The suitability report said the reasons for this recommendation were, in summary:

- Mr L wanted to retire at age 60 without any reduction factors.
- He wanted to control his own pension fund, and he intended to use the funds while he was fit and healthy. He wanted to access the funds as and when he needed to, perhaps to go part time.
- He wanted to ensure that on his death any remaining funds could be passed to his partner and children.
- Mr L had concerns about the stability of his employer and the DB scheme.

Mr L complained in 2022 to Countrywide about the suitability of the transfer advice. He'd received information that led him to believe that the transfer might not have been right for him and requested that compensation was calculated and paid if this was the case.

Countrywide didn't uphold Mr L's complaint. It said that the advice was suitable for him as he understood investments and was concerned about the DB scheme. The personal pension was financially strong, and the funds used met his attitude to risk. It didn't think that Mr L had any grounds for complaint.

Mr L referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended Countrywide pay compensation. He said that Mr L was likely to receive lower retirement benefits due to the advice. And whilst he was attracted to the improved death benefits, and the flexibility the personal pension offered, these weren't enough to outweigh the reduction in pension benefits he was likely to receive. Particularly as Mr L had a relatively long time until he retired over which he could build up a significant fund that he could use flexibly and to provide a lump sum on his death. He thought that Mr L should have been advised to join the BSPS2.

Countrywide disagreed, saying that:

- Mr L wasn't unhappy with the advice, but as his colleagues had received compensation the felt he should also 'give it a go'.
- The critical yields were artificially high as they were based on the BSPS, and this was made known to Mr L. But he didn't want to purchase an annuity, so they weren't really relevant.
- Mr L could meet his income requirements through other sources and he did want to manage his pension fund himself.
- Mr L wasn't married and so he may have lost his pension fund in its entirety on his death. He wanted to provide for his partner and family if this happened.
- Mr L did not want to wait to transfer due to the inherent risk of the loss of his whole pension fund.

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

The industry regulator the Financial Conduct Authority ('FCA') has since developed, and now provides, a BSPS-specific redress calculator. All parties to the complaint have been informed that I may award compensation based on a loss assessment using the FCA's BSPS calculator.

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

- The transfer value analysis ('TVAS') report, that Countrywide was required to carry out by the regulator, calculated the critical yield, that is how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme. I've not seen a full copy of the TVAS although the suitability letter contains information from it. It said the critical yield was 8.32% and 7.15% to match the full pension he'd have been entitled to under the scheme at age 65 from each of the two periods of membership. As far as I can see Countrywide didn't perform the same calculations for the PPF, which it should have done as this was one of the options open to Mr L. These critical yields are usually slightly lower than those based on the BSPS. There wasn't any analysis done for retirement at different ages either, or if Mr L took tax-free cash.

- And despite the fact it was known by the point Countrywide instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr L, the information I have indicates that the analysis was based on the BSPS benefits. And Countrywide didn't undertake any analysis of the benefits he'd have been due under the BSPS2, even though details were available. I think it should've done this. 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 slightly lower than those in the BSPS but likely higher than those from the PPF.

- Given Mr L's recorded 'low-medium' attitude to risk, the discount rate of 4.4% for 19 years to retirement and the regulator's low and middle projection rates, I think Mr L was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. Whilst I don't have these calculations the critical yield for the BSPS is high enough for me to say this is likely to be the case. And if Mr L wanted to retire early it's likely that these critical yields would be higher still and he would be even more likely to receive lower benefits than either the BSPS2 or the PPF.

- And the suitability report noted that there was a material risk of the transfer providing lower benefits for Mr L when it said that '*There is no guarantee of future growth and it is possible that your eventual pension would be under this growth rate and so your benefits would be less than in your current scheme'.* Whilst this is correct, I think it understates the likely reduction in benefits for Mr L at the time. And I think the transfer wasn't in his best interests for this reason alone.

- Countrywide said the transfer was suitable for Mr L as it allowed him to potentially retire early and to access his pension flexibly. And he was prepared to receive a lower income to do this. It is true to say the personal pension could be more flexible, as from the DB scheme Mr L would have to take any tax-free cash he wanted at the same time as he took an income. He wouldn't have had to do this in the personal pension.

- It was noted that at age 67 Mr L's retirement provision met his needs without risk. He and his partner wanted around £2,000 a month or, say, £25,000 a year. The BSPS would provide a pension of just under £30,000 at his age 65. Added to this, Mr L and his partner would receive state pensions of £16,000 a year his partner would receive a DB scheme pension of around £9,600 a year. So, I agree that at their scheme retirement ages their provision met their needs. And having a greater income than they need at retirement would allow them to enjoy it fully, or for example, save for their children in a tax efficient way such as through a trust.

- As far as I can see Countrywide didn't find out what the DB scheme would provide if Mr L retired earlier and it's not clear why, as this seems to be one of his main objectives. That said the FCA's BSPS specific calculator said that it can be assumed that at age 60 Mr L would have received about 85% of his pension. This would still be over £25,000. Again, this still met their needs. And I think this would likely be similar from the BSPS2 or the PPF.

- Countrywide consistently referred to the 'reduction' if Mr L took his benefits early from the DB scheme. But this isn't the right way to look at this. The starting pension is lower when benefits are taken early but this is to reflect the longer time in payment. And these changes are usually made on the basis that the pension will pay the same amount overall, given assumptions about life expectancy and so on.

- Added to this, I understand that Mr L and his employer had begun contributing to a recently set up DC pension scheme. They were together contributing 15% of Mr L's salary to that pension. Given the amounts that were being invested, that his salary and contributions would likely increase over time and investment returns would increase all of this, Mr L would likely build up a significant amount of money in the DC scheme.

- This would provide Mr L with flexibility – he wasn't committed to take the benefits in a set way. He could have taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr L retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early - if that was what he ultimately decided to do.

- Overall, I'm not persuaded that Mr L needed to transfer to increase the flexibility in how he took his pension benefits at this time.

- It was documented at the time of sale that the spouse's pension the DB scheme had would not pass to his partner, as they were not married. And Mr L said he wanted to provide for her and his children on his death. And he was concerned that the fund would be lost if this happened before he retired. I don't doubt that Mr L was concerned about this.

- But the priority here was to advise Mr L about what was best for his retirement, and lower or less secure pension benefits could also negatively affect him and his partner. Essentially Mr L had a need to provide capital to a financial dependent on his premature death. And this is the kind of situation that term assurance is usually used for. Or a whole of life policy could have been considered. But there's little evidence Countrywide did so. I don't think the advice to transfer was suitable when this option wasn't properly considered in first instance.

- And 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 after Mr L retired. As well as being dependent on investment performance, it would've also been reduced by any income Mr L drew in his lifetime. And so may not have provided the legacy that Mr L may have thought it would.

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

- I think Mr L'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 L – it was simply a consequence of transferring away from his DB scheme.

- Mr L may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Countrywide'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 L with guaranteed income and the option of accessing tax-free cash. Mr L 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 interest.

Overall, I can't see persuasive reasons why it was clearly in Mr L'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 L 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 L received from Countrywide was unsuitable for him.

Putting things right

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

Countrywide 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.

Countrywide should use the FCA's BSPS-specific redress calculator to calculate the redress. If Countrywide does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BSPS calculator output should be sent to Mr L and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Countrywide based the inputs into the calculator on.

For clarity, Mr L has not yet retired, and he has no 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 L's acceptance of my decision.

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

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L 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 L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts Countrywide's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr L 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 L's end of year tax position.

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

My final decision

Determination and money award: I uphold this complaint and require Pi Financial Ltd to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Pi Financial Ltd pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on Pi Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 24 November 2023.

Andy Burlinson
Ombudsman