DRN-4515144

The complaint

Mr T complains that he was given unsuitable advice by Financial Solutions Wales Ltd ('FSW'), to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension.

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 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 T's employer would be set up – the BSPS 2.

In September 2017 Mr T got in touch with FSW for advice on his BSPS pension and they recommended him to transfer his DB benefits into a personal pension. Mr T followed this advice.

In November 2021, Mr T complained about the advice he received. FSW rejected his complaint. They said the transfer met Mr T's objectives of taking control of his pension and taking it more flexibly and that their cashflow showed financial viability.

Our investigator upheld the complaint. He didn't think the advice was suitable.

FSW disagreed but a few months after the investigator's assessment, in October 2022, they carried out a loss calculation as recommended by the investigator in an attempt to settle the matter. They also offered Mr T £500, without admission of liability, for any distress the matter might have caused him. The calculation was carried out with an assumed retirement age of 57 as recommended by the investigator. The calculation showed Mr T had a surplus of around £94,000 in his pension and had not suffered a financial loss by transferring.

Mr T rejected the offer and asked for his redress to be calculated once new FCA rules about redress for unsuitable DB transfer advice were published in April 2023. His representatives also noted the assumed retirement age should be 65 as it was uncertain when Mr T will retire.

FSW carried out updated calculations in October and December 2023. These still showed that Mr T had not suffered a financial loss. They again offered Mr T £500 for any distress caused.

Mr T remains unhappy with the outcome and disagrees with the redress methodology. He feels it's unfair that colleagues have previously received high compensation payments and he receives nothing. He believes a calculation should be carried out based on data and economic assumptions in 2021 when he complained. Mr T asked for 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 FSW is still disputing unsuitable advice has been given. However, nonetheless they agreed to carry out a redress calculation in line with FCA guidance and rules to put Mr T as much as possible in the position he would have been in if he had not transferred his DB pension. So I don't see the need to address the suitability of their advice to Mr T in detail.

However, I would like to note that I agree with the investigator's view that the advice was unsuitable for largely the same reasons.

Mr T was 49 at the time of the advice and aimed to retire at 57. I can see from emails at the time that he was keen on transferring and he set out his objectives as taking £50,000 in tax free cash at age 55 for home improvements and then take an income from 57. He was aiming for returns of 4-6% after fees and living primarily off the interest earned in his pension.

FSW transfer analysis showed that in order to match his DB benefits at age 57 he needed to meet a critical yield of 6.26% if benefits were taken as tax-free cash and reduced income or 8.25% if only income was taken. Compared with the PPF benefits the critical yields were 6.39% and 7.1% respectively.

Mr T's risk profile was recorded as low medium and in his first email to FSW he said he wanted cautious funds. I think it was unlikely he could consistently meet these returns and FSW acknowledged in their report that Mr T had a shortfall in his pension of around £330,000 to be able to replicate his DB benefits at age 57 if he transferred out. I appreciate FSW carried out various cashflow reports to show that he could take higher income from age 57 and not run out of money until his mid-eighties. However, this still depended on robust investment returns and both Mr T and his wife could have lived longer than this. The cashflows did not allow for spouse's benefits which given the couple relied on Mr T's income this would have been important.

In my view Mr T didn't need to take any risk with his BSPS pension which was his main retirement provision. He had savings and significant disposable income which he was planning to use to increase his savings until retirement. He also had a defined contribution pension through his employer with employer and employee contributions totalling 21% which means he would have accrued more benefits over the following eight years which he could have used flexibly.

He could have paid for home improvements with savings and if necessary use his defined contribution pension. And the income from the PPF or the BSPS2 at 57 would have more than covered his outgoings. He could have topped this up with his flexible pension benefits in earlier retirement years if he wanted to.

I recognise that Mr T was worried about his employer's situation and his pension falling into the PPF was seen by him and colleagues as the worst possible outcome. However, even if this happened, Mr T could retire early and meet his objectives. And I think FSW could have done more to alleviate his fears and concerns around this.

Overall, I'm not persuaded that Mr T needed to give up guaranteed benefits to meet his objectives. I acknowledge that Mr T was keen on transferring, however on balance I think he would have listened to the adviser if they had explained that it wasn't in his best interest to give up his DB benefits and that the returns he was envisaging might not be possible to achieve year on year.

Having said all of the above, FSW have carried out loss calculations and in this decision I will focus on whether the method and offer of compensation is fair in the circumstances of this complaint.

Putting things right

The aim is to put Mr T back in the financial position he would have been in at retirement had he remained in the DB scheme. FSW 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 a consumer needs in their 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 the consumer's pension arrangement to be able to buy an income matching the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer'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 so they are as accurate as possible. 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 FSW which are personal to Mr T. These include Mr T'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.

The calculation in Mr T'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 and have nearly £125,000 surplus. Whilst I think the advice at the time wasn't suitable and Mr T was taking risks he didn't need to, he has achieved decent returns on his pension and the transfer has in fact worked out in his advantage. I'm satisfied that Mr T has not suffered a financial loss by transferring his pension.
I don't think it's reasonable to ask FSW to use outdated assumptions from 2021. FCA rules and guidance are clear about how any DB transfer loss needs to be calculated and this is based on up-to-date assumptions at the point of calculation. The aim of redress is to put Mr T as much as possible back into the position he would be in if he had not transferred and to make up any losses he might have incurred.

Over the past year interest rates have increased significantly and annuities have become cheaper. So based on current assumptions Mr T is able to buy a guaranteed income with his pension that replicates BSPS2 benefits and have a substantial sum leftover. It would not be fair to compensate him for losses he hasn't suffered.

Mr T previously asked me to consider a higher award than the £500 offered by FSW for distress and inconvenience. He said the pension transfer had affected his mental health and impacted on his quality of life. He said he found managing a personal pension stressful and that the future uncertainty is weighing heavily on him.

I'm sorry to hear that Mr T has been struggling with his mental health. However, I've taken into account that Mr T is professionally represented and received an investigator's view in his favour last year. So he ought to have been reassured that if there was a shortfall in his pension he would likely be compensated. Also, he has had a financial adviser throughout who is looking after his finances, so he doesn't have to manage the pension himself. The new adviser essentially has told him he will only need the tax-free cash element of his BSPS fund and existing savings to fund his retirement which would leave him with a very significant lump sum he can leave untouched. So I think he would have been reasonably reassured about his financial security in retirement.

FSW's offer of £500 is in line with what I would award for considerable stress and worry, so I consider this is fair and reasonable in the circumstances and I won't ask FSW to increase this amount.

My final decision

I uphold the complaint and require Financial Solutions Wales Ltd to pay Mr T £500 as offered previously if they haven't paid this to him already. No further loss calculation is required.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 January 2024.

Nina Walter
Ombudsman