

The complaint

Mr W complains that he was given unsuitable advice by Bailey Richards Wealth Management Limited (BRWM) 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 July 2016, Mr W contacted a financial adviser firm ('Firm A') for advice on his pension as he was concerned about the PPF and the security of his pension. They completed some of the initial paperwork for Mr W, but as they didn't have the relevant permissions to advise on a pension transfer they referred him to BRWM for advice.

A fact find, risk profiler and a retirement options form were completed by Firm A in July 2016 which showed:

- Mr W was nearly 40, married with two non-dependent children, and in good health. He earned £24,200 per year. He and his wife had an outstanding mortgage of around £81,000, loans totalling £16,000, and £1,500 in cash savings.
- Other than the BSPS pension, Mr W had a group personal pension (GPP) worth around £30,000 and his wife had a final salary pension of her own. Mr W was also planning to join the new company defined contribution (DC) pension scheme in September 2016.
- Mr W was convinced the BSPS would not have the funds to pay him a pension by the time he reached retirement due to underfunding.
- Being many years from retirement meant he could afford higher risk with his pension in the early years and could review this closer to retirement. His attitude to risk was recorded as "highest medium" or a 7 on a scale from 1-10. BRWM later categorised him as 'moderate to adventurous'.
- He had no idea when he would retire. But he would like to work until 60 if he could afford to retire then.

A suitability report dated October 2016 shows BRWM recommended Mr W to transfer his BSPS benefits to his existing GPP and consolidate his pensions.

Mr W complained to BRWM in 2020 about the advice he received. He said it wasn't suitable. BRWM rejected his complaint. Mr W referred his complaint to this service. One of our investigators upheld his complaint. He agreed BRWM had given unsuitable advice.

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.

The starting assumption for a transfer from a DB scheme is that it is unsuitable. BRWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interest. (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interest. I'll explain why.

financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The investment return required to match the DB pension at retirement at age 65 (critical yield) was 10.63% per year if benefits were taken in full or 9.29% if taken as a lump sum payment with a reduced pension. The equivalent critical yields to match the benefits available if BSPS moved to the PPF were 8.84% and 8.65% at age 65.

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 it was 4.6% per year for 24 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. I've taken this into account, along with the composition of assets in the discount rate, Mr W's medium-high attitude to risk and also the term to retirement. And I think Mr W was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement (even if the BSPS moved to the PPF). I think it's highly unlikely Mr W could have achieved returns above the regulator's highest projection rate every year until retirement, particularly as he would likely reduce his investment risk the closer he got to retirement.

BRWM says the critical yield is of limited relevance as Mr W was not planning to take an annuity with his pension funds. However, the critical yield does still give a good indication of the value of benefits Mr W was giving up and the regulator deems it an important part of the decision-making process. I also note that BRWM said themselves in the suitability report that the decision to transfer was only made on the critical yields, then they wouldn't have recommended the transfer.

In summary, even if BSPS had moved to the PPF and Mr W's benefits were reduced, he was very unlikely to match, let alone exceed his benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr W would be financially worse off in retirement. So based on the above alone, a transfer wasn't in Mr W's best interest.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall

lower benefits. I considered below whether such other reasons applied here.

flexibility and death benefits

Mr W was many years from retirement and wouldn't have known what benefits he might need in retirement and when he would start taking them. Flexibility sounds attractive, but I can't see that he had any concrete need for it. From what I've seen Mr W also had no real plans for early retirement. However, even if he could afford to do so nearer the time, early retirement was possible in the PPF and with lower reduction factors than BSPS.

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die. However, whilst death benefits might be important for consumers, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs. And the existing death benefits with BSPS were not to be underestimated. Mr W's wife would have received a guaranteed spouse's pension for life which would have been valuable if Mr W predeceased her. Mr W was young and in good health and so more focus should have been on ensuring Mr W would receive the best possible retirement benefits over a long period of time.

In any event Mr W had a GPP and was about to join his employer's DC scheme which would have allowed him to accrue benefits for many years. He could have used these pensions flexibly from age 55 if he wished to do so. He also could have left lump sums from these pensions to his wife and children if this is what he wanted. So there was no need to give up his DB benefits for these reasons.

concerns about financial stability of BSPS

In my view BRWM's key justification for the transfer was that Mr W was really concerned about his employer's financial situation and that they might not be able to pay his pension once he got to retirement age.

Lots of his colleagues at the time were transferring out of the scheme and he was worried his pension would end up in the PPF. He said this is why he wanted to move the pension into his control. He was also worried he could not transfer in future if the BSPS had moved to the PPF. So I think it's clear Mr W was worried about the security of his pension (which he marked as his priority in the pension transfer questionnaire) and it's quite possible that Mr W was leaning towards the decision to transfer for this reason.

However, it was BRWM's obligation to give Mr W an objective picture and recommend what was in his best interest. Mr W was particularly concerned about BSPS moving to the PPF. He was worried he could lose some of his pension. However, as the figures above show, even if this happened, Mr W was still likely to be better off not transferring. I can't see that this was properly explained to him or BRWM did enough to alleviate these concerns. And given that it was in his best interest to stay in the DB scheme, the possible loss of opportunity to transfer his pension in future shouldn't have been a significant concern to Mr W.

summary

It's possible that Mr W was attracted by the idea of transferring. He might have heard from colleagues that this is what they were doing and he was very concerned about the possibility of his pension falling to the PPF. And I don't doubt that flexibility, control and higher death benefits would have also sounded like attractive features. But BRWM wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interest.

I appreciate BRWM included some risk warnings in their suitability report. However, this doesn't replace suitable advice. Mr W's fear about the PPF and the security of his pension should have been put into perspective. If BRWM had recommended him to stay and explained their reasons properly why Mr W would be better off staying in BPS and that going into the PPF wasn't as concerning as he thought, I think Mr W likely would have followed their advice.

If Mr W had stayed in the BPS, he would have shortly after had the choice to move to the PPF or transfer to a new scheme, the BPS2. So I carefully considered what Mr W likely would have done nearly a year later had he been given the choice of either the PPF or BPS2 and placed into an informed position regarding the features, risks and benefits of both options. On balance I think Mr W would've likely opted for BPS2.

BPS2 wouldn't have decreased Mr W's initial entitlement by 10% like the PPF and some of his benefits would have had potentially higher increases in BPS2. Under BPS2, the spouse's pension would be set at 50% of Mr W's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. So the spouse's pension would likely have been higher than in the PPF.

Early retirement factors in the PPF were lower and commutation factors for tax free cash entitlement were also more favourable under the PPF. However, given that Mr W was many years from retirement and had no concrete plans to retire early, I don't think these factors would have outweighed the benefits of BPS2.

Putting things right

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of BPS and subsequently moved to BPS2. So calculations should be made on this assumption.

BRWM must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance of the decision.

BRWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr W's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr W's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr W as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been

taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition BRWM should pay Mr W £300 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr W within 90 days of the date BRWM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes BRWM to pay Mr W.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

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 Bailey Richards Wealth Management Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require Bailey Richards Wealth Management Limited to pay Mr W any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Bailey Richards Wealth Management Limited to pay Mr W any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Bailey Richards Wealth Management Limited pays Mr W the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr W. If Mr W accepts this decision, the money award becomes binding on Bailey Richards Wealth Management Limited. My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 4 May 2022.

Nina Walter
Ombudsman