DRN-3083037

The complaint

Mr A complains that he was given unsuitable advice by Tees Valley Asset Management Limited ('TVAM') to transfer deferred benefits from his Defined Benefit (DB) pension with British Steel (BSPS) to a personal pension. He's also unhappy that he was then advised to move the funds again to a new plan with a discretionary fund manager (DFM).

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 late 2015, Mr A contacted TVAM for advice on his pension. TVAM didn't have the necessary permissions to advise Mr A on DB pension transfers as this was a specialist area. So they referred him to another firm to provide this advice, Selectapension Bureau Services Ltd who were an appointed representative of CFP Management Limited. For the purpose of this decision I'll refer to Selectapension and CFP Management Limited as 'CFP'.

Mr A was subsequently advised by CFP to transfer his DB benefits to a personal pension with AXA. Very shortly after the transfer, TVAM advised him to switch his AXA plan to a pension with Nucleus and use a DFM.

Mr A complained both to TVAM and CFP in 2020 about the advice he received. He said both firms are responsible for his DB transfer and any potential losses suffered. He said they both encouraged him to transfer his BSPS pension. TVAM rejected his complaint and said they didn't provide Mr A with any advice about transferring his DB benefits.

Mr A referred his complaint to this service. One of our investigators considered his complaint and upheld it in part. She didn't think TVAM were responsible for any losses Mr A might have suffered by transferring his DB pension as CFP was responsible for this advice.

However, she didn't think TVAM's advice to switch Mr A's pension again from AXA to Nucleus was suitable. She asked TVAM to calculate what Mr A's pension would be worth (using a benchmark) if he had not switched to Nucleus. Neither party agreed with the investigator. Mr A still thought TVAM was responsible for the BSPS transfer. TVAM also disagreed with the investigator's findings.

As no agreement could be reached, the complaint was passed to me for a 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.

BSPS transfer advice

Mr A's representatives say TVAM and CFP should both be liable for his losses. They say both firms advised him to transfer and there was a joint venture between the firms. They say TVAM failed to act in Mr A's best interest and treated him unfairly by knowingly collaborating in a manner that led to unsuitable advice.

CFP is in liquidation, so I can't consider the complaint against them. I carefully considered whether TVAM should be held responsible for Mr A's DB transfer losses here in some form, however I don't think they should.

I appreciate that Mr A is unhappy that he was advised to transfer out of his BSPS scheme, however the firm responsible for this advice is CFP. They were the firm who had the relevant permissions and provided the formal recommendation to transfer out of his DB scheme. It's worth remembering that Mr A could not have transferred his DB pension without CFP's advice.

I understand Mr A says he never had any direct contact with CFP and all meetings he had were with TVAM. He says TVAM simply asked him to sign documents and not much was explained to him. He trusted TVAM to act in his best interest and he says he was encouraged to believe he would be better off transferring out of the BSPS.

I don't know what exactly was discussed between TVAM and Mr A. I haven't seen written evidence that TVAM actually recommended Mr A to transfer. I've seen an email and letter from CFP introducing themselves to Mr A and several of their letters including the suitability report were addressed to him directly. So on balance I think Mr A would have understood that CFP were advising him on the transfer.

TVAM became the ongoing advisers on Mr A's new pension and were charging ongoing advice fees. So they may have been hoping Mr A would transfer. I've also considered the possibility that TVAM inadvertently strayed into advice when discussing Mr A's DB scheme with him, even though I haven't seen any evidence to say that this is what happened. However, even if they did, in my view none of their interactions with Mr A and possible failures in this regard ultimately caused the potential losses he suffered.

TVAM did not have the required permissions to give advice on a DB pension transfer, so they couldn't be expected to recommend Mr A not to transfer. I think there was nothing generally wrong with referring Mr A on to a firm who could provide advice on his DB pension.

Mr A's representatives say TVAM referred a number of clients to CFP and most were advised to transfer out. However, even if this was the case, I think on balance it's more likely they referred customers to CFP on the understanding they would provide suitable advice rather than on the premise that CFP would recommend a transfer whether it was suitable or not.

I've seen CFP's introducer agreement and it says:

'[CFP] will issue a letter of recommendation and report directly to the Client. If no transfer is recommended that is the end of the process, however if a transfer is recommended we will process and issue the policy documentation.'

'Depending on the circumstances of the case, [CFP] will either recommend leaving the existing benefits where they are or [CFP] will recommend a transfer into a new policy […]. [CFP will provide advice to the Client which is suitable to their circumstances.'

So I don't think the recommendation to transfer was a foregone conclusion. I also don't think it's reasonable to expect that a firm who does not have permissions to provide DB pension transfer advice should identify whether advice given by a firm who does have those permissions was unsuitable. I think they were allowed to expect and rely on CFP, who were regulated and had the relevant permissions and advisers with the necessary qualifications, to provide suitable advice.

It was ultimately CFP's obligation to provide Mr A with independent and suitable advice and ensure he understood it. And if it wasn't suitable for Mr A to transfer CFP should, as the experts in this field, have clearly told him so and provided reasons why. If they had done so, I don't think any discussions with TVAM would have likely made Mr A go against this advice.

In summary, I'm satisfied it was CFP's positive recommendation that ultimately caused Mr A to transfer and that they are fully responsible for any losses caused by the transfer. I don't think Mr A's potential losses here are caused by TVAM's actions and so I don't consider it fair or reasonable to uphold this complaint.

Advice to switch from AXA to Nucleus

I agree with the investigator that the advice to switch pensions from AXA to Nucleus was unsuitable. The new plan was more unnecessarily expensive and Mr A incurred further advice fees. The AXA plan had a platform fee of 0.32% and his funds -if invested- would have attracted further charges of 0.15% (0.47% in total). The Nucleus portfolio cost 0.5% (including the DFM service) plus 0.33% in fund charges (0.83%). So even without taking into account ongoing adviser charges of 0.85% and the additional advice fees of £2,000, Mr A had to pay significantly higher ongoing charges.

I can't see any persuasive reasons why it was in Mr A's interest to switch plans and incur these higher charges which would reduce his returns. The reasons for the recommendation were recorded as:

- Mr A being able to access TVAM's preferred investment solution via a particular DFM
- Enabling TVAM to ensure Mr A was invested appropriately to his attitude to risk
- The portfolio would benefit from rebalancing and any required fund switches will happen automatically reducing the time and input required from Mr A.
- Access to a wider range of funds as well as more options in retirement

However, Mr A's attitude to risk was recorded as moderately cautious and he didn't have any investment experience, so I can't see why he needed a wider range of funds or a DFM. TVAM says the recommended funds in the AXA plan were too high risk. However, the AXA plan or any other simpler arrangement would have offered investments in accordance with his attitude to risk and Mr A could have invested into tracker funds or managed portfolios which didn't need much input from him. He was already in a flexi-drawdown plan, so he could have taken his benefits flexibly by staying where he was. Overall, I can't see that the additional charges he incurred by switching his plan were justified. His overall charges went from 0.47% to 1.68% (plus initial advice fees).

TVAM says Mr A knew that he was moving his pension again and provided text messages between the adviser and Mr A as evidence. And based on the documents I've seen I think this is correct. It also seems Mr A was told there would be higher charges. However, whether

Mr A knew that his pension was being moved again or not or whether he was told about additional charges does not affect whether the advice was suitable.

Based on the evidence provided, Mr A did not have need for a such an expensive arrangement which would significantly impact on his investment returns and given his financial inexperience I think it's more likely than not be was being guided by TVAM. I appreciate TVAM was a tied adviser and I understand they couldn't advise him on his AXA plan. However, this doesn't change the fact that the advice was not suitable and TVAM shouldn't have recommended him to switch pensions like they did. It simply wasn't in Mr A's best interest.

Putting things right

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr A would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr A's circumstances and objectives when he invested.

What must TVAM do?

To compensate Mr A fairly, TVAM must:

- Compare the performance of Mr A's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- TVAM should add interest as set out below:

- TVAM should pay into Mr A's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If TVAM is unable to pay the total amount into Mr A's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr A would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr A £200 for distress and inconvenience this matter has caused him.

Income tax may be payable on any interest paid. If TVAM deducts income tax from the interest it should tell Mr A how much has been taken off. TVAM should give Mr A a tax deduction certificate in respect of interest if Mr A asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Nucleus Plan	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of transfer from AXA plan	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, TVAM should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Nucleus Plan should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if TVAM totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr A's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr A into that position. It does not mean that Mr A would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr A could have obtained from investments suited to his objective and risk attitude.

Mr A should provide TVAM with a current Nucleus statement and full transactions history as soon as possible so that calculations can be carried out.

My final decision

I uphold this complaint in part. I require Tees Valley Asset Management Limited to calculate and pay Mr A compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 May 2022.

Nina Walter
Ombudsman