DRN-3189914

Financial Ombudsman Service

The complaint

Mr J complains that he was given unsuitable advice by County Capital Wealth Management Limited trading as The Pension Review Service ('CC') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension.

What happened

In March 2016, Mr J's employer 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 benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr J was concerned about what the announcement by his employer meant for the security of his DB scheme. So, he contacted another firm (which I'll refer to as 'Firm A') for advice in July 2017. Firm A completed a fact-find, pension transfer questionnaire and risk profile with Mr J. It also produced a transfer value analysis ('TVAS') report and Mr J says it verbally advised him to transfer out of the BSPS to a personal pension.

In October 2017, members of the BSPS were sent a "Time to Choose" leaflet, giving them the option to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their benefits elsewhere. The deadline to make their choice was 22 December 2017.

In December 2017, Firm A informed Mr J that it couldn't complete the transfer for him due to restrictions to their regulatory permissions. It explained that if he still wanted to transfer he had to make alternative arrangements. It also reminded Mr J of the deadline by which he needed to make his choice. Firm A ultimately referred Mr J to CC for advice.

CC completed its own fact find in December 2017. This showed Mr J was 50, married, in good health and was earning around £40,000 per year. Mr J had minimal savings of around £1,500, but owned a holiday home on which he received rental income of £450 per month. He had mortgages and a loan on both his residential property and holiday home totalling around £70,000. Mr J was member of his employer's new money purchase pension, with his contributions being 6% of his salary and employer's contributions of 10%. His risk profile was recorded as being 'balanced'.

A pension transfer questionnaire, also completed in December 2017, recorded that Mr J was considering a transfer because he wanted to retire at age 55 and he preferred that whatever was remaining of his pension when he died was left to his family. He also said he didn't have any faith in his employer or that BSPS2 would be any good.

On 28 December 2017, CC advised Mr J to transfer his BSPS benefits into a personal pension and invest his funds through a discretionary fund management firm ('DFM'). The suitability report said the reasons for this recommendation were that Mr J wanted to access his pension flexibly at age 55 and leave the funds invested and CC's cashflow analysis had shown his financial position would potentially improve. Also the transfer value of his final

salary scheme could be secured as a financial asset that could be passed on to his family in the event of his death. Mr J accepted the advice and the transfer of his BSPS benefits went ahead in 2018.

Mr J, through his representative, complained in 2019 to Firm A and CC about the suitability of the transfer advice. Mr J said he never met with CC and transferred based on the advice given by Firm A. He said he should've been advised to opt into the BSPS2.

Firm A told Mr J it hadn't provided him with advice to transfer his pension – it said it had referred him to CC. CC didn't uphold Mr J's complaint. It said by the time Mr J had been referred to CC he had missed his opportunity to join the BSPS2, so his complaint should lie with Firm A.

Mr J referred his complaints about both businesses to this service. Firm A has since gone into liquidation and so this service cannot consider the complaint against it anymore.

An investigator thought the advice CC gave Mr J was unsuitable and said it should compensate Mr J for the losses he incurred by transferring his DB pension. She said compensation should be based on Mr J having moved his pension to the PPF given the deadline for joining the BSPS2 had passed by the time CC gave its advice.

CC disagreed. It said it was only providing a "bureau service" for Firm A and it was Firm A's adviser who took Mr J through the cash flow analysis and reports. CC says Firm A played a key role in advising Mr J and Mr J had already decided to transfer based on Firm A's advice, so it should be held responsible for Mr J's alleged loss. CC added using the critical yields required to match Mr J's BSPS benefits alone as a basis for upholding the complaint was unreasonable. It also said it was unreasonable to compare the discount rates and critical yields as they do not measure the same thing.

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

I informed both parties of a change to the redress calculation, which takes account of the impact of the BSPS trustees buying an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out.

CC didn't think the redress amendment was fair because it required CC to carry out another calculation to determine if additional redress was payable once the buy-out completed. CC said it should only have to compensate Mr J based on the position he'd be in now, not at another point in the future. It said this meant Mr J was getting the best of both worlds. CC added that if it had known at the time of the advice that the BSPS would be bought out of the PPF, it wouldn't have advised Mr J to transfer his benefits.

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 regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, CC should have only considered a transfer if they could clearly demonstrate that the transfer was in Mr J's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied the transfer was in his best interests. I'll explain why.

Financial viability

CC's suitability report says that Mr J did not have a specific retirement age in mind, but the fact-find completed by CC states that Mr J's desired retirement age was 55. It said he wanted to access the tax-free cash ('TFC') available to him at 55 to pay off his mortgage and loan but he was undecided on when he would take pension income. Firm A's fact-find and pension transfer questionnaire says Mr J anticipated retiring between age 55 and 60 – it said he would make an assessment of his situation at 55. So, I think it's fair to say here that Mr J was certainly expecting to retire before age 65, and probably closer to age 60.

CC carried out a TVAS showing the average investment return required in the new pension to match the DB pension benefits (critical yield) if Mr J took TFC was quoted as 5.06% per year at age 65 and 10.48% at age 55. But by the time the advice was given to Mr J, his only option was to move with the scheme to the PPF. So, I think this is the most relevant figure to use. The critical yield to match the benefits available in the PPF if Mr J took TFC was 4.25% at age 65 and 8.21% at age 55. It didn't provide critical yields for Mr J retiring at age 60, but this would've been somewhere in between these two figures.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. The closest discount rate to this time which I'm able to refer to was published by the Financial Ombudsman Service for the period before 1 October 2017. It was 3% per year for 4 years to retirement (age 55) or 4.2% per year for 14 years to retirement (age 65). 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. Even taking the lowest critical yield here (4.25%), which was a comparison to the PPF at age 65, there was a risk Mr J wouldn't have been able to match, let alone exceed his DB benefits in the personal pension if he was invested in line with a medium risk strategy as suggested. And given what Mr J said about wanting to retire early, I think the critical yield would've been somewhere between the 4.25% and 8.21% quoted.

CC says it is unreasonable to take the discount rate into account because it isn't a fair comparison to the critical yield. But I still think the discount rate provides a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case. And in any event, I've also considered whether the regulator's middle projection rate of 5% was achievable. Given Mr J was likely to retire early, meaning the critical yield would've been above 4.25%, I still don't think he would've likely been able to match or exceed the benefits available to him through the PPF if he transferred out of the BSPS.

However, CC has said it told Mr J that the critical yields if he retired at age 55 were not achievable. Instead, CC says it recommended Mr J transfer out of the BSPS to meet his other objectives, although it says the cash flow models demonstrate that Mr J could meet his income requirements by transferring to a personal pension.

I've considered CC's cash flow models which it says showed Mr J could have been significantly better off in the personal pension plan. They compared his existing situation with scenarios where his transfer value grew a) only in line with inflation, b) assuming returns of the recommended investment portfolio based on historic returns and c) a stress test where the transfer value fell by 14% in the first couple of years and then performed in line with historic returns of the asset allocation of the recommended portfolio.

I firstly note that in the model for Mr J's existing financial position, for the total income, CC used an annual pension figure of £18,329 per year, which was the sum available to Mr J through the BSPS if he retired at age 55. But that figure was irrelevant because the only option Mr J actually had when the advice was given was for his benefits to enter the PPF. The figure also failed to include the annual increases on the BSPS/PPF benefits in payment. Also, as CC will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. CC's models also show that if returns were only in line with inflation or there was poor performance for a couple of years, Mr J's financial assets would actually be lower in the long-term than if he kept his DB pension.

Overall, I'm satisfied that by transferring his pension it was unlikely Mr J's benefits would match, let alone exceed his existing benefits in the DB scheme. Instead there was a real risk he would be worse off in retirement. So based on the above alone, a transfer wasn't in Mr J's best interest.

Of course financial viability isn't the only consideration when giving transfer advice, as CC has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Concerns about financial stability of BSPS

Mr J approached Firm A as he was concerned about his BSPS pension. CC's fact-find doesn't include much detail about why Mr J was concerned, but Firm A's fact-find and pension transfer questionnaire states that Mr J had lost faith in his employer and the scheme trustees. CC's suitability report further stated that Mr J had already decided that he did not want to keep his pension benefits in the BSPS.

It's quite possible that Mr J came to CC leaning towards the decision to transfer. However, it was CC's obligation to recommend what was in his best interests. Mr J, like many of his colleagues, was concerned about the BSPS moving to the PPF. But from what I've seen, CC didn't provide Mr J with an objective picture about the PPF and what this might mean for him specifically.

Mr J was clearly interested in retiring early and this was still possible in the PPF. In fact, the early retirement reductions were lower in the PPF than in the BSPS. I don't think this was shared with Mr J, instead, he was given the impression that because he wanted to retire early, he would be better off transferring out of the BSPS. However, as the figures above show, even if this happened, Mr J was still likely to be better off by not transferring out. I can't see that this was properly explained to him.

And in any event, I think Mr J's concerns were with his employer generally. And I don't think CC explained that Mr J's scheme benefits entering the PPF would remove his pension from his employer's control. It seems to me that an explanation along those lines would've gone some way to reassuring Mr J about his concerns.

Overall, I don't think CC did much to alleviate Mr J's concerns and fears. Instead, it appears to have used these concerns to justify the transfer.

Flexibility

One of CC's main arguments in support of its recommendation to transfer was that Mr J wanted to pay off his mortgage and loan at age 55, but he wasn't sure if he wanted to take pension income at that point. This comes back to Mr J's uncertainty around when he'd

actually retire. So, CC says he needed to be able to access his pension flexibly as he couldn't take TFC without also taking his pension income through the PPF. It also says this flexibility would allow Mr J to take a higher income from his pension at first before reducing it when his state benefits became payable.

But an adviser's job isn't simply to facilitate a customer's objectives. Any objectives should be interrogated thoroughly to determine whether or not they are realistic, or achievable through other means. And ultimately, the adviser has to determine whether giving up the secure, guaranteed benefits available through the PPF was in Mr J's best interests.

CC's fact-find says at the time of the advice, Mr J had a mortgage of £60,000 ending in 2028 (when Mr J would be around 61 years old) and a loan of £10,000 ending in 2022 (when Mr J would be around 55). So, at the earliest age Mr J could think about retiring, the loan would've been cleared, and the mortgage would've had substantially less than £60,000 to repay. Based on the repayments of £550 per month and the remaining term, I think the mortgage balance would be around £30,000 at age 55. And if Mr J actually retired around 60 years old, the mortgage would've almost been cleared.

So, in my view, Mr J had very little need to access his TFC from his pension before retiring; at most he'd need a capital sum of around £30,000 to clear the remaining mortgage at 55. And even less capital would be required (if at all) if he retired closer to age 60 or 65, which was a distinct possibility. Given the mortgage repayments were only £550 per month, they were not unaffordable or having an impact on Mr and Mrs J's lifestyle. So, clearing the remaining mortgage doesn't seem to have been a pressing need, and certainly not one that I think should've necessitated Mr J giving up a secure, guaranteed, escalating pension income in retirement. For this reason, I don't think CC should've advised Mr J to transfer out of the BSPS simply to repay a small, affordable mortgage at 55, particularly when Mr J hadn't decided when he was likely to stop working.

Furthermore, Mr J was contributing to another pension – around £6,000 per year including his employer's contributions – meaning he would have access to a fund of more than £30,000 at age 55. If Mr J genuinely wanted to repay whatever was remaining on his mortgage at age 55, or before age 65, I think it would've been in his best interests to use this fund to do so. So, I think Mr J should've been advised to remain in the BSPS and move with the scheme to the PPF rather than transfer his benefits to a personal pension.

Death Benefits

CC says Mr J wanted to ensure he could pass on whatever was remaining of his pension to his family upon his death.

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. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr J. But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer his BSPS benefits because of this, the priority here was to advise Mr J about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think CC explored to what extent Mr J was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits with PPF were underplayed. Mr J's wife would have received a spouse's pension for life, which would have been valuable if Mr J predeceased her. Furthermore, Mr J had generous death in service cover if he died before retirement. I can't see that any of these benefits were explained to Mr J in a balanced way. So, I don't

think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr J.

Summary

Overall, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, he was risking obtaining lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. I don't think his options with regards to his DB scheme were properly explored.

I appreciate that at the time the advice was given there was a lot of uncertainty around the pension scheme. And I've fully taken into account that Mr J was likely keen to transfer out as he was worried about his pension and his colleagues were telling him this was a good idea. However, it was the adviser's responsibility to objectively weigh up the options for Mr J. He should have advised him what was best for his circumstances and explained what he was giving up in the BSPS and that moving to the PPF was not as concerning as he thought. For the reasons given above I think this advice should have been to remain in the BSPS.

On balance I think Mr J would have listened to the adviser and followed their advice. Mr J was an inexperienced investor and he was concerned about the security of his pension. This pension made up a significant part of his retirement provision, and I don't think he would've wanted to take any unnecessary risk with it. So, if CC had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice. So, I think CC should compensate Mr J for the unsuitable advice, using the regulator's DB pension transfer redress methodology. As Mr J had lost the opportunity to opt into the BSPS2 by the time CC gave him advice, it is the benefits available to him through the PPF that should be used for comparison purposes.

I've taken into account CC's comments about the fairness of the redress method which requires it to carry out a second calculation.

I've considered this carefully, but I think it would be fair for CC to carry out the second calculation and pay to Mr J any additional compensation this calculation produces as a result of the buy-out completing. As I've explained above, I'm satisfied that Mr J should've been advised to allow his pension to move with the scheme to the PPF. And as Mr J's pension wouldn't have been in payment at the time the buy-out is completed, I think he may have been entitled to an increase in benefits as a result of the buy-out if he had been in the PPF. So, it is only fair that Mr J's settlement takes account of this. I don't think this means Mr J is getting the best of both worlds, it simply seeks to compensate him for the position he should've been in but for the unsuitable advice.

I appreciate that CC says it wouldn't have advised Mr J to transfer out of the BSPS if it knew it would be bought out of the PPF. But I don't think that is particularly relevant here. CC needed to determine whether transferring out of the BSPS or moving with the scheme to the PPF was in Mr J's best interests. And I still think it was clear Mr J would've been better off moving with the scheme to the PPF, and that transferring out wasn't suitable for him, regardless of any future buy-out.

Firm A's involvement

I understand CC say they only performed a bureau service for Firm A. CC said Firm A had already advised Mr J to transfer and they were still heavily involved in the advice process throughout.

I can't consider the complaint against Firm A as they have gone into liquidation. But based on the information I've seen it seems likely that Firm A had previously verbally advised Mr J to transfer and it continued to be involved in the process. However, notwithstanding Firm A's involvement, CC had a duty to give Mr J suitable advice and without its advice a transfer couldn't have proceeded. CC is responsible for its own actions here.

Nevertheless, if CC had given suitable advice, Mr J would have had a recommendation not to transfer from CC, but he still would've had the verbal advice to transfer from Firm A. It's possible that Firm A might have continued to persuade Mr J to proceed with the transfer. However, given that Firm A hadn't been able to proceed with the advice due to issues with the regulator, I think on balance Mr J would have listened to CC's advice if its reasons why a transfer wasn't in his interest had been explained properly. So in my view it was CC's unsuitable advice that ultimately led to Mr J transferring his DB benefits. For this reason, I think it's fair and reasonable to hold CC fully responsible for any losses this transfer caused Mr J. If CC considers that Firm A should also be held liable, CC is free to pursue Firm A directly after having compensated Mr J in full.

Putting things right

My aim to is put Mr J, as closely as possible, into the position he'd be in now but for CC's unsuitable advice. I consider he would have stayed in the BSPS and subsequently moved to the PPF (which was his only other option at the point CC advised him). So, calculations should be undertaken on this assumption.

CC 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. For clarity, although Mr J thought he would retire early, he is still working now and has no plans to retire or access his pension at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 J's acceptance of the decision.

CC may wish to contact the Department for Work and Pensions (DWP) to obtain Mr J'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 J's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr J'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 J 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.

The compensation amount must where possible be paid to Mr J within 90 days of the date CC 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 CC to pay Mr J.

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.

Additional compensation

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late summer 2022.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

The amounts of possible increases are yet unknown. The scheme expects to be able to have information on this by late summer 2022. Mr J would possibly have been entitled to an increase in benefits after the buy-out if he had been in the PPF. So, I think it's fair any such increases are taken into account when compensating Mr J.

I don't think it's reasonable for CC to delay the compensation calculation in its entirety until the buy-out is completed. Although it is expected to happen in late summer 2022, I'm conscious that this could be delayed further due to its complexity. To give some certainty to the parties, I think it's fair CC calculates and pays Mr J compensation now as set out above comparing his existing benefits with the PPF. Once the buy-out is completed and more detailed information is available how exactly PPF benefits will increase, CC should do a second calculation in line with the latest FCA guidance on DB transfer redress applicable at the time. They should base their calculations on the benefits Mr J would have been entitled to after the buy-out.

This calculation should be done as soon as possible after the new buy-out benefits are known. CC should keep up to date with developments on this matter, for example any information published on **www.oldbritishsteelpension.co.uk.** Equally, if Mr J becomes aware further information is available, he should let CC know. If the second calculation

results in a higher redress amount than the first calculation, CC must pay Mr J the difference. If the second calculation results in the same or a lower redress amount than the first calculation, no further action should be taken.

The compensation amount of the second calculation must where possible be paid to Mr J within 90 days of the date a public announcement is made that the buy-out has completed. Further interest must be added to the compensation amount at the rate of 8% per year simple from the announcement to the date of settlement for any time, in excess of 90 days, that it takes CC to pay Mr J.

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 County Capital Wealth Management Ltd to pay Mr J 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 County Capital Wealth Management Ltd to pay Mr J any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require County Capital Wealth Management Ltd to pay Mr J any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that County Capital Wealth Management Ltd pays Mr J the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr J.

If Mr J accepts this decision, the money award becomes binding on County Capital Wealth Management Ltd. My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J may want to consider getting independent legal advice before deciding whether to accept any final decision.

County Capital Wealth Management Ltd should provide details of its calculations to Mr J and his representative in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 April 2022.

Hannah Wise
Ombudsman