DRN-4038537

Financial Ombudsman Service

The complaint

Mr M complains that he was given unsuitable advice by CST Wealth Management Limited ('CST') to transfer the benefits from his defined benefit ('DB') pension scheme with British Steel ('BSPS') to a personal pension plan. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employer's DB scheme) 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.

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 M's employer would be set up – the BSPS2.

In July 2017, the DB scheme administrators sent Mr M information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr M had 11 years and 6 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £132,693.02.

Mr M wasn't sure what to do about his pension so he contacted CST to seek some advice. An initial meeting was arranged between CST and Mr M in September 2017. CST completed a fact-find to gather information about Mr M's circumstances and objectives.

CST noted that Mr M was aged 39 and that he was separated from his wife. He had two financially dependent children, one aged 13 and one aged 5. Further, CST recorded that Mr M lived in rented accommodation, earned £2,003 net per month and a bonus of £800 per year, had savings of £1,000 and also had £5,000 in other investments. The fact-find also recorded that Mr M had a debt of £30,000 which was subject to a debt management plan to which he made monthly repayments of £229. It was also noted that Mr M was a member of his employer's new defined-contribution ('DC') pension scheme to which he was contributing 6% of his annual salary and his employer 10%.

Mr M also told CST he was hoping to retire between the ages of 57 and 60 and that he was aiming to be able to buy a property again in the future. CST carried out an assessment of Mr M's attitude to risk ('ATR') which was mutually agreed to be 'high medium', or 6 on a scale of 1 to 10.

On 13 September 2017, CST sent Mr M a transfer value analysis report ('TVAS') which showed the estimated benefits from his DB scheme at the scheme's normal retirement date ('NRD') of age 65 were an annual pension of £11,826 or a tax-free lump sum of £52,251 and a reduced annual pension of £7,837. It also gave the annual investment returns that Mr M

needed to achieve from his personal pension in order to be able to match the benefits offered by the BSPS at age 65. Those were 6.02% if he took his benefits in the form of an annual pension only or 4.9% if he took a tax-free lump sum and a reduced pension. If he took early retirement at age 57, the investment returns required were 7.61% and 6.08% respectively.

On 14 September 2017 Mr M completed a pension transfer questionnaire where his objectives for transferring his DB scheme were noted. These were*:* that he wanted to break ties with his employer and take control of his pension; to protect his pension benefits; that he wanted the flexibility to retire early; that he wanted choice and flexibility on how he drew his pension benefits; and to take advantage of the flexible death benefits associated with a personal pension plan. The questionnaire also include a section on ATR and Mr M ticked the box to say his was 'balanced'.

Also on 14 September 2017, CST sent Mr M its suitability report. The report included a section on Mr M's ATR where it was noted that in respect of his DB scheme benefits his attitude was one of caution which CST said would be reflected in the investment strategy it recommended for him. In respect of the annual investment return Mr M's investment would need to attain (also known as the 'critical yield'), CST stated that the critical yields weren't guaranteed to be achieved each year.

Having set out the options available to Mr M, including moving to the BSPS2 or PPF, or a stakeholder pension or transferring his CETV to his employer's new DC scheme, CST recommended he transfer his BSPS DB pension benefits to a personal pension. CST said the plan would allow Mr M to access his pension flexibly and that Mr M would also receive a higher level of death benefits offered by the plan.

On 28 September 2017 Mr M accepted CST's recommendation and signed the DB scheme discharge form. On 19 October 2017 Mr M signed the personal pension application form.

Also in October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Following a processing delay, the transfer took place in early January 2018. The CETV having been uplifted, a total of £137,019.97 was transferred to the personal pension.

In November 2021, Mr M, through his representative, complained to CST about the advice he received, believing it may have been unsuitable because it favoured flexibility and uncertainty over the guaranteed benefits available to him under the DB scheme. Mr M also said that the critical yield cited by CST in the suitability report was unachievable and that he should be entitled to financial redress as a result of CST's unsuitable advice.

CST looked into Mr M's complaint but didn't think it had done anything wrong. It said Mr M had no possibility of achieving his retirement objectives unless he transferred to a personal pension arrangement thus it had provided him with suitable advice.

Unhappy with the outcome of his complaint to CST, Mr M complained to the Financial Ombudsman Service. Our Investigator looked into Mr M's complaint for him and issued his findings in February 2023. He recommended that Mr M's complaint was upheld as he thought CST's recommendation was unsuitable for him.

Our Investigator thought that CST should have advised Mr M to opt into the BSPS2 rather than the PPF because he was only aged 39 at the time of the advice and his future

retirement plans weren't clear. Our Investigator said CST should undertake a redress calculation based on Mr M drawing his benefits at age 57 to ascertain whether Mr M had suffered a loss as a result of its advice to transfer.

Mr M accepted our Investigator's findings.

From April 2023, the regulator (the Financial Conduct Authority – 'FCA') encouraged businesses to use the BSPS-specific redress calculator it recently developed to calculate whether or not BSPS members who had received unsuitable advice to transfer had lost out.

In August 2023 CST replied to say that, without any admission as regards the suitability of the advice, it was prepared to accept our Investigator's findings rather than waste further time. CST asked us to obtain an up-to-date valuation of Mr M's personal pension so that it could use it when running the BSPS-specific redress calculation.

On 30 August 2023, CST ran the calculation based on Mr M retiring at age 57. CST provided us with a copy of the calculation and said that it showed that Mr M was better off by over £30,000 as a result of transferring his pension so no redress was due to him. CST said it had also run a second calculation based on Mr M retiring at the DB scheme's NRD of age 65 and that too showed he'd suffered no loss. CST said whether the advice was suitable or not was of little consequence as Mr M was better off as a result of transferring. CST said it would offer Mr M £250 in full and final settlement of his complaint providing he accepted it within two weeks after which the offer would be withdrawn.

Our Investigator provided Mr M with a copy of the calculation and let him know about CST's offer. Mr M responded to say he was aggrieved and was checking the calculations with his current financial adviser. He said he had colleagues who had received meaningful compensation payments so he considered CST's calculation to be fundamentally unfair.

Our Investigator replied to Mr M to explain that the Financial Ombudsman Service had no discretion over the calculator's outputs and could only check that the correct inputs had been used. He said that whether Mr M's colleagues had received substantive compensation offers would depend on the value of their current pensions being lower than the cost to replicate the DB scheme benefits. Further, our Investigator said that Mr M was in the fortunate position of not having suffered a loss.

In November 2023, another of our Investigators told Mr M that she had checked the calculation and that it had been based on the assumption that had he not been advised to transfer his benefits from his DB scheme he would have moved to the BSPS2 and drawn his benefits at age 65. Our Investigator said that, in her view, the calculation had been carried out correctly. Our Investigator added there was no shortfall in Mr M's pension and that he was on track to be able to replicate his DB scheme benefits in retirement.

Mr M replied to say that it was unfair, when the Financial Ombudsman Service had agreed that he had received unsuitable advice, that a 'point in time' calculation dictated whether he received any compensation at all. Mr M said a movement in the financial markets meant he had been negatively affected at the point his redress calculation had been carried out. He said had it been carried out much sooner, he would have received potentially life changing compensation. Mr M said he rejected the 'no loss' calculation and said he wanted an Ombudsman to consider his complaint.

Mr M also explained the effect the situation had had on his mental wellbeing. He said that whilst his mental state had been exacerbated by the breakdown of his marriage and his debt problems, CST had provided its unsuitable advice at the start of his mental health difficulties and was aware that he was experiencing vulnerabilities as a consequence of his personal

circumstances. Mr M explained that during the period he was waiting and hoping to receive compensation he had visited his doctor several times in respect of his mental health and had been diagnosed with depression. Mr M said he was currently living with his widowed father and could not afford to move out. He said he had been hoping to be able to get a mortgage on the back of a compensation pay out but felt that this had been whipped out from under him. Further, Mr M also said that his poor mental health had been exacerbated by worry about his pension and the financial impact the unsuitable advice he received could have on him. He said this had made his already vulnerable mental state worse.

Mr M said that he hoped the Ombudsman would consider making the maximum possible compensation award for distress and inconvenience suffered.

The complaint was then passed to me for a decision. During my consideration of the complaint, I noticed that Mr M's comments about the distress and inconvenience caused to him by the unsuitable advice he'd received had not been relayed to CST or addressed by the Financial Ombudsman Service.

Consequently, I asked our Investigator to write to the parties to explain that I had given careful consideration to Mr M's comments. I also asked her to explain my thoughts about compensation and whether any was fairly due in the circumstances of this complaint.

Our Investigator explained to both CST and Mr M that I thought an amount of £500 was fairly and reasonably due to him for his distress and inconvenience. She further explained that this was because of the additional vulnerability of Mr M's position at the time of the advice as well as the fact that the anxiety he was caused by it would have had a more detrimental affect on him than on others in the same situation.

CST responded to our Investigator to say that Mr M had never displayed signs of vulnerability during their initial meetings nor did his representative refer to any on making his complaint. It also said that at the time of the advice Mr M's marital separation was not a recent occurrence and it said that his debt issues were very much under control. CST said that Mr M was no longer employed by the same company and that he should be questioned about why. It also said evidence of his alleged health issues should be sought if it was being relied upon to make an award of compensation. CST said an award of £500 was without merit, or would be if evidence was sought from the consumer in relation to his ill health and terminated employment.

No response was received from Mr M so the complaint was returned to me 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 CST hasn't conceded that the advice it gave Mr M was unsuitable. Nonetheless, in order to conclude the matter, it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr M in detail.

That said, I will comment that I agree with our Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable and they should only recommend one where they can clearly show, based on contemporary evidence, that it was in the consumer's best interests. I don't think that was the case for Mr M. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme seem too high to ensure he would be financially better off by transferring out of the DB scheme.
- The difference in death benefits from a personal pension wasn't worth giving up the guarantees offered by the DB scheme for. That's especially the case as both the BSPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- Mr M didn't need to give up the guaranteed benefits of his DB scheme in order to take early retirement or have flexible access to his pension funds. That's because both the BSPS2 and the PPF gave members an early retirement option. Also Mr M was a member of his employer's DC scheme which provided him with the flexibility he claimed he needed – he wasn't committed to take its benefits in a set way. Mr M was aged only 39 at the time of the advice so had at least 18 years (and possibly 26 years) to go before retirement during which he would have built up a significant fund in his employer's DC scheme which he would be able to access flexibly at whatever age he chose to retire. I can't see that CST explained to Mr M that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.
- Mr M could have taken lump sums from his DC scheme as and when required and adjusted the income he took from it according to his needs. So, I think if Mr M 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.
- I understand that Mr M may have legitimately held concerns about how his employer had handled his pension and that he thought it would be better if he had 'control' of his pension benefits. But it was CST's role to objectively address those concerns and to explain to him that he wasn't severing links with his employer in any event as he remained a member of his employer's new DC scheme.

Overall, I can't see persuasive reasons why it was in Mr M's best interests to give up his DB scheme guarantees.

I have noted Mr M's comment that he has been unfairly disadvantaged by having his complaint assessed right now due to the recent shift in financial market conditions.

I appreciate many consumers like Mr M feel anger and frustration at the situation they now find themselves in. They approached advising firms like CST for the benefit of their expertise so feel understandably shocked and disappointed to learn that some advisers made recommendations to their – often financially inexperienced – clients to take actions that could make those clients poorer and which weren't in their best interests.

So I can understand consumers like Mr M might have an expectation that, because they received unsuitable advice, they are in future danger of suffering a financial loss as a result and should be compensated in line with the potential for an unquantified loss. But, while the advice might not have been in their best interests, it's not necessarily the case that they have – or will – lose out. And the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr M into a better position than they would have been had they not transferred. It also isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back, as near as possible, into the financial position they would have been in at retirement had they remained in the DB scheme.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. And for

consumers like Mr M, the FCA has developed a BSPS-specific calculator which applies those assumptions fairly.

CST carried out a redress calculation for Mr M on 30 August 2023. As CST is aware, such calculations are valid only for a period of three months, so the August 2023 calculation has since expired and it will now need to carry out an up-to-date calculation using the FCA's most recently issued assumptions.

CST has previously acknowledged that Mr M thinks that the calculation should be based on him retiring at age 65. Like our Investigator, I too think that 65 is the age that CST should use when undertaking the new BSPS-specific redress calculation and I say that for several reasons.

Mr M was aged just 39 at the time of the advice so he had a long way to go until he reached retirement. The further someone is from retirement, the more difficult it is to establish what their retirement income needs might be such that may make a transfer suitable. I can't see that Mr M had any fixed plans about when he wanted to retire nor can I see that CST carried out any analysis of Mr M's likely retirement expenditure to see if taking early retirement was something he was likely to be able to afford. I'm mindful too that Mr M was very keen to buy a property and clear his debts, both of which could preclude early retirement on the grounds of affordability. And I can't ignore Mr M's own statement on the pension transfer questionnaire where he said he did *"not anticipate retiring early but would like the flexibility to do so should my circumstances change".* So I think, both at the time of the advice as well as at the present time too, it is too soon to say that Mr M would likely have retired at age 57; the redress calculation should be based on the scheme's NRD of age 65.

Whilst I can see that in August 2023, the redress calculation showed Mr M was over £30,000 better of as a result of transferring his DB scheme that was based on a retirement age of 57. I can see from the calculation that CST did based on Mr M retiring at age 65 however, that he was only £1,555 better off as result of transferring his DB scheme. Whether Mr M is still better off (based on a retirement age of 65) as a result of CST's advice to transfer will depend on how his BSPS benefits are currently valued, along with the up-to-date valuation of his personal pension and the FCA's most recently issued assumptions.

I've thought about Mr M's comments about his mental health and I'm sorry to hear about the personal difficulties he has had to endure in recent years and that he has been unwell. Without specific medical evidence however, it isn't possible for me to attribute to what degree his mental illness is the result of CST's unsuitable advice. Indeed, when considering whether to award compensation to Mr M, I've kept in mind that he has implied that his mental health has been recently adversely affected both as a result of the loss of expectation about the amount of compensation he might receive as well as his personal difficulties. However, I don't think it would be fair to attribute the impact of those factors to the advice CST gave in 2017.

I've noted CST's comment that I should seek medical evidence of Mr M's health issues if I am minded to rely on them in support of my decision to make an award of compensation. I haven't sought proof of Mr M's alleged health issues from him because I'm not relying on their existence to support the award I'm making. I think that compensation is fairly and reasonably due in the circumstances of Mr M's complaint because of the vulnerability of his position at the time of the advice.

Mr M was separated, living in rented accommodation and subject to a debt management plan at the time he was advised by CST. These were facts of Mr M's personal circumstances that were known to CST at the time of the advice. Individuals don't enter into debt management plans unless they are struggling to keep up with their debt repayments. Thus

whilst Mr M's may have been classified by CST as being very much 'under control', I think it's reasonable to assume that the very fact he'd entered into a debt management plan at all suggests that Mr M was (or had recently been) struggling to pay his creditors.

I don't know the reasons why Mr M needed to arrange a debt management plan but it's not unfair to think that having to arrange and maintain one, as well as support his family and pay his rent, would be reasonably stressful and points to at least an element of financial vulnerability. The debt management plan is not the fault of CST but its existence brings an additional vulnerability to Mr M's position. The advice CST gave to Mr M was unsuitable but his debt and marital issues likely had a more detrimental impact on him than would be felt by someone not experiencing such issues.

I accept that all BSPS DB scheme members will have experienced anxiety about their pensions whether they transferred out or moved with it to the BSPS2 or PPF. I also accept that there is no automatic entitlement to compensation for consumers just because they receive poor advice. For Mr M however, his personal circumstances at the time of the advice meant he was vulnerable and most likely to such a degree that he likely personally experienced greater distress than others in the same situation upon realising he was unsuitably advised.

As there is no up-to-date calculation for me to consider, I don't know for certain that Mr M hasn't lost out financially as a consequence of CST's advice and neither does Mr M himself. But I accept that the uncertainty he's experienced as a result of CST's advice has caused him some additional distress and concern in discovering that it might not have been suitable. I'm conscious too that this upset wouldn't have happened but for CST's advice.

For these reasons, I am awarding Mr M compensation of £500 for the anxiety and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and that he may have put his financial security in retirement in jeopardy.

Mr M thinks that I should make a '*maximum'* possible award for distress and inconvenience. However, when thinking about the appropriate level of compensation I've considered the Financial Ombudsman Service's general approach to redress. Having done so, I'm satisfied that my requirement that CST pay Mr M £500 is in line with awards I've made in complaints with similar circumstances.

Putting things right

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

CST 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.

CST should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr M and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what CST based the inputs into the calculator on.

For clarity, Mr M has not yet retired so compensation should be based on the scheme's normal retirement age of 65, 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 M'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, CST should:

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

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

For the reasons I've given above, I think paying Mr M £500 for the distress and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and that he could have suffered a financial loss as a consequence, is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and require CST Wealth Management Limited to pay Mr M the compensation amount as set out in the steps above. I also require CST Wealth Management Limited to pay Mr M a sum of £500 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 April 2024.

Claire Woollerson
Ombudsman