DRN-4549615

Financial Ombudsman Service

The complaint

Mr H complains about the outcome of the review carried out by FB Wealth Management Ltd trading as Forrester Boyd Wealth Management ("Forrester Boyd") in connection with the FCA's consumer redress scheme for the British Steel Pension Scheme ("BSPS") – to make my findings easier to follow, I'll refer to this as the "redress scheme".

What happened

The sequence of events isn't in dispute, so I've only set out a brief summary of what happened.

Mr H had built up 37 years and 9 months' pensionable service in the BSPS between August 1978 and May 2016. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. Mr H's annual pension at the date of leaving the scheme was £22,548. In 2017, the BSPS issued a cash equivalent transfer value of £565,405 to Mr H in respect of his DB pension.

Mr H was interested in transferring the value of his DB pension to a private arrangement. He contacted Forrester Boyd for advice on his options.

In August 2017, Forrester Boyd advised Mr H to transfer the value of his DB pension to a self-invested personal pension ("SIPP") provided by Standard Life. Mr H accepted the recommendation. The transfer to the SIPP was completed shortly afterwards. At the time Forrester Boyd advised Mr H, it recorded the following information about his personal and financial circumstances:

- Mr H was aged 55 and his wife was aged 52. They were both in good health. They had one adult child who wasn't financially dependent on them;

- Mr H was employed by British Steel and paid gross annual income of around £36,000. His pension provision comprised the following: (1) entitlement to a full state pension from age 67; (2) his preserved DB pension in the BSPS; (3) a defined contribution ("DC") workplace pension plan offered by his employer which he joined in May 2016 (Forrester Boyd didn't record the fund value at that time);

- His wife was a housewife with no income. She didn't have any private pension provision. She would be entitled to a state pension at age 67 based on 21 qualifying years;

- Their joint assets comprised the main residence valued at about £150,000, cash savings of about £20,000 and shares valued at about £13,000;

- They didn't have any debts or liabilities; to

- Their total annual outgoings were about £22,000 covered by Mr H's annual salary;

- Mr H had no previous investment experience. He had a *'Low Medium'* risk profile;
- They didn't have any capital expenditure or lump sum needs in connection with his DB pension. And they weren't particularly motivated to provide an inheritance for their adult child. Mr H was concerned by a transfer to the Pension Protection Fund ("PPF") or a reduction in benefits if he didn't transfer away. The primary objective was to *"have sufficient income to live off during retirement"*; and
- Once they retired, Mr H and his wife required joint gross annual income of at least £17,500 but ideally wanted around £22,000 from all sources. He wanted to retire from around age 55 or 56 then go part-time on an annual salary of around £20,000 and then fully retire at age 60. So the ultimate aim was to retire no later than age 60.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms must use the FCA's BSPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as "suitable" and the case is closed; or
- The advice is rated as "unsuitable" – if so, the case progresses to a calculation and the payment of redress if it's shown the consumer suffered a financial loss

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service ("FOS") to look at whether the review was carried out correctly in line with the redress scheme rules.

Forrester Boyd's review of the advice it gave Mr H

In August 2023, Forrester Boyd completed its review of the advice it gave to Mr H to transfer out of the BSPS. The DBAAT generated a suggested suitability rating of "potentially unsuitable" based on Forrester Boyd's answers. But it decided that its advice was "suitable" and closed Mr H's case.

Forrester Boyd confirmed the review outcome to Mr H and told him that it wouldn't be taking any further action.

FOS's assessment

Mr H disagreed with Forrester Boyd's assessment of his case. So he referred the matter to FOS.

One of our investigators recommended that this complaint be upheld because he had concerns Forrester Boyd hadn't followed the FCA's redress scheme rules. He explained the reasons why in his assessment. To put things right, our investigator recommended that Forrester Boyd amend the review outcome on Mr H's case under the redress scheme to "unsuitable" and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Forrester Boyd didn't agree with our investigator's assessment. It provided additional comments in response. It remained satisfied that it had provided a suitable recommendation to transfer. In its view, Mr H's objectives couldn't be met by remaining in the BSPS. It also thought its answers on the DBAAT were correct and supported its view that the advice was suitable. It provided details of a loss assessment it had carried out that showed Mr H hadn't suffered a financial loss. It expressed its view that there wasn't any need to progress this complaint to an ombudsman and that it should instead be closed.

Our investigator considered Forrester Boyd's additional comments but wasn't persuaded to change his mind. He explained to Forrester Boyd that – at this stage – the loss assessment outcome is essentially irrelevant until such time as agreement is reached on the redress scheme outcome. So, as it stands, this complaint remains unresolved because Forrester Boyd didn't accept our investigator's assessment.

Since agreement hasn't been reached, this complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

Mr H has specifically complained about the outcome of Forrester Boyd's assessment of his case under the redress scheme. Therefore the scope of this final decision is limited to evaluating the adequacy of Forrester Boyd's assessment of Mr H's case. I'd like to point out the following for Forrester Boyd's benefit. If it's shown that a consumer hasn't suffered a financial loss it doesn't mean their complaint is without merit or should be closed, as it seems to think. The redress scheme requires firms to go through steps in a certain order. And in Mr H's case it's necessary for a decision to be made first on whether its advice was suitable or not before any financial loss is calculated.

This means that in deciding this complaint I won't be considering the loss assessment calculation carried out by Forrester Boyd. If I decide to uphold this complaint and Mr H accepts it, then Forrester Boyd would then be required to carry out a loss assessment in line with the redress scheme rules.

I've considered all the evidence afresh including Forrester Boyd's comments in response to our investigator's assessment. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The FCA's BSPS DBAAT

As noted above, the redress scheme rules require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Forrester Boyd's review of the advice it gave Mr H

In its role as assessor, Forrester Boyd answered that one (Example 1) of the 12 examples of unsuitability applied to Mr H's case. This generated a suggested rating of "potentially unsuitable". But Forrester Boyd finalised the advice rating as "suitable" based on the following rationale:

> *"Revised TVAS should have been run to match figure on updated CETV. However, as anticipated, this was higher than the original and consequently does not impact on advice. Main driver is the desire to retire early, which is achievable outside BSPS. File states that clients feel they have a simple lifestyle and do not have a need to spend a high level of income. Income needs in longer-term retirement are relatively modest and can largely be met by guaranteed income from their combined state pensions. In the short to medium term, income needs can be met by the drawdown fund through a combination of PCLS and income without creating any undue strain or longevity issues.."*

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Forrester Boyd didn't follow the redress scheme rules when it assessed Mr H's case. Based on the contemporaneous evidence and the redress scheme instructions in CONRED 4 Annex 21, I think Forrester Boyd, in its role as assessor, should've answered "yes" to the following examples of unsuitability:

Example 1: The client is, or will be, reliant on income from the comparator scheme

When completing the DBAAT, Forrester Boyd answered "yes" to this question. For the record, it's also my opinion that the assessor should've answered "yes" to Example 1 given Mr H's low capacity for loss and high level of reliance on his DB pension to support him and his wife during their retirement. Since we share the same opinion, I don't think it's necessary to scrutinise Forrester Boyd's reasoning here.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

Under reference 10.17E, the assessor is required to answer "yes" to this question where the following apply:

- (1) (a) the level of comparator scheme benefits meets the consumer's income needs

Forrester Boyd recorded that Mr H was concerned about the prospect of transferring to the PPF or a reduction in benefits. So it seems to me that it was important to Mr H that he didn't expose the value of his pension benefits to the risk of receiving a lower level of income than provided by the BSPS. In the fact find document Forrester Boyd recorded that Mr H had no previous investment experience. While it's true that a transfer to the PPF would've resulted

in a 10% reduction in benefits, there was also a risk that the transfer to the SIPP would expose Mr H to unlimited downside risk where the reduction in benefits could be greater than 10%. The benefits available under the SIPP option would be dependent on the performance of underlying investments and annuity rates available at retirement – in other words, there were no guarantees regarding the level of benefits paid.

Forrester Boyd recorded in respect of Mr H that he wanted to, *“Ensure you have sufficient income to live off during retirement - you have a set level of income you would desire for your entire retirement of £22,000, although you accept £17,500 would be enough to cover your essential expenditure”.*

While it was recorded that Mr H wanted to retire at around age 55 or 56, it appears there was some uncertainty regarding whether this was achievable. So Forrester Boyd’s advice was based on Mr H working part-time until fully retiring at age 60. Mr H confirmed at the time that he didn’t have any capital expenditure or lump sum needs in connection with his DB pension. Therefore, there wasn’t any need to convert part of his pension income into a lump sum.

According to the TVAS report, at age 60 the BSPS was projected to provide an annual pension of £21,094 and the PPF a projected annual pension £20,997 (in the event the BSPS transferred to the PPF before Mr H retired). Both these projected annual pension figures were higher than Mr H’s stated minimum annual income need of £17,500. So it’s clear that the comparator scheme would’ve met the stated income need. And once his state pension started from age 67 he would be in receipt of two sources of guaranteed income that would provide a combined level of income in excess of the stated income need. If there was a shortfall of income between age 60 and 67, then this could’ve been topped up by using their existing cash, investments and the value of benefits built up in Mr H’s DC workplace pension scheme.

I don’t think it was appropriate for an inexperienced investor like Mr H who wanted to protect his pension benefits to expose his main retirement provision to unnecessary risk when the comparator scheme met his income need from age 60.

Given the above points, it’s my opinion that the assessor should’ve answered “yes” to Example 5.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

Under reference 10.20E, the assessor is required to answer “yes” to this question where the following apply:

- (3) a lower risk suitable alternative was available to achieve this objective;

In the suitability report, Forrester Boyd stated in reference to taking benefits early at age 60 from the BSPS, *“A penalty would be applied for taking benefits before the scheme’s normal retirement age. This has been taken into account in the figures shown”.* Forrester Boyd portrayed the reduction as a penalty. But it wasn’t a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. And so, based on what Forrester Boyd stated, it’s likely Mr H incorrectly believed he would be treated unfairly if he took benefits early under the BSPS.

Forrester Boyd also portrayed the SIPP option as allowing for early retirement earlier than age 65 without penalty. I think this was misleading. The reality was of course that the SIPP

would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr H so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65. So I think he made the decision to transfer from an uninformed position in this regard.

In its rationale in the DBAAT, Forrester Boyd stated *"Main driver is the desire to retire early, which is achievable outside BSPS".* So it seems to have decided it's advice was suitable because, in its view, the SIPP option met the income need. But the redress scheme rules didn't require it to determine if the early retirement objective could be met by the personal arrangement. Rather, the rules required it to determine if the comparator scheme could meet the early retirement objective and, if it did, to answer "yes" to this question.

For the reasons I've explained under Example 5 above, Forrester Boyd's analysis at the time showed that Mr H's stated minimum annual income need of £17,500 could be met by taking benefits early from the BSPS or PPF (in the event the BSPS transferred to the PPF before Mr H retired). This was a lower risk suitable alternative to achieve the objective rather than transferring to the SIPP which exposed Mr H to a higher level of risk – the transfer to the SIPP led to the investment, inflation and longevity risks associated with providing the pension income transferring from the BSPS to Mr H. Overall, I cannot see why that was a suitable outcome for Mr H when his income objective could be met by the BSPS/PPF.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 6.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk.

As noted above, Forrester Boyd's advice was based on Mr H working part-time until fully retiring at age 60.

The critical yield figure at age 60 was 11.67% on the basis Mr H took all benefits as pension only. Forrester Boyd determined that Mr H's risk profile was *'Low Medium'* and recommended his SIPP be invested in a discretionary managed portfolio to align with this.

I cannot see a copy of any illustration produced by the provider that showed the assumed growth rates of the transfer value under the SIPP. But it appears Forrester Boyd based its advice on the prospect of the recommended portfolio achieving average annual investment returns of 5%. In my view, average annual growth of 11.67% to match the BSPS was likely to be unobtainable under the SIPP if investing on a *'Low Medium'* basis. And it seems Forrester Boyd agrees because in its suitability report it stated, *"Even if you were to achieve a reduced annual income of £24,899 at age 65, the critical yield on this reduced rate would be 5.83%. Even at this reduced rate this growth is not guaranteed to be achievable consistently and your income in retirement is likely to be lower overall".* So it thought 5.83% average annual growth was unlikely to be achieved. So I think it's fair to say that it would also agree that average annual growth of 11.67% was even less likely to be achieved.

This analysis showed that it was likely Mr H would be financially worse off as a result of the pension transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 9, particularly given my view that Mr H was reliant on the income (Example 1), had a desire to protect the value of his pension benefits (Example 5) and his early retirement income need could be met by the comparator scheme (Example 6).

Conclusion

Based on the above considerations, it's my opinion that Forrester Boyd failed to follow the FCA's redress scheme rules when it assessed Mr H's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 1, 5, 6 and 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Forrester Boyd's non-compliant conduct was the effective cause of Mr H's decision to transfer. This was a complex transaction involving many factors. In my view, Mr H was reliant on Forrester Boyd, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views.

Overall, it's my view that Forrester Boyd's conduct is more likely than not to have caused Mr H to transfer to the SIPP when this wasn't in his best interests. Given Mr H's reliance on Forrester Boyd to provide suitable advice, I think it's unlikely he would've still decided to transfer to the SIPP against its advice had it advised him to retain his benefits in the BSPS instead.

Putting things right

Forrester Boyd must do the following:

1. Amend the DBAAT so that in addition to Example 1, unsuitability Examples 5, 6 and 9 are marked as 'yes' on the relevant tab and the *'Assessor's suitability rating'* is marked as "unsuitable" – and then update the section covering rationale with appropriate comments to support the conclusion;

2. Calculate and pay any redress due in line with the redress scheme rules; and

3. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr H's case.

To be clear, when Forrester Boyd completes the loss assessment it should send the appropriate redress determination letter to Mr H in line with CONRED 4.4.2R and settle any redress due in line with CONRED 4.4.9R. This is so that his case is formally closed under the redress scheme rather than remaining open-ended as is currently the case.

My final decision

I uphold this complaint. I direct FB Wealth Management Ltd trading as Forrester Boyd Wealth Management to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 19 June 2024.
Clint Penfold
Ombudsman