DRN-4563162

Financial Ombudsman Service

The complaint

Mr P complaint about FIL Wealth Management Limited's ('FIL') review conclusion that it had given him suitable advice to transfer the benefits from the British Steel Pension Scheme ("the BSPS") to an alternative pension. FIL was required to carry out the review under the terms of the regulator's, the Financial Conduct Authority's ('FCA'), consumer redress scheme ('the redress scheme').

What happened

Mr P was a member of his employer's defined benefit ('DB') pension scheme - the BSPS. The scheme was underfunded and unable to meet its liabilities. In 2017, in an exercise known as "time to choose" members were given three choices:

- To stay in the BSPS which would move to the pension protection fund ('PPF')[1].
- Move to a new DB scheme, the BSPS2, which the employer was in the process of setting up.
- Transfer their BSPS benefits elsewhere.

Thousands of BSPS members like Mr P sought guidance from firms of financial advisers for advice on their pensions. Many of them chose to transfer their BSPS benefits to an alternative pension arrangement.

Subsequently, the FCA found that some advising firms had given BSPS members unsuitable advice to transfer out of the scheme. As a consequence, in February 2023, it instructed firms who had given advice to BSPS members to review that advice under a redress scheme.

The FCA set out rules in the FCA Handbook under CONRED 4 that advising firms must follow when reviewing their advice. The FCA also developed a tool, known as the BSPS Defined Benefit Advice Assessment Tool ('DBAAT') which firms are required to use.

The redress scheme reviews have two possible outcomes:

- The advice is rated as "suitable" and the case is closed.
- The advice is rated as "unsuitable" – then the firm would be required to establish if the consumer had lost out as a result of the unsuitable advice and if so pay appropriate compensation.

If the consumer disagrees with the outcome of the firm's review they may ask the Financial Ombudsman Service to look at whether the firm carried it out correctly in line with the redress scheme's rules.

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[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

In 2017 Mr P approached FIL for advice about his pension. At that time it recorded that he had three objectives:

- To have the option to retire between ages 57 and 65, with a personal income between £24,000 and £30,000 rising with inflation.
- To reduce his liabilities and pay off his mortgage in 15 years
- If he died he wanted to provide for his family ; for his pension to provide the most income for his wife and then for his children in the event of her death.

In November 2017 FIL provided its suitability report setting out its analysis and recommendations. In short it indicated that for Mr P, transferring his DB scheme funds into a named SIPP was in his best interests as it would allow him to achieve his objectives.

Mr P accepted FIL's recommendation and the transfer went ahead.

In June 2023 FIL wrote to Mr P. It said it had carried out the redress scheme review and found that its advice to transfer was suitable.

Mr P had doubts about the review outcome and asked the Financial Ombudsman Service to look into the matter. One of our Investigators considered it. He didn't think FIL had carried out the review appropriately.

To put things right the Investigator recommended that FIL should change its review outcome to *unsuitable* and then make the appropriate redress calculation in line with the redress scheme's rules.

In a detailed response FIL disagreed with our Investigator's opinion of its review. It asked for an Ombudsman to make a final determination. The matter has since been passed to me.

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.

My role and considerations

When considering Mr P's complaint about the outcome reached in the redress scheme, my role is to decide whether FIL has followed the redress scheme rules correctly.

CONRED 4 sets out that when reviewing advice firms must use the DBAAT tool. Annex 21 of CONRED 4 includes rules and guidance on how to use the tool.

In essence, the tool helps firms assess the suitability of their 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's assessor (the person or people carrying out the review), should simply answer "yes" or "no" to indicate whether or not the example is present.

If the firm answers "no" to all 12 examples of unsuitability, the tool will rate the advice as "potentially suitable". If the firm answers "yes" to any of the 12 examples of unsuitability, this might indicate that the firm's advice to the consumer to transfer was unsuitable and not in the consumer's best interests. In those circumstances the tool will suggest a rating of "potentially unsuitable". 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 the reasoning for their decision.

In responding to our Investigator's opinion FIL has made a number of detailed points. I've considered carefully everything it said. But in this decision I don't intend to address each and every point raised. Instead I will focus on what I see as being the key matters and the reasons for my decision.

After careful consideration, as I explain below, I agree with our Investigator that FIL did not carry out the review appropriately.

Why I think FIL's review wasn't appropriate

Our Investigator found that FIL should have answered "yes" to three examples of unsuitability. And as such it should have concluded that its advice was unsuitable. I will deal with each example below but first I will address a general point FIL made.

FIL said that our Investigator's opinion was flawed as it "*demonstrates a lack of knowledge, experience and competence in respect of the rules*". It went on to say the appropriate process for demonstrating suitability when recommending a DB pension transfer is [to use] "*APTA* [appropriate pension transfer analysis] *and TVC* [transfer value comparator]" rather than looking at the critical yield[2] as a "*pivot point*". And it cited some FCA rules which it says support its position.

I agree that the critical yield shouldn't be the only factor involved in deciding whether or not a DB transfer is suitable for a consumer. But FIL gave its advice in November 2017. The FCA didn't introduce the requirement to use an APTA until April 2018, over four months later. Similarly, the FCA didn't introduce the requirement to use a TVC until October 2018. And the majority of the COBS rules FIL referred to in support of its argument (COBS 19.1.1C, COBS 19.1.2BR to 19.1.2E and COBS 19 Annex 4A) were only introduce in April and October 2018. So they weren't in place at the time that FIL gave advice to Mr P.

Also CONRED 4.1.1(20) is clear the rules that apply to the redress scheme are those that were in force at the 'relevant period'. The relevant period is from 26 May 2016 to 29 March 2018. That period ended before the more recent COBS rules FIL has referred to were introduced. As those aren't appropriate to the redress scheme, I don't intend to comment further on them. Instead I will turn to the specific examples of unsuitability from the DBAAT tool which are disputed.

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

In Mr P's circumstances the "comparator scheme" is the BSPS2.

FIL says that Mr P's objective was not to retire early. Instead it said he wanted the *option* to *potentially retire* at an age between 57 and 65. However, it's notable that when it's produced its suitability report setting out its analysis and recommendations under a heading of "*Your Objectives"* it said that Mr P's:

"*main objective is to have the option to retire around age 57 if affordable but certainly by age 65 at the latest*."

Mr P was still only 42 years old when FIL gave its advice, and I accept that given he had at least 15 years to retirement, any plans he had at that time wouldn't have been set in stone and could be subject to change in order to match his circumstances. But he clearly said in

[2] The critical yield is a measure of the growth rate required to match the DB scheme benefits.

his fact-find that his preferred retirement age was 57. And that was the preferred retirement age FIL entered into the DBAAT tool.

Also it was FIL itself that composed the wording of Mr P's objectives. And I think that shows that, while not an absolute must for him, early retirement at 57 was certainly something he aspired to and wanted advice upon. Further FIL's suitability report said a transfer was in Mr P's best interests because "*with the right investment returns*" Mr P's objectives of retiring between ages 57 and 65 was possible. So I'm satisfied that the evidence is convincing that Mr P did want to retire early and FIL considered this as a reason to support its recommendation to transfer.

I've gone on to consider whether or not Mr P could have retired early if he'd opted for the BSPS2.

When producing its transfer value analysis report ('TVAS'), despite Mr P's clearly stated preference to retire at age 57, FIL didn't obtain figures for what Mr P's entitlement from the BSPS2 would be at that age. Nor did it establish what the critical yield to match that entitlement would be. Instead it produced figures for Mr P retiring at age 55 and 65. FIL has now said that it did so as Mr P wanted to retire sometime between those two dates. He did but more specifically he wanted to retire between ages 57 and 65. I've seen no evidence on file that he said at any point that he wanted to retire at age 55. And the absence of figures for retirement at age 57 makes it more difficult to make the appropriate calculation. However, I've estimated my own figures below using the information on file and the figures and early retirement factors (the adjusted ratios for taking a DB pension early) from the BSPS "time to choose" leaflet.

It's notable that Mr P said he wanted an income, in 'today's terms' of at least £24,000 in retirement. He said that this sum was for his own personal requirements and didn't include his wife's needs within this. It's not clear how he arrived at that sum as the expenditure information he completed on the fact-find isn't detailed. He gave annual figures for his and his wife's mortgage payments, utilities, regular savings, and general living expenses. And removing the mortgage repayments, which Mr P said he would repay by age 57 and the regular savings left a sum of £52,500. So, given that he and his wife were jointly responsible for the household expenses, it seems likely he's picked a figure that was roughly half that sum as a minimum income requirement.

FIL's TVAS estimated that Mr P could receive an income from the BSPS2 of £17,467 at age 55 and that is also the figure quoted in the "time to choose" leaflet at that age. But Mr P's BSPS2 entitlement at age 57 would undoubtedly have been higher than that sum. That's because the early retirement factors were more generous and Mr P would have benefits from two more years of indexation. Using the "time to choose" information I've estimated that his BSPS2 entitlement at age 57, which will be in 2032, would have been around £19,450 a year.

Mr P said he wanted at least £24,000 in 2017 terms. As far as I can see FIL didn't attempt to revalue that sum to Mr P'S retirement dates. But in order to make a reasonable comparison between his income requirements at age 57 and his BSPS2 benefits at that age, I think it would be reasonable to do so.

Following our Investigators opinion, FIL suggested that a fair way to make a comparison would be using an inflation rate of 3%. But, I've noted that the inflation rate used in its TVAS at the time was the retail price index figure (RPI) of 2.5%. So I think it's fair to apply that rate to Mr P's stated income requirement. Having done so £24,000 a year becomes £34,906. So if Mr P were to take income from the BSPS2 alone he would have a shortfall of around

£15,456 a year, which he would have to make up each year until his state pension became payable, which wouldn't be for another ten years.

In addition, Mr P had an interest only mortgage of £357,000 which required payment in 2032. He planned to pay that mortgage from the following sources:

- ISAs which had a combined value of £167,000 and to which he was making regular contributions of £8,400 per year (£700 a month). FIL didn't document how much that ISA was assumed to grow at. But assuming zero growth by 2032 it would be worth £293,000. However, if we apply the FCA's growth assumptions available at the time, the ISAs could have benefited from investment returns at the low-rate projection of 2% or mid-rate projection of 5%. So by 2032 they would be worth between £370,800 (2%) and £541,000 (5%). And either of those sums could have repaid Mr P's interest only mortgage.
- An existing SIPP with a value of £59,000. Mr P had said he would continue to make ad-hoc payments into the SIPP, but – for the purposes of this exercise – I will assume that no payments were made. Applying the FCA's low or mid-rate projections of 2% and 5% respectively would show that by 2017, FIL could have anticipated that Mr P's SIPP could have grown to between roughly £79,600 (2%) and £124,700 (5%). I've noted that in its suitability report setting out its advice to transfer, FIL anticipated that investing in specific funds within a SIPP would make a year on year return (yield) of 6.3%. Had FIL predicted the growth using its anticipated rate of 6.3% the figure would have climbed to around £151,400.
- Mr P's employer's recently set up defined contribution ('DC') pension scheme. At the time of FIL's advice the DC pension had a value of around £6,996, with regular contributions totalling £744 a month or £8,928 a year. So, without investment growth and assuming Mr P didn't increase his contributions, by 2032 Mr P could have anticipated the DC pension to have a value of £140,916. But, with growth of 2% or 5%, then Fil could have predicted that Mr P's DC pension fund would be worth between £165,450 and £213,650 at age 57.

So by age 57 FIL could have anticipated that Mr P would have funds, outside of his BSPS2 scheme, from the above sources of between £615,850 (low growth) and £879,350 (medium growth). From those sums Mr P would have to pay his mortgage of £357,000 reducing the value of those assets to £258,850 or £522,350.

From those sums Mr P would need to draw at least £15,456 a year for ten years until he could supplement his income with his state pension. The above figures show that Mr P could have done that with some margin to spare, while remaining in the BSPS2. In other words Mr P could have achieved his objectives of early retirement, from age 57 onwards, without transferring out of the DB scheme.

So, as I'm satisfied that Mr P did wish to consider taking early retirement and could meet that objective while remaining in the BSPS2. And – while I've used different figures to those our Investigator presented in his view – I agree with his conclusion that Mr P could have retired early while taking benefits from the BSPS2. As such FIL should have answered "yes" when completing the DBAAT tool for this example of unsuitability.

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

When completing the DBAAT tool FIL was required, amongst other things, to input Mr P's preferred retirement age and also the critical yield applicable at that date. FIL recorded

Mr P’s preferred retirement age as 57 but then entered the details for Mr P taking his benefits at age 55.

FIL was also required to compare the critical yield for Mr P taking early retirement at his preferred retirement date and compare that with his attitude to risk to establish if the yield was achievable (CONRED 4 Annex 21 10.26R(5)). But FIL didn’t do that. It didn't ever obtain the critical yield figure for Mr P retiring at age 57. FIL said that Mr P’s attitude to risk was “medium to high” and it anticipated he could achieve a growth rate of 6.3% by transferring. But, as FIL didn’t produce the required critical yield figure at age 57, it's not possible to know, using the evidence FIL’s assessor had in front of them, whether that critical yield was achievable at that age. The critical yield at age 55 was 7.65% and at age 65 5.04%. But given that Mr P’s preferred retirement age of 57 was nearer to 55 than 65, I think the critical yield was likely to have been closer to 7.65% than 5.04% and, most probably, unobtainable given his attitude to risk.

I note FIL said its cashflow models showed Mr P could achieve his objectives by transferring from both ages 55 and 65. So it said that it stood to reason he would also have been able to achieve his objectives at age 57. But I don't know how realistic that assumption is as FIL simply didn’t record the necessary information required of it. Further, a yield of 7.65% is high and almost at the regulator's upper projection rate of 8% at the time. So it would be extremely difficult to attain that level of return on a year by year basis. And, if that was the case then Mr P would most likely be worse off in retirement. Therefore, in those circumstances, in line with the appropriate guidance (CONRED Annex 21 10.27E(1)(e)) I think FIL should have answered “yes” to the question of whether this example of unsuitability was present.

Example 2: the aim of the transfer is to pass the value of the pension to beneficiaries on the member’s death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective.

FIL’s told us that Mr P didn’t originally mention death benefits when it asked him to set out his objectives. But, in discussion with the adviser, he said that in the event of his death he would like his wife to have sufficient funds for a comfortable life, with any remaining assets following her death passing to their children. FIL said that this was more of a wish than a need and wasn't quantified. And as this wasn't an objective for Mr P its assessor answered “no” to this example.

So I've first considered it this was an applicable objective for Mr P. I've noted that elsewhere FIL has told us that at the time of providing its advice it discussed Mr P’s objectives and priorities with him and then summarised those in its suitability report. In its suitability report, FIL documented the following as one of Mr P’s three objectives.

“*In the event you pass away, you want your pension to provide for your family. You want to provide the most income possible for your wife or sufficient assets to support herself. When you both pass away you would like to maximise the amount of wealth that can be passed to your children and minimise any inheritance tax payable.*”

So, it’s apparent that after FIL’s adviser discussed Mr P’s priorities and objectives it identified passing the value of his pension on to his family as one of those. If that wasn't the case it had no reason to refer to this as being an objective within its suitability report. Similarly, under a heading of “*Comparison of protection for your beneficiaries*”, FIL’s suitability report set out the difference in death benefits between those offered by the BSPS2 and a transfer to a SIPP. Under a subheading of “O*utcome”* it said:

"Transferring to the SIPP is likely to offer better value in terms of your ability to pass on wealth to your children."

So, not only did FIL say that one of Mr P's three objectives from a transfer was to be able to pass on the residual pension value to his family, it then also indicated that transferring was better value way of achieving that than remaining in the DB scheme and joining the BSPS2. In other words it used the difference in death benefits as a point to support its recommendation to transfer.

Also, when it completed the DBAAT tool FIL again said that Mr P's third objective was the one I've quoted above. If it hadn't intended this as an objective that would need to be considered as part of the review, I would have expected it to omit it with an explanation why. But it didn't. It follows that I'm satisfied that consideration of death benefits was one of Mr P's objectives as set out by FIL at the time of its advice.

When addressing this example of unsuitability FIL's assessor was required to identify whether there was an alternative way to meet this objective without giving up the BSPS2 benefits (CONRED Annex 21 10.5R(3)). Doing so included considering:

- Level term assurance
- Decreasing term assurance
- Death in service cover.

In fact Mr P already had decreasing term insurance, which was primarily secured to cover his mortgage. Although it wouldn't cover the full amount. He also had death in service cover from his employer. So, if he were to die before his retirement then that would pay a sum of around £260,000 to his beneficiaries. But FIL also said that as some of this might be needed to cover part of the mortgage Mr P might want to consider speaking with a life insurance specialist. So it's apparent that FIL clearly recognised that life insurance was something that could be of benefit to Mr P. And, given his level of disposable income, something that was affordable for him. But, as it essentially skipped this example when completing the DBAAT tool, it didn't give the appropriate thought to the correct answer when completing it.

Also, as well as savings, Mr P had funds invested in his existing SIPP and was contributing to his relatively recently set up DC pension. He could have left the funds from all of those to his wife and family on his death in order to achieve his objective, without putting his DB funds at risk. So, as there were lower risk alternatives available for Mr P to achieve his objective I think FIL should have answered "yes" to this example of unsuitability when completing the DBAAT tool (CONRED Annex 21 10.6E(3)).

Mr P's comments

For completeness I'll add that Mr P raised another point why he believed FIL hadn't provided suitable advice. He said that was because it hadn't advised him there was a possibility that the BSPS trustees could arrange for an insurance company to "buy-out" the scheme and remove it from the PPF, which has subsequently happened. But that was not a question that FIL needed to address under the redress scheme rules. So it's not something I intend to comment on here.

Conclusion

For the reasons given above, I don't think FIL appropriately followed the FCA guidance for conducting the redress scheme review. I think it should have answered "yes" to the following three examples of unsuitability: 2, 6 and 9. Had it done so, the DBAAT tool would've generated a suggested rating of "potentially unsuitable". And while I've considered all of FIL's comments those don't persuade me that it would be appropriate to amend that suggested rating to a "suitable" outcome.

Also, I'm satisfied that if it wasn't for FIL's advice to transfer Mr P would have remained in the DB scheme and joined the BSPS2. I say that because, as far as I'm aware, Mr P had not previously shown any interest in transferring out of the scheme. He only did so because of the unusual situation with BSPS at the time. And he could have achieved his objectives after joining the BSPS2. So I don't think he would have insisted on transferring if FIL had recommended he remain within the scheme. So I'm persuaded he would have joined BSPS2 if it wasn't for FIL's advice to transfer his BSPS benefits to a SIPP.

Putting things right

FIL must do the following:

1. Amend the BSPS DBAAT so that unsuitability examples 2, 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. Establish if any redress is due and if so pay that to Mr P in line with the redress scheme rules.
3. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr P's case.

My final decision

For the reasons given above I uphold this complaint. I require FIL Wealth Management Limited to take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 April 2024.

Joe Scott
Ombudsman