DRN-4590856

The complaint

Mr J complains that Chequers Wealth Management Limited ('CWM') gave him unsuitable advice to transfer the benefits from his defined benefit (DB) occupational pension scheme to a self-invested personal pension ('SIPP'). He believes he has suffered a financial loss as a result.

Professional representatives have helped Mr J to bring this complaint. But, for ease of reading I will refer to the representatives' comments as being Mr J's.

Similarly a third party company has assisted CWM in responding to the complaint. But for clarity I will only refer to CWM below.

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' 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')[1], 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 J's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017, the BSPS trustees gave Mr J details of his DB pension's cash equivalent transfer value, which was £335,209.

Mr J approached a financial adviser for advice about his pension. That adviser didn't have the required regulatory permissions to advise on occupational pension transfers and introduced Mr J to CWM.

CWM conducted a fact-find with Mr J. Amongst other things it noted he was 54 years old and married. He was working. His wife was retired and receiving a pension. They had three children one of whom remained dependent. They owned their own home. They had no other debts. Mr J had relatively recently joined his employer's newly set up defined contribution scheme. He had one other small pension pot worth around £15,000.

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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 October 2017, members of the BSPS were sent a “time to choose” letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Later that month, October 2017, after obtaining a transfer value analysis report and an illustration from alternative pension providers, CWM spoke with Mr J. He signed the forms to transfer the benefits from his DB scheme to a SIPP that day.

Almost two weeks later, on 30 October 2017, CWM sent Mr J its suitability report setting out its analysis and the reasons for its recommendation.

The transfer concluded in February 2018.

In 2022 Mr J complained to CWM that its advice wasn’t suitable for him. It didn’t uphold his complaint.

Mr J brought his complaint to the Financial Ombudsman Service. Initially CWM said Mr J had brought his complaint outside of the allowed timeframes for doing so.

One of our Investigators looked into the complaint. He explained why Mr J was not out of time to bring it.

Our Investigator also considered the merits of Mr J’s complaint. He didn’t think CWM’s advice was suitable for Mr J. The Investigator noted CWM had made its recommendation and Mr J had signed the forms for the transfer to go ahead before CWM provided its suitability report. He added that he thought the relevant growth rates required (the critical yields) to replicate the BSPS benefits were too high to support a recommendation to transfer. He didn't think the advantages of a transfer such as flexibility of access to funds and different death benefits were worthwhile reasons to give up the safeguards of a DB scheme.

Our Investigator recommended that CWM should carry out a redress calculation to establish if Mr J had lost out as a result of the transfer. The Investigator also recommended CWM pay Mr J £250 to address his distress and inconvenience arising from the matter.

CWM didn’t agree with our Investigator’s complaint assessment. But, it said it would carry out the required calculation to establish if Mr J had suffered a financial loss. It also agreed to pay £250 for Mr J’s distress.

Since then CWM has performed the redress calculation on several occasions. Those calculations have shown Mr J has not suffered a loss because of the transfer.

Mr J remained unhappy and said that, in order to be calculated fairly, the redress calculation would need actuarial input.

As the matter remains unresolved it's been passed to me to issue a final determination.

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.

As far as I'm aware CWM hasn't accepted that it gave Mr J unsuitable advice. But, 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 J in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for similar reasons. That's because, amongst other things, at that time the critical yields required to match the BSPS scheme benefits were high and unlikely to be met. For example at Mr J's preferred retirement age (at that time) of 60 the critical yield was estimated to be between 11.48% - if Mr J took a tax free cash lump sum – and 15.54% for a full pension.

CWM itself acknowledged that it was highly unlikely that transferring to a SIPP would meet the required critical yields to replicate the DB scheme's safeguarded benefits. But it said that it recommended the transfer for other reasons such as the flexibility transferring would allow Mr J, amongst other things.

However, once he'd transferred his funds, Mr J was putting those at risk of the volatilities of the investment markets. And if his investments suffered poor performance, or market crashes leading to losses, he could have potentially found himself significantly worse off in retirement. Whereas remaining in the DB scheme would have provided a guaranteed and escalating income for the rest of his life. He lost those guarantees by transferring.

Overall, I can't see persuasive reasons why it was in Mr J's best interest to give up his DB scheme guarantees. So I'm not convinced a transfer was suitable for him.

However, given that CWM has already carried out redress calculations, the issue now isn't the suitability of its advice but whether or not it's done enough to put things right. Mr J is of the opinion it hasn't.

As I explain in more detail below, in order to calculate redress CWM used a calculator, which the regulator, the Financial Conduct Authority ('FCA') specifically developed for BSPS redress calculations. But there are some cases where the FCA's calculator isn't appropriate. Mr J believes his is one such case. He believes CWM should appoint actuaries to perform the calculation.

The FCA's guidance for DB redress calculations is that where a firm is required to make an adjustment to a consumers current pension value, for example to allow for contributions from other sources not included within the calculation, then the firm must use an actuary or an approach approved by an actuary.

Mr J has made contributions to his SIPP from a source other than the BSPS in August 2018. So, he thinks his situation falls within the FCA's guidance above. As a consequence he believes CWM should use an actuary to assist with the redress calculation. But I don't think that's necessary.

It's notable that the FCA's guidance is that firms must *either* use: an actuary; or an approach approved by an actuary. So CWM was not required to use an actuarial service. And there's no evidence it instructed an actuary. Instead it established Mr J's SIPP value on the day before he made the second (non-BSPS) transfer to it. CWM then calculated a percentage proportion of the amounts transferred following the non-BSPS transfer. CWM established that 94.59%[2] of Mr J's SIPP was attributable to his BSPS transfer and the remaining 5.41% to the other amount transferred in August 2018. CWM then applied that proportion to calculate Mr J's SIPP value at the relevant date for the redress calculation.

I understand the approach CWM used, as described above, is accepted actuarial practice. So, I don't think there's any requirement for CWM to appoint an actuary and I'm satisfied the way it arrived at the SIPP value for the BSPS part of the transfer is fair and reasonable.

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[2] CWM calculated that figure to seven decimal places but I don't intend to repeat all of those here.

That said, I note that Mr J had also taken a one-off tax free withdrawal from his SIPP of £6,500 in 2020. CWM's redress calculation has not apportioned that sum against the two transferred in sums. But, if it had, using the actuarial approved method above, then it would have calculated that the proportion applying to the BSPS transfer was (£6,500 x 94.59%) £6,148.35. That is a difference of £351.65 to the figure CWM used in its redress calculation. But given that Mr J had a surplus of over £59,000, a reduction in that surplus of £351 wouldn't make a material difference as to whether or not he was entitled to redress.

Also, Mr J's said that CWM's recent calculation doesn't use the appropriate values for Mr J's entitlement from the BSPS at the date he left. I'll briefly explain that DB pension entitlements are often calculated using various tranches (or slices) as benefit entitlement is calculated differently during various periods. CWM calculated Mr J's BSPS entitlement using the figures the scheme trustees had provided in 2017. I think that's an acceptable method of calculating the BSPS entitlement.

But, Mr J had separately approached the current BSPS administrators for confirmation of what the various tranche figures should be. And, while the overall entitlement amount was the same, for some tranches the figures the administrators provided were slightly different to those the trustees gave in 2017.

I'll add that the administrators themselves said they were unable to validate the figures they presented as those were "inherited" and the administrators didn't have access to the original data. So that is not confirmation that the figures the administrators provided are more accurate than the figures CWM used.

In any event. CWM did use the administrators' figures in an earlier redress calculation (using the same valuation date). That calculation showed – using the administrators' figures – the costs to replace Mr J's BSPS benefits would be £309,321. However, using the trustees' figures from the 2017 paperwork on file, the cost to replace the BSPS benefits was £312,594. The higher figure is the one most favourable to Mr J, as the higher the value of his BSPS benefits the more likely he would be to receive redress. However, as I've said above, using that higher figure shows that Mr J still had over £59,000 more than he needed in his SIPP to replicate his BSPS benefits. So regardless of which tranche information CWM used doesn't affect whether or not Mr J is entitled to redress.

Therefore, I don't think that CWM needs the involvement of an actuary in order to be confident that its redress calculation is fair.

I'll add that the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr J 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. The FCA has developed it's redress methodology and the calculator to apply those assumptions fairly.

In essence the calculations look to establish whether or not a consumer like Mr J has sufficient funds in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 or the PPF, had they not transferred out. The calculator uses economic and demographic assumptions as set out by the FCA in order to do so. Firms can't change these.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The calculator makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs CWM entered which are specific to Mr J. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and taken his DB benefits at age 65.

As I've indicated above, while there are a couple of small anomalies within CWM's redress calculation, those are not material as to whether or not Mr J is entitled to redress.

Overall, the above comments aside, CWM has carried out the calculation appropriately. I'm satisfied it's generally done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr J's case shows that there is no shortfall to his pension and he has more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied he has not suffered a financial loss by transferring his pension. And as CWM has performed the necessary redress calculation, I don't think it needs to do anything further in respect of any potential financial loss.

That said, while the recent calculation shows Mr J hasn't lost out financially, I think finding out about this potential issue has likely caused him some concern. Which wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think a £250 payment for that distress is fair and reasonable.

My final decision

I uphold this complaint. I require Chequers Wealth Management Limited to pay Mr J £250 to address the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 March 2024.

Joe Scott
Ombudsman