DRN-4599013

The complaint

Mr M complains that WPS Financial Group Limited ('WPS') 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 might have suffered a financial loss as a result.

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 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 M'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 M details of his DB pension's cash equivalent transfer value, which was £480,488.

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.

Mr M approached WPS for advice about his pension. It conducted a fact-find with him. Amongst other things it noted he was 52 years old, separated with two non-financially dependent children. He was working. He owned his house subject to a mortgage. He owed around £11,400 in unsecured debt. He had no other savings or investments. He had recently joined his employer's newly set up defined contribution pension scheme. His preferred retirement age was 60. He had a low capacity for loss and a medium attitude to risk.

In November 2017 WPS sent Mr M its suitability report setting out its analysis. It recommended that Mr M should transfer his BSPS benefits to a named SIPP. Mr M accepted WPS' recommendation.

In 2021 Mr M divorced and his SIPP became the subject of a 50% pension sharing order.

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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 2022 Mr M complained to WPS that its advice might not have been suitable for him. It didn't uphold his complaint. In short it said that a transfer met Mr M's objectives. However, while it didn't uphold the complaint, it said it had run a calculation to establish if Mr M had lost out as a result of the transfer. It's calculation showed that Mr M had not suffered a financial loss. As a gesture of goodwill WPS offered Mr M £300 to address his distress and inconvenience arising from the matter.

Mr M didn't accept WPS' offer and brought his complaint to us. One of our investigators looked into it. He didn't think WPS' advice to transfer was suitable for Mr M. So the Investigator said WPS should again calculate If Mr M had suffered a loss, using the regulator's – the Financial Conduct Authority (FCA) – updated redress calculation methodology. The Investigator added that WPS' offer of £300 for Mr M's distress and inconvenience was reasonable in the circumstances.

WPS didn't accept our Investigator's findings. It believed its advice was suitable for Mr M. However, in an effort to resolve matters it has, more than once, ran redress calculations. These have shown that Mr M had not suffered a financial loss. It also again offered to pay Mr M £300.

Mr M wasn't satisfied that the matter was resolved so the complaint's been passed to me to make 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 WPS hasn't accepted that it gave Mr M unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out redress calculations. So I don't see the need to address the suitability of its advice to Mr M in detail.

That said, I will briefly comment that I agree with the 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 on contemporary evidence it was in the consumer's best interests. I don't think that was the case for Mr M.

For example WPS' suitability report said that, in order to replicate the DB scheme's secure benefits at age 60, Mr M's investment would need to grow at a rate of 6.5%, or at the scheme's normal retirement age of 65, 4.91%.

To put this into context at the time, the FCA's upper projection growth rate was 8%, the middle projection rate 5%, and the lower projection rate 2%. And, WPS recommended Mr M invest in funds that matched his attitude to risk. But in order to match his DB scheme benefits at age 60 his investment would need to regularly perform above the FCA's medium rate which would usually require higher risk investments to be made in order to achieve that level of growth.

So, at that time, it seemed unlikely his investments would match the required growth rate for his preferred retirement age of 60. However, even if I accept that matching the required growth rate was possible, there would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve a level of benefit outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve on his DB scheme benefits, he would need to put those funds at investment risk. That was something he could have avoided by remaining in the DB scheme.

Further, by transferring from the DB scheme Mr M would have to pay the fees and charges that are required in order to invest in a SIPP. And those have the effect of reducing any gains the funds make. Those are not charges he would have had to pay if his pension remained in the DB scheme. And, if his fund experienced an extended period of poor performance or suffered losses, he could find himself worse off in retirement.

Overall, I don't think a transfer was in Mr M's best interests.

However, given that WPS has already performed 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 M is of the opinion it hasn't.

I appreciate that many consumers like Mr M feel anger, anxiety and frustration that advising firms gave them unsuitable advice. They sought advice for the benefit of the advising firms' expertise but received recommendations to take actions that could have made them poorer and which weren't in their best interests.

So I can understand that 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 have – lost 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.

In essence the calculations look to establish whether or not a consumer like Mr M 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. The calculator also 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.

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.

I’ve checked the inputs that WPS entered which are specific to Mr M. 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. WPS has also adjusted the inputs to reflect the effect of the pension sharing order. 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.

WPS has carried out the calculation appropriately. I'm satisfied it’s 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 M’s case shows that there is no shortfall to his pension and he has significantly 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 WPS has performed the necessary calculation, I don’t think it needs to do anything further in respect of any potential financial loss.

I appreciate that Mr M does now have the concern that, like the majority of defined contribution pension policy holders who invest in personal pensions or SIPPs, his pension remains at investment risk. But it’s simply not possible to return him to his DB scheme. And WPS’ recent calculation has shown that he’s actually currently in a better position than he would have been by remaining in the scheme, which I hope provides him with some reassurance.

That said, while the recent calculation shows Mr M hasn't lost out financially, I accept that the uncertainty he’s experienced as a result of WPS' advice has caused some distress and concern by finding out it may not have been suitable. I’m conscious this upset wouldn’t have happened but for WPS’s advice. So, in the circumstances, I think its offer of a £300 payment for that distress is fair and reasonable.

My final decision

WPS Financial Group Limited has already made an offer to pay £300 to settle the complaint. For the reasons given above I think that is a fair resolution. So I require it to pay that sum to Mr M.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 18 March 2024.

Joe Scott
Ombudsman