

## **The complaint**

Mr S's representative has complained, on his behalf, that Pensionhelp Limited gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

## **What happened**

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (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 S's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the PPF or into a private arrangement, such as a PPP.

Mr S received a BSPS cash equivalent transfer value (CETV) of just over £285,000 which was guaranteed until 22 December 2017.

Mr S had 18 years and 6 months of pensionable service and a total annual pension amount of approximately £10,000 at the date of leaving the scheme. This would include a 50% spouse's pension.

Mr S was referred to Pensionhelp Limited by a different financial firm. He met with an adviser and a fact find was completed dated 8 November 2017.

Mr S was provided with a suitability report dated 6 December 2017 which set out the recommendation. It recorded his circumstances as follows:

- He was 46 and intended to retire at age 67.
- He lived with his partner.
- He was in good health, but was under medication for a particular condition.
- He had one financially dependent child.

- He was employed, earning £34,248 pa.
- He owned his home, worth around £100,000, and had a mortgage on it of around £11,800.
- He had a personal loan with £8,800 outstanding, as well as a credit card with £5,000 outstanding.
- He had no other assets.

The report recorded Mr S's objectives as follows:

*"You have indicated that your priorities are to be able to have greater flexibility in how you can take your benefits.*

*To guarantee your dependant's death benefits (lump sum for [partner]).*

*This is because you plan to retire at age 67 and do not wish to take the scheme benefits offered at that age.*

*The main driver of looking at a transfer at this time is that the BSPS is in severe financial difficulty following the takeover by TATA steel."*

The report confirmed Mr S's attitude to risk was "Risk profile 7 – growth" and his capacity for loss was recorded as "medium".

A transfer value analysis (TVAS) was produced on 24 November 2017.

The report showed the critical yield for transferring the BSPS benefits to a Royal London Pension Portfolio was 6.55% pa to match the BSPS benefits at a retirement age of 65.

The report confirmed the fund required to purchase the annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme at retirement was £757,553.

Mr S was advised to transfer his BSPS benefits to a Royal London PPP invested in the "Governed Portfolio 7".

Mr S was charged an Initial fee of £8,217, paid as a deduction from the plan, in addition to other fund and product charges.

The application was completed, and the discharge form was signed by Mr S on 8 December 2017. The Royal London PPP was established with a full transfer from the BSPS.

Having assessed the complaint, our investigator thought that it should be upheld. In summary, the investigator considered that it was unlikely that Mr S would be financially better off by transferring, given his attitude to risk and the critical yield just to match the scheme benefits.

She also wasn't persuaded that objectives such as flexibility of income or lump sum death benefits were sufficient reasons for Mr S to have transferred.

The investigator recommended that Pensionhelp Limited undertake a loss calculation in accordance with the regulator's guidance (FG17/9) for such complaints – and on the basis that Mr S would have opted to join the BSPS 2.

She said that any redress should in the first instance be paid to Mr S's pension plan, but if this wasn't possible, it should be paid directly to Mr S, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

Pensionhelp Limited didn't agree with the investigator's findings, but said that it would undertake the loss calculation. Having done so, it said that Mr S had suffered no financial loss as a result of the transfer.

Mr S didn't accept this outcome, however, and requested that the matter be reviewed by an ombudsman.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, she said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Pensionhelp Limited to use the FCA's BSPS-specific calculator to determine any redress due to Mr S.

The investigator said that if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr S's complaint, they should let her know by 8 June 2023.

Pensionhelp Limited then undertook the loss calculation on the new basis.

The (further) investigator considered the calculation and wrote to Mr S's representative confirming his view that it had been carried out appropriately. He noted that the calculation had assumed that Mr S was in a civil partnership, which wasn't the case, but this had only served to overstate the value of BSPS benefits which were compared against the value of the PPP benefits.

As the calculation still showed that there was no shortfall in the value of Mr S's PPP, he was satisfied that that particular assumption hadn't adversely affected the overall outcome of the calculation.

The investigator concluded that Mr S had sufficient funds in his PPP to replicate the defined benefits in retirement. And so no redress was therefore due.

Mr S's representative requested that the matter be referred to an ombudsman, however, saying that he would like an ombudsman to reach a final decision on the level of award in respect of distress and inconvenience caused to Mr S.

The matter has now been referred to me for review.

### **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 that Pensionhelp Limited didn't accept the investigator's findings relating to suitability. However, it didn't explain why it disagreed, and has nevertheless carried out a loss calculation. So I don't see the need to address the suitability of their advice to Mr S in detail.

Suffice to say, however, that I agree with the investigator's view that the advice was unsuitable for largely the same reasons.

Overall, I can't see persuasive reasons why it was in Mr S's best interest to give up his defined benefits.

### **Putting things right**

I'll focus in this decision on how to put things right for Mr S as agreement hasn't been reached on the outcome.

The aim is to put Mr S back in the financial position he would have been in at retirement had he remained in the defined benefit scheme. Pensionhelp Limited has carried out a calculation using a specific BPS calculator provided by the FCA, which is what I would expect it to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS 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.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

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.

I have checked the inputs that were entered by Pensionhelp Limited which are personal to Mr S. These include Mr S's personal details, his individual benefits from the BPS at the date he left the scheme and the value of his PPP. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, and taking note of what the investigator has already said about the anomaly relating to Mr S's recorded civil partnered status, I think the calculation has been carried out appropriately and 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>.

Mr S's representative also hasn't suggested that the calculation has been undertaken incorrectly.

I have, however, noted the comments relating to an award in respect of the distress and inconvenience caused to Mr S.

I've carefully considered the matter, but note that the investigator didn't recommend a payment in her initial assessment - and Mr S's representative made no submission in response to that assessment about the level of distress and inconvenience caused to Mr S.

Additionally, in its response to the investigator's assessment of the redress calculation, Mr S's representative hasn't articulated how and to what extent Mr S has suffered to justify such an award.

Overall, therefore, I don't think that a non-financial award is appropriate in this case.

### **My final decision**

My final decision is that I uphold the complaint. But for the reasons set out above, Pensionhelp Limited doesn't need to taken any further action in response to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2024.

Philip Miller  
**Ombudsman**