

## **The complaint**

Mr M complains about the advice given by CST Wealth Management Limited ('CST') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

## **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 pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension 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 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.

On 28 June 2017, Mr M obtained a transfer value for his BSPS scheme benefits from the trustees of the scheme. The cash equivalent transfer value ('CETV') of his benefits at that time was £165,000.43.

Mr M sought advice from CST in August 2017 about his pension. Also in August 2017, the RAA was signed and confirmed. There were important updates, including on 25 August 2017, which indicated that when the RAA took effect, updated transfer valuations would be provided.

CST completed a fact-find to gather information about Mr M's circumstances and objectives. Amongst other things CST noted Mr M was 47 married to Mrs M, who was 46, and had two older children, who were no longer financially dependent. He and Mrs M were employed, and their income exceeded their outgoings. They owned their own home, subject to a mortgage, which was due to be repaid in approximately 7 years. And in addition to the benefits he held in the BSPS scheme, Mr M was also a member of his employer's new defined contribution ('DC') pension.

The fact-find said that Mr M had made no plans for when he wished to retire, he had no need to maximise lump sums available from his pension and the BSPS benefits made up the major portion of his retirement provisions. It said though that he hoped to potentially retire at age 60 and was interested in flexibility in his benefits. The fact-find also said Mr M's capacity and tolerance for loss had already been discussed and it was agreed that this was 'moderately cautious'. And Mr M also agreed with a statement that said he did not consider it appropriate to expose his pension to anything other than a minimal amount of risk.

CST however carried out a separate assessment of Mr M's attitude to risk, which it deemed

to be 'high medium'. This assessment said the target portfolio for a 'high medium' risk profile investor had an estimated annual growth rate of 3.25%.

In September 2017, CST advised Mr M to transfer his BPS benefits into a SIPP and use the services of a discretionary fund manager ('DFM'). CST said Mr M wanted to retire at age 60 and expected to need an income of £18,000 per year in retirement. It said he'd incur penalties if he retired before the normal scheme retirement age of the BPS and so wanted to transfer for the flexibility. It also said Mr M wanted the option to access tax-free cash to clear his mortgage and other debts and was interested in the lump sum death benefits offered by a personal pension. CST said it felt Mr M's attitude to risk was actually lower than the 'high medium' that the risk profiler had suggested and a more cautious approach to investment should be taken. And it noted that the critical yield, the level of investment return required each year in order to provide the same benefits as his DB scheme at retirement, couldn't be guaranteed to be achieved year on year. But it still considered a transfer was suitable to meet Mr M's objectives.

Mr M accepted the recommendation and forms were completed to enable the transfer on 18 September 2017. The CETV of Mr M's benefits was increased, following the RAA, to £170,380.39. The transfer didn't complete until after this had happened and the higher value was the amount transferred.

Mr M complained in 2022 about the suitability of the transfer advice. He said he felt he'd been given bad advice to transfer out of the scheme rather than join the BPS2 or the PPF. He said this had caused him a lot of worry as he had lost valuable guaranteed benefits and he believed he was likely to be worse off.

CST didn't uphold Mr M's complaint. It said it felt the advice was suitable based on Mr M's objectives and preference to retire from age 60, mentioning a higher income requirement than the suitability report suggested.

Mr M referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint. He noted there was some contradiction about Mr M's attitude to risk, which the recommendation had in fact picked up on. In any event, he felt Mr M's retirement plans were unlikely to be finalised, given how far from retirement he was. So, the Investigator didn't think transferring at that time was in his interests. He also didn't think alternative death benefits meant a transfer was suitable. And he noted Mr M's mortgage was due to be repaid before he reached retirement so didn't think he needed access to tax-free cash to address this, as the advice had suggested. Based on this and because the Investigator felt Mr M was unlikely to improve on the benefits that he could've taken via the scheme at retirement by transferring he said the complaint should be upheld. And he recommended that CST compensate Mr M for any losses caused by the unsuitable advice and pay him £300 for the distress he'd incurred.

CST initially said that, without prejudice to its position that the advice was suitable, it was minded to accept the Investigator's opinion in order to resolve matters. But there was some debate about when a calculation should be run. And a decision by an ombudsman was subsequently requested.

The FCA has since developed a BPS-specific redress calculator. Although the calculator has been developed for the BPS consumer redress scheme, it can still be used to carry out calculations in non-scheme cases, such as Mr M's complaint with the Financial Ombudsman Service. Our Investigator informed both Mr M and CST, in May 2023, that if an Ombudsman's decision was required and they upheld the complaint, they may require CST to calculate any redress due using the FCA BPS-specific calculator.

CST responded to this and said it estimated that Mr M had gained from its advice and no harm had been suffered, so it didn't see how it could be concluded the advice was unsuitable. But to avoid any further delay it said it was prepared to accept the Investigator's opinion and withdrew its appeal.

CST has explained that it has carried out a loss assessment using the FCA's redress calculator, using the most recent quarterly assumptions. It said, having done so, the calculation showed that Mr M had not incurred a financial loss and so he was not owed any redress. A copy of the calculation was sent to the Financial Ombudsman Service and shared with Mr M. Although it disputed whether Mr M had incurred distress or inconvenience, CST said it would make a payment of £300 to address this and to settle matters and has confirmed that offer still stands.

We shared this with Mr M and our Investigator said they believed the calculation had been carried out correctly. Mr M did not accept the calculation and said he wanted a decision by an Ombudsman. He said CST had poorly advised him and he felt it should be held accountable. He also said he didn't agree with the recommended award for the distress caused. He said the advice had had a significant impact on him and caused him a great deal of stress. So, he felt that an award of £5,000 - £10,000 was more appropriate.

In light of Mr M's remaining concerns and as agreement could not be reached, I'm now providing a final decision on the matter.

### **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.

CST has said while it doesn't believe the advice was unsuitable, it was willing to accept the Investigator's opinion. And it has carried out a loss calculation and agreed to pay Mr M £300 for the distress and inconvenience caused as recommended by our investigator. So, I don't see the need to address the suitability of its advice to Mr M in detail.

However, I would note, for the avoidance of doubt, that having taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time, I agree with the Investigator's view that the advice was unsuitable for largely the same reasons they set out.

A loss calculation now, showing that Mr M has not suffered a loss, doesn't mean that the advice at the time was suitable. The critical yields to match the benefits that Mr M could've obtained through the BPS2 and PPF at age 60 or 65 were high. And taking into account the relevant discount rates from the time, the regulators standard projection rates and what CST said the estimated annual growth for a portfolio for a 'high medium' investor was, I think these all point to it being unlikely at the time of the advice, that Mr M would be able to match the guaranteed benefits he was giving up. Which CST acknowledged in the suitability report when saying the critical yields couldn't be guaranteed to be achievable year on year.

Although CST recorded that Mr M would like to retire at age 60, the fact find also noted he had no plans for retirement. And I think any thoughts about retirement were unlikely to be finalised, given his age at the time. So, I think it was too soon for Mr M to make an irreversible decision to transfer out of his DB scheme to achieve flexibility. Particularly when his new DC pension scheme would've provided him with access to pension benefits flexibly at retirement. And he had the option of joining the BPS2, and by joining it he would retain the option to transfer out at a later date if his circumstances required it.

As a pension's primary purpose is to meet the holder's needs in retirement, I don't think transferring for alternative death benefits was in Mr M's interest, particularly when life insurance could've been explored and, in my view, would have been a more appropriate solution for providing a legacy. And while Mr M was likely to have been, quite understandably, concerned about what had happened with his pension to that point, I don't think any concerns he held about this meant transferring was in his best interests – as the BSPS2 and PPF would've still provided him with guaranteed pension benefits.

So overall, I can't see persuasive reasons why it was clearly in Mr M's best interest to give up his DB benefits and transfer them to a SIPP. And I also haven't seen anything to persuade me that Mr M would've insisted on transferring, against advice to remain in the DB scheme.

As I've noted though, CST has said it accepts the Investigator's findings. And the dispute now is around how to put things right. So, I'll focus in the rest of this decision on the redress method.

Mr M has said CST should be "held accountable". But I think it is worth explaining that the role of our service is to informally review and decide individual disputes on a fair and reasonable basis. We aren't a regulator. And our awards are not intended to fine or punish a business.

As Mr M has received unsuitable advice, the aim is to put him, as far as possible, in the position he would've been but for that advice. Mr M cannot though return to the BSPS. So, the aim is to put Mr M back in the financial position he would have been in at retirement had he remained in the DB scheme. For which the FCA developed a calculator, specific to the BSPS. CST has carried out a calculation using that calculator. 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 BSPS retirement benefits that they would have been entitled to under either BSPS2 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 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.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 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 CST which are personal to Mr M. These include Mr M's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. All of which appear to have been input correctly. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65 – in line with the recommendation of the Investigator. I'd also note though the calculation also produced details of the cost of replicating benefits under the PPF. Retiring at 60 appears to have been discussed as part of the advice. But as I've

explained, I don't think his plans were confirmed at the time of the advice. And, as the benefits from age 65 would've been greater (so would cost more to replicate) I think using this assumption, in line with the FCA's guidance was appropriate and hasn't disadvantaged Mr M with regard to the calculation.

Overall, based on what I've seen, 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>.

The calculation in Mr M's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr M has not suffered a financial loss by transferring his pension.

And as an appropriate calculation has been carried out by CST, using the FCA calculator and up to date quarterly assumptions, I don't think it now needs to do anything further in respect of any potential financial loss.

CST has still offered to pay £300 as recommended by our Investigator for the distress and inconvenience this matter has caused him. Mr M has said he does not accept this amount and believes that a far greater payment for the distress this has caused him should be required.

Mr M received advice from CST in September 2017. He first complained about that advice in May 2022. I've seen evidence that, in the intervening period, Mr M remained a customer of CST's and sought advice from it in relation to other financial matters. In respect of the pension, CST appears to have continued to provide updates and reviews to Mr M. And I can't see that Mr M indicated at any stage, up to the point he complained, that he had any concerns about the advice or service he'd received from CST. So, I don't think I can fairly conclude he was caused ongoing distress by the advice from the point it was given to when he made a complaint. Nor can I see that he has been caused any inconvenience – administrative or other – in that period, resulting from the advice.

I acknowledge that Mr M has had to go to some effort when bringing a complaint. But we're all inconvenienced at times in our day-to-day lives. We wouldn't usually make an award just for someone having to go to the effort of making a complaint. And I don't think it'd be fair to do so here. This is because things do go wrong from time to time and it's reasonable to expect that they will need to be put right.

I don't doubt that, after lodging the complaint, Mr M has potentially been worried by the thought of the advice he received having been unsuitable for him. The advice related to his pension, which is important to his longer-term financial planning. And when also taking into account the circumstances and uncertainty under which he asked for advice, thinking about this has likely caused him some concern. Which is likely in my view to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But I think most people feel strongly about complaints they make, if they think something has gone wrong. And again, our role is not to fine or punish a business. And, although I don't doubt that Mr M has been worried that he might've received unsuitable advice or that he felt strongly about this since complaining, the calculation CST has carried out should reassure him that he has not suffered a loss.

Having taken all of this into consideration, while I know this will come as a disappointment to Mr M, I think the award of £300 recommended by the Investigator, which CST has agreed to pay, is fair in the circumstances.

**My final decision**

I uphold this complaint and require CST Wealth Management Limited to pay Mr M £300, as it has previously agreed to, for the distress this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 January 2024.

Ben Stoker  
**Ombudsman**