

## **The complaint**

Mr M complains about the advice Hargreaves Lansdown Advisory Services Limited ('HL') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice might not have been suitable for him and may have 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 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')<sup>1</sup>, 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 £781,050.

Mr M approached HL for advice about his pension. It conducted a fact-find with him. Amongst other things it noted Mr M was 52 years old and married. They had two non-dependent adult children. Mr M was still employed but he'd had a serious adverse health incident around 18 months earlier and had been off work as a result since, although he was returning to work. Mrs M was also working. Mr M had begun contributing to his employer's recently set up defined contribution ('DC') pension 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.

After meeting with Mr M twice, on 29 November 2017 HL sent him its suitability report setting out its analysis and recommendations. It recommended Mr M transfer his DB benefits to an HL SIPP. Mr M accepted HL's recommendations and transferred his DB benefits to the SIPP.

---

<sup>1</sup> 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 2021 Mr M complained, via the Financial Ombudsman Service, to HL that its advice may not have been suitable for him. HL said it believed its advice to transfer was suitable for Mr M. He asked the Financial Ombudsman Service to look into his complaint.

One of our Investigators looked into Mr M's complaint. He didn't think HL's advice was in Mr M's best interests. So the Investigator recommended HL establish if Mr M had suffered a financial loss as a result of its advice. Our Investigator also recommended HL make a payment of £300 to address Mr M's distress and inconvenience arising from the unsuitable advice.

HL didn't initially accept our Investigator's complaint assessment. As the matter wasn't resolved informally the complaint was referred for an Ombudsman's review.

While the matter was awaiting an Ombudsman's attention, in July 2022 HL told us that it had reviewed the matter. And, while it still felt a transfer was suitable for Mr M it said it accepted that it could have explained more fully to him how he could have met his needs by opting to remain in the BSPS2 without putting his pension fund at investment risk. So it made a proposal to settle the complaint. That proposal wasn't in line with our Investigator's recommendation or the regulator's, the Financial Conduct Authority's ('FCA'), guidance for doing so at the time. Mr M rejected HL's offer. The matter was again referred for an Ombudsman's consideration.

In October 2023 we wrote to the parties. We pointed out that the FCA had developed a BSPS specific calculator for establishing redress for BSPS cases. We advised HL that if an Ombudsman were to later uphold the complaint they would likely instruct HL to carry out another redress calculation using the FCA's BSPS calculator. In an attempt to resolve the complaint we invited HL to take the necessary steps to carry out an up-to-date redress calculation.

After reviewing the matter HL agreed to carry out the calculation. It gathered the required information and in November 2023 it performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr M had not suffered a loss. However, HL said it would increase the payment for Mr M's distress and inconvenience to £500 to reflect the time taken to resolve the matter.

Mr M still wasn't happy that his complaint had been resolved. So it's been referred 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.

I understand HL hasn't accepted that it gave Mr M unsuitable advice. Although it acknowledged that it could have given him more information about his entitlement under the BSPS2. 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 M 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 growth rates (known as the critical yields) required to match the DB scheme benefits were high. For example at Mr M's preferred retirement age (at that time) of 58 the critical yield was estimated to be 9%.

HL itself acknowledged that it was highly unlikely the critical yields would be met. But it said the reasons for its recommendations were because of the flexibility and the ability to retire early transferring would allow Mr M. However, once he'd transferred his funds, he was putting those at risk of the volatilities of the investment markets. And if Mr M's investments suffered poor performance, or market crashes leading to losses, he could potentially find himself 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. And, HL has now accepted, it could have done more to let Mr M know that he could have met his needs while remaining in the BSPS2. So he had no need to put his pension funds at risk.

Overall, I can't see persuasive reasons why it was in Mr M's best interest to give up his DB scheme guarantees.

### **Putting things right**

The sticking point now in terms of concluding the matter is not the suitability of the advice but whether HL's offer for redress is fair and reasonable. Mr M still doesn't consider the matter resolved.

As one of our Investigator's has previously explained to Mr M, the aim is to put him back in the financial position he would have been in at retirement had he remained in the DB scheme. HL carried out calculations using the specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator was designed to establish how much a consumer needs in their 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. It uses economic and demographic assumptions as set out by the FCA in order to do so.

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 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). The FCA updates the relevant economic and demographic assumptions the calculator uses 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.

At the time of the advice Mr M's preferred retirement age was 58. But he has already passed that milestone and as far as I'm aware has no concrete plans for retirement at present. HL did three separate calculations assuming Mr M took his pension benefits at ages 59, 60 and 65. All of those showed that Mr M had significantly more funds in his SIPP than was required to match the benefits from his DB scheme.

I've checked the inputs that HL entered which are personal 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 SIPP. I've noted that the value HL used of Mr M's current SIPP is around £4,100

less than the figures Mr M provided at the appropriate date. I've also noted that HL appears to have used the wrong month for Mr M's date of birth (making him two months younger than he actually is). However, given that Mr M's SIPP is valued at (as a minimum) £93,000 more than he would need to replicate his BPS2 benefits at age 65 and over £179,000 more at age 59, I don't think those anomalies are material as to whether or not he is owed any compensation.

Overall, based on what I've seen, the calculations have 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 calculations show there is no shortfall to Mr M's pension. So he has sufficient funds to be able to replicate his DB benefits in retirement. It follows that I'm satisfied that Mr M has not suffered a financial loss by transferring his pension.

HL has offered to pay £500, which is £200 more than our Investigator recommended, to address the distress and inconvenience this matter has caused him.

I think the calculations HL carried out are appropriate in the circumstances and no redress for financial losses is due to Mr M. I think HL's offer to pay him £500 for the distress and worry he experienced is fair and reasonable in the circumstances.

### **My final decision**

I uphold this complaint and require Hargreaves Lansdown Advisory Services Limited to pay Mr M a sum of £500 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 February 2024.

Joe Scott  
**Ombudsman**