

The complaint

Mr H complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017. He says the advice was unsuitable for him and believes this has caused a financial loss.

Esteem Money Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "EML".

What happened

In March 2016, Mr H's employer 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, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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 H's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr H was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to EML which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr H was 50 years old and married. He had accrued several years' worth of service with BSPS.
- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £407,149. The normal retirement age (NRA) was 65.
- Mr H was contributing to a new defined contribution (DC) pension scheme. This pension isn't the subject of any complaint.

EML set out its advice in a suitability report in September 2017. In this EML advised Mr H to transfer out of the BSPS and invest the funds in a type of personal pension plan. EML said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred out in 2018. In 2022 Mr H complained to EML about its advice, saying he shouldn't have been advised to transfer out to a personal pension but EML didn't uphold his complaint.

Mr H then referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld. In response, EML still said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

As the complaint couldn't be informally resolved, it came to me for a final decision.

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 I've said above, EML didn't initially agree it had done anything wrong. However, in the interest of bringing complaints like this to a close, EML said, back in May 2023, that it would be willing to accept the investigator's view and run a calculation to see if the pension transfer had incurred any loss for Mr H.

There then followed a dispute about whether any redress calculation should be based on the PPF or BSPS2 and whether the retirement age of 55 or 65 should be used. However, in June 2023, Mr H's representative agreed to a calculation of redress based on the benefits found in the PPF and him retiring at the earlier age of 55. Both Mr H's representative and EML agreed to settle the case using this calculation and also a distress payment of £250.

EML then complied with this approach. It used a BSPS-specific calculator established by the regulator for this purpose. I've noted it took Mr H's transferred pension's current value and inputted this into the calculator together with all his personal details. Overall, the calculation showed there has been no financial loss incurred as a result of Mr H transferring away.

For the avoidance of any doubt here, I've still looked at Mr H's case and his points of complaint in great detail. Having done this, I agree with the points made by our investigator who comprehensively set out why he thought the complaint ought to be upheld. I'm also sorry that it's taken so long for Mr H's complaint to reach this stage – I understand the distress and inconvenience caused by him having to bring the complaint at all. However, these recent delays have been at Mr H's end. This is because EML has already shown it is willing to accept the investigator's view that the advice wasn't right for Mr H. It initially agreed this back in June 2023 and I've noted it has now carried out an updated calculation incorporating the most recent financial quarter and potential changes to bond yields – there is still no loss shown.

As I say, EML agreed many months ago to make any payments due including a £250 payment for any distress and inconvenience caused. We haven't had replies about the calculation and offer to settle the complaint from Mr H despite asking several times throughout the second half of 2023, so it's fair to now bring this to a close. And as the calculation has been carried out as required by the regulator, I'm not going to go into the level of detail I normally would about why the complaint should be upheld.

I can see we've also checked several times that the inputs that were put into the BSPS-calculator are correct. Our investigator has written to Mr H's representative explaining this but we haven't had any reply.

In summary, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income within the PPF. I think EML ought to have advised him against transferring away from the BSPS. As I don't think I need to consider this in any further detail, I'll focus in this decision on the redress methodology.

Putting things right

The aim is to put Mr H back in the financial position he would have been in at retirement had he remained in the DB scheme alternative – the PPF. EML has carried out a calculation using a BSPS-specific 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 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 EML which are personal to Mr H. These include Mr H's 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 had not been advised to transfer his benefits from the BSPS, he would have moved to the PPF and that he would have taken his DB benefits at age 55.

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 H'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. I'm satisfied that Mr H has not suffered a financial loss by transferring his pension. My understanding is that he has already retired.

Our investigator recommended that EML should pay Mr H for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr H in his particular circumstances. This pension at the time represented most of his retirement provision and it was a relatively large amount. In his situation I think the thought of losing material benefits would have impacted upon Mr H. EML has also agreed to pay this amount. So I agree the recommended payment of £250 for distress and inconvenience. EML should pay Mr H this.

I think the calculation carried out by EML is appropriate in the circumstances and no redress for financial losses is due to Mr H.

My final decision

I uphold this complaint and now require Esteem Money Ltd to pay Mr H a sum of £250 for the distress and inconvenience he says this matter has caused him. No other redress is due.

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

Michael Campbell
Ombudsman