

## **The complaint**

Mr S complains about the advice given by Estate Capital Financial Management Limited (Estate) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss. He says it has also caused him some stress and anxiety.

## **What happened**

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the 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 S' employer would be set up – the BSPS2.

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. The deadline to make their choice was 11 December (and was later extended to 22 December 2017).

Mr S approached Estate in October 2017 to discuss his pension and retirement needs. It was noted that he was concerned about the overall situation with his employer and the DB scheme, and the possibility of his pension moving to the PPF.

Estate completed a fact-find to gather information about Mr S' circumstances and objectives. This showed that he was aged 53 and married, his wife was aged 46. They were both in good health and employed. They had no dependent children (they were older). They both had savings and investments worth about £85,000. Estate also carried out an assessment of Mr S' attitude to risk, which it said was 'balanced'.

In respect of Mr S' pension arrangements, he had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. This showed that he had around 36 and a half years' service. He was entitled to a pension of about £20,500 at the date of leaving the scheme. The CETV was about £530,000. Mr S had also joined his employers new defined contribution ('DC') scheme. He was contributing 10% of his salary into this and his employer was also contributing 10%.

On 22 November 2017, Estate advised Mr S to transfer his pension benefits into a personal pension and invest the proceeds in line with his attitude to risk. The suitability report said the reasons for this recommendation were that Mr S had concerns about the stability and future of both his employer and the BSPS, so he wanted to take control of his pension fund. He

thought the spouse's pension was better under the personal pension and he was attracted by the flexibility of the personal pension and the ability to retire early.

Mr S complained in 2022 to Estate about the suitability of the transfer advice. He thought that the advice he received wasn't suitable for him.

Estate didn't uphold Mr S' complaint. It said, in summary, that the returns he needed from the personal pension were likely to be achievable. And Mr S wasn't worse off due to the advice. But he had his own reasons to transfer, such as improved flexibility and death benefits. And he had the opportunity to retire when he wanted to. So, the transfer wasn't unsuitable for him.

Mr S referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Estate pay compensation. The Investigator said that in summary the transfer didn't represent value for money and that Mr S was likely to be financially worse off in retirement. His objectives were not strong enough to warrant this reduction in retirement benefits.

Our Investigator recommended that Estate calculate and pay any compensation that Mr S was due from the DB transfer and £250 for any distress and inconvenience he may have suffered due to the advice.

Estate disagreed, saying that the advice was suitable for Mr S and the Investigator had relied disproportionately on critical yield analysis. And that the uncertainty that he was facing, his wish to improve on the death benefits and his desire to cut ties with his employer and the scheme, were largely ignored. The transfer has met his needs given his ill health and his desire to see his family who live abroad.

The Investigator wasn't persuaded to change their opinion. And Mr S' representative said that the notional 15% reduction to the redress in relation to the tax-free cash wasn't reasonable. It thought this should be calculated after fees and charges had been taken from the fund. And made some further comment on the proposed compensation and the changes the FCA was making to this. Because there wasn't agreement both parties were informed that the complaint would be considered by an ombudsman in due course.

However, in December 2022, Estate Capital said that whilst it still disputed the substance of the Investigator's opinion it had performed a loss assessment using the regulators current methodology of the time which was given under the Financial Conduct Authorities ('FCA') guidance note FG17/9. This showed that Mr S hadn't suffered a loss. Despite this it offered £1,000 as a goodwill gesture to settle the complaint.

Our Investigator, and Mr S' representative, considered the calculation but it was noted that it wasn't performed entirely correctly as it used the PPF as a comparator and assumed that Mr S was retired at 57, which he hadn't done. Mr S wanted to use the new loss assessment basis, given in the FCA's policy statement PS22/13 which would come into effect in April 2023. Estate went on to amend the calculation on this basis, but this also didn't show that Mr S had suffered a loss.

And after this the regulator developed, and now provides access to, a BSPS-specific redress calculator. Both parties to the complaint were informed that an Ombudsman was likely to award compensation based on this.

Estate then contacted the Financial Ombudsman and said that it was prepared to not disagree with the Investigator's opinion that the advice wasn't suitable for Mr S. And it would

go on to calculate the loss using the BSPS-specific redress calculator. It wanted to do this to bring the matter to a close.

Mr S' representative didn't agree with this course of action and indicated that it would still request that an ombudsman consider the complaint. It said that Mr S was put under severe stress by the advice and the uncertainty around his retirement that he now faces.

Nevertheless, Estate decided to proceed with a calculation using the BSPS-specific redress calculator. It completed a loss assessment using the new calculator, but this also showed that Mr S hadn't suffered a loss. Estate again made a goodwill gesture of £1,000, but said this would be withdrawn if the case was considered by an ombudsman.

Our Investigator considered the calculation and wrote to all the parties to the complaint to say that it had been performed correctly. And that Estate's offer of £1,000 was still available at this time. But Mr S' representative confirmed that Mr S wanted an ombudsman to consider the complaint.

In particular Mr S wanted the level of distress and inconvenience looked at. He felt that the advice was poor and that he was coerced into the transfer. Mr S' representative said the impact of advice was high and had caused a significant level of distress and inconvenience. He feels that the transfer has greatly affected his future and led to sleepless nights and a lack of financial security. It has made an existing health condition worse.

Estate has now withdrawn its offer to pay Mr S £1,000 as a goodwill gesture.

So, as this complaint isn't resolved, I'm now issuing my 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.

I've 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. This includes the Principles for Business ('PRIN') and the Conduct of Estate Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Estate has recently informed us that it is willing to accept the Investigator's view, to bring this matter to a close. But Mr S' representative has asked that an ombudsman consider whether the redress method agreed so far is appropriate and if the compensation our Investigator recommended for the distress and inconvenience that Mr S has suffered is reasonable. As the suitability of the advice is not in dispute any longer, I will focus in this decision on the redress method.

## Putting things right

The aim is to put Mr S back in the financial position he would have been in at retirement had he remained in the DB scheme. Estate carried out a calculation using a specific BPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much Mr S needs in his 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 Mr S' pension arrangement to match the BPS benefits he would have received, the shortfall is the amount owed to Mr S. If the calculation shows there is enough money in Mr 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 Estate which are personal to Mr S. These include Mr S' personal details, his individual benefits from the BPS 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 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, 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>.

I've thought about Mr S' representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr S would've paid had this been taken as income. But I'm not fully addressing this here as the calculation hasn't included a deduction for this (as it has not shown a loss).

The calculation in Mr 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 S has not suffered a financial loss by transferring his pension. I think the calculation carried out by Estate is appropriate in the circumstances and no redress for financial losses is due to Mr S.

Mr S received advice from Estate in November 2017. He first complained about that advice in early 2022. I haven't seen anything that suggests the advice caused him ongoing distress during that period. There are contact notes and update that show that Mr S was generally 'happy' with the advice. The first indication he potentially had any concern about the advice seems to have been when he made his complaint. 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 S then raised a complaint. But his representative has handled the complaint on his behalf since it was first made. So, this doesn't appear to have inconvenienced him. And I wouldn't usually make an award just for someone having to go to the effort of making a complaint - because things do go wrong from time to time and it's reasonable to expect that they will need to be put right. And I don't think it'd be fair to do so here.

Since discussing this with his representative and lodging a complaint, Mr S might potentially have 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. But in December 2022 Estate did a loss assessment calculation that showed he hadn't suffered a loss. Which should have alleviated this concern somewhat.

I don't doubt, given the circumstances and uncertainty under which he asked for advice, thinking that it may have been wrong may have 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 this would have been in part due to the situation with his employer and the DB scheme.

And whilst I note that Mr S has a health condition which can effect his day to day life I don't really have enough here to say that the advice given by Estate made this worse. This is not to doubt what Mr S may have said. it's more that there isn't any certainty around this.

Most people do feel strongly about a situation where they think a professional has given poor advice or service. But my role is not to fine or punish Estate. I don't doubt that Mr S has potentially been worried that he might've received unsuitable advice, the calculation Estate has carried out should reassure him that he has not suffered a loss. And this was done at a relatively early point in the complaint process

And having taken all of this into consideration, while I know this will come as a disappointment to Mr S, I think the award of £250 recommended by the Investigator, which Estate has agreed to pay, is fair in the circumstances.

### **My final decision**

I uphold this complaint and require Estate Capital Financial Management Limited to pay Mr S a sum of £250 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 January 2024.

Andy Burlinson  
**Ombudsman**