DRN-4521841

The complaint

Mr G complains that Financial Solutions Wales Ltd (FSW) unsuitably advised him to transfer his pension benefits out of the British Steel Pension Scheme (BSPS) in January 2018. The proceeds of the transfer were invested within a Self-Invested Personal Pension (SIPP) in land used in conjunction with a family business which Mr G ran alongside his full-time employment. Specifically, he complains that:

- He was 'prompted' into giving 'reasons' that would improve the case for transferring his pension – he's subsequently said these included the purchase of land.
- FSW didn't fully explain how the resulting SIPP would meet his needs in retirement, or its costs.
- The land rental payments have remained invested in the SIPP's bank account earning 0.01% interest with no explanation of how this would be used to generate an income.
- There was no discussion about what his employer's new defined contribution (DC) workplace pension would provide at retirement age.
- He was rushed into making a decision against a deadline with limited meeting time.

FSW originally argued that the nature of the complaint precluded Mr G from being an eligible complainant under the regulator's Dispute Resolution ('DISP') rule 2.7.3R which governs the operation of the Financial Ombudsman Service. It said this was because Mr G wasn't acting *"wholly or mainly outside that individual's trade, business, craft or profession"* in bringing the complaint.

What happened

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 pension benefits. One of these was a transfer to the 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 G's employer would be set up – the BSPS 2. This was intended to provide benefits that were somewhere between the PPF and BSPS in value.

On 13 October 2017 the BSPS had quoted Mr G a transfer value of £374,992 (including the value of his Additional Voluntary Contributions). This was said to incorporate a 5% reduction due to underfunding in the scheme (which FSW's transfer analysis noted was 98% funded). This was a lessening of the reduction than had applied to earlier transfer values.

In the scheme's "Time To Choose" exercise, members were given the option of transferring out of the BSPS to avoid their benefits going into the PPF, or the further option of transferring to BSPS 2. Mr G was made aware that if he wanted to transfer out, he would need to do so before 28 March 2018 – because on that date it was expected to enter the PPF assessment period.

Mr G has told this service that he didn't really want to 'pull out' of the BSPS, and left it later than other colleagues to consider doing so. He described a 'flood' of people including senior management leaving the scheme, and that made him more worried. He was sceptical of the first two advising firms he met, and found that FSW was the most amenable. But to a certain extent he felt he was 'stuck' with FSW as he had run out of time to look elsewhere.

On 12 November 2017 FSW recorded meeting with Mr G and handing him its client agreement, which he later signed on 20 December.

On 16 November Mr G completed a questionnaire including some brief fact-finding information and asking about his attitude towards making a transfer and the subsequent investment. His answers were then entered on to FSW's computer system on 26 November and the following day FSW sent him an engagement letter. Between 27 November and 13 December 2017, FSW expanded the information it collected on its fact find:

- Mr G and his wife were both age 38, employed, and in good health
- They had two dependent children
- Mrs G had her own defined benefit (DB) pension worth £182,000 from ongoing local authority employment
- Mr G had started to accrue a small DC pension (worth £9,000) when the BSPS closed to future accrual
- They ran a business alongside their employment, but reinvested any profit back into the business rather than taking an income
- They would need £1,500 per month in retirement (in 2017 terms)
- Their £320,000 main residence was subject to a £196,000 mortgage, and they owed £19,500 on another loan
- They held £100,000 of joint life assurance
- They also owned the main share of the family business property where they lived, worth £700,000
- They had a rental property worth £110,000 – and £9,000 in an ISA
- They were expecting inheritances of other property in future years totalling £600,000

Mr G has explained to this service that he was born into the family business – and the house he lives in (which he would never want to leave) was attached to his existing land via a restrictive clause. Despite this restriction meaning he had no ability to downsize to release the value of this land to support him and his wife in retirement, he recalls that the adviser told him the value of this asset improved the case for transferring from BSPS – because it would show he had the capacity to take risk.

The fact find expressed Mr G's "medium" attitude to risk in terms of the typical spread of assets (cash, bonds, property and shares) someone might invest in. But it went on to suggest Mr G's motivation was to use the resulting funds from a SIPP transfer to make further investment in land. Mr G says land came up as an investment because he expressed his reluctance to invest in stocks and shares. He'd said the same to the previous firms he'd met and they had explained he could invest in property. At around the same time he noticed the land near to his property coming up for sale. And he recalls FSW saying that investing in this manner would better support the case for transferring.

Mr G signed the fact find on 22 January 2018 – the same day as FSW issued its suitability report. This report recommended he transfer for the combined reasons of: greater flexibility with the timing of income and available death benefits; capitalising on the recent higher transfer value; and securing the purchase of the land Mr G had found for sale. It was supported by a transfer value analysis, which FSW carried out and documented on 13 December 2017, and a cash flow planning report which it generated on 8 January 2018.

The transfer was made shortly afterwards into a SIPP, of which Mr G acted as co-trustee. The SIPP's purchase of the land was completed on 1 April 2018 at a cost of £345,000, with £6,750 paid in stamp duty, and rent receivable from Mr G's business (which had use of the land) of £2,850pa. At 37 acres this represented almost a 50% increase on Mr G's existing land, although the business' subsequent accounts suggest it had a comparatively modest impact on any profits.

In June 2021 Mr G raised the complaint set out above with FSW. Although FSW didn't agree with most of Mr G's complaint, it offered him compensation totalling £1,520 in respect of the SIPP fees not being explained properly at the outset, and the upset that had caused. Mr G didn't accept this offer and referred his complaint to our service.

When we contacted FSW for its file, it told us that it believed Mr G wasn't a consumer, which it considered he would need to be in order to be an eligible complainant under DISP 2.7.3R. FSW referred to the High Court's judgment in *R (on the application of Bluefin Insurance Services) v Financial Ombudsman Service Ltd [2014] EWHC 3413*. It concluded from that case that we needed to look at the circumstances of the complaint, and the underlying facts which caused it, to consider whether Mr G's complaint related to his trade, business, craft or profession. That was because if Mr G was acting wholly or mainly for the purposes of his trade, business, craft or profession, he didn't meet the definition of a consumer under the regulator's glossary to the above rules.

FSW explained that whilst the loss of benefits previously held in the final salary pension is a personal loss for Mr G, previous ombudsman decisions have concluded that this alone is not enough to say Mr G wouldn't be acting outside of his trade, business or profession. It considered the transactions were part of the objective to take over the premises being sold by a neighbouring property, which would allow [Mr G] to continue and enhance the profits within his existing trade as part of the family business. Its view was that the advice was primarily about facilitating [Mr G's] objective of operating a business outside of his needs for his BSPS benefits.

However, Mr G told our investigator that he considered his trade was the full-time job he'd had for the last 25 years. He had gone to FSW for pension advice, not advice on how to invest in land – but this had resulted in FSW advising him to make this investment. In any event he was complaining about the advice to transfer from BSPS specifically, as this had itself caused him losses. He also considered his "small" family business was a "joke" as after the expenses it incurred it didn't make much, if any profit. Mr G also sought a legal opinion which argued that he was motivated to seek advice from FSW by an announcement that the BSPS was being restructured – and that formed the key part of the advice he received. The opinion argued that irrespective of the resulting investment, Mr G should have been advised to remain in the BSPS in any event.

I issued a Provisional Decision on this complaint on 22 November 2023. In summary, I concluded that Mr G was an eligible complainant, because he met the definition of a consumer. In short, this was because he had shown a weighting towards acting in a personal capacity when bringing the complaint, so that he was acting 'wholly or mainly' outside his trade, business, craft or profession.

I won't repeat my reasoning in full here, because FSW has since responded saying it's prepared to accept the Provisional Decision. However, I noted that:

- Mr G hadn't alleged that FSW advised, or failed to advise, him on the benefits that buying land would potentially bring from the perspective of his family business (nor did it give such advice). And he didn't express any concerns that the transfer has adversely impacted that business.
- The aim of investing in the land wasn't the original reason Mr G approached FSW: the precarious position of the BSPS was, and this was reflected in FSW's engagement letter. This other aim was added during the advice process, and was seen as a way of investing the fund; a step that was necessitated by having first transferred out of the scheme to avoid it falling into the PPF.
- Although this 'business' aim was subsequently elevated to one of Mr G's main objectives, it was done from the point of view of Mr G seeking to avoid the investment-related uncertainty that he would largely only be exposed to by leaving the BSPS in the first place.
- Mr G wished to buy the land in terms of its investment characteristics, rather than its potential to improve the finances of his business operation. And the tail was now wagging the dog as Mr G had agreed with a third party to buy the land – making it a priority in terms of the timing of the transfer.
- FSW's suitability report provided a disclaimer that it *hadn't* advised Mr G on the prospects for his family business. It was simply gathering information from him on his anticipated future income, as part of the financial circumstances it needed to take into account when advising him as an individual.
- FSW gave generic risk warnings about investing in land, and said that it hadn't undertaken due diligence on the particular property Mr G was buying.

I then proceeded to uphold the complaint on its merits. As FSW also indicated it would accept this outcome and proceed to loss assessment, I'll repeat my findings on the merits of the complaint below.

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 Businesses ('PRIN') and the Conduct of Business 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.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of FSW's actions here.

Principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
Principle 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, FSW should have only considered a transfer if it could clearly demonstrate on contemporaneous evidence that the transfer was in Mr G's best interests.

At the time this advice was given, a key starting point would have been the critical yield calculated in FSW's transfer value analysis – and what that meant for the likelihood of Mr G bettering the future income from the PPF, or BSPS 2, by transferring to a SIPP. This was based on transferring to a 'generic pension plan' which had a reduction in yield due to product charges of 0%pa. The adviser's charges on top of this were proposed to be about 1.8% of the transfer value initially and 0.5% per year thereafter.

I note that Mr G cancelled the ongoing advice service, which was intended for a portfolio proposition he ultimately didn't invest in (and as a result, this is likely what caused the rental income his SIPP received not to be further invested). But as FSW explained at the time, it would ordinarily recommend such a portfolio of broadly medium risk investments to mitigate an overconcentration risk. In my experience such a portfolio was unlikely to have been obtainable with annual charges lower than about 1%pa. Whilst the impact of the initial advice charge for the length of time Mr G was going to invest was negligible, this does mean that the following critical yields which FSW calculated should realistically have been about 1% higher:

	For BSPS itself	For PPF
To age 65	3.27%	3.25%
To age 57	3.94%	4.31%

These figures were if Mr G took tax-free cash plus a reduced pension, and reflect that age 57 would be the new normal minimum pension age by the time he reached that point. So they showed the range of critical yields if Mr G sought to retire somewhat earlier than age 65 – with the PPF providing more favourable early retirement reductions than the BSPS. Although they weren't calculated, in my experience the figures for BSPS 2 would have come some way between the BSPS and PPF figures.

So, in order to viably transfer into investments appropriate to a medium attitude to risk and have them reviewed on an ongoing basis I consider Mr G would need to have been looking to make returns (before charges) of materially more than 4.25%pa – and up to a percent more than that if he had firm plans to retire early. I say materially more, because there would have been no point Mr G transferring and accepting all the investment risk instead of the PPF or BSPS2, in order to stand still in relation to the benefits those schemes provided. He would reasonably expect to achieve materially greater benefits.

Shortly before this advice was given (as of September 2017) the Financial Ombudsman Service had still been publishing discount rates for use in loss assessments where complaints about past pension transfers were being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given, if Mr G went on to buy an annuity at retirement.

The relevant rate here for an investment term of 26 years to age 65 was 4.6%, and for an 18 year term to age 57 it was 4.4%. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. FSW also assessed Mr G as having a medium attitude to risk, which would have put him broadly in the area of achieving the middle projection rate.

All this means that, providing Mr G had a medium risk outlook – which I'll consider next – the critical yield was potentially achievable for retirement at the normal retirement age of 65. But Mr G would start to risk having a greater downside than a benefit of transferring, if he wanted to retire at a significantly earlier age and buy an annuity.

The likelihood of Mr G retiring early, when that at the earliest could be in nearly 20 years' time, was somewhat uncertain in any event. FSW's data capture form actually said that Mr and Mrs G expected to retire at 65. On the questionnaires he completed for FSW, he didn't rate the availability of early retirement particularly highly. So, I think the outcome of this complaint depends more on Mr G's attitude to risk.

FSW assessed Mr G as having a medium attitude to risk using a psychometric questionnaire which he completed. Broadly, on this form he *agreed* he was willing to take risks to get a good return; it was necessary to take a *high* risk to get a *high* return; and he would accept potential losses for long-term growth. The only statement he *disagreed* with was that he took lower risks than the average person.

Further, Mr G said he was *indifferent* to being more concerned about losses than gains; to having his returns guaranteed; to having financial uncertainty; or any preference to keep money in a bank account. But he was also indifferent to taking risks being important to him, or to investing a large proportion in a high-risk investment.

Mr G also said he had a reasonable knowledge of investments, having bought equity ISAs, shares, gilts or corporate bonds and structured investment products before – and having taken an active interest in them he'd been comfortable with how they fluctuated in value. He wanted to invest for more than ten years and could accept losses to the portfolio of between 10-25%, as he had other savings and investments which could meet his needs.

On balance, whilst this type of questionnaire is only as good as the weightings used, I can see why FSW broadly accepted from these answers that Mr G was a medium risk investor. I couldn't fairly conclude he was low risk given some of these answers. And I think Mr G did have the capacity to take some risk even though the BSPS was a key part of his retirement provision: he had membership of a new DC scheme with significant employer contributions on an ongoing basis, and his wife had her own significant DB pension. Although I understand Mr G's point about their inability to downsize their existing property, I note they also owned a rental property and were expecting further inheritances.

Crucially however, Mr G gave FSW information separately to the answers on this questionnaire which suggested he *wasn't* in fact comfortable with investing on the stock market – something he'd need to do to some extent to achieve the sorts of returns at around the mid projection rate to make this sort of transfer viable. FSW recorded that Mr G was 'far more confident' with the sorts of returns he knew he could get from land, than investing in the stock market – which he saw as little different to the uncertainty he was already experiencing with his BSPS pension. Mr G seemed to prefer having a different problem of ending up with land in his SIPP that he'd likely find harder to sell than if he owned individual shares or funds, because he was more confident in knowing how to go about disposing of the land if he needed to do so.

It looks to me that Mr G was potentially conflating the volatility of owning land, which he might have experienced as being low, with the risk that posed to his pension pot when that was the sole investment in the portfolio. I do of course accept that FSW tried to caution him against thinking in this way. But it was ultimately unsuccessful in persuading him that it was better to invest across a range of assets, which I think would have been acceptable at his recorded attitude to risk.

Crucially in my view for this complaint, Mr G's unwillingness to accept risks linked to the stock market, because he viewed the land investment as lower risk, means that he wasn't on any objective basis a medium risk investor in respect of making this pension transfer. I appreciate that FSW carried out cashflow modelling showing how the income from the transfer could be made to last for the rest of his life. However this was based on income drawdown, which to my mind would also require a greater acceptance of risk than Mr G was reasonably prepared to take. Indeed my view is that Mr G could ill afford to forego the guarantees of BSPS 2 (or the PPF), if he wasn't prepared to take the risk of investing on the stock market. And I'm not persuaded that the critical yield to buy an annuity (which would replicate the guarantees Mr G was giving) would have been achievable.

I've considered what FSW recorded about Mr G saying he expected the land to appreciate in value by 6%pa. Notably this would provide a sufficient return to achieve the critical yield, before any rental income was even taken into account. So, was it reasonable for FSW to accept that figure and proceed to give its advice on that basis?

That's certainly what FSW told Mr G it had done at the time: it said*, "I have relied on the information you provided concerning the prospective returns available from a purchase of…property in support of your existing business."* And *"I have made no specific recommendation as regards the investment into…property".* Without taking into consideration the wider regulatory rules that applied to FSW's advice, I can see how this might lead to an argument that FSW at no point claimed to be the expert in making such land investments and reasonably relied on Mr G's greater level of knowledge and experience in this field.

However the difficulty for FSW here is that I can't ignore the regulator's rules which prevented it from restricting the terms of its advice in this way. COBS 9.2.2R requires the business to obtain the information necessary about its client to have a reasonable basis for believing its recommendation *'meets his investment objective*s', that the client is able to *'bear any related investment risks'* and that he had *'the necessary experience and knowledge'* to understand those risks. And those risks included foregoing the guarantees in the DB scheme, which wasn't something Mr G had experience of before – they weren't just confined to the risks of investing in land.

It means that FSW couldn't just accept without question Mr G's preference of making an unregulated investment in land. If it didn't consider this to be suitable in Mr G's circumstances, it should have said so. And I think here there was an evident conflict between Mr G's experience and knowledge of investing in land, and his ability to bear those risks in the context of foregoing the guarantees on a large part of his pension provision. Notably, FSW recognised that conflict at the time which is why it cautioned Mr G about the investment he was making.

COBS 2.1.2R also sets out that a business must not seek to exclude or restrict any duty or liability it may have to a client under the regulatory system. So, FSW couldn't avoid that obligation simply by informing Mr G in its suitability letter that it hadn't done due diligence into the land he was proposing to buy, and that its recommendation excluded considerations relevant to that.

That doesn't mean I'm expecting FSW to have analysed the profitability of the land, and how Mr G's business was going to make use of that land – in such a way that it was then giving Mr G the advice in a business capacity. As I've already explained, Mr G never sought that advice from FSW and it wasn't necessary for FSW to advise Mr G from the perspective of his business. I'm also not expecting an adviser trained in DB transfers and more mainstream investments to have had detailed knowledge of the market for such land.

What I'm expecting FSW to have done is to point out the obvious pitfalls of making an investment which was unregulated and illiquid, and would cause Mr G to be overexposed to market sentiment in a single asset class. It would prove difficult to realise value from the land in stages when cash was needed during retirement, with Mr G's relatively low expectation of a 2%pa rental return giving insufficient liquidity. FSW should have reiterated the objective view that ought to be taken of this as a high-risk investment; rather than Mr G's tendency to view it as low risk, potentially from a past experience of low volatility. An adverse movement or flattening out in land prices would have significantly affected the viability of the transfer.

I need to be mindful that FSW did say a lot of these things to Mr G, with one notable exception: it didn't amend its recommendation that he *should make* the pension transfer. It tailored its advice around his preference for a land investment, provided risk warnings around his choice of investment, and emphasized that the wider portfolio it would ordinarily recommend would better mitigate those risks. But it didn't advise Mr G against making the pension transfer because he was unwilling to invest as it ordinarily recommended.

FSW needed to address Mr G's choice of investment as part of the advice under COBS 9.2.2R, and as that investment represented a higher risk than he should reasonably have been expected to take, my view is that it should firmly have advised him not to make this transfer. I say this in particular as none of the other reasons given for transferring to a SIPP at that particular time were in my view compelling.

As FSW acknowledged at the time, Mr G could wait until nearer the earliest age at which he was permitted to draw benefits, which was just under 20 years away, before deciding to give up defined benefits in favour of more flexible options. So I fail to follow why it dismissed the option of a transfer to BSPS 2, when this scheme would likely provide superior benefits to the PPF and, if the circumstances warranted, would still provide for an option to transfer out.

The likelihood of Mr G retiring early, when that would be in nearly 20 years' time, was somewhat uncertain in any event. FSW's data capture form actually said that Mr and Mrs G expected to retire at 65. On the questionnaires he completed for FSW, he didn't rate the availability of early retirement or providing potentially greater sums to dependants the most highly. The BSPS 2 offered death benefits, by way of a spouse's pension, that could have been very valuable to his family in the event of his death. While the transfer value would no doubt have appeared attractive as a potential lump sum on his death before retirement, it could also have been provided fairly cheaply via a life insurance policy from Mr G's disposable income, without subjecting his retirement income to unnecessary risk.

The original driver for Mr G seeking this advice, as recorded at the time and borne out in his testimony, was concerns about the future of the BSPS and the preference of having control over the funds in light of that. He may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was FSW's role to objectively address those concerns, and BSPS 2 (which would itself be protected by the PPF) would provide Mr G with a guaranteed income that was to a large degree insulated from the solvency of his employer.

Mr G didn't have the risk tolerance to transfer to a SIPP and make a high risk investment in land in order for such a transfer to pay off – because of the corresponding potential for losses. I think he could ill afford to lose a significant part of his retirement provision – and would have become as concerned about such a loss as he evidently was about investing in the stock market at that time, should it have happened. I don't think FSW should have accepted the premise that all of Mr and Mrs G's retirement needs could be met by starting to draw an income from the family business rather than reinvesting into it in future: that was also a higher-risk source of income.

FSW should have explained to Mr G that because all of his benefits were earned after 1997, his pension increases would be protected and he would lose relatively little should even BSPS 2 default into the PPF. He would even have potentially better benefits on early retirement, as the critical yields show. So, transferring into BSPS 2 (protected if necessary by the PPF) shouldn't have been as concerning as Mr G might have thought. And in my view, it was FSW's role to advise him to do that as it was in his best interests.

Would Mr G have followed the suitable advice to transfer to BSPS 2?

Mr G has told us that he was concerned about the number of other colleagues transferring out of the BSPS altogether. That was what prompted him to take this advice from FSW. But at the same time, he was cautious about transferring. FSW was the third adviser he'd met and he'd spent his time weighing up whether he should 'follow the herd'. That, to me, doesn't suggest he was determined to transfer. From what I gather, the previous two advisers had recommended transfers but he hadn't been confident in their advice. With all the advisers he met, he hadn't felt comfortable enough to invest through them in the stock market – which I've noted above he'd have reasonably needed to do.

Despite Mr G's comments on FSW's questionnaire that he'd taken an interest in his past ISA investment, I can't see that he had a keen enough interest in or the knowledge to be able to manage a pension fund of this size without the ongoing input of an adviser. Indeed, that was what FSW's ongoing fee was intended for. Mr G continued to have sufficient doubt in how a balanced portfolio would work for him which led him to retreat to the comfort of an investment he felt he could understand better.

I'm not persuaded as a result that Mr G's concerns about his employer, or preferences for land investments over the stock market, would genuinely still have been driving this transfer if FSW had reassured him that he would be doing the right thing by moving over to BSPS 2. In my view Mr G has demonstrated in his testimony that he wasn't blindly following what other colleagues were doing. He was reliant on advice, and because FSW's advice remained to transfer, FSW fitted that advice around his preferred investment.

I think Mr G did have the attitude to and capacity to take some risk, but crucially not the risk of placing all his SIPP in a single land investment, which is all he was prepared to do. And I'm satisfied in any event that this wasn't what had prompted Mr G to seek advice: his concerns about the BSPS and PPF did, and FSW should have explained to him that these weren't substantially justified. It should have advised him not to transfer, and on balance I'm satisfied that Mr G would then have followed that advice – and moved to BSPS 2.

Both FSW and Mr G agreed with these findings in my Provisional Decision, but had comments to make on how redress should be calculated. I'll address those comments in the section below.

Putting things right

A fair and reasonable outcome would be for FSW to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr G would most likely have opted to join BSPS 2 if suitable advice had been given.

FSW must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

FSW should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr G and our Service upon completion of the calculation together with supporting evidence of what FSW based the inputs into the calculator on.

For clarity, Mr G has not yet retired, and is far from having any concrete plans to do so (or be able to do so) at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once FSW is notified that Mr G accepts my Final Decision.

In my Provisional Decision I gave consideration to whether the redress FSW paid should include the lack of growth obtained on the rental income received by the SIPP, as this is also part of Mr G's complaint. I initially said that by cancelling the ongoing advice service, Mr G effectively prevented FSW from investing those receipts for growth.

I also noted that the rent of £2,850pa paid by Mr G's family business was only 0.8% of the value of the land, rather than the 2% Mr G believed at the time he could get. As Mr G controlled the land through his SIPP, I provisionally took the view that this return was within his control – and it appeared (without further explanation) that Mr G might have benefited, indirectly through his business, from a saving in rent.

I was originally minded to allow FSW to notionally assume that Mr G's SIPP received rental income at 2%pa – and that this was then invested, after any SIPP charges payable, in line with the FTSE UK Private Investors Income Total Return Index (reflecting the sorts of returns that could have been achieved if Mr G had taken ongoing advice).

However, Mr G responded to these comments following my Provisional Decision. His belief that the rental income would be 2% had been an estimate from limited knowledge. He made the reasonable point, which I now accept, that the rental value is worked out by a qualified RICS valuer for the SIPP – and he had no input into that valuation.

Mr G also added that the reason for the cancellation of FSW's ongoing advice was because each year he would be paying £1,875 in ongoing advice charges plus £550 SIPP fees, leaving a total of £425 left from the yearly rental. From this, other incidental costs (which he doesn't feel FSW warned him sufficiently about) would also have been incurred, such as a two-yearly property valuation and rental agreements, resulting in no money left to invest.

I subsequently wrote to FSW agreeing with Mr G that it was problematic that FSW's ongoing fee was based on the whole value of the SIPP when most of this was tied up in land. FSW had already said it wasn't going to be responsible for Mr G's choice of land as an investment, so I could see his point of view that the charge didn't represent good value for money for him. And without paying the charge, it wouldn't have been straightforward for Mr G to determine how to invest the rental income proceeds.

So in summary, I no longer consider it will be reasonable to assume, as part of redress, that any more rental income was received into the SIPP than was actually paid – or that any additional investment return should be added to that income. The actual amount sitting in the SIPP bank account – but with any personal contributions Mr G made into the SIPP that don't relate to the BSPS transfer or rental income stripped out of it – should be used as the value for the non-land part of Mr G's SIPP.

In response to my Provisional Decision, Mr G has asked how the land held in the SIPP should be valued. I provided the link to the FCA's guidance above. DISP App 4.5.6G(1a) says the following:

> *"where the investment is illiquid or unquoted but there is a realistic probability of receiving value from an asset, obtain the most recent historical valuation and, unless there is clear evidence that the value has otherwise materially changed, increase it in line with the consumer price index from the date of the historical valuation to the valuation date;"*

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, FSW should:

- calculate and offer Mr G redress as a cash lump sum payment,
- explain to Mr G before starting the redress calculation that:
  - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest redress prudently is to use it to augment his SIPP
- offer to calculate how much of any redress Mr G receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr G accepts FSW's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr G for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr G's end of year tax position.

In line with DISP App 4, FSW may make a notional deduction to cash lump sum payments to take account of tax Mr G would otherwise pay on income from his pension during retirement. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr G's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Mr G has asked in response to my Provisional Decision whether this calculation will take into account the ongoing costs of managing and valuing the land. It will take into account costs incurred to date, as they will have reduced the valuation of the SIPP bank account. But in terms of the future, the FCA sets the assumption for future charges in the SIPP at 0.75%pa of its total value overall (plus an allowance for ongoing advice charges at 0.5%pa). I'm not in a position to change this assumption, but I expect it will likely cover the costs Mr G mentions.

I'm also aware that FSW has embarked on preliminary calculations and thinks it can demonstrate that Mr G has experienced a gain on his pension transfer. It isn't unusual for gains to be identified in these calculations at the moment, as the economic assumptions are currently favourable. However, a key part of FSW's calculation will be what value is used for the land owned by Mr G's SIPP, and I'm not aware that FSW has been in touch with Mr G to establish the most recent valuation – to which (unless there is clear evidence that the value has otherwise materially changed) an inflationary increase would then be added in line with DISP App 4.5.6G.

Mr G mentions that there have been two-yearly valuations of the land carried out for rental purposes, several of which would have occurred since 2018. I don't know the results of these, but it's obviously possible that the value of the land might have reduced which could materially affect the calculation which FSW believes will be a 'gain'. So, prior to finalising its calculation FSW should contact Mr G (or the SIPP provider directly, with Mr G's authority) to establish the latest valuation used for the land in the SIPP – and apply DISP App 4.5.6G to that valuation.

Finally, in view of the possibility that its calculation may result in a gain, FSW has also said it's prepared to make a payment of £250 to Mr G for the distress and inconvenience caused to him by its advice, in acknowledgement of the concerns he raised. This amount sits in the range of awards we would typically make where we consider that a consumer has experienced more than a minimal amount of frustration and this has required a reasonable effort to sort out.

Allowing for the fact that if there is any financial loss this will be addressed through the rest of my award, I think FSW has made a fair and reasonable offer to additionally compensate Mr G for the distress and inconvenience caused. As Mr G has said in response to the Provisional Decision (and whether or not he is found to have suffered a loss), he is still unable to turn the clock back and restore his benefits to BSPS 2. I wouldn't have awarded more than this amount, so I'm confirming as part of this Final Decision that FSW should also pay this sum of £250 to Mr G.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

<u>Determination and money award:</u> I uphold this complaint and require Financial Solutions Wales Ltd to pay Mr G the compensation amount as set out in the steps above, including £250 for the distress and inconvenience suffered, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Financial Solutions Wales Ltd pays Mr G the balance.

If Mr G accepts my Final Decision, the money award becomes binding on Financial Solutions Wales Ltd. My recommendation would not be binding. Further, it's unlikely that Mr G can accept my Final Decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept my Final Decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 January 2024.

Gideon Moore
Ombudsman