

## **The complaint**

Mr P complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

Tuto Money Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to Tuto.

## **What happened**

In March 2016, Mr P'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 P's employer would be set up – the BSPS2.

In around 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 P 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 Tuto which is responsible for providing the pension advice. Information gathered about his circumstances in November 2017 were broadly as follows:

- Mr P was 50 years old, divorced and in good health. He owned a property with a mortgage of around 40% of his home's current value.
- Mr P earned around £32,600 per year. He had modest debts. He held £2,000 in savings but no investments outside a pension.
- The cash equivalent transfer value (CETV) of Mr P's BSPS was approximately £406,071. The normal retirement age (NRA) was 65.
- Mr P had also recently joined the TATA defined contribution (DC) pension scheme which had come about as a consequence of the BSPS closing to new contributions.

Tuto set out its advice in a suitability report in November 2017. In this it advised Mr P to transfer out of the BSPS and invest the funds in a type of personal pension arrangement. Tuto said this would allow Mr P to achieve his objectives. Mr P accepted this advice and so transferred out several weeks later. In early 2022, he complained to Tuto about its advice,

saying he shouldn't have been advised to transfer out to a personal pension. However, Tuto didn't uphold his complaint.

Mr P later referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld.

Tuto still said it hadn't done anything wrong but agreed to carry out a redress calculation to establish whether Mr P had incurred any loss as a result of transferring. It used a software package it says was designed for such situations and said that this showed Mr P hadn't lost any money. Put another way, Tuto said that no redress was due to Mr P. But it said it would pay Mr P £300 for distress and inconvenience as recommended by the Investigator. Mr P didn't agree with this and asked for an ombudsman's final decision.

Since carrying out the above redress calculation in April 2023 a BPS-specific calculator has been established by the Financial Conduct Authority ('FCA') which is what I would expect Tuto to use in the circumstances. The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF had they not transferred out. So Tuto needs to use this calculator to find out if any redress is due.

As the complaint hasn't thus far been resolved informally, it's time for me to make 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.

I've also 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'). 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 applicable rules, regulations and requirements*

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 Tuto's actions here.

- *PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*
- *PRIN 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.

I have further considered that the regulator, the FCA, states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Tuto should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests.

I've used all the information we have to consider whether transferring away from the BPS to a personal pension was in Mr P's best interests. I have also carefully considered the final response letter from Tuto. I've carefully considered too, the various other responses made to the points contained within our Investigator's view. And I've taken into account that the BPS-calculator doesn't yet appear to have been used to establish if redress is due.

Having done all this, I'm upholding Mr P's complaint.

### Why I'm upholding the complaint

Because I now know Tuto has agreed to carry out a loss calculation to establish the redress due (if there is any), I therefore don't see the need to address the suitability of Tuto's advice to Mr P in quite the same detail as I would normally.

However, I'd like to be clear that I've read everything we have with great care. And I've considered everything both parties have said and presented in evidence. Our Investigator comprehensively set out why they thought we should uphold Mr P's complaint and I fully agree with their conclusions.

Tuto's transfer advice was unsuitable for the following reasons:

- Tuto said that at the age of 65, which in this case was Mr P's NRA, the critical yield (the investment return required to replicate the benefits available to him through the BPS2) was 8.22% if he was taking his full pension without a tax-free lump sum. If drawing a reduced pension and a tax-free lump sum, the critical yield was 6.11%. So, I think this was already showing that by transferring away from the DB scheme, Mr P was unlikely to be able to grow his pension to a degree which made transferring financially viable.
- Tuto said Mr P wanted to retire early so it calculated critical yields for the age of 58. These were higher – at 13.02% and 8.8% respectively. However, there's no compelling evidence that Mr P would retire early. 58 was still eight years away for him and he was described as being in good health. There were no concrete plans for an early retirement.
- The relevant discount rate closest to when the advice was given which I can refer to was only 4.2% per year for just over 14 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. For the age of 58, the discount rate was only 3.4%.
- I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. Tuto categorised Mr P as having a "medium high" attitude to risk. In my view this was too high for someone who had no apparent investment experience to call upon. I've also considered the higher costs associated with a personal pension and that Mr P's limited knowledge of investing would have probably required on-going support and management from a professional adviser. I think these additional costs would have reduced potential growth even further. So, everything I've seen shows – that when viewed from the point of advice – Mr P would likely receive lower pension benefits in the longer term as a result of transferring away from the DB scheme.

- I've noted too, that the transfer analysis said that in order to buy an annuity to provide benefits of equal value to those estimated by the existing DB scheme, the estimated fund required would be £838,300. Even to purchase an annuity to provide benefits of equal value to the estimated benefits of his existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the analysis said the fund required would still be around £485,704. In my view, these figures provide a revealing window into the value of the scheme Mr P was being advised to give up.
- I've also considered some projections Tuto used to help show that if he transferred out to a personal plan, the funds could last Mr P well into retirement. It's fair to say these were not comparing like-with-like. What Tuto was showing Mr P were comparisons with plans which lacked the guarantees and benefits of a DB scheme. These also ran out at certain points, whilst his DB pension was for life.
- I've also seen nothing that showed Mr P required changing how his retirement benefits ought to be paid. He already had a new and more flexible DC pension with his existing job. This DC pension was being significantly contributed towards by both Mr P and his employer. There's no reason why by retirement this DC pension couldn't have contained a significant sum.
- This means I've seen nothing explaining why Mr P wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr P could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of reasonable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BPS2 and the scheme was still underpinned by the PPF. On the other hand, he had another DC pension. So, if Mr P ever found he needed any flexibility, then he'd be able to use the latter, rather than transferring away from the former.
- I've also seen no evidence that Mr P had either the capacity or desire to exercise control over his funds. I think he would have found the complexity, scale and responsibility of managing over £400,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr P would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.
- Death benefits (1) - I think the adviser told Mr P that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr P. But this needed carefully explaining; the priority here was to advise him about what was best for his retirement provisions. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr P had lived a long life there could be nothing left at all in his personal pension plan. It also doesn't appear that Tuto took into account the fact that Mr P could have nominated a beneficiary of any funds remaining in his other DC scheme. He could also have taken out a modest 'term' life insurance policy if he wanted to leave a lump-sum legacy to his adult daughter or partner. So, to this end, Mr P already had options ensuring part of his pension wouldn't 'die with him'.
- Death benefits (2) – Mr P was not married at the time but was already in another relationship with an established partner. In this context, the guaranteed spouse's

benefits found within the BSPS2 may well have been relevant to Mr P's situation at a future point in time.

- It's clear that Mr P, like many employees of his company, was concerned about his pension. However, even if there was a chance the BSPS2 wouldn't go ahead, I think that Tuto should have reassured Mr P that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr P through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out.

### Summary

I don't think the advice given to Mr P was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr P was likely to obtain lower retirement benefits. Flexibility was not defined and in my view it was no more than a 'stock' objective used to help justify the transfer. The critical yield implied transferring for financial reasons wasn't viable and the adviser failed to explain this properly. I don't think there were any other particular reasons which would justify the transfer.

I think Tuto ought to have advised him against transferring out of his DB scheme for these reasons. I don't think it was in Mr P's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. On this basis, I think Tuto should have advised Mr P to opt into the BSPS2.

In light of the above, I think Tuto should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for Tuto's unsuitable advice. I consider Mr P would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Tuto should use the benefits offered by BSPS2 for comparison purposes.

Tuto 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>.

Tuto 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 P and the Financial Ombudsman Service upon completion of the calculation.

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 following receipt of notification of Mr P's acceptance of my final decision.

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

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P before starting the redress calculation that:
  - the 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 the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Tuto's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

Redress paid to Mr P as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Tuto may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr P'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.

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. This is a maximum amount and may not be relevant to Mr P's situation.

Our investigator recommended that Tuto should pay Mr P for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr P in his particular circumstances. This pension at the time represented almost all of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon Mr P. So I agree the recommended payment of £300 for distress and inconvenience. Tuto should pay Mr P this amount in addition to the redress I've set out above.

### **My final decision**

Determination and money award: I am upholding this complaint and I now direct Tuto Money Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Tuto Money Limited pays Mr P the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr P.

If Mr P accepts my final decision, the money award becomes binding on Tuto Money Limited.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision.

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

Michael Campbell  
**Ombudsman**