

The complaint

Mr P complains about advice he received to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss. The advice was given by a business which I understand AFH Independent Financial Services Limited trading as AFH Wealth Management is responsible for answering complaints about. So, for ease of reading this decision, I'll just refer to 'AFH' throughout.

Mr P is being represented by a third party but again for ease of reading this decision I'll largely refer to representations as being made by Mr P.

What happened

In March 2016, Mr P'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'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members of the BSPS 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 included 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. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

On 18 September 2017, the BSPS provided Mr P with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £375,358.67.

AFH says Mr P first met with it to discuss his BSPS pension on 25 September 2017. AFH completed a fact-find to gather information about his circumstances and objectives. Mr P was 49, in good health, single with one child. He was employed, he held savings of roughly £18,000 and had no recorded liabilities.

AFH recorded that Mr P hoped to retire at age 55 and expected to need an income of around £15,000 per year. He didn't have a recorded need to take a lump sum from the pension. The ability to retire early, control over his pension, the flexibility to draw income as he required and the option to pass the pension to his daughter as a lump sum if he were to pass away were said to be Mr P's priorities.

AFH also carried out an assessment of Mr P's attitude to risk. Its assessment deemed this to be 'adventurous'. But it said it agreed with Mr P that a 'low moderate' approach to risk was more appropriate.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them

the options to either stay in the BPS and move with it to the PPF, move to the BPS2 or transfer their BPS benefits elsewhere.

On 21 November 2017, AFH advised Mr P to transfer his pension benefits into a SIPP. The suitability report said the reasons for this recommendation were AFH thought Mr P's objectives could be best met through a pension with flexible drawdown features. It said this would enable Mr P to access the income he wanted without restriction and use his tax-free cash entitlement gradually. It would also give him the opportunity to leave a lump sum to his daughter and avoid the concerns of the pension potentially moving to the PPF. AFH was also to provide ongoing servicing of the SIPP, for a cost.

Mr P complained in 2022 to AFH as he didn't think the advice he'd received was suitable. AFH didn't uphold Mr P's complaint. It said the advice was based on Mr P's objectives and that he'd felt, at the time, achieving these was more important than the guarantees he'd given up. AFH also thought Mr P had been adequately warned about the risks involved.

Mr P referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. He thought Mr P was always unlikely to improve his pension benefits by transferring. And he didn't think Mr P needed to transfer to achieve his objective of retiring early – as this was allowed under the scheme and the investigator thought Mr P could still meet his income needs by doing so. He also didn't think the alternative death benefits meant a transfer was in Mr P's best interests. So, the investigator recommended that AFH compensate Mr P for any losses caused by the unsuitable advice and pay him £300 for the distress he'd incurred.

AFH didn't respond to the Investigator's opinion. So, we have assumed it did not agree.

Mr P's representatives agreed with the Investigator that the complaint should be upheld. But they said they didn't think making an overall 15% notional deduction from the compensation amount to account for income tax was fair as this didn't allow for ongoing charges that Mr P may incur. And they said they thought a much larger payment for distress should be made as Mr P has taken periods of leave from his work due to suffering with his mental health.

As agreement could not be reached, the complaint was referred to 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 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 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 AFH'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those given by the investigator.

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, AFH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

- AFH was required, by the regulator, to produce a transfer value analysis ('TVAS'). This included calculating critical yields which showed how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.
- The critical yield required to match the full pension the BPS2 would've provided him from age 65 was 7.86%. And to match the pension the BPS2 would've provided from 55, the age it was noted Mr P was interested in retiring at, the critical yield was 22.56%. But Mr P didn't have the option to remain in the BPS2 as it was. So, I understand AFH calculated the critical yields required to match the benefits the BPS2 and the PPF would've offered.
- For retiring at age 65, AFH has said the critical yield to match the full pension the BPS2 would've provided was 6.04%. And the critical yield to match the pension the PPF would've paid from 65 was 4.47%. The relevant critical yields to match the benefits the BPS2 and PPF would've paid from age 55 have been noted as 11.8% and 7.98% respectively.
- The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. The relevant discount rate if Mr P retired at age 65 was 4.3%. And for retiring at age 55, was 3.1%.
- I don't think it is likely that Mr P genuinely had an 'adventurous' attitude to risk with regard to this pension, given his level of experience and that it represented the majority of his retirement provisions. Which I think is supported by a lower attitude to risk being agreed upon following discussions with AFH. And given the agreed attitude to risk, the regulator's standard projection rates – which at the time were 2%, 5% and 8% for low medium and high rate returns respectively – and the discount rates, I think Mr P was always likely to receive benefits of a lower overall value than he'd have been entitled to under the PPF or the BPS2, by transferring. And this is particularly so, if retiring at age 55.

- And AFH has acknowledged this, noting, in response to the complaint, that it had said in the recommendation that based on the critical yields it was highly unlikely Mr P would be able to match the benefits of the DB scheme on the open market. And in nearly all circumstances he'd be unable to purchase equivalent benefits.
- AFH has said there were other reasons that Mr P was interested in transferring, which he thought were more important than the guarantees he was giving up. I'll go on to address these other reasons. But I'd also add, notwithstanding that Mr P doesn't seem to have had a great deal of relevant decision making experience about the management of a pension of this size and importance, that AFH's role wasn't that of wish fulfilment or to put in place what Mr P might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests.
- AFH says Mr P was interested in being able to retire early, from age 55, that he expected to need an income of £15,000 per year in retirement and so wanted flexibility in terms of how he could draw his pension benefits.
- Mr P could've taken benefits under the BPS2 or the PPF from age 55. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age. This reduction was not a penalty.
- AFH estimated that under the BPS2 Mr P could've taken a full pension from age 55 starting at £12,733 per year. Or he could've taken tax-free cash ('TFC') of £61,910 and a reduced starting pension of £9,286 per year. Or under the PPF he could've taken a full pension starting at £12,275 or TFC of £67,997 and a reduced pension starting at £10,236. It appears true that the starting annual pension amounts on their own would not have been sufficient to meet his expected income needs if he had retired at age 55. But the annual pension amounts would've escalated while in payment. And it was recorded that Mr P did not have any planned expenditure that required access to TFC. So, he could've drawn TFC under either the BPS2 or the PPF and retained this. And he could've used this TFC, and the £18,000 of savings he was recorded as having, to top up the income from the pension under either the BPS2 or the PPF to meet his expected income needs until he began receiving his state pension.
- And that was before even accounting for the fact that Mr P appears to have been a member of his employers new defined contribution pension, which he would've continued to build benefits in until he retired, and which could've been accessed flexibly to assist towards his income needs. So, I don't think he needed to transfer in order to retire early.
- And, in any event, Mr P was still several years away from when he could retire. I don't doubt that Mr P likely aspired to retire early. I think, when asked, most people would say they would like to do so. But, for the majority, early retirement means a significant drop in income. So, when it had come to it, he may've felt differently or opted not to retire early. And so, I think it was too soon for Mr P to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BPS2, because by joining it he would retain the option to transfer out at a later date if his circumstances required it.
- AFH says the lump sum death benefits afforded by a SIPP, and the option of being able to leave his pension to his daughter, appealed to Mr P. But AFH's priority should have been to advise Mr P about what was best for his retirement, not what was the

best vehicle to leave a legacy on his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. It would've been impacted by investment performance and would've been reduced by any income Mr P drew in his lifetime. Given this pension made up the majority of his pension provisions, Mr P was still relatively young and was recorded as being in good health, there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement into his old age. So, it may not have provided the legacy Mr P might've thought it would.
- If Mr P was concerned about leaving a legacy AFH ought to have explored insurance instead, which could have been considered on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. But I can't see that it properly considered this alternative.
- Overall, I don't think different death benefits available through a transfer meant it was in Mr P's best interests. And ultimately AFH should not have encouraged Mr P to prioritise the potential for alternative death benefits through a SIPP over his security in retirement.
- AFH said Mr P wished to break ties with his employer and take control of his pension. But I think Mr P's desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been on the understanding he was going to take ongoing advice about how his pension was invested. So, I don't think that this was a genuine objective for Mr P – it was simply a consequence of transferring away from his DB scheme.
- I don't doubt that Mr P was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But again, AFH's role was to give impartial, objective advice. Mr P's employer and pension scheme were not one and the same. And Mr P intended to continue in his job and was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.
- Mr P may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr P the option to transfer closer to retirement. But even if this hadn't happened, the PPF still provided Mr P with guaranteed income and the option of accessing his benefits early. Mr P was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr P's best interest to give up his DB benefits and transfer them to a personal pension.

AFH says that Mr P made an informed decision to transfer. And I can see that it did give him information about some of the risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr P to transfer. And I think he relied on that advice. If AFH, a professional adviser whose expertise he had sought out, had explained why it wasn't in his

best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr P received from AFH was unsuitable.

I think, had he received suitable advice not to transfer, Mr P would've opted into the BSPS2. He was still several years away from when he could retire. And although he was interested in retiring at age 55, his plans weren't confirmed. By opting into the BSPS2, Mr P would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Our Investigator recommended that AFH make a payment of £300 for the distress caused to Mr P. His representative has said that it thinks a significantly higher award should be made for the distress the advice has caused. It has said that Mr P has suffered with stress and his mental health since receiving advice, which necessitated some absences from work, which it has provided evidence of. And the representative said that this was because of the advice Mr P received to transfer his pension.

AFH advised Mr P about his pension in November 2017. He first raised concerns about the advice with AFH in February 2022, via his representative, after talking to it. I've seen evidence that, in the intervening period, Mr P remained a customer of AFH's and sought advice from it in relation to other financial matters, including a mortgage. In respect of the pension, AFH continued to provide annual updates to Mr P until at least 2021. The value of his pension seems to have increased during that time – with the summary provided in May 2021 putting it at over £411,000. And I can't see that Mr P indicated at any stage, up to the point he was in contact with his representative, that he had any concerns about the advice or service he'd received from AFH. 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.

The information his representative has provided however indicates that the absences from work it has referred to, began in early 2021, before he expressed any concerns about the advice or his pension. Taking all of this into account, I can't reasonably conclude that the advice he received was the only cause of stress Mr P has experienced.

I accept that Mr P has likely been worried to find, when he discussed matters with his representative, that the advice might not have been suitable for him. The advice related to Mr P's pension, which will be important for his longer-term financial planning. And given, what he's shared with us about the stress he was already experiencing, this is likely to have caused him further concern, likely above the level of frustration and annoyance he might usually experience on a day-to-day basis. But for the reasons I've already explained I think the award of £300 recommended by the Investigator is fair in the circumstances.

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 the unsuitable advice. I consider Mr P would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

AFH 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>.

AFH should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr P and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what AFH based the inputs into the calculator on.

For clarity, I understand Mr P has not yet retired. 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 following receipt of notification of Mr P's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, AFH 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 his personal 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 AFH's offer to calculate how much of his 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 his 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, AFH 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.

I've thought about Mr P's representative's point regarding the 15% deduction – they believe this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr P back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr P for the impact of the unsuitable advice he received.

AFH should also pay Mr P £300 for the distress and inconvenience the advice has caused him.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require AFH Independent Financial Services Limited, trading as AFH Wealth Management, to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that AFH Independent Financial Services Limited pays Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on AFH Independent Financial Services 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 5 December 2023.

Ben Stoker
Ombudsman