

## The complaint

Mrs W complained that she was given unsuitable advice to transfer her deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018. She says the advice was unsuitable for her and believes this has caused a financial loss.

Grove Pension Solutions Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "GPS".

## What happened

In March 2016, Mrs W'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 Mrs W's employer would be set up – the BSPS2.

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

Mrs W was concerned about what the announcement by her employer meant for the security of her preserved benefits in the BSPS. She was unsure what to do and was referred to GPS in December 2017. Information gathered about her circumstances and objectives at the time of the recommendation were broadly as follows:

- Mrs W was 46 years old and single. She had accrued several years' worth of service with BSPS.
- The cash equivalent transfer value (CETV) of Mrs W's BSPS was approximately £182,834. The normal retirement age (NRA) was 65.
- Mrs W was contributing to a new defined contribution (DC) pension scheme. This pension isn't the subject of any complaint.

GPS commenced its advice process in December 2017 and carried out a 'fact-find' exercise on 19 December. It set out its advice in a suitability report in early January 2018. In this GPS advised Mrs W to transfer out of the BSPS and invest the funds in a type of personal pension plan. GPS said this would allow Mrs W to achieve her objectives. Mrs W accepted this advice and so transferred out in 2018. In 2021 Mrs W complained to GPS about its

advice, saying she shouldn't have been advised to transfer out to a personal pension but GPS didn't uphold her complaint. However, it offered to settle the complaint with an offer which Mrs W declined to accept.

Mrs W then referred her complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said in May 2022 that it should be upheld. In response, GPS still said it hadn't done anything wrong and was acting on the financial objectives Mrs W had at the time. I've noted it asked for a number of extensions in the time allowed to reply formally to the Investigator's View. As of March 2023 GPS still hadn't accepted the Investigator's View in full.

However, on 18 July 2023 GPS said that in the interests of pragmatism it would "*abide by the Investigator's decision to conduct a redress calculation using the current FCA methodology*". GPS said it would also make a payment of £300 as recommended by the Investigator for the distress and inconvenience this matter has caused Mrs W. On 7 September 2023 GPS contacted Mrs W directly and explained the calculation method it had used. It said the calculation had revealed "no loss".

Mrs W hasn't accepted the explanation from GPS. She says she wasn't personally consulted by GPS when it decided to carry out a calculation and she doesn't think her pension value used in the calculation was the current and correct value. Mrs W thinks this could affect the overall calculation because her pension value has actually decreased over time rather than increased as GPS said it most likely would. And because of what she considers to have been unacceptable delays throughout 2022/23 by GPS – and that the BPS-calculator appears to have been used to calculate the redress as far back as 1 July 2023 - she still wants an ombudsman's final decision. She hasn't yet cashed the cheque for £300 for the distress and inconvenience suffered and says this isn't enough to reflect what has taken place over the last few years.

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

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I've said above, GPS didn't agree until July 2023 that it had done anything wrong. However, in the interest of bringing complaints like this to a close, GPS then said it would be willing to accept the Investigator's view and run a calculation to see if the pension transfer had incurred any loss for Mrs W.

GPS has used a BPS-specific calculator established by the regulator for this purpose. I've noted it took what it believed to be Mrs W's transferred pension's 'current' value and inputted this into the calculator together with all her personal details. And it says because Mrs W's transferred pension balance has grown, the calculation shows there has been no financial loss incurred as a result of Mrs W transferring away, back in 2018.

### **What issue is still in dispute?**

The outstanding dispute here relates to the calculation of redress - if there is any. But for the avoidance of any doubt, I've still looked at Mrs W's case and her points of complaint in great detail. Having done this, I fully agree with the points made by our Investigator who comprehensively set out why he thought the complaint ought to be upheld. Both parties were sent this View some time ago. I'm also sorry that it's taken so long for Mrs W's complaint to

reach this stage – I understand the distress and inconvenience caused by her having to bring the complaint at all.

I don't think the advice given to Mrs W to transfer was suitable. She was giving up a guaranteed, risk-free and increasing income within the BPS2. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. GPS ought to have advised her against transferring away from the BPS and given her age and circumstances, she should have been advised to transfer to the BPS2.

As GPS has agreed it should run the calculation, I don't think I need to consider the issue of suitability any further.

I'll therefore focus now on the redress methodology.

### Why GPS needs to recalculate the redress

GPS has only relatively recently informed us that it is willing to accept the Investigator's View that the advice wasn't right for Mrs W. Although I welcome GPS's subsequent calculation, I also agree with Mrs W that it was indeed only carried out in the financial quarter relating to July 2023 (Q2). And even then, this was only after a period of considerable delay.

Mrs W feels these delays have disadvantaged her and has specifically said that she doesn't accept that an up-to-date pension value was used by GPS in determining whether there was a loss incurred as a result of GPS's unsuitable advice. She says she wasn't personally consulted about the calculation inputs or given the opportunity to provide scrutiny of what was taking place. Mrs W also says that whilst she broadly accepts the Investigator's View recommending that we uphold her complaint, she doesn't agree that the £300 recommended by the Investigator adequately compensates for the distress and inconvenience all this has caused.

I have therefore considered these issues.

As for the £300 payment, I think this award is in line with our approach. As I've said, I do recognise that this has not been an easy time for Mrs W and that the unsuitable advice would have caused her a great deal of worry. However, I've seen no supporting medical evidence and I've considered the overall value of her pension and Mrs W's age. I've also considered her general retirement plans. Having considered all these issues very carefully, I think the £300 award adequately recognises the distress and inconvenience Mrs W would have endured.

As for the calculation, I don't think enough has been done to accurately ensure the correct and current pension value was entered by GPS when it first carried this out on or around 20 July 2023. It is my direction that this needs to be re-done now in the current financial quarter (Q4).

Having said all that, I see that we've explained to Mrs W, the complexities about her former DB pension's value and also explained its relationship with both market forces in general, and specifically, with bond yields. But whilst these issues help explain why no overall financial loss has been incurred in this situation as of July 2023, Mrs W asserts that the calculation is out of date, that she wasn't fully consulted and the value of her pension entered wasn't correct.

### Summary

I don't think the advice given to Mrs W by GPS was suitable.

It was not in her best interests for her to transfer her DB scheme to a personal pension when she had the opportunity of opting into the BSPS2.

I understand the point that GPS will no doubt make, which is that it has already carried out a calculation as recommended by our Investigator. However, this was carried out after a considerable delay and was dated 1 July 2023. I've not found enough evidence that the correct pension value was used and I note Mrs W wasn't aware of the calculation until much later. So, I can't say the calculation is correct.

In light of the above, I think GPS should now re-run the calculation after obtaining verified evidence of Mrs W's correct and current pension value. It should then compensate Mrs W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. The calculation should relate to the current financial quarter (January 2024) and should use the current and correct value of Mrs W's pension as a basis for the calculation.

### **Putting things right**

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

GPS 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>.

GPS should correctly use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mrs W 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 Mrs W'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, GPS should:

- calculate and offer Mrs W redress as a cash lump sum payment,
- explain to Mrs W 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 Mrs W receives could be augmented rather than receiving it all as a cash lump sum,

- if Mrs W accepts GPS's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mrs W for the calculation, even if she 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 Mrs W's end of year tax position.

If redress is due, it should be paid to Mrs W as a cash lump sum and will be treated as income for tax purposes. So, in line with DISP App 4, GPS 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 Mrs W'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 agree the recommended payment of £300 for distress and inconvenience. GPS should pay Mrs W this amount in addition to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to a maximum of £160,000, plus any interest and/or costs that I consider are appropriate. *This is a maximum which is unlikely to be relevant in Mrs W's situation.*

### **My final decision**

Determination and money award: I am upholding this complaint and I now direct Grove Pension Solutions Limited to pay Mrs W 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 Grove Pension Solutions Limited pays Mrs W the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs W.

If Mrs W accepts my final decision, the money award becomes binding on Grove Pension Solutions Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs W can accept my decision and go to court to ask for the balance. Mrs W 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 Mrs W to accept or reject my decision before 1 February 2024.

Michael Campbell  
**Ombudsman**