

The complaint

Mr L 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. He says the advice was unsuitable for him and believes this has caused a financial loss.

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

What happened

In March 2016, Mr L'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 L'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).

Mr L 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 Pensionhelp which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr L was 49 years old and married. He had accrued several years' worth of service with BSPS.
- The cash equivalent transfer value (CETV) of Mr L's BSPS was approximately £153,880. The normal retirement age (NRA) was 65.
- Mr L earned around £40,000 per year. He lived in a home he and Mrs L owned with a modest mortgage. They had around £10,000 in savings.
- Mr L was contributing to a new defined contribution (DC) pension scheme. This pension isn't the subject of any complaint.

Pensionhelp set out its advice in a suitability report. In this Pensionhelp advised Mr L to transfer out of the BSPS and invest the funds in a type of personal pension plan.

Pensionhelp said this would allow Mr L to achieve his objectives. Mr L accepted this advice and so transferred out in early 2018. In 2021 Mr L complained to Pensionhelp about its advice, saying he shouldn't have been advised to transfer out to a personal pension but Pensionhelp didn't uphold his complaint.

Mr L then referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. In response, Pensionhelp said it hadn't done anything wrong and was acting on the financial objectives Mr L had at the time.

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.

Pensionhelp didn't initially agree it had done anything wrong. However, in the interest of bringing complaints like this to a close, Pensionhelp has recently 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 Mr L.

Pensionhelp has used a BPS-specific calculator established by the regulator for this purpose. I've noted it took Mr L's transferred pension's value as of summer 2023 and inputted this into the calculator together with all his personal details. The calculation showed there has been no financial loss incurred as a result of Mr L transferring away, back in 2018.

However, Mr L still doesn't think it's fair that the redress should be calculated in the way it has. As I understand it, he's not saying that Pensionhelp hasn't followed the FCA's guidance – he just thinks the guidance itself is unfair. And so, when Pensionhelp said in October 2023 that it wanted to recalculate again using the most up to date pension balance in Mr L's fund, he hasn't provided this. Nor was he willing to sign a consent form authorising Pensionhelp to obtain the precise up to date figures.

For the avoidance of any doubt here, I've still looked at Mr L's case and his points of complaint in great detail. Having done this, I agree with the points made by our Investigator who comprehensively set out why he thought the complaint ought to be upheld. I'm also sorry that it's taken so long for Mr L's complaint to reach this stage – I understand the distress and inconvenience caused by him having to bring the complaint at all.

However, because Pensionhelp has recently informed us that it is willing to accept the Investigator's view that the advice wasn't right for Mr L, and that a calculation has been carried out as required by the regulator, I'm not going to go into the level of detail I normally would about why the complaint should be upheld. I can also see that we have explained to Mr L, the complexities about his former DB pension's value. We have also explained its relationship with both market forces in general, and specifically, with bond yields. So, these things help explain why no overall financial loss has been incurred in this situation. We've also checked that the inputs that were put into the BPS-calculator are correct.

So, in summary, I don't think the advice given to Mr L was suitable. He 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. So I think Pensionhelp ought to have advised him against transferring away from the BPS.

As I don't think I need to consider this in any further detail, I'll focus in this decision on the

redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr L, as far as possible, into the position he would now be in but for Pensionhelp's unsuitable advice. I consider Mr L would have most likely opted to join the BPS2, 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. Pensionhelp should use the benefits offered by BPS2 for comparison purposes.

Pensionhelp 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>.

I appreciate that Mr L says the delay in his complaint reaching the stage of an ombudsman's final decision has contributed to the redress calculation being much different than he expected. However, our aim is to put consumers like him back into a position as if the unsuitable advice had never occurred in the first place. DB pensions have a relationship with bond yields and these have seen substantial changes recently. However, the calculator established by the regulator takes account of this and assumes Mr L can get back into the position of having a pension with broadly the same benefits. And in his case, he won't be any worse off.

Pensionhelp 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 L and our Service upon completion of the calculation. *But Mr L needs to authorise and assist Pensionhelp in achieving the correct 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 L's acceptance of my final decision.

Pensionhelp has been clear up until now that the redress calculation has not demonstrated a loss. But if the new redress calculation does demonstrate a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Pensionhelp should:

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L 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 L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts Pensionhelp's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of their redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

If any redress is paid to Mr L as a cash lump sum, it will need to be treated as income for tax purposes. So, in line with DISP App 4, Pensionhelp 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.

Our Investigator recommended that Pensionhelp should pay Mr L for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr L in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr L. So I agree the recommended payment of £300 for distress and inconvenience. Pensionhelp should pay this 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 Pensionhelp Limited to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £160,000. However, in this case, this limit is unlikely to be relevant.

Pensionhelp should additionally pay £300 for the distress and inconvenience caused by the unsuitable advice. If Mr L accepts my final decision, the money award becomes binding on Pensionhelp Limited.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 16 January 2024.

Michael Campbell
Ombudsman