

The complaint

Mr J complains that he was given unsuitable advice by Estate Capital Financial Management Limited ('ECF') to transfer deferred benefits from his defined benefit ('DB') pension with British Steel ('BSPS') to a personal pension.

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 which was a transfer to the Pension Protection Fund ("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 J's employer would be set up – the BSPS 2.

In September 2017, Mr J contacted ECF and asked for advice on his BSPS pension. He was advised to transfer the benefits to a Self-Invested Personal Pension which he did in May 2018.

Mr J complained to ECF in 2021 about the advice he received. He thought it was flawed and that by relying on it he had suffered significant financial losses.

ECF rejected the complaint. One of our investigators considered the complaint and found Mr J had received unsuitable advice. He recommended that ECF should compensate Mr J following the regulator's guidance which was in place at the time -Finalised Guidance (FG) 17/9- and pay him £300 for any distress and inconvenience caused.

ECF disagreed with the investigator's assessment and asked for the complaint to be considered by an ombudsman. However, in December 2022 as a gesture of goodwill they carried out a loss calculation. They assumed in the calculations that Mr J would have ended up in the PPF and retired at 57. The calculation showed Mr J had not suffered a financial loss. They offered him a gesture of goodwill payment to settle the complaint.

Mr J rejected this offer. His representatives said calculations should have been based on Mr J choosing the BSPS2 with an assumed retirement age of 65.

ECF subsequently asked Mr J's representatives for information to undertake an updated calculation in line with new rules and guidance for DB transfer redress calculations which came into effect on 1 April 2023 and which are set out in the FCA's handbook at DISP App 4: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>)

Mr J said he wanted loss calculations to be based on previous guidance set out in FG17/9 as this was more favourable in his particular circumstances as future charges weren't

capped at a set level and the assumptions for him being married at retirement were also more favourable for him. He said if this wasn't agreed he wanted an ombudsman's decision.

The investigator explained that the current rules and guidance (DISP APP4) should be used by ECF. He also pointed out that in previous communications with Mr J's representatives it had been made clear that if settlement had not been reached by the time the new rules had come into effect, we would expect calculations to be carried out in line with the new rules.

In October 2023 ECF received the necessary information from Mr J to carry out a loss calculation which they did in line with DISP APP4 and using the FCA BSPS calculator. The calculation shows that Mr J's current pension has a shortfall of £9,571. If paid to him in cash, it would be subject to a notional tax reduction of 15% which would bring the redress amount to £8,135. In addition to that ECF offered to pay £300 for any distress and inconvenience caused as per the investigator's recommendation. So the total offer amount was £8,435.

Our investigator reviewed the offer and found the calculations were carried out in line what we would expect and that the offer was fair.

Mr J rejected the offer. He still believes calculations should be carried out in line with FG17/9 using assumptions that were in place when the investigator issued their initial view in June 2022.

Mr J says the unsuitable advice he was given has affected him financially and mentally. He says arguments about this matter were part of the reason why he and his partner split up and this has now resulted in court action over child custody. He says he is worried about the fact his pension has lost money and that he has to keep enduring the ups and down of the investments markets rather than having a safe pension. Mr J also thinks it's unfair that colleagues have received differing amounts in compensation depending on when their calculation was carried out. He says he's stressed and genuinely worried about his pension.

As no agreement could be reached between the parties, the case was passed to me for an ombudsman 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.

ECF has carried out a loss calculation and has offered to pay compensation, so I don't see the need to address the advice Mr J received in full detail. However, for completeness I would like to say that I agree with the investigator that the advice Mr J received wasn't in his best interest.

Based on what I've seen, it was unlikely Mr J would be able to improve on his DB pension benefits, particularly if he retired earlier than 65 which was what the advice was based on. Different death benefits, flexibility and an enhanced transfer value didn't justify a transfer here in my view. Mr J was 38 at the time of the advice and had a defined contribution plan through his employer with generous employer and employee contributions which could have afforded him some flexibility and different death benefits if required. I can't see that there was a particular need for Mr J to give up safeguarded benefits so many years before retirement when his plans would have been uncertain.

I think suitable advice would have been to move to the BSPS2. I appreciate the new scheme wasn't fully guaranteed at the time of the advice. However, there was a good chance that it would go ahead. And even if it didn't and Mr J had ended up in the PPF, his overall benefits

would still have been competitive, particularly if he did decide to retire early.

I'll now focus in this decision on the matter that is still in dispute which is the redress. The aim is to put Mr J back in the financial position he would have been in at retirement had he moved to the BPS2. Unfortunately reinstatement into the BPS2 is not possible. So an alternative way of redress is required.

ECF carried out a calculation using a specific BPS calculator provided by the FCA which is what I would expect them to do in the circumstances. They used the BPS2 and a retirement age of 65 in their assumptions for the calculations.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure an annuity which provides the benefits that they would have been entitled to under either the BPS2 or the PPF (as uplifted to reflect the buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement now to match the DB benefits they would have received, the shortfall is the redress amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

Both the investigator and I have checked the calculations and I'm satisfied they have been carried out in line with the current rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4. This is the same method that is used for all other DB transfer cases where reinstatement into the scheme isn't possible.

Mr J wants ECF to use outdated guidance and assumptions as he thinks this would lead to higher redress. However, I don't consider this reasonable. FCA rules are clear that the most up to date assumptions should be used for calculations. Redress calculations are designed to work out if Mr J has suffered a financial loss and if so, how much he needs in his pension now to be able to buy an annuity at 65 which replicates his DB benefits in retirement.

Rise in interest rates mean that consumers now need less money in their pension to buy an equivalent annuity, so the value of DB benefits has decreased. This might impact on the level of redress being paid. However it still puts Mr J in the position he would be in now if he had not transferred his DB pension. And it is the same redress method that is used for colleagues who are currently part of the FCA's BPS redress scheme.

ECF was entitled to disagree with the investigator's view and ask for an ombudsman's decision. And they were also able to make goodwill settlement offers at any stage in the process, just like Mr J was entitled to reject them. I appreciate Mr J is frustrated that the settlement of his complaint has taken a long time. However, I'm satisfied that the redress has now been calculated correctly and is fair and reasonable and puts him as much as possible in the position he would have been in if he had remained in the BPS.

I can look at the distress and inconvenience that the advice to transfer his DB benefits caused Mr J. I'm sorry to hear about the family issues he has faced which I understand will be stressful and upsetting. However, this situation always would have been difficult and I don't think it's likely the unsuitable advice he received would have been the main cause for this. So it would be disproportionate to hold ECF responsible for the stress this situation is causing him.

However, I also believe him when he says he is worried about the volatility of investments he is now exposed to. I have considered that Mr J is in a long term investment and he is still

many years from possible retirement. And I've taken into account that Mr J is professionally represented and received an investigator's view in his favour last year. So he ought to have been reassured that if there was a shortfall in his pension he would likely be compensated.

But based on what I have seen I think Mr J generally has a fairly cautious attitude to risk. He might have agreed to a balanced risk profile during the advice process but he moved to a more cautious portfolio in 2018 not long after the transfer and he was concerned when his pension dropped during Covid in 2020. I can see he monitored his pension, took an active interest and raised queries with ECF over the years. His pension has also been more volatile over the last two years since he has moved to a different adviser and pension plan which is likely due to him being invested heavily in equities.

I acknowledge that the increased exposure to equities and volatility over the past two years in Mr J's investments isn't ECF's fault. I suggest Mr J should discuss his risk profile, attitude to volatility and the higher charges he is paying with his new adviser.

However, Mr J wouldn't be exposed to investment risk at all if he had remained in the DB scheme which is why they are held responsible for all of his financial losses. Their unsuitable advice has led Mr J to be in a position where he has been worried about his pension and I'm satisfied this had a considerable impact on him.

So in the circumstances I think an award for the distress caused should be raised to £500.

Putting things right

The calculations that ECF have carried out are fair and reasonable and don't need to be repeated on a different basis or with different assumptions. However, if Mr J accepts this decision, ECF should add the payment date to the current calculations so that additional compensation is added for the time between valuation and payment. The resulting loss amount should be paid to Mr J together with £500 for the distress ECF's unsuitable advice has caused him. Payment should be made without delay after acceptance of this decision.

My final decision

I uphold Mr J's complaint and require Estate Capital Financial Management Limited to follow the instructions as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 29 December 2023.

Nina Walter

Ombudsman