

The complaint

Mr M complains about the advice AMG Wealth Solutions LLP ('AMG') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He was concerned that the advice might not have been suitable for him and may have caused a financial loss.

What happened

In March 2016, Mr M'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')¹, or a new defined-benefit scheme ('BSPS2'). Alternatively, members 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 said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In June 2017, the DB scheme administrators sent Mr M information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') quotation, which was around £770,000.

Mr M approached an independent financial adviser for advice about his pension. That adviser didn't have the relevant regulatory permissions to advise on pension transfers and referred Mr M to AMG. It conducted a fact-find with him and an assessment of his attitude to risk. Amongst other things it noted Mr M was 52 years old and married. He and his wife were both working. Mr M had another small defined contribution ('DC') pension. He and his employer had also recently begun contributing towards his employer's new DC scheme. His attitude to risk was assessed as seven out of ten, with one being low risk and ten highest risk.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. Later that month the BSPS trustees gave Mr M details of his enhanced CETV, which was £802,340.

After meeting with Mr M on a number of occasions, in November 2017, Mr M met with AMG again. He signed forms to transfer his BSPS benefits to a named SIPP and to use the

¹ The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

services of a discretionary fund manager, which is a separate business to AMG, to advise on his investment portfolio. AMG issued its final suitability report, setting out its analysis and the reasons for its recommendations a few days later.

The transfer of Mr M's BPS benefits to the SIPP was concluded in February 2018.

In 2021 Mr M complained to AMG that its advice may not have been suitable for him. AMG didn't initially reply within the timeframe set out by the regulator for doing so. Mr M asked the Financial Ombudsman Service to look into his complaint. After he'd done so AMG replied to say that it thought its advice was suitable for Mr M. It added that it had done a calculation, based on Mr M retiring at age 60, which showed that he hadn't suffered a financial loss as a result of the transfer.

One of our Investigators looked into Mr M's complaint. He didn't think AMG's advice was suitable for Mr M. So the Investigator recommended AMG establish if Mr M had suffered a financial loss, based on the DB scheme's normal retirement age of 65, as a result of AMG's advice. Our Investigator also recommended AMG make a payment to address Mr M's distress and inconvenience arising from the unsuitable advice.

AMG didn't initially accept our Investigator's complaint assessment. As the matter wasn't resolved informally the complaint was referred for an Ombudsman's review.

While the matter was waiting an Ombudsman's attention, in October 2022 we wrote to the parties. We said the regulator, the Financial Conduct Authority ('FCA') was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. We said that Mr M had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023. Mr M told us he would prefer to await the outcome of the FCA's consultation. However, before we'd advised AMG of Mr M's choice, it told us it had run a redress calculation using the existing methodology and again established that Mr M hadn't suffered a loss. It said Mr M could buy a deferred annuity which would match his benefit entitlements from the BPS2. Mr M said he didn't accept AMG's calculation and would await an Ombudsman's review.

In October 2023 the Financial Ombudsman Service wrote to AMG. We noted that while it had previously carried out redress calculations the FCA had developed a BPS specific calculator for establishing redress for BPS cases. We advised AMG that if an Ombudsman were to later uphold the complaint they would instruct AMG to carry out another redress calculation using the FCA's BPS calculator. In an attempt to resolve the complaint we invited AMG to take the necessary steps to carry out an up-to-date redress calculation.

AMG gathered the required information and in November 2023 it performed the redress calculation using the FCA's BPS calculator. The calculation showed Mr M had not suffered a loss. However, AMG said it would pay Mr M £300 to address his distress.

Mr M still wasn't happy that his complaint had been resolved. So it's been referred to me to make a final determination.

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 understand AMG hasn't accepted that it gave Mr M unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr M in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable. And they should only recommend one where they can clearly show it was in the consumer's best interests. I don't think that was the case for Mr M.

That's because, amongst other things, the growth rates (known as the critical yield) required to match the DB scheme benefits were high, at over 9%. AMG itself acknowledged that there was no guarantee that the critical yields would be met. AMG said Mr M could meet his income needs in retirement from drawing down his pension. However, once he'd transferred his funds, he was putting those at risk of the volatilities of the investment markets. And if Mr M's investments suffered poor performance, or market crashes leading to losses, he could potentially find himself worse off in retirement. Whereas remaining in the DB scheme would have provided a guaranteed and escalating income for the rest of his life. He lost those guarantees by transferring.

Overall, I can't see persuasive reasons why it was in Mr M's best interest to give up his DB scheme guarantees.

Putting things right

The sticking point now in terms of concluding the matter is not the suitability of the advice but AMG's offer for redress. Mr M still doesn't consider the matter resolved.

When considering what is appropriate redress the aim is to put Mr M, as near as possible, back in the financial position he would have been in at retirement had he remained in the DB scheme. AMG carried out a calculation using the specific BPS calculator provided by the FCA, which is what I would expect it to do.

The calculator was designed to establish how much a consumer needs in their pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

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

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF and relevant economic and demographic assumptions which are updated regularly.

This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% a year and product charges of 0.75% a year which are set percentages by the FCA.

I've checked the inputs that AMG entered which are specific to Mr M. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised

to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65.

The calculator shows that, as at 1 October 2023, Mr M's investments in his SIPP, arising from his BPS transfer alone, are worth £217,332 more than it would cost to replace his BPS2 benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the 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: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr M's case shows that there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr M has not suffered a financial loss by transferring his pension.

In recent correspondence with the Financial Ombudsman Service Mr M's said the sum in his SIPP wouldn't be enough to buy an annuity that would meet his income needs, increasing by the Retail Price Index ('RPI') each year. I understand he's based his income needs figure on the sum he gave to AMG in 2017 and increased that with inflation.

I haven't checked Mr M's figures, nor have I looked to see if he could find his required annuity on the open market. That's because the BPS redress calculation is based on the cost of him replicating the benefits from the BPS2 at age 65. Not reproducing what he told AMG the income he would like to receive was.

Further, if AMG had made a redress calculation based on Mr M taking his BPS2 benefits immediately in October 2023 it's likely the gap between his SIPP value and the BPS2 value would have been even higher. That's because the BPS2 applies actuarial reductions for taking benefits early. And, given that Mr M wasn't expected to take his BPS2 benefits until he was 65, my estimate is that would result in a reduction in benefit entitlement for Mr M of somewhere between 17% and 20% each year. And that reduced pension entitlement would most likely result in a reduced cost to replace the benefits.

Also while the BPS2 benefits are index linked to offer some protection from inflation, the index used isn't the RPI but the CPI (Consumer Price Index). And, as with most DB pensions, there are caps that apply to the indexation allowed when calculating benefits. And some tranches of Mr M's pension under the BPS2 – for example those earned over the guaranteed minimum pension prior to 1997 - receive no indexed increases at all.

So the annuity that Mr M says he is unable to buy isn't a like-for-like comparison with his pension benefits he would have received from the BPS2.

Mr M also said that the investments in his SIPP have lost value in real terms – after factoring in CPI or RPI increases. That might be the case but AMG isn't responsible for Mr M's ongoing investment performance. His investments are managed by a discretionary fund manager and a firm of financial advisers unconnected to AMG. A poorly performing portfolio might result in a (higher) compensation payment than a portfolio that's done particularly well. But in Mr M's case his SIPP has more than adequate funds to match the BPS2 benefits regardless that he might not be happy with its performance.

Mr M also said that he felt AMG was attempting to "game the system" by carrying out the calculations using a valuation date of 1 October 2023, at a time when the financial markets are favourable to AMG. But, putting aside that AMG had twice before made calculations that

also resulted in no compensation being payable, I'm satisfied it's not the case that AMG was trying to "game the system".

We wrote to AMG in October 2023 and invited it to try to resolve the matter by using the BPS calculator. And AMG put the steps in place to do so. The FCA updates the assumptions its calculation uses each quarter of a year. And its instructions on using the calculator say that firms must use the figures from the first day of the quarter in which they make the calculation. In this case, as AMG made the calculation on 2 November 2023, the appropriate valuation date was 1 October 2023. So there was nothing sinister in AMG using that date.

AMG has also agreed to pay Mr M £300 to address the distress and inconvenience this matter has caused him. I'm aware Mr M doesn't feel this is enough. But, I think it's worth noting that AMG isn't responsible for any of the stress Mr M might have experienced because of his concerns over his employer's actions in closing the original BPS, or any distress associated with the employer's ongoing viability.

Further, it's notable that Mr M first raised his complaint in 2021. He said he did so because many of his colleagues were concerned about the matter. And, at that time, Mr M didn't know whether or not he'd received appropriate advice or if in fact he'd lost out. And, as AMG's calculations have shown, on more than one occasion, his SIPP has sufficient funds to replicate the benefits of the BPS2 if that's what he wanted to do.

So, while I'm satisfied that AMG's advice wasn't in his best interests at the time, I don't think Mr M's lost out financially as a result. That said, I don't doubt the uncertainty he's experienced as a result of AMG's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for AMG's advice. So, in the circumstances, I think AMG's offer of £300 is fair and reasonable.

My final decision

I uphold this complaint and require AMG Wealth Solutions LLP to pay Mr M a sum of £300 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 February 2024.

Joe Scott
Ombudsman