

## **The complaint**

Mr R complains that he was given unsuitable advice by AJH Financial Services Ltd ('AJH') to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

In March 2016, Mr R'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 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 R's employer would be set up – the BSPS2.

In August 2017, the DB scheme administrators sent Mr R information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr R had 24 years and 9 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £393,537.05.

Mr R wasn't sure what to do about his pension so he contacted AJH to seek some advice. An initial meeting was arranged between AJH and Mr R at the end of August 2017 along with a follow up meeting in October 2017. A fact-find was completed to gather information about Mr R's circumstances and objectives. It noted Mr R was aged 48, his wife was aged 44 and they had two children, one aged 23 who was financially independent and one aged 17 who was financially dependent. It also noted that Mr R earned £46,000 per year and his wife earned £30,000. Their home was documented as being valued at £130,000 with a repayment mortgage of £76,000 and an outstanding term of 10 years. Mr R was noted as having no debts, savings or investments save for £1,000 in his bank account. AJH also recorded that Mr R and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme and that Mrs R was a member of her employer's DB scheme.

Mr R told AJH he was hoping to retire at age 60 on a target income of £18,000 per year and an aspirational income of £24,000 per year. AJH carried out an assessment of Mr R's attitude to risk ('ATR') which was mutually agreed to be 'lowest medium', or 4 on a scale of 1 to 10.

The pension transfer questionnaire completed by Mr R with AJH during their first meeting (along with his comments on the fact-find) recorded his objectives for wanting to transfer his DB benefits to a personal pension. These were that he had concerns and had lost faith with his employer and its pension schemes and did not want to risk his benefits moving to the

PPF because he thought this would impact his ability to retire early at age 60. Mr R said he didn't want to leave his funds invested in a scheme connected to his employer and that he wanted to ensure that his family could benefit from his pension monies if anything happened to him. Mr R also said that he wanted the flexibility around how he drew his benefits because he wanted to be able to draw more income in the early years of his retirement. Mr R also said he wanted to maximise the benefits payable to him in his lifetime because his wife had significant pension benefits of her own which, together with their state pensions, would provide them with sufficient guaranteed income. Finally Mr R said he wanted to retire early at age 60 and did not want to incur a penalty for doing so.

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

Mr R signed the transfer and application forms on 25 October 2017.

On 2 November 2017, AJH sent Mr R its suitability report in which it recommended he transfer his DB scheme benefits to a personal pension plan. AJH said Mr R would benefit from being able to invest in a range of investment funds that had the potential for long term growth; from tax-free death benefits should he pass away before the age of 75; the flexibility to draw unrestricted amounts from his pension at any one time and from being able to vary the underlying funds and risks within the pension to reflect any changes in his personal circumstances.

On 21 November 2017, AJH sent Mr R a transfer value analysis report.

In December 2017, £406,369.78 (Mr R's CETV having been revised by his employer) was transferred from Mr R's BPS DB scheme to his new pension. AJH's advice fee, paid from the transferred fund, was £4,063.70

In August 2021, Mr R, through his representative, complained to AJH about the advice he received, believing it may have been unsuitable for him and that he had suffered a financial loss as a result. Mr R said he should have been advised to join the BSPS2. AJH looked into Mr R's complaint but didn't think it had done anything wrong. It said it had acted in Mr R's best interests and in good faith based on his retirement objectives.

Unhappy with the outcome of his complaint to AJH, Mr R complained to the Financial Ombudsman Service. Our Investigator looked into Mr R's complaint for him and issued his findings in April 2022. He recommended that Mr R's complaint was upheld as he didn't think it was in Mr R's best interests to transfer his guaranteed benefits to a personal pension plan.

Our Investigator said he didn't think there was any reasonable prospect of Mr R improving on his guaranteed scheme benefits based on him investing in line with his ATR. So he didn't think that the transfer was a financially viable one. Nor did he think the alternative death benefits available through the personal pension were worth Mr R giving up the guarantees associated with his DB scheme for. And our Investigator thought that Mr R's other objectives of early retirement and flexibility could have been met through utilising the benefits available through either the BSPS2 or the PPF.

Our Investigator thought that AJH should have advised Mr R to opt into the PPF due to him wanting to take early retirement and that the early retirement factors under the PPF being more favourable than under BSPS2. So he recommended that AJH calculate whether Mr R had suffered a loss as a result of its advice to transfer. The Investigator also recommended

that AJH should pay Mr R £300 to address the distress and inconvenience caused by the receipt of its unsuitable advice.

Mr R replied to say that whilst he was pleased to note our Investigator was recommending that his complaint was upheld, he disagreed that the redress recommended should be based on him having opted to join the PPF. He said he was some way away from retirement at the time of the advice so it was too early to decide at that point that he would have retired at age 60. Mr R said he intended to retire at age 65. AJH replied to say it disagreed with our Investigator's findings but made no new substantial submissions.

Our Investigator considered the responses he received and issued a second view. He explained why he wasn't persuaded to change his mind regarding the outcome of the complaint but that he did now think that, had Mr R been suitably advised he would have opted to remain in the BPS and move with it to the BPS2. He said this was because Mr R's retirement plans were not finalised at the time of the advice. Our Investigator recommended that AJH should calculate redress in line with the regulator's pension review guidance based on Mr R retiring at age 65 and opting to move to the BPS2. Our Investigator remained of the view that AJH should pay Mr R £300 to address the distress and inconvenience caused by the receipt of its unsuitable advice.

Mr R replied to say he accepted our Investigator's findings. AJH replied to say it disagreed that it had provided Mr R with unsuitable advice. It said that by transferring, Mr R had been able to meet all of his objectives. AJH asked that the complaint be referred for an Ombudsman's decision.

In December 2022, whilst the complaint was waiting to be referred for an Ombudsman's decision, AJH informed our Investigator that it had undertaken a redress calculation for Mr R and that it showed he had suffered no financial loss. AJH said that in the interests of settling the complaint it was willing to pay Mr R £300 in recognition of the distress and inconvenience he had been caused.

Mr R declined to accept AJH's offer and said he would rather wait until after 1 April 2023 to have his losses assessed in accordance with the changes brought about by the regulator's Policy Statement PS 22/13.

In February 2023, and again in May 2023, AJH undertook a redress calculation in accordance with PS 22/13. Both calculations showed that Mr R had suffered no financial loss. Mr R remained of the view that he wanted his complaint referred to an Ombudsman.

Also in May 2023, our Investigator wrote to both Mr R and AJH to say that the regulator had now developed a BPS-specific redress calculator which it was encouraging businesses to use. In June 2023 AJH ran a further calculation using the BPS-specific redress calculator which showed that Mr R had sustained no financial loss. The calculation was valid for three months from the point AJH provided it to Mr R. Mr R didn't accept the calculation and it expired.

In October 2023, in an attempt to resolve the complaint informally, the Financial Ombudsman Service asked AJH to carry out an up-to-date loss assessment using the BPS calculator which it would then put to Mr R. AJH carried out the loss assessment which showed that Mr R had not suffered a loss as a result of its advice to transfer his DB scheme benefits.

Our Investigator wrote to Mr R in November 2023 to explain that he had checked the inputs personal to him and entered by AJH into the BPS calculator. Our Investigator said that based on what he'd seen, AJH had carried out the calculation appropriately. He also said

that the calculation showed that Mr R had suffered no financial loss and that his personal pension had sufficient funds to be able to replicate his DB scheme benefits at retirement. Our Investigator explained that no redress was due to Mr R but that AJH had agreed to pay the recommended award of £300 for distress and inconvenience suffered.

Mr R replied to say that he would still like an Ombudsman to look at the complaint. He said he would like the Ombudsman to consider increasing the compensation award for distress and inconvenience in light of the stress the entire situation and the protracted complaints process had caused him.

The complaint has been passed 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 understand AJH is still disputing that it gave Mr R unsuitable advice. 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 R in detail.

That said, I will comment that I agree with the Investigator's view that the advice was unsuitable for broadly 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 that it was in the consumer's best interests. I don't think that was the case for Mr R. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme, particularly if Mr R were to take early retirement, seem too high to ensure he would be financially better off by transferring out of the DB scheme.
- The difference in death benefits from a personal pension wasn't worth giving up the guarantees offered by the DB scheme for. That's especially the case as both the BPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- Mr R didn't need to give up the guaranteed benefits of his DB scheme in order to take early retirement or have flexible access to his pension funds. That's because Mr R was a member of his employer's DC scheme which provided him with the flexibility he claimed he needed – he wasn't committed to take its benefits in a set way. Mr R was aged only 48 at the time of the advice so had at least 12 years (and possibly 17 years) to go before retirement during which he would have built up a significant fund in his employer's DC scheme which he would be able to access flexibly at whatever age he chose to retire. I can't see that AJH explained to Mr R that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.
- Mr R could have taken lump sums from his DC scheme as and when required and adjusted the income he took from it according to his needs. So, I think if Mr R retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early - *if* that was what he ultimately decided.
- I understand that Mr R may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was AJH's role to objectively address those concerns.

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

I also agree with our Investigator that AJH should compensate Mr R for any distress and inconvenience its unsuitable advice caused him by paying him £300. I've noted the comments made by Mr R's representative that Mr R would like me to consider increasing the amount of compensation he is awarded in light of the distress the entire BPS situation and the protracted complaints process has caused him.

I've thought carefully about the amount of compensation I am awarding Mr R here and I'm satisfied that it is in line both with the Financial Ombudsman Service's approach to such awards in general and with awards we have made in similar complaints. I am also mindful that we don't award compensation for the process of bringing a complaint to this service. So I'm not awarding any more than the £300 recommended by the Investigator.

### **Putting things right**

I'll focus in this decision on how to put things right for Mr R as no agreement could be reached.

The aim is to put Mr R back in the financial position he would have been in at retirement had he remained in the DB scheme. AJH 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.

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

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 (including the impact of the subsequent buy-out) 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% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by AJH which are personal to Mr R. These include Mr R's 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.

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

AJH has agreed to pay £300 as recommended by our Investigator for the distress and inconvenience this matter has caused him.

Overall, I think the calculation carried out by AJH is appropriate in the circumstances and no redress for financial losses is due to Mr R. I think AJH's offer to pay Mr R £300 for the distress and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and that he could have suffered a financial loss as a consequence, is fair and reasonable in the circumstances. I've also thought about compensation awards that I've made in complaints with similar circumstances and I'm satisfied that this award is in line with those and with the Financial Ombudsman Service's approach to compensation in general.

### **My final decision**

My final decision is that I uphold this complaint and require AJH Financial Services Ltd to pay Mr P compensation 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 R to accept or reject my decision before 12 January 2024.

Claire Woollerson

**Ombudsman**