

The complaint

Mr T complains that he was given unsuitable advice by Vision Independent Financial Planning Ltd (Vision) to transfer the benefits from his defined benefit (DB) scheme 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 (the DB pension scheme) 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 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 T's employer would be set up – the BSPS2.

In October 2017, members of BSPS were 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 (and was later extended to 22 December 2017).

Mr T met Vision in October 2017 to discuss his pension and retirement needs. He wanted to review all the possibilities in the light of the situation with his scheme and employer, and his personal retirement needs.

Vision completed a fact-find to gather information about Mr T's circumstances and objectives. This showed he was 48 and living with his partner and their two dependent children. He was currently employed at Tata steel and had joined its new defined contribution (DC) scheme. Vision also carried out an assessment of Mr T's attitude to risk, which it said was 'balanced'.

In November 2017, Vision advised Mr T to transfer his pension benefits into a personal pension and invest the proceeds in a way that it said matched his attitude to risk. The suitability report said the reasons for this recommendation were so that Mr T would be able to draw down his pension flexibly which met his overall retirement strategy.

Mr T complained in 2022 to Vision about the suitability of the transfer advice. He was concerned that he may have been given unsuitable advice and that this could have caused him a financial loss.

Vision didn't uphold Mr T's complaint. It said that, in summary, the advice provided was in accordance with his needs, circumstances and objectives at the time. It was suitable for him and met his requirements in a way the DB scheme could not.

Mr T referred his complaint to our service. An Investigator upheld the complaint and recommended that Vision pay compensation. He thought it was likely that Mr T would receive benefits of a lower value than the DB scheme given the returns that were needed and his attitude to risk. And he could have met his early retirement, and flexibility needs, with his deferred DB scheme benefits and his employer's DC scheme that he had recently joined. Whilst there were some advantages to the personal pension, such as the increased death benefits, these didn't make it in his best interests to transfer.

Vision disagreed and it provided a detailed response which I have read. But, in summary, it said that it considered Mr T's interests at all material times and said that the advice provided was in accordance with his personal circumstances and objectives at the time of advice.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

In August 2022 the regulator, the Financial Conduct Authority (FCA), launched a consultation on changes to its DB transfer redress guidance. The FCA's proposed changes were due to come into effect in April 2023. Mr T wasn't clear at this point whether he would like any compensation calculated under the new guidance or not.

However, in early 2023, Vision contacted the Financial Ombudsman Service to say that it now accepted what the Investigator had said, and it was prepared to calculate and offer compensation as our Investigator had recommended.

The FCA has since developed a BPS-specific redress calculator. And Vision wrote to Mr T and said it had carried out a loss assessment using the FCA's redress calculator and enclosed a copy. It said, having done so, the calculation showed that Mr T had not incurred a financial loss and so he was not owed any redress. However, Vision said that it would pay £300 for any distress or inconvenience suffered by Mr T. A copy of this correspondence was provided to the Financial Ombudsman Service.

Mr T hasn't accepted this offer and has also said that he thinks the compensation should be calculated as at an earlier time when the Investigator first upheld the complaint.

So as no agreement has been reached, I'm issuing my 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 said above Vision has recently informed the Financial Ombudsman Service that it is willing to accept the Investigator's view. It has agreed to calculate and pay compensation for any loss Mr T may have suffered due to the DB transfer and pay compensation for any distress and inconvenience Mr T may have suffered. As the suitability of the advice is no longer in dispute, I will focus in this decision on the proposed redress method.

Putting things right

The aim is to put Mr T back in the financial position he would have been in at retirement had he remained in the DB scheme. Vision carried out a calculation using a specific BSPS 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 BSPS retirement benefits that they would have been entitled to under either BSPS2 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 BSPS 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 BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 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 Vision which are personal to Mr T. These include Mr T's personal details, his individual benefits from the BSPS 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 BSPS, he would have moved to the BSPS2 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 T'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 T has not suffered a financial loss by transferring his pension.

So, I think the calculation carried out by Vision is appropriate in the circumstances and no redress for financial losses is due to Mr T.

Mr T thinks that the calculation should have been performed as at the time the investigator upheld the complaint. I've considered Mr T's points carefully, but the regulator has set out what it considers the appropriate method of compensation to be in instances of unsuitable pension transfer advice. And this requires Vision to use the assumptions from the same financial quarter in which the calculation is carried out. I appreciate that the assumptions used in the redress calculation have changed significantly over the last 12 months, which has had an impact on the calculation. But I'm satisfied the regulator's redress method puts Mr T back, as far as possible, into the position he would have been in had he not transferred his BSPS benefits. And I'm conscious that the way the regulator requires firms to calculate redress is consistent with the approach a court would take.

Vision has offered to pay Mr T £300 for any distress and inconvenience he may have

suffered due to the advice it gave him. While the loss assessment has determined that Mr T hasn't been financially disadvantaged by the unsuitable advice, I accept that finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice – has caused him some concern. Mr T has said this has caused him worry whilst the matter remained unresolved, and Mr T has said he also had to make what he feels are very difficult decisions. So, I think Vision's offer to pay Mr T £300 for the distress and inconvenience caused is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and require Vision Independent Financial Planning Ltd to pay Mr T 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 T to accept or reject my decision before 15 November 2023.

Andy Burlinson
Ombudsman