

The complaint

Mr V has complained that Tuto Money Limited (Tuto) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

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 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 V's employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the PPF or into a private arrangement, such as a PPP.

Mr V initially met with an adviser from a different advisory firm on 27 October 2017 and a fact find and risk profiling questionnaire were completed. That firm wasn't authorised to give pension transfer advice, so Mr V was referred to Eadon & King, which at the time was an appointed representative of Tuto.

The Financial Planning Report and fact find detailed Mr V's circumstances as follows:

- He was 49 and married, with one dependent child.
- He was employed with an annual income of £49,000.
- He owned his home, valued at £340,000, with an outstanding mortgage of £40,000.
- He owned a second property worth £40,000.
- He had other borrowing of around £4,000.

In terms of income and expenditure, Mr V's net monthly income was £2,300, but his wife also had net monthly income of £2,350. The joint household expenditure, including discretionary spending, amounted to around £2,900.

Mr V's objectives can be summarised as follows:

- To retire early at age 55
- Ability to access benefits flexibility
- Flexibility of death benefits

The risk profiling questionnaire (RPQ) was based on 10 questions and Mr V scored "4" on a scale of "1 to 10", with "1" being lowest risk. The score of 4 categorised Mr V as 'Lowest Medium' but notes in the fact find say that following further discussion it was agreed that a more cautious approach would be taken.

Mr V was provided with a Cash Equivalent Transfer Value (CETV) from the BPS as at 15 September 2017. Mr V had 30 years and 2 months' service and was offered a transfer value of £444,611.91, after the 5% penalty to reflect the scheme's underfunding position.

The adviser recommended the BPS benefits be transferred into a Prudential Retirement account invested 50% in the Prudential Growth Fund and 50% in the Prudential Cautious Fund.

Prudential levied charges of 0.9% per annum. Tuto levied an initial advice charge of just over £5,900. Ongoing advice was provided by the initial advisory firm who levied a fee of 0.5% pa.

Having assessed the complaint, our investigator thought that it should be upheld. In summary, the investigator considered that it was unlikely that Mr V would be financially better off by transferring, given his attitude to risk and the critical yield just to match the scheme benefits. This was especially so if Mr V intended to retire early. And Tuto itself seemed to have recognised this within the suitability report.

He also wasn't persuaded that objectives such as flexibility of income or lump sum death benefits were sufficient reasons for Mr V to have transferred.

The investigator recommended that Tuto undertake a loss calculation in accordance with the regulator's guidance (FG17/9) for such complaints – and on the basis that Mr V would have opted to join the PPF.

He said that any redress should in the first instance be paid to Mr V's pension plan, but if this wasn't possible, it should be paid directly to Mr V, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

He also said that Tuto should pay Mr V £250 in respect of the distress he was experiencing at the value of his pension fund fluctuating in value.

Tuto didn't agree with the investigator's findings, and requested that the matter be reviewed by an ombudsman.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BPS-specific redress calculator to calculate redress for cases which were included in the BPS consumer redress scheme. But, she said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require Tuto to use the FCA's BPS-specific calculator to determine any redress due to Mr V.

The investigator said that if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr V's complaint, they should let her know by 5 June 2023.

Tuto then undertook the loss calculation on the new basis. It said that this had determined that Mr V hadn't suffered a financial loss as a result of transferring.

It provided a copy of the calculation, but having assessed this, the investigator identified some errors in the information used.

Tuto acknowledged this, and said that it would recalculate, but that it needed an up to date plan value to be able to do so.

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 that Tuto didn't accept the investigator's findings relating to suitability. However, it has nevertheless carried out a loss calculation. So I don't see the need to address the suitability of its advice to Mr V in detail.

Suffice to say, however, that I agree with the investigator's view that the advice was unsuitable for largely the same reasons.

Overall, I can't see persuasive reasons why it was in Mr V's best interest to give up his defined benefits.

Putting things right

A fair and reasonable outcome would be for the business to put Mr V, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr V would more likely than not have remained in the occupational pension scheme and opted to join the PPF if suitable advice had been given. This was set out in the investigator's assessment and I agree that Mr V had a clear intention to retire early – and indeed began withdrawals in 2023 at age 55. The early retirement commutation factor was in general terms lower with the PPF than with the BSPS 2.

Tuto Money Limited 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>.

Tuto Money Limited should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr V and our service upon completion of the calculation. Mr V, for his part, should cooperate with Tuto Money Limited so that it can obtain any updated plan valuation and withdrawal information.

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 V's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Tuto Money Limited should:

- calculate and offer Mr V redress as a cash lump sum payment,
- explain to Mr V before starting the redress calculation that:

- its 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 their redress prudently is to use it to augment their defined contribution pension

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

and

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

Redress paid to Mr V as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses 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.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr V's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

As set out by the investigator, Mr V has been distressed at seeing the value of his pension fund fluctuate over time. Whilst current indications may be that Mr V hasn't suffered an overall financial loss, I nevertheless think that the uncertainty around this will have caused him some anxiety. As such, I agree that Tuto Money Limited should pay to Mr V £250 in respect of this.

My final decision

My final decision is that I uphold the complaint and direct Tuto Money Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 February 2024.

Philip Miller
Ombudsman