

The complaint

Mr P complains about the advice AJH Financial Services Ltd ('AJH') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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 P'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 P's employer would be set up – the BSPS2.

In September 2017, the DB scheme administrators sent Mr P information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') quotation.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. While I haven't seen the document sent to Mr P I'm aware the packs gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

Mr P made enquiries with three separate firms, including AJH, about seeking pensions advice. In the first instance he instructed another firm. He was some way down the advice road when that firm told him it no longer had the regulator's (the Financial Conduct Authority - FCA) permission to give the relevant pension advice.

Mr P then asked AJH for advice. It met with him in December 2017 and January 2018. In February 2018 it sent Mr P its financial planning report setting out its analysis and recommendations. It recommended that Mr P should transfer his DB funds to a named personal pension. In short it said that by doing so, amongst other things, Mr P would be able to retire early and his wife would benefit from enhanced death benefits if he should die

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.

before her. Mr P accepted AJH's advice and transferred his DB funds to the named personal pension.

In November 2021 Mr P complained, via this Service, that AJH's advice to transfer out of the DB scheme wasn't suitable for him. AJH didn't think it had done anything wrong so in February 2022 Mr P asked us to consider his complaint. One of our Investigators looked into it. He didn't think AJH had dealt with Mr P fairly. In short he didn't think AJH's advice was suitable and said it should have advised Mr P to opt into the BPS2. The Investigator said AJH should calculate if Mr P had suffered a loss because of its advice to transfer. The Investigator also recommended that AJH should pay Mr P £300 to address the distress and inconvenience he experienced as a result of learning that AJH had given unsuitable advice.

AJH didn't initially agree with our Investigator's assessment of the complaint. So it was referred for an ombudsman's decision.

While the case was awaiting an ombudsman's attention, in August 2022 the FCA launched a consultation on changes to its DB transfer redress method guidance. In October 2022, our Investigator wrote to Mr P and AJH. He said the FCA was consulting on the method for calculating redress in DB transfer cases, which would come into effect from 2023. He said he was giving Mr P the option of choosing which method of redress calculation he preferred, either:

- using the existing guidance; or
- to wait for the new guidance to come into effect.

The Investigator added that if Mr P's complaint still hadn't been settled by the time the new method came into effect he would expect AJH to use the updated calculation method. Mr P replied to say he would like his redress calculated under the existing rule.

In April 2023 the FCA's new rules for calculating redress in DB transfer cases came into effect. From that date forward the previous method of calculating redress no longer applied.

In June 2023 AJH told us that in an effort to resolve that matter it had done a calculation, using the regulator's BPS specific calculator, to establish if Mr P had suffered a financial loss as a result of its advice. It said Mr P hadn't suffered a loss. For technical reasons, this service was unable to check the figures. In August 2023 AJH ran the calculation again using the regulator's most recent assumptions. It still showed no loss.

We advised Mr P about AJH's calculation. Mr P said AJH hadn't told him that it was calculating a loss. He also said that any loss should be calculated at the "time of claim" rather than using up-to-date figures.

The complaint has since been referred 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 P 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 P 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 P. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme, particularly if Mr P 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.

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

I also agreed with our Investigator that learning that he might have put his security in retirement at risk unnecessarily would have been a source of distress and inconvenience for Mr P. To address that I think it's fair that AJH pays him £300 compensation.

Putting things right

The aim is to put Mr P back in the financial position he would have been in at retirement had he remained in the BPS. AJH carried out a calculation using a specific BPS calculator provided by the FCA which is what I would expect it 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 by an insurance company), 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 AJH entered which are personal to Mr P. These include Mr P'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>.

I understand that AJH didn't tell Mr P that it was intending to make the calculation before it did so. But I don't think it needed to. As the firm that provides him with ongoing financial advice it had access to his up-to-date personal pension details. So it didn't need to make an enquiry of him to establish those figures. And AJH told us that it wanted to show us the calculation before giving it to Mr P in order to give him the reassurance it had undertaken the calculation correctly. I think that was reasonable.

Mr P also said that, while the calculator has appropriately allowed for the fees his current personal pension provider charges, he changed provider last year and his previous provider's charges were higher than those allowed by the calculator. However, those higher charges would have been allowed for in the calculation. I'll explain that, in essence, the calculator looks at what Mr P's current personal pension is valued at, and compares that with how much he would need to buy a pension of equal value to his DB scheme benefits. And the higher charges Mr P has paid in the past would have reduced the value of his pension pot before he moved it to his new provider. So any previous reduction in value affects its current value which is used in the calculation.

Further, Mr P said AJH should calculate any loss as at the "*time of claim*". But I don't think that would be fair. As I've said above the FCA altered its method of calculating redress and developed the BPS calculator in order for a consumer like Mr P to be able to secure today equivalent benefits available from the DB scheme had he remained in it. And, as the precise amount required will be affected by things like annuity and interest rates, that amount will fluctuate over time. The FCA has recognised this when it designed the calculator. So calculations factor in assumptions about future market conditions including things like inflation, interest rates and investment returns. The FCA updates these on a regular basis to ensure they are as accurate as possible. They are programmed into the BPS redress calculator which firms are required to use. So applying a retrospective date to the calculation now wouldn't provide fair results.

Also we let Mr P know when we wrote to him in October 2022, if AJH hadn't made a potential loss calculation by the time the new method for doing so came into effect then we would expect AJH to use that new method. That's what it's done in this instance. I think that's fair.

I think the calculation AJH carried out is appropriate in the circumstances and no redress for financial loss is due to Mr P. However, I think AJH should pay him £300 to address the distress and inconvenience he experienced as a result of its unsuitable advice.

My final decision

For the reasons given I require AJH Financial Services Ltd to pay Mr P £300 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 October 2023.

Joe Scott
Ombudsman