

The complaint

Mr R complains about the advice given by Cradle Overseas Pensions Ltd to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

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 R's employer would be set up – the BSPS2.

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. The deadline to make their choice was 11 December (and was later extended to 22 December 2017).

Mr R approached Cradle in November 2017 to discuss his pension and retirement needs. He was introduced to Cradle by another adviser who couldn't advise on DB pension transfers. And he was concerned about the situation with the BSPS.

Cradle completed a fact-find to gather information about Mr R's circumstances and objectives. This showed that he was aged 54, married and had two non-dependent children. Both he and his wife were employed full time. They had a property worth £450,000 and they jointly held £22,000 in cash. Mr R owed £5,000 on a credit card and £13,000 in a personal loan.

Cradle also carried out an assessment of Mr R's attitude to risk, which it said was 'cautious'. And Mr R has said that one of his main concerns was that his pension wouldn't perform well enough for it to support his retirement plans. So, it's reasonable to say he didn't want to take a great deal of risk.

In respect of Mr R's pension arrangements, he had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. This showed that he had around 32 years' service. He was entitled to a pension of about £32,500 at the date of leaving the scheme. The CETV was about £830,000. And he had joined his employer's group personal pension in April 2017. Both he and his employer were contributing into this, and it was valued as £6,500.

On 1 December 2017, Cradle advised Mr R to transfer his pension benefits into a SIPP and invest the proceeds into several funds that it said matched his attitude to risk. The suitability report said the reasons for this recommendation were that he wanted to retire at age 60 and he could meet this need whilst taking a relatively low risk. The transfer value was advantageous and the potential death benefits were greater and could leave his family better off if he were to die prematurely. He didn't need the income from this pension to meet his needs, so the transfer had very little risk.

Cradle advised Mr R to join the BPS2 as he didn't want to enter the PPF. I'm assuming that Mr R did this – although this doesn't affect my consideration of the complaint.

After receiving a letter from the industry regulator the Financial Conduct Authority ('FCA') advising that he might have received unsuitable advice Mr R complained to Cradle in 2021. He later went on to say that as a cautious investor he shouldn't have been advised to take the risk of the DB transfer.

Cradle didn't uphold Mr R's complaint. It used a guide that the FCA had produced to consider unsuitable DB transfer complaints. And it thought that it had covered all the areas that could result in unsuitable advice. It felt that the transfer met Mr R's needs at the time and that he would always have transferred as he didn't want his pension to end up in the PPF.

Mr R referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint and recommended that Cradle pay compensation. Our Investigator didn't think that it was in Mr R's best interests to transfer his DB scheme to a SIPP as he was likely to receive lower retirement benefits as a result. The advantages of the SIPP didn't outweigh this. Our Investigator thought that Cradle should pay Mr R £350 for the worry the advice caused him.

Cradle disagreed, but at the same time it said that it would perform a loss assessment to determine if Mr R had suffered a loss. It completed this in September 2022 and it was based on the FCA's guidance given in FG17/9, this showed that Mr R hadn't suffered a loss due to the transfer. It agreed to pay Mr R £350 for the distress and inconvenience the advice would have caused him.

Mr R didn't agree with Cradle's calculation and requested that an ombudsman consider the complaint. He also employed an actuary to consider the calculation. His actuary commented on the calculation and, in particular, they questioned whether it had correctly considered the future charges on the SIPP and inflation. Cradle considered these comments but still thought that its redress calculation was performed correctly and within the guidance of the time.

At a later point Cradle explained why it thought the Investigator's opinion was incorrect. It did this in some detail and I have read all the comments it made about this. I don't intend to refer to every point it made here. But a summary is that it thought the advice was right for Mr R as he didn't want or need the income from his DB scheme. This is because his partner had provision of her own and they would both receive state pensions in time. This would take them close to their target retirement income of £32,000 a year. So, it was reasonable that he transferred his DB scheme funds and use those in a more flexible way.

The Investigator wasn't persuaded to change their opinion, so both parties were informed that an ombudsman would consider the complaint in due course.

And after this, the regulator developed, and now provides access to, a BPS-specific redress calculator. Both parties to the complaint have been informed that if I uphold the

complaint, I'm likely to award compensation based on this. And Cradle has now confirmed that it would be prepared to do a loss calculation using this and pay any compensation that arises.

Cradle also made Mr R an ex-gratia offer of £1,000 to settle the complaint. But this wasn't accepted by Mr R, and I understand it is now withdrawn.

And as far as I can see, Cradle hasn't performed a loss assessment yet although it does seem to be in the process of gathering information to allow it to do this. But agreement hasn't been reached by both sides, even though Cradle has said that in principle it will calculate if any compensation is due to Mr R. And Mr R has said that he would like an ombudsman's decision to ensure finality, particularly about the compensation method.

So, I've looked at whether the advice was suitable for Mr R and how Cradle should put this right if it isn't. I've set out my conclusions below.

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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Cradle's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Cradle should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Cradle was required to carry out a transfer value analysis ('TVAS') report by the regulator. This calculated the critical yield which was how much Mr R's pension fund would need to grow by each year to provide the same benefits as his DB scheme. It showed this was 14.61% to match the full pension he'd have been entitled to under the scheme at age 60. I understand this was based on the BPS2. I can't see that any calculations were done if Mr R were to take tax-free cash which isn't unreasonable as he didn't seem to need this.

To match the full pension the PPF would've paid from age 60 the critical yield was 12.34% and to match the tax-free cash and reduced pension the PPF would've offered, it was 11.52%.

The discount rate, which represents a reasonable assumption about future growth, was 3% for four years to retirement in this case. And given this, and Mr R's recorded cautious attitude to risk, and the regulator's lower projection rate of 2%, I think Mr R was always likely to receive pension benefits, from age 60, of a lower value than those he'd have been entitled to under the BPS2 or the PPF by transferring and investing in line with that attitude to risk.

And this was recognised at the time of sale when the suitability report said that referring to the returns needed that they were '*unlikely to be achieved and is outside of your attitude to risk and so if you were definitely going to purchase an annuity at age 60 to match the benefits in the new British Steel pension then you should not transfer.*' And gave warnings that he may not be able to secure the same, or the same type of income, as the DB scheme would have provided.

Cradle has said that Mr R didn't want a regular income from this DB scheme benefits as he and his wife had other provisions. So it was a realistic option that he didn't use this pension to provide a regular income. It seems clear enough that Mr R didn't disagree with this at the time. But it wasn't Cradle's role just to put in place what Mr R might've thought he wanted. Its role was to advise him on what was in his best interests. Put simply, given the financial detriment that Mr R may suffer due to the transfer, it really had to be the best option for him, not just something he thought was a reasonable idea.

Mr and Mrs R wanted an income in retirement of about £32,000. It was estimated that Mr R's DB scheme would have provided around £41,750 at his age 65. And Mrs R had a DB scheme that would give her an annual pension of £14,000 at her age 60 (she was three years younger than Mr R) and they would both receive their state pensions of just over £8,000 each year.

So, I don't think there is any doubt that Mr and Mrs R had more than enough income to meet their needs at age 65. But having more income than they may have needed isn't a good enough reason to transfer on its own. Mr and Mrs R could have used this extra income to fully enjoy their retirement or save in a tax efficient way for their wider family. And their needs at the point of sale are only estimates, and they could end up needing much more at some point in the future. There needs to be a good reason for Mr R to make the transfer in addition to this, due to the lower benefits he may receive and the increase in the risk he would be taking. But as far as I can see there wasn't a pressing need, and no party to the complaint has said that there was.

And I don't think it was fully explored whether the DB scheme could have met their retirement aims in a different way. It was noted that at 60 the BPS2 would provide tax-free cash of about £155,250 and an income of about £23,250. This was lower than Mr and Mrs R said they wanted at their retirement, but they could have used Mr R's tax-free cash to use until Mrs R's pension, and their state pensions, became payable in due course. Or Mr R could have thought about retiring earlier. I think it's clear that Mr R had a significant degree of

flexibility with his existing arrangements, and this should have been the first place to look to meet his retirement aims.

Mr R was giving up a guaranteed and increasing income. I don't think that Cradle should have advised him to alter his retirement provisions, at a significant potential overall cost, without fully exploring any alternatives he could have used to meet these aims. The pension under the BSPS2 or PPF was guaranteed. And appears to have been a more appropriate way to meet Mr R's income needs in retirement – which is the primary purpose of a pension. I don't think transferring to obtain flexibility in this way was in his best interests.

Cradle said Mr R was interested in the improved death benefits a transfer offered to his family, I note this wasn't a main objective of his. But the priority here was to advise Mr R about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr R drew in his lifetime. And so may not have provided the legacy that Mr R may have thought it would.

If Mr R had wanted to leave a legacy for his family, Cradle could've explored life insurance as an alternative. He did have some disposable income through which he could've met the associated premiums and this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. But there's little evidence Cradle did so, or that Mr R was concerned about this aspect of his finances.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr R. And ultimately Cradle should not have encouraged Mr R to prioritise the potential for alternative death benefits through a SIPP over his security in retirement.

Cradle has said that Mr R wanted to control his pension benefits. By this it understood Mr R wanted to choose how he took his benefits and have some input about how and where his funds were invested – as he has done.

But I think Mr R's desire for control over how his pension was invested was overstated. I don't think he needed to control how he took his benefits in this way and I can't see that he had an interest in or the knowledge to be able to manage his pension in a more detailed way. And the recommendation seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. Which has increased the cost of his retirement. So, I don't think that this was a genuine objective for Mr R – it was simply a consequence of transferring away from his DB scheme.

Mr R may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. And it was recorded that he very strongly didn't trust his employer. But it was Cradle's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr R with guaranteed income and the option of accessing tax-free cash. Mr R was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr R's best interests to give up his DB benefits and transfer them to a SIPP. And I also haven't seen anything to persuade me that Mr R would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr R received from Cradle was unsuitable for him.

Our Investigator recommended that Cradle also pay Mr R £350 for the distress caused by the unsuitable advice. Mr R said that the incorrect advice has caused him worry. In particular, he's been concerned about whether the transfer would affect his retirement income. I don't doubt that Mr R has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. And I'm conscious this wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr R, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would most likely have joined the BPS2 if suitable advice had been given.

Cradle 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>.

Cradle should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr R and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Cradle based the inputs into the calculator on.

For clarity, Mr R has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

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 R'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, Cradle should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
 - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R accepts Cradle's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr R for the

calculation, even if he ultimately decides not to have any of his redress augmented, and

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

Redress paid to Mr R as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Cradle may make a notional deduction to cash lump sum payments to take account of tax that Mr R 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 R'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.

Cradle should also pay Mr R £350 for the distress and inconvenience the poor advice caused him.

Mr R did comment on the earlier loss assessment and provided input from an actuary. But the calculation will now be redone using new assumptions and some changes in methodology. So, I don't think I need to comment on what his actuary said about the earlier calculation. It's not now relevant to the complaint.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the Cradle Overseas Pensions Ltd pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Cradle Overseas Pensions Ltd to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Cradle Overseas Pensions Ltd pays Mr R the balance.

If Mr R accepts this decision, the money award becomes binding on Cradle Overseas Pensions Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr R can accept my decision and go to court to ask for the balance. Mr R may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 January 2023.

Andy Burlinson
Ombudsman