

The complaint

Mr E complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2018.

Vision Independent Financial Planning Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Vision".

What happened

In March 2016, Mr E's employer 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, 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 personal pension arrangement.

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

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

Mr E was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to Vision which is responsible for providing the pension advice. Information gathered about his circumstances were broadly as follows:

- Mr E was 53 years old, married and with children. Mr and Mrs E owned a home with a £12,500 mortgage. This had around 3 years left to pay.
- Mr E earned around £31,700 per year and Mrs E earned £30,000. After expenses he and Mrs E had a reasonable amount of disposable income left over each month. They had savings of £48,000.
- The cash equivalent transfer value (CETV) of Mr E's BSPS was approximately £316,582. The normal retirement age (NRA) was 65.
- Mr E had also recently joined a defined contribution (DC) pension scheme. This had around £4,000 in it at the time, but significant contributions were going into this every month from both Mr E and his employer.

Vision set out its advice in a suitability report dated 30 January 2018. In this it advised Mr E to transfer out of the BSPS and invest the funds in a type of personal pension plan. Vision

said this would allow Mr E to achieve his objectives. Mr E accepted this advice and so transferred out several weeks later. In 2022 Mr E complained to Vision about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Vision upheld his complaint agreeing the advice had been unsuitable.

However, Mr E referred his complaint to our Service because Vision's method of redress calculation wasn't something he agreed with. Vision initially used an early retirement assumption of 58. This was because it said Mr E had implied, during the advice sessions in 2018, that this was what he was hoping to do. Vision had also calculated the redress against the benefits of the PPF, rather than using BSPS2.

One of our investigators looked into the complaint and agreed the complaint should be upheld and that the redress should be awarded using the assumption that Mr E would have eventually moved to the BPS2, rather than transferring away. The investigator also said the NRA of 65 should be used, rather than the early retirement age of 58 Vision had used.

Vision now accepts this. And it has asked for it to be made clear that it has been evidently waiting a considerable amount of time for Mr E to produce information for the purposes of the calculation and that it had hoped that having accepted the investigator's decision, that this complaint could have been resolved before any final decision.

I've noted Vision later calculated the redress based on what the investigator had said. And it has said that, in any event, even if using the NRA as the retirement age and the assumption Mr E would have joined the BPS2, there is "no loss" to Mr E. He doesn't think this can be right.

The parties haven't been able to agree about the redress outcome, so I've been asked 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've also 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 Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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 Vision'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Vision should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr E's best interests.

I've used all the information we have to consider whether transferring away from the BPS to a personal pension was in Mr E's best interests. I have also carefully considered the final response letter from Vision. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr E's complaint.

Introductory issues

I'd like to start by referring to the 'timeline' of events. I've already described above how members of the BPS were given until 22 December 2017 to decide whether or not to join the BPS2.

However, I've noted in this case, that although the suitability report was from 30 January 2018, there's plenty of evidence showing Mr E had already told the BPS trustees that he had opted to join BPS2 ahead of the deadline date. In fact, this 'opting in' decision by Mr E is contained in Vision's own notes from the time. Vision's Financial Review Form said he had *"elected to transfer to the new BPS2 scheme rather than remain in [the] existing [scheme] and be placed in PPF"*. So this shows he'd already elected moving to the BPS2 in due course, if even as a precautionary measure, whilst he was still sourcing longer-term pension advice. I've also seen evidence of a letter from the trustees confirming Mr E's selection.

This means that although Vision didn't start researching his pension details and issuing its advice until January 2018 (after the deadline), Mr E was already on course to join the BPS2. And it was Vision's transfer-away advice that caused this to change. To be clear then, this means the redress should be based on Mr E joining the BPS2 if he hadn't been unsuitably advised.

Was the advice unsuitable?

In a case of this nature, I'd normally go on to comprehensively explain why the advice to transfer away was unsuitable.

However, as I've said, Vision already accepts the advice was unsuitable. I refer to its final response letter of 29 July 2022 which sets this out very clearly. So, if Vision accepted then that its advice was unsuitable, it would clearly be very hard for it now to say the advice was suitable.

What retirement age should be used in the redress assumptions?

I've noted that Vision has already carried out a calculation which it says used a retirement age of 65, as opposed to 58.

Mr E was only 53 at the time and in good health. This is still relatively young in a retirement context although there was obviously a discussion during the advice sessions about him wanting to retire at around the age of 58. But whilst I'm sure like many people, Mr E may have aspired to retire early, he was still 12 years from the NRA and five years from the age of 58. I can't see that his retirement plans were concrete and he still had a mortgage and two dependent children at the time. I think too that there were still some unforeseen things that life could throw at Mr and Mrs E which might have included, for example, health issues, financial pressures or relationship demands. So I don't think he was yet at the stage where mature or unchangeable retirement plans were right upon him.

I've noted several discussion points from the parties about what Mr E has indeed gone on to do. But of course, this is with the benefit of hindsight and also on the basis that Mr E was put into a particular financial situation as a result of Vision's unsuitable advice.

It is therefore my direction that the correct thing to do here is to use Mr E's NRA as prescribed in the ceding scheme's rules. This age, as we know, is 65.

Should Vision pay Mr E for distress and inconvenience?

Mr E has asked that this matter be considered. I have therefore thought about it with great care. Our investigator recommended that Vision should pay Mr E for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr E in his particular circumstances. This pension at the time represented most of his retirement provision and it was a relatively large amount. In his situation I think the thought of losing material benefits would have impacted upon Mr E.

Overall, I agree the recommended payment of £300 for distress and inconvenience is proportionate in all the circumstances.

Summary

By transferring from the BSPS to a personal pension arrangement, Mr E was giving up a guaranteed, risk-free and increasing income within the BSPS2. Vision now accepts the advice was unsuitable.

On this basis, I think Vision should have advised Mr E to remain opted into the BSPS2. Vision should compensate Mr E for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for Vision's unsuitable advice. I consider Mr E would have most likely have remained opted into the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Vision should use the benefits offered by BSPS2 for comparison purposes.

Vision 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>.

Vision 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 E and our Service upon completion of the calculation.

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 E'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, Vision should:

- calculate and offer Mr E redress as a cash lump sum payment,
- explain to Mr E before starting the redress calculation that:
 - the 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 the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr E receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr E accepts Vision's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr E for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr E's end of year tax position.

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

Our investigator recommended that Vision should pay £300 to Mr E for the distress and inconvenience caused by the unsuitable advice. I have considered this issue carefully particularly with regard to the size of this pension and Mr E's wider circumstances. I've considered also, the opportunities our investigator gave to Mr E to add any evidence about this aspect and his feedback directly to this invitation. I agree the recommended payment of £300. Vision should pay Mr E this amount *in addition* to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation, plus any interest and/or costs that I consider are appropriate.

Mr E should assist Vision in calculating the redress by producing information about his transferred funds.

My final decision

Determination and money award: I am upholding this complaint and I now direct Vision Independent Financial Planning Ltd to pay Mr E the compensation amount as set out in the steps above.

If Mr E accepts my final decision, the money award becomes binding on Vision Independent Financial Planning Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr E can accept my decision and go to court to ask for the balance. Mr E 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 E to accept or reject my decision before 4 January 2024.

Michael Campbell
Ombudsman