

## **The complaint**

Mr T complains that he was given unsuitable advice by AB Vision Financial Ltd ('ABV') 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 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 ("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 T's employer would be set up – the BSPS2.

In October 2017, members of 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 22 December 2017.

Mr T met with ABV in November 2017 for advice as he was worried about his pension. ABV recommended him to transfer his BSPS benefits to a personal pension and Mr T followed this recommendation.

In 2022 Mr T complained about the advice he was given as he thought it had been unsuitable.

ABV rejected his complaint and subsequently one of our investigators considered Mr T's complaint and upheld it. He thought Mr T had been given unsuitable advice and asked ABV to compensate Mr T accordingly. The investigator recommended ABV should calculate redress using the Financial Conduct Authority's ('FCA') redress methodology for DB transfers and pay Mr T an additional £300 for the distress and worry this matter had caused him. Mr T was given the option to have his redress calculated under current FCA guidance or alternatively wait until the FCA's updated rules and guidance would come into effect in early 2023. Mr T decided not to wait.

ABV accepted the investigator's view and carried out redress calculations which showed a loss of £10,840.80. ABV offered to pay the redress into Mr T's pension as recommended by the investigator. Alternatively, they offered to pay him £5,700 as a cash lump sum.

Mr T wasn't happy with this offer for several reasons. He didn't think the calculations were accurate as they were based on a value from October 2022 when the calculations were only

done in January 2023. And he was concerned that not all charges he had to pay in his new pension had been accounted for. He didn't want to accept a payment into his pension as he was worried about possible penalties he might have to pay and he didn't want to accept a cash offer that was reduced by over 50%. He also noticed that ABV had not mentioned the additional award of £300 as recommended by the investigator. Mr T requested an ombudsman's decision.

Very shortly after, in March 2023, ABV provided updated calculations. They said the estimated loss now was £4,829 and would likely be a maximum of £6,546 based on Mr T's personal pension value at the time. However, they said they would be willing to honour their first, higher, offer if Mr T accepted this by the end of March. They also offered Mr T that he could contact the actuary directly and ask them any questions he had about the calculations.

Mr T asked for a week's extension of this deadline so he could discuss the offer with the actuary who had prepared the calculations for ABV. ABV agreed to this and also confirmed to Mr T there would be no penalties if the redress was paid into his pension assuming Mr T had not used up all his annual allowance of £40,000 (increased to £60,000 per year from 6 April 2023). They also confirmed that all charges had been taken into account in the calculations.

After Mr T discussed the calculations with the actuary, he was still concerned about how the value of his personal pension was established for the calculations. He also still questioned why ABV's cash offer was reduced that much when in line with FCA guidance at the time and the investigator's view a cash sum payment should only have been reduced by a notional tax reduction of 15% in his case.

ABV explained that a cash offer wasn't mandatory. The investigator had asked for the redress to be paid into Mr T's pension in line with FCA guidance and only pay a cash lump sum if this wasn't possible or would conflict with any existing protection or allowance. Nonetheless they had decided to make a cash offer, however with a higher reduction as they believe it should be paid into his pension to enhance his retirement benefits.

Mr T remained dissatisfied with the offer and wanted an ombudsman 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.

ABV accepted the investigator's view and so I don't see the need to address the suitability of their advice to Mr T in detail. However, I would like to note that I agree with the investigator's view that the advice was unsuitable.

Mr T was 36 at the time of the advice. He said he would like to retire at 55 if financially possible. Mr T couldn't retire at 55 as by the time he reaches this age the earliest retirement age will be 57. Despite this benefit comparisons were done to age 55.

ABV concluded that it was clearly not achievable to match his DB benefits in the personal pension at age 55 and that it would be a struggle at age 65. Reasons to transfer despite the lower benefits he could achieve were the possibility of early retirement without deductions, flexibility and control as well as different death benefits. However, based on what I've seen these were stock objectives without proper analysis whether this is what Mr T required.

Whilst I don't doubt Mr T would have liked to retire early he was still at least 21 years away from being able to retire. A lot could change in this time and so it wasn't in Mr T's best

interest to give up guaranteed income so many years before retirement in my view when this decision was irreversible. Deductions in early retirement from the DB scheme or the PPF simply recognise that benefits are taken for longer, just like benefits need to be reduced in a personal pension if taken over a longer period to ensure the funds last over the full term of retirement. I can't see that this was properly explained.

Mr T had other defined contribution pensions which he could have used flexibly if he needed to in future and the DB scheme offered a valuable spouse's pension if Mr T passed away. In any event a pension is primarily designed to provide retirement benefits.

Overall, I can't see persuasive reasons why it was in Mr T's best interest to give up his DB benefits in 2017.

### **Putting things right**

I'll focus in this decision on the way to redress Mr T as no compensation offer could be agreed upon.

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice he was given. I consider he would have remained a member of the BPS and subsequently moved to the BPS2. So calculations should be made on this assumption.

Since the investigator issued their view, the FCA has issued new rules and guidance on how to redress consumer for unsuitable pension transfer advice (they came into effect on 1 April 2023). The FCA has also provided a BPS calculator which they expect businesses to use when they calculate redress for customers who transferred out of the BPS. I agree that this ensures more consistent and reliable outcomes.

ABV must 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>.

ABV should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output together with supporting evidence what the input are based on should be sent to Mr T and the Financial Ombudsman 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 promptly following receipt of notification of Mr T's acceptance of my final decision.

In the past the value of Mr T's personal pension has been a matter of contention between the parties. The actual value of Mr T's pension at the first date of the quarter when the calculation is carried out should be used.

DISP APP 4.3.16 R prescribes that for the redress calculation it should be assumed that Mr T would have taken his DB benefits at his normal retirement age from the BPS which is 65. ABV says early retirement can be assumed if there's evidence that Mr T would have retired early. They point to the fact that Mr T said he wanted to retire early if possible and that all the advice was based on this assumption. ABV also says Mr T hasn't queried once that early retirement was set out as one of his objectives.

ABV is correct that calculations can be based on an earlier (or later) retirement age in certain circumstances. DISP APP 4.3.17 G explains that this is the case where evidence shows that more likely than not the consumer would have taken DB benefits at an alternative date. Examples of evidence are mentioned which include documents from the time of the advice which show the consumer's intentions. However, the guidance does also state that evidence from the time of the advice is more likely to be relevant if it shows that the consumer had a 'considered plan' for taking retirement benefits early from their DB scheme.

I considered whether an earlier assumed retirement age should be used here, however I don't think this would be reasonable here. I don't think it's disputed that Mr T was interested in retiring earlier and found that idea attractive. However, I haven't seen evidence that that this was a considered plan with any more detail. And given Mr T's age and the long time before he can actually retire I think when he will retire is very uncertain. I don't think it's more likely than not that he will retire before 65. So ABV should use age 65 as the assumed retirement age in their calculations.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP APP 4, ABV should:

- calculate and offer Mr T redress as a cash lump sum payment
- explain to Mr T before starting the redress calculation that:
  - their 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 DC pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum
- if Mr T accepts ABV's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T 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 T's end of year tax position.

Redress paid to Mr T as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, ABV 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 T'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.

I'd like to note at this point that the investigator did ask ABV to pay compensation into Mr T's pension where possible and a cash sum offer wasn't mandatory under the FCA's previous guidance. However, I want to be clear that that Mr T is entitled to a cash lump sum offer for any redress that he might be entitled to under DISP APP4. And any notional tax reduction can only be 15%.

In addition ABV should pay Mr T £300 for the distress their unsuitable advice has caused him as recommended previously. I note that Mr T thinks this isn't enough. However, although it would have undoubtedly caused Mr T worry that he might have been given unsuitable advice, I'm mindful that Mr T is still working and isn't yet reliant on his pension for some time. So overall, I think £300 is fair compensation in the circumstances.

**My final decision**

I uphold Mr T's complaint and require AB Vision Financial Ltd to carry out the calculation as set out above. They should pay Mr T any redress due if the calculations shows a shortfall in Mr T's pension and £300 for the distress and worry caused by their unsuitable advice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 October 2023.

Nina Walter  
**Ombudsman**