The complaint

Mr G has complained that Cambrian Associates Limited (CAL) 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 her 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 G'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 The main defined benefit OPS had been replaced by a new defined contribution scheme.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 G was sent a transfer value quote on 18 September 2017 for his BSPS pension benefits. He had pensionable service of 33 years, and a cash equivalent transfer value (CETV) of £513,885.

Mr G met with an adviser from CAL who completed a fact find analysis on 11 October 2017 to establish his circumstances and financial objectives. An assessment of his attitude to risk determined that his risk appetite was "balanced".

The fact find recorded the following further details about Mr G:

- He was 50, cohabiting with his partner, and in good health. He was employed, earning around £40,000 pa.
- He was looking to retire at 60 with annual net income of £24,000 and expected to receive £8,320 annually from the state pension from age 67.
- His net monthly income was £2,400, he had joint monthly expenditure of £1,190, a jointly owned residence valued at £130,000, and a car worth £11,000. No debts or other liabilities were noted. His partner had savings of £25,000.
- He was contributing £200 (6%) per month to the workplace pension, which also received employer contributions of £333 per month (10%).

Mr G was recorded as being concerned about the stability of his BSPS pension and didn't want to transfer to the BSPS2 or PPF because of this. His objectives were *"to retire at 60 with pension income of £2,000 net per month. To leave any unused funds to [partner] when I die."*

Mr G wanted a "major proportion" of his pension fund to be protected as far as possible and said his dependants could benefits from additional sums of money in the event of his death.

He had no requirement for a pension commencement lump sum (PCLS) on retirement, expected to retire early and was happy to receive a lower sum on retirement to do this. He had little prior investment experience.

The risk profiling questionnaire asked 10 questions of Mr G on a scale of 1-5 (1 being "strongly agree", and 5 being "strongly disagree"). Five of the answers given were neutral ("3"). Mr G did not strongly agree with any of the statements, and only strongly disagreed with one question - when asked whether he would invest in something high risk. When asked whether he would describe himself as a risk taker, he answered "2" to indicate disagreement with the statement. His capacity for loss was recorded as "low", as the fund would be required to produce his required income in retirement.

Quotes for mortgage protection life assurance were obtained, as well as whole of life (WOL) protection for £513,885 at £516 per month. WOL cover was discounted due to the size of the premium, and Mr G did not want to commit to a substantial monthly sum for the rest of his life.

CAL issued a suitability report on 21 October 2017 and recommended that Mr G transfer his BSPS pension to a Prudential Retirement account and invest into the PruFund Growth Fund. Mr G's objectives were recorded as being:

- *"To retire when you reach age 60.*
- *To achieve retirement income in your own right throughout your retirement totalling £2,000 net per month.*
- *To have the facility to take a flexible income in retirement.*
- *To leave any unused pension fund at the time of your death to [partner] who will then leave any unused pension fund on her death to your extended family."*

The CAL adviser noted that the *"required yields, in my opinion, are extremely unachievable… and it is possible that your eventual pension may be less under this route than if you transferred to the new BSPS."*

However, the adviser recommended the transfer due to Mr G's objectives for the transfer:

"I am happy to recommend that you transfer your benefits … based on your current circumstances and retirement plans and your desire to leave a lump sum death benefit, even though the results of the Transfer Value Analysis System (TVAS) report would suggest that a transfer may not be the best option when comparing like for like benefits."

The benefits available under the BSPS and PPF schemes, and the critical yields that would be needed to match the PPF benefits were provided as follows:

	Age	Benefits as pension	Reduced pension plus PCLS	PCLS
BSPS	65	£30,342	£20,109	£134,060
BSPS	60	£24,881	£17,081	£113,875
PPF	65	£24,738	£19,045	£126,687
PPF	60	£20,860	£16,599	£110,423
Critical yield (to match the PPF)	65	4.15%	3.73%	
Critical yield (to match the PPF)	60	5.49%	4.91%	

A transfer to a stakeholder plan was discounted as it would not allow the funds to be invested in the recommended fund with Prudential, and flexi access drawdown was not available in a stakeholder plan.

The charges that would be due after the transfer were shown as:

- Annual fund charge 0.65%
- Annual product charge 0.30%
- Annual adviser charge of 0.5%

The transfer value analysis (TVAS) of 20 October 2017 provided the following information on the critical yields that would be required of the transferred funds to provide the same benefits as the BSPS:

PPP	Age	Benefits as pension	Reduced pension plus PCLS
Critical yield	65	7.73%	6.12%
Hurdle rate	65	3.39%	2.36%
Age drawdown funds depleted at medium rate of return	65	81	84

PPP	Age	Benefits as pension	Reduced pension plus PCLS
Critical yield	60	11.05%	8.55%
Hurdles rate	60	3.59%	2.07%
Age drawdown funds depleted at medium rate of return	60	79	81

Mr G accepted CAL's recommendation and the transfer took place on 19 October 2017. The amount transferred was £513,885.

Mr G complained to CAL through his representative, raising concerns as he'd received a letter from the FCA and was concerned he may have been mis-sold.

In its final response of 22 December 2022 CAL rejected the complaint, saying in summary that the transfer was suitable for Mr G's circumstances at the time and matched his objectives.

Dissatisfied with the response, Mr G referred the matter to this service.

Having considered the complaint, our investigator thought that it should be upheld. She said the following in summary:

- The regulator's guidance, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests. CAL confirmed in the suitability report that it took this into account.

- Mr G was recorded as having concerns about the BSPS. But even if this was the case, these concerns should have been appropriately managed by CAL. Mr G was relying upon CAL for balanced information and advice.

- The death benefits within the scheme had been underplayed – they were guaranteed and escalating. His partner would have received this for life.

- The drawdown fund was reliant upon investment growth, and was estimated to run out between 79 and 84. But if investment returns were lower than forecast, this would happen sooner, with there then being no unused pension fund to leave to his partner/family in the event of his death.

- Mr G could have achieved his income objectives – and any flexibility he required - by remaining in the scheme and accessing the tax free cash, his defined contribution fund and the scheme income. And so the different format of death benefits wouldn't have justified the transfer.

- The advice had been after the regulator had given instructions in final guidance FG17/9 as to how businesses could calculate future "discount rates" for complaints about transfers which were being upheld. Prior to that, this service was publishing information with which businesses could calculate future "discount" rates.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The critical yield to match the scheme benefits (taking the PCLS) at age 60 was 8.55%. The discount rate to that age was 3.7% and, taking into account Mr G's attitude to risk, along with the regulator's low, mid and high rate growth projections (2%/5%/8%) it was unlikely that the scheme benefits could be bettered through transferring. This was also noted by CAL within its suitability report.

- Mr G had been assessed as having a balanced attitude to risk, but the answers he'd given in the risk profiling exercise seemed to indicate a preference for the security of his pension funds. He was therefore more likely than not to have had a cautious risk attitude. He was an inexperienced investor and may not have understood the type of risk which would be required to try to achieve the required returns to match the scheme benefits.

The investigator recommended that CAL undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr G would have opted to join the BSPS 2.

The investigator set out the manner of paying redress, in line with policy statement PS22/13, and as set out in DISP App 4.

This said that redress should be paid to Mr G as a lump sum, with information as to how his defined contribution plan might be augmented with that amount. CAL could make a notional deduction from the amount for the (assumed basic rate) income tax he would have paid on the pension benefits.

Mr G accepted the investigator's findings. CAL hasn't made any comment on them.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BSPS-specific redress calculator to calculate redress for cases which were included in the BSPS consumer redress scheme. But, he 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 CAL to use the FCA's BSPS-specific calculator to determine any redress due to Mr G.

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 G's complaint, they should let him know by 15 June 2023.

As agreement hasn't been reached on the matter, it's been referred to me to review.

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 Business ('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 B'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 deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 specifically relate to a DB pension transfer.

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, CAL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr G's best interests.

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 TVAS report which CAL was required to carry out by the regulator said that the critical yield - how much Mr G's pension fund would need to grow by each year in order to provide the same benefits as his defined benefit scheme – was 8.55% to match the benefits he'd have been entitled to under the scheme at age 60. To match them at 65, the critical yield was 6.12%.

- Even given Mr G's recorded "balanced" attitude to risk – although I'm inclined to agree with the investigator that the answers provided by Mr G in the risk profiling exercise might reasonably indicate that he was more of a cautious investor - the discount rate of 3.7% to age 60, and the regulator's middle projection rate for growth (5% pa), I think Mr G was more likely than not to receive pension benefits, from either age 60 or 65, of a lower value that those he'd have been entitled to under the BSPS 2 (or most likely the PPF) by transferring and investing in line with that attitude to risk.

- Early retirement was clearly appealing to Mr G, as it might reasonably be appealing to a great many people, but as set out by the investigator, on the basis that Mr G envisaged needing £24,000 pa from age 60, this would also have been possible by accessing the tax free cash and benefits which would have been available from the BSPS 2 (or the PPF) and his separate defined contribution accrual (flexibly if required).

- In terms of the alternative lump sum benefits a transfer offered to his partner and family, the priority here was to advise Mr G about what was best for his retirement. While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer would likely be different if Mr G was drawing upon it, especially to a significant degree in the early years after retirement. It would also be dependent on investment performance, and so may not have provided the legacy that Mr G may have thought it would.

- My understanding is that Mr G wasn't married to his partner, and as set out in the suitability report, whether or not a spouse's pension would be payable to her in the event of Mr G's death would be at the discretion of the trustees. But there was also the five year guaranteed period of full payment after the pension had begun to be paid.

- Mr G's partner also had her own pension provision in the form of two paid up plans worth in the region of £60,000 and ongoing membership of a group personal pension (with a fund value of £15,000). She would also have her own state pension from age

67. She would further likely have benefitted from any unused value remaining in Mr G's defined contribution accrual in the event of his death.

- And this of course presupposes that Mr G would remain unmarried - with another 10 years until prospective retirement, Mr G's circumstances could have changed. There was no recorded prospect of Mr G marrying at the time of the advice, and so I haven't factored this specifically into the suitability assessment, but given the number of years to retirement, and the benefits to be gained by retirement age for Mr G (or rather a spouse) if indeed he did marry, I think it's worth noting that this can't necessarily be ruled out as a possibility.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr G. There was no identified need for a lump sum, given Mr G's and his partner's likely situation (married or unmarried) in retirement.

- My view is that CAL shouldn't have encouraged Mr G to prioritise the potential for alternative death benefits through a PPP over his own security in retirement.

- I also think Mr G's desire for control over how his pension was invested was likely overstated. As with the investigator, I can't see that he had an interest in managing, or the knowledge to be able to do so, his pension funds on his own. Given his balanced (or likely more cautious) risk attitude and lack of other experience I don't think that this was likely a genuine objective for Mr G – it was simply a consequence of transferring away from his defined benefit scheme.

- Mr G may nevertheless have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was CAL's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS 2 being established. But even if not, the PPF would still provide Mr G with guaranteed income and the option of accessing tax-free cash. Mr G was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might have thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons as to why it was clearly in Mr G's best interest to relinquish his defined benefits and transfer them to a PPP. And I also haven't seen anything to persuade me that Mr G would have insisted on transferring, against advice to remain in the defined benefit scheme.

So, as with the investigator, I'm upholding the complaint as I think the advice Mr G received from CAL was unsuitable.

Putting things right

As set out in the investigator's further comments relating to the BSPS-specific redress calculator, I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice.

In terms of the option Mr G would have chosen, had he been suitably advised, I've noted that there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.

Regarding death benefits, under the BPSP 2 the spouse's pension would be set at 50% of Mr G's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. But as Mr G was single at the time, and unless he had undisclosed plans to marry, I don't think this particular enhancement over the PPF benefits would have had much resonance for him at that time.

The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.

Mr G intended to retire at 60, and indeed, as set out above, it seemed likely that he would be able to do so on the basis of his anticipated income requirement and the benefits which would be payable from all sources of pension provision.

And so this would have been a point which required careful consideration when weighing up whether he should opt for the BSPS 2 or remain in the BSPS with a likely subsequent move into the PPF. Given what I've noted above, I consider Mr G would more likely than not have remained in the occupational pension scheme and opted to join the PPF if suitable advice had been given.

Cambrian Associates 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.

Cambrian Associates 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 G and our service upon completion of the calculation.

As Mr G intends to retire at 60, compensation should be based on a calculation to that age.

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 G'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, Cambrian Associates Limited should:

- calculate and offer Mr G redress as a cash lump sum payment,

- explain to Mr G 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 G receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr G accepts Cambrian Associates Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr G 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 G's end of year tax position.

Redress paid to Mr G 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 G'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

Determination and money award: I require Cambrian Associates Limited to pay Mr G the compensation amount as set out above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I would also recommend that Cambrian Associates Limited pays Mr G the balance.

If Mr G accepts this final decision, the award will be binding on Cambrian Associates Limited.

My recommendation wouldn't be binding on Cambrian Associates Limited. Further, it's unlikely that Mr G could accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept my final decision.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 December 2023.

Philip Miller
Ombudsman