

The complaint

Mr P complains that Beacon IFA Limited (Beacon) gave him unsuitable advice to transfer the benefits from his defined-benefit (DB) occupational pension scheme to a personal pension (PP).

At times we've received correspondence from a third party on Mr P's behalf, but for ease I'll refer to all representations as being from Mr P.

What happened

The events are well known to both parties, so I'll only set out what I think is key to reaching my decision.

Mr P was a deferred member of his employer's DB scheme, known as the British Steel Pension Scheme (BSPS). And, in March 2016, Mr P's employer announced it would be examining restructuring options, including decoupling its DB scheme from the company. The employer and scheme trustees consulted with members about possible outcomes for their benefits, including transferring the scheme to the Pension Protection Fund, or a new DB scheme known as BSPS2. Alternatively, members could transfer their benefits to a PP.

Mr P was concerned about what this meant for the security of his pension. He contacted Beacon for advice, and it gathered evidence of his circumstances. Amongst other things, Beacon recorded that Mr P's preferred retirement age was 60 and that he wanted to take a pension commencement lump sum (PCLS) at age 55 to repay his mortgage to allow a higher disposable income and because the term extended beyond age 60. In November 2017, Beacon sent Mr P a suitability report where it recommended he transfer the benefits from his DB scheme to a PP. And Mr P accepted its advice.

In June 2021, Mr P complained to Beacon that, in summary, he'd received a letter from the Financial Conduct Authority (FCA) saying he might have received unsuitable advice to transfer out of the BSPS. He asked Beacon to calculate compensation in line with the FCA's FG17/9 guidance for firms on how to calculate redress for unsuitable DB transfers.

In August 2021, Beacon sent Mr P its final response letter. It said Mr P ought to have been advised to remain in his BSPS, as he shouldn't have been exposed to investment risk given he chose an investment strategy suited to a cautious investor and had a low capacity for loss. Beacon said that while it considered using FG17/9 guidance to redress this, it instead decided to place money in an escrow account with the aim, combined with the value of his PP and based on growth assumptions, of Mr P purchasing an annuity at age 60 sufficient to replicate scheme benefits. And it calculated this as £56,112.01, although it later said it based this on what Mr P would have received in the BSPS rather than the BSPS2.

In September 2021, unhappy with Beacon's final response, Mr P brought his complaint to our Service. He said it made more errors than just its assessment of his attitude to risk. And that he'd like it to calculate redress as per FG17/9 guidance, as buying an annuity at 60 is more restrictive than what his options would have been had he remained in the BSPS.

One of our Investigators looked into it and said it isn't in dispute that Mr P was given unsuitable advice, or that he would have otherwise remained in his DB scheme and transferred to the BSPS2. He said Beacon should calculate redress in line with FG17/9, as this leaves Mr P's options open rather than having to purchase an annuity. And that Beacon should pay Mr P £300 compensation for the distress and inconvenience caused to him.

In October 2021, Beacon offered to pay an additional sum into escrow to resolve any concerns about a shortfall, while also inviting Mr P to decide which redress option he'd prefer. It went on to gather information and calculate redress based on FG17/19 guidance, but used assumptions as it couldn't obtain the full split of what his BSPS2 benefits would have been. And, in July 2022, it offered to pay Mr P redress of just over £6,000, as well as the £300 in compensation recommended by our Investigator.

In response, amongst other things, Mr P was unhappy Beacon took nine months to do the calculation. And that, after initially being done in June 2022, this was calculated again in July 2022 after the post retirement discount rate increased on 1 July 2022. Mr P said redress had drastically reduced due the impact of inflation on discount rates. And that Beacon hadn't included ongoing advice charges, when he was paying 0.6% until November 2021 when it stopped charging this fee.

Our Investigator said the calculation should use the most recent assumptions, regardless of how long the process took. And that while Beacon stopped charging Mr P ongoing advice fees during the complaint process, it should assume these would continue in the calculation to compensate him for the fact he wouldn't have incurred these if he hadn't been advised to transfer. So he said Beacon should recalculate the redress.

In August 2022, Beacon said Mr P had showed an interest in having a review in January 2022, which it offered through its sister business for £500 per year, but he wasn't prepared to pay this and hasn't appointed another adviser. So Mr P became a self-investor and including an ongoing adviser charge wasn't appropriate. Although it said it would add £500 per year to the calculation to age 60, given Mr P intends to retire then. It said that despite Mr P's early retirement intention it still used age 65 in the calculation, when redress would otherwise have likely be nil. And that if a different ongoing adviser charge is used then Mr P will be over compensated.

Mr P said he didn't accept this offer. He maintained that Beacon should include ongoing adviser charges in line with FG17/9. And he suggested it do two calculations, the first until the earliest he could have retired from the BSPS2 without penalty and the second to age 65. He said the first could be an amendment to the July 2022 calculation, and the second an amendment to the June 2022 calculation based on assumptions as of 1 April 2022.

Our Investigator said that while the ongoing adviser charge should be included in Beacon's calculations, he didn't think it ought to use assumptions that are now out of date. And he said that a retirement age of 65 should be assumed in the calculations in line with FG17/9.

As no agreement could be reached, the complaint was referred for a decision.

In August 2022 the FCA launched a consultation on changes to its DB transfer redress guidance (CP22/15).

Mr P appointed a new financial adviser who he'd pay an annual ongoing charge of 0.85% to. But Beacon said it only accounted for 0.5% ongoing adviser charges in its calculation, as the FCA said this was reasonable in CP22/15. And it offered to pay Mr P £250 in compensation.

In November 2022, the FCA published policy statement PS22/13 summarising the changes to its redress methodology following the consultation, which would come into force on 1 April 2023. And in February 2023, Beacon again offered to carry out new calculations including 0.5% ongoing adviser charges that it said was in line with PS22/13.

Mr P said the current position is that ongoing adviser charges are uncapped and new FCA guidance doesn't come in until 1 April 2023. And that if this should already be adhered to then Beacon also needs to account for new advice costs. Mr P also said Beacon should just amend its original August 2021 calculation to be in line with FG17/9.

Our Investigator said that the cost of new advice wasn't payable in Mr P's circumstances. And that, in any case, Mr P wanted redress to be calculated in line with FG17/9 as it currently stood which required Beacon to use actual ongoing adviser charges. He thought the calculation should be updated, but suggested the parties wait for an Ombudsman's decision.

In mid-February 2023, Beacon carried out new calculations anyway to age 65, based on what it already knew of Mr P's fund value as of 1 July 2022. It said that the values, even when accounting for the different adviser charges, were all lower than Mr P's actual fund value which shows he hadn't experienced a loss. It offered Mr P £1,000 in compensation though to make up for the distress and inconvenience caused to him. And Mr P said he wanted to wait until we'd been through the calculation before accepting this.

The FCA went on to develop a calculator to establish redress due under the BSPS consumer redress scheme. And our Investigator let the parties know the FCA is encouraging businesses to use this for non-scheme cases too. And that the Ombudsman might require Beacon to use this. So he asked Beacon to do so, and for the parties to let him know if they didn't consider this appropriate and why.

Beacon offered to do this. But it said the calculator only allowed it to calculate redress on 1 April 2023, so Mr P would need to evidence his fund value as of that date. Otherwise it would complete the calculation using the 'illiquid' fund method, using the last known valuation.

Mr P said that while he initially came to us as Beacon hadn't followed FG17/9, as well as because it hadn't calculated redress correctly, he feels like the errors and time taken has worked in its favour. He said its offer has reduced from around £56,000 due to inflation and interest rates, as well as a recalculated discount rate. Mr P said bulletins from the Pension Review era, which haven't been specifically revoked by FG17/9 or legislation, are clear about the impact of delay. And that as he's lost out due to Beacon's maladministration and non-adherence to rules, it ought to carry out a calculation using the summer 2021 figures.

Our Investigator said that if things have moved in Beacon's favour, this is likely because of the effects of changes in market conditions on the calculation. He said that, ultimately, the calculation is intended to ensure (so far as possible) that Mr P is able to purchase equivalent retirement benefits to those the scheme would have provided. And that as the cost of replacing those benefits changes over time, the redress figure was also likely to change.

In May 2023, Mr P said that he might get legal advice, as he should be able to request to use the assumptions where an adviser wilfully delayed paying compensation.

We didn't receive anything further from Mr P. And the complaint has now been passed to me for 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 should first say that there is no dispute the advice Beacon provided to Mr P was unsuitable. Beacon has agreed that it is required to put things right for Mr P by carrying out a loss assessment in line with the regulator's guidance. What remains in dispute here is whether the compensation Beacon has offered to Mr P for the unsuitable advice is fair and reasonable in the circumstances. However, for completeness, I agree that the advice provided to Mr P was unsuitable and will briefly set out my reasons for this.

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); the Conduct of Business Sourcebook (COBS) and the FCA's handbook rules on how firms should deal with complaints (DISP). 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 Beacon'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.

The FCA states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Beacon should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. And having looked at all the evidence available, I'm in agreement with Beacon that the advice provided to Mr P wasn't suitable.

Beacon acknowledged in the suitability report that the critical yield at Mr P's desired retirement age of 60 was unlikely to be attainable in light of his risk profile. And I agree that this meant Mr P was unlikely to be able to replicate or exceed the benefits available to him through the BSPS if he transferred out to a PP.

Furthermore, in Beacon's response to the complaint it agreed that it didn't think that giving up a guaranteed income was suitable for Mr P when he had a cautious attitude to risk, a low capacity for loss and limited investment experience. I agree with this analysis and as there were no other compelling reasons that would've otherwise meant that transferring out of the BSPS was suitable for Mr P, I'm satisfied that the advice to transfer out was unsuitable. And

that instead of transferring out, Mr P should've been advised to join the BSPS2. As such, it is fair for Beacon to compensate Mr P for the unsuitable advice according to the regulator's rules for calculating redress for non-compliant pension transfer advice.

Does Beacon's redress offer fairly compensate Mr P for the unsuitable advice?

There has been considerable correspondence about Beacon's redress offers including, for example, the calculation method it used and what it ought to take into account, such as what retirement date and ongoing adviser charge to use.

Beacon's most recent calculation is based on Mr P taking benefits from his DB scheme at its normal retirement age of 65, which Mr P has said it should have done from the outset. So it seems both parties now accept Beacon should use age 65 in its calculation. For completeness though, I think this ought to be based on Mr P taking benefits from BPS2 at age 65. From what I understand, Mr P hasn't yet retired or taken an annuity and I haven't seen anything to suggest he has concrete plans to do so before age 65. And, while it appears Mr P enquired about when he could take benefits from his PP to pay for his child's education, I don't think this shows he would have taken benefits early from BPS2. Ultimately Mr P is in a different position as a result of Beacon's advice, so his actions now aren't evidence of what he would've done had he been advised to remain in the DB scheme.

Taking advantage of the rules relating to drawdown PPs – being the ability to take up to 25% tax free upon turning 55 without needing to draw an income and leaving the remainder invested – isn't something Mr P could have done had he transferred to the BPS2. If Mr P took a PCLS payment at age 55 from this then he would have had to take a regular income at the same time, which would be significantly reduced compared to what he could receive at 65. So I think it's unlikely Mr P would have taken a PCLS at age 55 from the BPS2 had he been advised to join it. Mr P was still working then, I haven't seen anything to suggest he needed another regular income and taking one would have left him worse off in retirement.

I note Mr P told Beacon at the time of the advice that he wanted to retire at age 60 and take benefits from age 55 to repay his mortgage. But most people, when asked, would say they would like to retire early. But in reality, this often means a significant drop in income that would reduce their spending power and lifestyle choices, so most choose to continue working. That seems a more likely prospect for Mr P, given it seems he had a significant disposable income to pay down his mortgage in the meantime should he wish. Also, at the time of the advice Mr P was around 11 years away from age 60 and 16 away from age 65, during which his plans could change. So I don't think he had concrete plans to retire at 60.

It follows that I think Beacon should compensate Mr P for unsuitable advice, in line with the FCA's rules for calculating redress for non-compliant pension transfer advice. This should be based on Mr P taking benefits from the BPS2 at age 65. And, when carrying out the calculation, I expect Beacon to consult the FCA's calculator user guide and to follow the technical report, which explains how it should input the current ongoing adviser charge and what amount it should use.

I understand Mr P is concerned about the time Beacon's taken to carry out what he says are appropriate redress calculations to date. He's said this has impacted on him, as its offers have reduced as time has gone on. And most recently, the calculations have shown he hasn't experienced a loss due to the changes in market conditions, rates and assumptions during this time. Mr P said this has worked in Beacon's favour. And that it ought to be required to carry out a loss calculation using figures relevant in the summer of 2021 and be held responsible for maladministration.

While I appreciate Mr P's position and I've taken into account his comments, redress is based on the quarterly assumptions in place at the time the calculation is carried out. And as the latest calculation undertaken by Beacon is no longer valid, and Mr P hasn't accepted Beacon's offers to date, I think it's ultimately fair and reasonable that it carries out a new calculation using the most recent assumptions. The purpose of the redress method is to put Mr P back, as far as possible, into the position he would have been in had he not transferred his BSPS benefits. While the outcome of the calculation might be that Mr P hasn't experienced a loss, this would essentially mean he hasn't been disadvantaged financially as a result of the advice.

I do, however, think that Beacon's caused Mr P upset and frustration by, for example, not calculating redress in line with FG17/9 from the outset and, once it did, not including ongoing adviser charges in this until later. It has most recently offered to pay Mr P £1,000 in compensation for distress and inconvenience caused to him though and given the above, I think this is a fair and reasonable amount in the circumstances to make up for the impact of this matter on him.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice. There's no dispute that Mr P would have option to join the BSPS2 if suitable advice had been given, so I consider that most likely what he'd have done.

Beacon 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>.

Beacon 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 P and our Service upon completion of the calculation.

As I've said above, Mr P has not yet retired, and has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 P's acceptance of my decision.

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

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P 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 P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Beacon's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

Redress paid to Mr P as a cash lump includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Beacon may make a notional deduction to cash lump sum payments to take account of tax that Mr P would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr P'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 £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 business pays the balance.

Beacon should also pay Mr P £1,000 in compensation for the distress and inconvenience caused to him.

My final decision

Determination and money award: I uphold this complaint and require Beacon IFA Limited to pay Mr P 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 Beacon IFA Limited pays Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on Beacon IFA Limited.

My recommendation would not be binding. Further, it's unlikely Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 30 August 2023.

Holly Jackson
Ombudsman