

The complaint

Mr M 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 2017.

PSFM Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "PSFM".

What happened

In March 2016, Mr M'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 M's employer would be set up – the BSPS2.

In 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 M 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 PSFM which is responsible for providing the pension advice.

PSFM set out its advice in a suitability report on 16 November 2017. In this it advised Mr M to transfer out of the BSPS and invest the funds in a type of personal pension arrangement. PSFM said this would allow Mr M to achieve his objectives. Mr M accepted this advice and so transferred out.

In 2022 PSFM asked an external accountancy firm to review a number of DB transfer cases it had given historic advice on. Mr M's case was one of those chosen and he accepted the offer of an external scrutiny of his transfer case. But Mr M also referred a complaint about the transfer to our Service, the Financial Ombudsman Service, in June 2022.

The company brought in by PSFM to carry out the review said the transfer advice in 2017 wasn't suitable for Mr M. This was accepted by PSFM. However, when it then went on to calculate the redress owed to Mr M, it assumed he'd have transferred to the BSPS2 instead of transferring to the personal plan. And having used the calculation guidelines from the regulator, PSFM said there was nothing due. So, ultimately what PSFM said was that even though the transfer advice had been unsuitable, Mr M wasn't actually due back any money. This was because the personal pension arrangement to which he had transferred had grown

to an extent that it was effectively worth more, in monetary terms, than the DB scheme Mr M had been advised to leave.

Mr M didn't accept this calculation. He said he'd had numerous former steelworker colleagues, in very similar situations, who had received pay-outs as a result of unsuitable transfer advice.

One of our investigators looked into Mr M's complaint. Because PSFM accepted the advice to transfer had been unsuitable, the investigator looked specifically into the redress issue and whether PSFM had undertaken the calculation correctly. And they said that because Mr M had clearly wanted to retire early (and more or less directly after the transfer advice had been provided by PSFM) then the redress calculation should assume he would have moved to the PPF, rather than the BPS2, if he'd been given suitable advice.

PSFM is saying that as a matter of principle it used the BPS2 assumption for the redress, rather than the PPF. It says using this calculation is as per its normal approach in similar cases. But in any event, PSFM says that whatever calculation is used, Mr M still isn't due any money. On the other hand, Mr M still thinks he's due some money back by way of redress.

As this complaint can't be resolved informally, it's therefore come to me to make a 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 PSFM'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, PSFM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

Having considered all this, I'm upholding Mr M's complaint.

Suitability issues

Normally when assessing the suitability of a DB pension transfer advice case I'd comprehensively look at a number of issues. These might include, for example, whether the transferred pension was expected to grow by much after the transfer. It might also include whether the consumer needed a particular form of flexibility or whether ill health was an issue in their case. It might also be relevant to consider the various benefits and guarantees that would be lost if giving up a DB pension and transferring to a different scheme.

However, in this case I don't need to do this. This is because, as I've said, PSFM brought in an external firm to examine whether its advice was suitable and it accepts now that it wasn't suitable. I can see that this was set out clearly in PSFM's final response letter to Mr M on 10 October 2022 which says, *"as you will now be aware, it has been concluded by [the external company] that the advice you received to transfer from the British Steel Pension Scheme was **unsuitable** for your personal circumstances. Therefore, we have upheld this aspect of your complaint"*.

So, having accepted that the advice was *unsuitable* in October 2022, it would clearly be very difficult for PSFM now to say that it was *suitable*.

However, the FRL went on to explain that it had separately written to Mr M about the redress due. It said this letter, *"provides you with information to help you understand how the decision which has been reached results in no redress being payable to you, despite ... reaching the conclusion that the advice provided by [us] was unsuitable. I appreciate you will be disappointed with this outcome, but the approach taken is in line with the FCA's expectation"*.

So, what PSFM was saying here was that even though it now accepted the advice was wrong, Mr M wasn't going to receive any money by way of redress.

Was PSFM correct in saying no redress is payable?

As I've explained earlier, PSFM used the assumption that instead of transferring away from his DB scheme, Mr M would have most probably decided to move to the new BSPS2 scheme. And because the adviser was clearly wrong, they should have advised Mr M that BSPS2 was the much more suitable option for him.

But as our investigator explained, there are some anomalies that can occur when someone who is very close to taking early retirement is concerned. This can mean the PPF offers a better tax-free lump sum and sometimes a better annual pension than the BSPS2. In Mr M's case, he'd told the adviser he wanted to retire at the age of 55 which for him was only a few months away. The figures pertaining to the PPF in his case were indeed slightly better and so the adviser should have pointed this out and advised him that moving to the PPF – in his case – was the more suitable option.

PSFM has shown us the calculations that make up its "no loss" offer to Mr M and these were based on him transferring to the BSPS2 instead. But this isn't the calculation that should be used. Because of what I've said above, the assumption and comparison that needs to be used here is that Mr M would have moved to the PPF *and not* BSPS2.

Redress therefore needs to be re-calculated on that basis.

Summary

The advice given to Mr M wasn't suitable.

In light of what I have explained above, I think that PSFM should calculate any compensation to Mr M for the unsuitable advice using the regulator's defined benefits pension transfer redress methodology. But PSFM should use the benefits offered by the PPF for comparison purposes.

I do accept that PSFM has said it still doesn't believe this would change anything and that there would still be "no loss". However, we need to see these calculations to make sure they have been done correctly.

I've also personally explained the calculation approach to Mr M. I completely accept that it might seem very unfair that some colleagues have received redress whereas he might not. But every individual case is different and I have also explained the relationship DB pensions can have with bond yields. There have been recent and very significant changes in these areas caused by market corrections. In short, the landscape for DB pensions has changed substantially in recent times.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for PSFM's unsuitable advice. I consider Mr M **would have most likely opted to join the PPF**, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his stated early retirement age of 55, as per the assumptions in the FCA's guidance.

PSFM 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>.

PSFM 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 M 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 M'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, PSFM should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts PSFM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

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

My final decision

Determination and money award: I uphold this complaint and I direct PSFM Limited to pay Mr M the compensation amount (if any is due) as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that PSFM Limited pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award becomes binding on PSFM Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 8 December 2023.

Michael Campbell
Ombudsman