DRN-4321552

Financial Ombudsman Service

The complaint

Mr G complains about the advice given by Financial Planning Solutions Ltd ('FPS') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr G held benefits in the BSPS. In March 2016, Mr G's employer announced that it would be examining options to restructure its business including decoupling the BSPS (the employers' DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension 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 private pension arrangement.

In May 2017, it was announced that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed between the BSPS trustees, PPF and the pensions regulator. 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 BSPS2.

The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after. Updated transfer valuations were then provided by the BSPS trustees to qualifying members, reflecting the improved funding position – with the cash equivalent transfer value ('CETV') of Mr G's pension being £394,576.31. And in October 2017 members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

I understand Mr G was first in contact with FPS in October 2017 for advice about his BSPS benefits.

FPS completed a fact-find to gather information about Mr G's circumstances and objectives. Amongst other things it recorded that Mr G was 51, married to Mrs G who was 45 and had two children, one of whom was still financially dependent. Mr and Mrs G were both employed. In addition to the benefits he held in the BSPS, Mr G was also a member of his employers new defined contribution ('DC') pension scheme. And it was noted that Mrs G was a member of her employer's pension scheme and had been since approximately 1997.

FPS also carried out an assessment of Mr G's attitude to risk, which it deemed to be 'low medium' or five on a scale of one to ten, with one being lowest risk and ten highest. This assessment said the target portfolio for a 'low medium' risk profile investor had an estimated potential annual growth rate of 2.47%.

On 21 November 2017, FPS advised Mr G to transfer his pension benefits into a personal pension. The suitability report said Mr G's objectives were to retire at age 55 and begin drawing benefits from his pension and FPS said Mr G wanted a flexible source of income so that he could vary and reduce this once he started receiving his state pension. FPS discussed the critical yield – the level of growth required of a new pension to enable Mr G to purchase benefits at retirement equivalent to those he was giving up. It said it was unrealistic to expect these to be met consistently – particularly in the case of retiring early – although it did say that the past performance of the recommended investments often exceeded the critical yield for retiring at age 65. That notwithstanding it still recommended a transfer as it said this met Mr G's objectives.

The transfer went ahead in line with FPS' recommendation. I understand Mr G drew pension benefits – tax free cash and an income – when he reached age 55.

Mr G contacted the Financial Ombudsman Service in 2022 to raise his complaint about the advice he'd received from FPS. He said he was concerned he'd received unsuitable advice and may be in a worse position than he would've been. Mr G said he believed the guarantees he'd given up were more valuable than he'd been led to believe and that he could end up with less or no income at all if investments performed poorly. We asked FPS to respond to Mr G's complaint.

FPS didn't uphold Mr G's complaint. It said Mr G had been given clear information about the risks and benefits. FPS said it had considered and discussed with Mr G whether he could meet his objectives by remaining in the scheme. And while he could've taken benefits early, he was likely to have to make adjustments to his lifestyle to avoid an income shortfall in the future. At the same time though, FPS said it had identified that Mr and Mrs G had sufficient other assets to support their needs, should the transferred fund suffer a fall in value. But FPS said it felt the advice was suitable, based on Mr G's circumstances and objectives.

FPS also said its research indicated that, with Mr G's remaining pension funds, he could purchase an annuity that would provide a guaranteed pension in excess of what he'd have been able to take under the BSPS2 from age 55. So, it didn't think he had lost out.

Mr G asked us to then consider his complaint. He said some of the information FPS had used in its analysis to support its advice was inconsistent and incorrect and shouldn't have been used. And he said information in its response about his circumstances since the advice was also incorrect. He said he was an inexperienced investor and while his objective was to look to retire at age 55, he would only have done so if he was financially able. And he said he relied on advice from FPS about this. He acknowledged he had now retired, due to health issues, but says he only did so because of further reassurance from FPS that income would be sustainable. And if it weren't for this, he said he'd have continued to work, potentially in a different role.

FPS told our service, in February 2023, the while it still believed the advice to have been suitable, based on its calculations it believed Mr G had not suffered a loss.

One of our Investigators considered the complaint. She didn't think FPS's advice was in Mr G's best interests. So, the Investigator recommended FPS establish if Mr G had suffered a financial loss as a result of its advice. She said she thought Mr G was serious about retiring at age 55, particularly as he had gone on to do so. So, she said the calculation should be based on the assumption Mr G would have joined the PPF – which provided more favourable benefits for early retirement – and retired at age 55. Our Investigator also recommended FPS make a payment to Mr G for the distress caused.

FPS said, while it did not agree with the Investigator's findings that the advice was unsuitable, it had run redress calculations. It said it had done so under both the rules in place at the time and the proposed new rules that the regulator, the Financial Conduct

Authority ('FCA'), intended to implement from 1 April 2023. It said both showed that Mr G had not incurred a loss. However, to resolve matters, it was prepared to pay him £300 for the distress caused.

Mr G didn't agree that the calculation should be run on the basis of him retiring at age 55. He said he'd have continued to work if he hadn't been unsuitably advised and it wasn't financially viable. So, he said compensation should be calculated using the normal retirement age of the BSPS, 65. Mr G also said he didn't think the amount that had been discussed as a payment for distress and inconvenience was fair. He said this didn't reflect the stress this had caused him and the impact this had had on him.

As the matter could not be resolved, the complaint was referred for an Ombudsman's decision.

The FCA has since developed a BSPS-specific redress calculator. The calculator was developed for the BSPS consumer redress scheme. But it can still be used to carry out calculations in non-scheme cases, like Mr G's complaint with the Financial Ombudsman Service.

We asked FPS more recently if it was willing to update its redress calculation and use the BSPS-specific calculator. At the same time, the Investigator explained to FPS that an Ombudsman may conclude it would be fair to use different assumptions relating to what Mr G would've done had he not been advised to transfer. And he asked if FPS would consider running an additional calculation based on Mr G joining the BSPS2 and not taking benefits until age 65.

FPS agreed and carried out calculations, using the BSPS-specific calculator, on the basis of Mr G retiring at both age 55 and age 65. Both calculations indicated Mr G had not incurred a loss due to the advice to transfer as the value of his current pension, and the benefits he'd drawn, were greater than the cost of replicating the benefits he'd given up

Our Investigator explained to Mr G that he had reviewed the calculations and believed that they had been carried out correctly. And that FPS had now done what we'd recommended in respect of the calculation. He also still believed a payment of £300 for the distress Mr G had incurred, which FPS had agreed to make, was fair.

Mr G said he still wanted an Ombudsman to review his complaint, noting that he remained unhappy with the £300 offered as he didn't think this reflected the distress he'd been caused. So, the complaint has been passed to me to decide.

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.

FPS has said that it doesn't agree with the Investigator's findings about the suitability of the advice. But, in attempt to resolve matters, it agreed to carry out the redress calculations that the Investigator recommended. And it offered to pay Mr G £300 for the distress and inconvenience caused. So, FPS has agreed to do what the Investigator felt would be fair to resolve matters. And the dispute now largely relates to whether that is a fair way to resolve the complaint.

For the avoidance of doubt though, I have considered whether the advice was suitable. 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). These include the provisions in COBS 19 which specifically relate to a DB pension transfer in which the FCA states, in COBS 19.1.6G, that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, FPS should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr G's best interests. Having looked at all the evidence available, I'm not satisfied it was in Mr G's best interests. I'll explain why.

- FPS was required by the regulator to instruct a transfer value analysis ('TVAS'). This included the calculation of critical yields. FPS has said the Investigator focussed too much on the critical yields and that these alone don't determine whether advice is suitable or not. But again, the regulator required FPS to calculate these and consider the cost of the guarantees being given up. So, I do think an analysis of the critical yields is a relevant consideration here.

- The relevant TVAS report said the critical yield required to enable Mr G to purchase benefits equivalent to the full starting pension the BSPS2 would pay him from age 65 was 8.01%. And to purchase benefits equivalent to the full starting pension the PPF would provide from age 65 was 5.52%. FPS also calculated the critical yields required to match the pension benefits he could draw under both the BSPS2 and PPF from age 55. These yields were 17.95% and 11.7% respectively. And these critical yields were only to match the benefits being given up – so Mr G would have needed to achieve growth exceeding these levels to improve his pension benefits.

- The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. The regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So, while FPS was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. The discount rate at the time was 4.1% for 13 years to retirement – relevant for retiring at age 65. And it was 2.8% for 3 years to retirement – relevant if Mr G retired at age 55.

- The regulator also published lower, middle and upper standard projection rates – which at the time of the advice were 2%, 5% and 8% respectively.

- FPS said Mr G had a 'low medium' attitude to risk. And the risk assessment FPS produced said the estimated potential annual growth for a portfolio matching Mr G's risk profile was 2.47%.

- Considering all of these things, I don't think achieving returns in excess of the critical yields consistently could reasonably have been said to be likely. And I note FPS indicated as much in its recommendation, when saying achieving these consistently was unrealistic.

- FPS did somewhat undermine its own statement about this by then indicating that the product it was recommending had largely outperformed the critical yields for retirement at age 65 for a few years prior to the advice. But, as FPS will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

- And the critical yields aren't the only thing that, in my view, indicated there was the potential for Mr G to be worse off by transferring. The TVAS estimated that the cost of, or pension fund value that would be required, purchasing equivalent benefits at age 65 to match the pension the BSPS2 would provide was £846,532.12. And to purchase equivalent benefits at age 55, a fund of £682,857.43 was likely to be required. But a personalised illustration from the pension provider said that if the mid-rate of growth it used was achieved until age 75, a further ten years from the scheme normal retirement age and twenty years from when Mr G was apparently considering retiring, the value of the pension was likely to only be £378,000. And indeed, higher growth was likely to only result in a fund value of 739,000. Which indicates achieving the fund values that were expected to be required by the retirement dates was unlikely, particularly considering Mr G's attitude to risk.

- Because of all of this, I think Mr G appeared likely to receive benefits of a lower value by transferring. Which, in my view, means a transfer wasn't in his interests.

- FPS says Mr G wanted flexibility with his pension benefits and to be able to retire at age 55. But under the BSPS2 and the PPF he'd have been entitled to draw benefits form age 55 onwards. It has also provided, as part of its file, more than one note that appears to represent a review of the advice. In these it was noted that Mr and Mrs G could've lived their desired lifestyle if Mr G had remained in the BSPS2 and retired at age 55.

- The notes refer to Mr and Mrs G potentially having to cut back when Mr G reached age 81 if he remained in the BSPS2. But that may have happened naturally as Mr and Mrs G got older. And the TVAS report also indicated that if Mr G transferred, mid-rate growth was achieved (which wasn't guaranteed) and he drew benefits from the new pension equivalent to those the BSPS2 guaranteed him from age 55, his pension fund would've been depleted entirely by age 81. The notes also say that, by remaining in the BSPS2 Mr and Mrs G's essential expenditure would be covered by the guaranteed income. So, I don't think the information I've seen supports that transferring to achieve flexibility was in Mr G's best interests.

- FPS has indicated that if Mr G passed away at age 70, Mrs G may have found herself without sufficient retirement provisions by the time she reached age 73. By which it may be suggesting that the alternative, lump sum death benefits offered by a personal pension were beneficial. But while death benefits are an emotive subject the priority here was what was best for Mr G's retirement.

- Also, while the CETV would no doubt have been appealing as a potential lump sum, the figure remaining on death was always likely to be different. This is because it would be impacted by investment performance and any benefits Mr G drew from the pension – which, given FPS's advice was based on him retiring at age 55, could've been significant. So, the pension might not have provided the legacy Mr G thought.

- The fact find recorded that Mr and Mrs G already had large sums of life assurance in place, which would appear to have been a more suitable alternative for providing a legacy. And if Mr G had thought these were insufficient, he could've looked to increase his cover, rather than transferring his pension and giving up his guaranteed benefits.

- Overall, I don't think different death benefits available through a transfer meant it was in Mr G's best interests.

- FPS has said that control of his pension, because of the issues that had happened to that point, appealed to Mr G. But from what I've seen Mr G was an inexperienced investor. And I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And indeed, the advice was on the understanding he'd take ongoing advice, at a cost – which he wouldn't have incurred by remaining in the scheme.

- I don't doubt that Mr G was likely to have been upset by what had happened with his pension to that point. Or that he might've had negative feelings about his employer or thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But FPS's role was to give impartial, objective advice. Mr G's employer and pension scheme were not one and the same. And Mr G intended to continue in his job and was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.

- I don't doubt Mr G had potentially heard negative things about the prospect of his benefits moving to the PPF. But that was why it was even more important for FPS to provide objective advice. Notwithstanding that the BSPS2 was being established as an alternative, the PPF still provided Mr G with a guaranteed income and the option of accessing his benefits early, and the information at the time indicated he was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr G's best interest to give up his DB benefits and transfer them to a personal pension. Nor have I seen anything that leads me to think Mr G would've gone against advice not to transfer, had it been explained that this wasn't in his best interests. So, I think the advice FPS gave was unsuitable.

Putting things right

As I've explained, FPS agreed to the steps to settle the complaint which the Investigator recommended. So, what is left for me to decide is if this is fair and whether or not it's done enough to put things right.

The aim is to put Mr G back, as close as possible, in the financial position he would have been in at retirement had he remained in the DB scheme. Mr G can't though return to the BSPS. So, the FCA developed and has set out a methodology for calculating redress where unsuitable advice has been given to transfer from a DB scheme (like the BSPS).

I can understand that consumers like Mr G might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr G into a better position than he would have been had he not transferred. And compensation isn't designed to punish or fine a business for giving unsuitable advice.

The FCA developed the BSPS-specific redress calculator. And FPS used this when carrying out its recent calculations. Which I think is appropriate.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I have checked the inputs that were entered by FPS which are personal to Mr G. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The current value that was used for Mr G's pension was as of 1 October 2023. Using 1 October 2023 is specified by the regulator – it mandates the use of the first day of the financial quarter in which the calculation is run (with the calculations here having been completed in November and December 2023). And this information appears to have been entered correctly.

Mr G has said that the calculation should be based on the assumption he'd have joined the BSPS2 and continued to work until age 65 if he'd been given suitable advice.

The FCA explains in DISP App 4 that the starting assumption for a redress calculation should be that benefits would be taken at the normal retirement age of the DB scheme (which here was 65). It also explains what might make it reasonable to depart from that assumption. Taking tax-free cash from the new pension – which Mr G has done here – on its own, is said to be unlikely to be enough to depart from the starting assumption. But where a consumer has changed their working pattern at a similar time to taking regular benefits from the new pension, this would rebut the presumption. Mr G retired and began drawing regular income from the pension. And although Mr G has argued this was because of FPS's advice, given the information from around the time that suggests a health condition played a part in this, I think it only fair that I have regard for what has happened. And so, I don't think what the Investigator said about assuming he'd have retired at age 55 was unreasonable.

But in any event, FPS has carried out redress calculations for both the scenario of him having drawn benefits from age 55 and him having continued to work until age 65.

Overall, based on what I've seen, FPS has carried out the calculations appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter .

The calculations in Mr G's case show, whether assuming retirement at age 55 or age 65, there is no shortfall - the funds he holds and has had the benefit of are sufficient to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr G has not suffered a financial loss by transferring his pension. And as an appropriate calculation has now been carried out by FPS, I don't think it needs to do anything further in respect of any potential financial loss.

Our Investigator also recommended that FPS make a payment for the distress caused by its advice. And FPS has previously explained it is willing to make a payment of £300 for this. Mr G has said that this is insufficient given the distress he's been caused.

Most people, when they bring a complaint feel strongly about them, if they think something has gone wrong. And I don't doubt Mr G feels strongly about this complaint. But any award for distress is not intended to punish a business. Nor is it intended to make up for any loss of expectation that a redress calculation may result in.

I do accept Mr G is likely to have worried, and potentially more so after complaining, that the advice might not have been suitable for him. Particularly given the circumstances under which he first asked for this advice - when there was a lot of uncertainty regarding the pension scheme. But I think it's likely that, even some of those BSPS members who didn't take advice and remained in the scheme suffered similar worries, wondering if they'd made the right choice. I think that was likely to be a consequence of the circumstances they found themselves in. And Mr G has not been prevented from accessing or utilising his pension benefits by the advice. And the calculations FPS have carried out have shown Mr G hasn't incurred a financial loss, which I hope provides some reassurance.

The uncertainty Mr G has experienced as a result of FPS's advice has likely caused some distress and concern. This upset wouldn't have happened but for FPS's advice. And I do think Mr G's concerns, since raising the complaint, were likely, in my view, to have been more than the levels of frustration and annoyance you might reasonably expect from day-to-day life. But, while I appreciate this will likely come as a disappointment to Mr G, I think a payment of £300 for the distress he's been caused is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and – unless it has already done so – require Financial Planning Solutions Ltd to pay Mr G a sum of £300 to address the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 February 2024.

Ben Stoker
Ombudsman