

## **The complaint**

Mr G complains about the advice given by Merlin Financial Services Limited ('Merlin') to transfer the benefits from a defined-benefit ('DB') occupational pension, 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.

Mr G is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr G.

## **What happened**

Mr G held benefits in the BSPS having previously worked for the sponsoring employer. In March 2016, Mr G's former 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, 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.

In May 2017, the 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 former 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. 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. The deadline to make a decision about joining the BSPS2 was 11 December 2017 (later extended to 22 December 2017).

Merlin says Mr G approached it, a pension transfer specialist, via his financial adviser, who worked for a different business, for advice about transferring his BSPS benefits.

Merlin completed a fact-find on 7 December 2017, to gather information about Mr G's circumstances and objectives. Mr G was 52, in good health, married with two children. He was employed and his income exceeded his outgoings. In addition to his BSPS benefits, Mr G held benefits in three other defined contribution ('DC') pensions schemes. One was with his current employer, to which he was making contributions of around £2,200 per year. The other two were no longer receiving contributions and had a total value of approximately £30,500. Mrs G also held pension benefits in two different pensions, one of which was a DB scheme.

Mr G expected to retire at age 67. But he said he'd like to retire or reduce his hours at age 60. Merlin said he expected to need an income of £15,000 per year from age 67. But from age 60 only expected to require £10,000 per year from his pensions. It said he was

interested in transferring his BPS benefits to a more flexible pension to enable him to retire early. It said Mr and Mrs G's state pensions and Mrs G's DB scheme benefits were likely to be enough to meet their needs from age 67. Merlin said Mr G was concerned about the benefits moving to the PPF and losing the option to access them flexibly. And it also said Mr G was interested in the lump sum death benefits a personal pension offered, so that he could leave his full pension to his wife and children.

Merlin also carried out an assessment of Mr G's attitude to risk, which it deemed to be 'low' or three on a scale of one to ten, with one being lowest risk and ten highest.

On 22 December 2017, Merlin sent Mr G its written recommendation (often referred to as a 'suitability report'). It advised him to transfer the full cash-equivalent transfer value ('CETV') of his benefits (£212,121.10) from the BPS to a personal pension with a named provider and invest in a managed fund that Merlin said met Mr G's attitude to risk. Merlin said it was unlikely the new pension would grow at a rate large enough to provide benefits equal to those the existing scheme would pay. And it said for that reason it wouldn't recommend a transfer. But because Mr G wanted flexibility and alternative death benefits, it said it was happy to facilitate a transfer for him. The transfer went ahead in line with the recommendation.

Mr G complained in 2023 to Merlin about the suitability of the transfer advice. Merlin didn't uphold the complaint. It said it thought the advice was suitable based on Mr G's concerns about the issues the scheme had experienced and his preference for flexibility in how he could take his benefits and for lump sum death benefits.

Mr G referred his complaint to the Financial Ombudsman Service. One of our Investigator's considered it. He said he didn't think Mr G needed to transfer at the time he did and that, in his view, there were no compelling reasons that meant a transfer was in Mr G's best interests. So, he recommended that Merlin compensate Mr G for any loss the advice had caused and pay him £300 for the distress he'd suffered.

Merlin disagreed. It said Mr G and his adviser had approached it looking to transfer his benefits. Merlin said Mr G would not have been reliant on his DB scheme benefits once he and Mrs G began receiving state pension, to meet their needs. It said Mr G had wanted flexibility in terms of how he could draw his benefits and wasn't transferring to replicate guaranteed benefits. And it said because of this, his concerns about the running of the DB scheme and potentially entering the PPF and his preference for alternative death benefits, which Merlin says was very important to him, it still considered the advice was suitable as it address his objectives.

The Investigator wasn't persuaded to change their opinion, noting that Merlin's role was to provide objective advice not to put in place what Mr G might've thought he wanted. As agreement could not be reached, the complaint was referred to me to make 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'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'). 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 Merlin'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 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, Merlin should have only considered recommending a transfer if it could clearly demonstrate that the transfer was in Mr G's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

Merlin said in its suitability report that it was unlikely and not guaranteed that a personal pension could achieve the returns needed to replace the guaranteed benefits Mr G was giving up. And it had to therefore assume that by transferring, over the long term, Mr G would receive a lower income. Given the primary purpose of a pension is to provide income to the holder in retirement, this would suggest, as Merlin acknowledged Mr G was likely to be worse off, that a transfer wasn't in his interests. But Merlin says Mr G did not want guaranteed benefits and there were other reasons that meant a transfer was suitable.

Merlin says Mr G and his adviser approached it wanting to transfer his DB scheme benefits. The suitability report said that he wanted to transfer the value of his pension for flexibility and to achieve alternative death benefits. And it went on to say, taking these other reasons for transferring into account, it was "happy to facilitate this for you".

Before I go on to address these reasons for transferring in more detail, firstly, I can't say with certainty that any thoughts Mr G had about transferring before contacting Merlin hadn't been influenced by discussions he'd already had with the financial adviser it has referenced. Merlin recorded that Mr G had a low attitude to risk and, although he held other pensions, I can't see that he had a great deal of relevant decision-making experience relating to the management of a pension of this size and importance. So, it is possible that flexibility, control and alternative death benefits – generic features of personal pensions – were suggested to him as potential benefits rather than being something he wanted. In any event though, Merlin's role was not to facilitate a transfer nor was it one of wish fulfilment or to put in place what Mr G might've thought he wanted when seeking advice. It was to give him objective advice about what was in his best interests.

The fact-find recorded that Mr G expected to retire at age 67, but said he hoped to do so at 60. But it also made reference to him instead potentially reducing his working hours from age 60 and expecting to need an income of £10,000 per year from his pensions at that age. And

Merlin said Mr G wanted flexibility in order to meet these aims. But I can't see that Mr G had a strong need for a variable income, and this was more a 'nice to have'.

Under the BSPS2 and the PPF, Mr G could've taken pension benefits at age 60. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age.

The analysis that Merlin carried out appears to have only considered the benefits that Mr G could've received under the BSPS and the PPF. Even though remaining in the BSPS, as it was, wasn't an option, details of the BSPS2 were known and events that had happened to that point indicated that the BSPS2 would be going ahead. And I think that was a failing by Merlin. But that notwithstanding, I don't think, based on what I've seen, that Mr G needed to transfer to achieve the recorded income objective from age 60.

Merlin's analysis said that, from age 60, under the PPF, Mr G could've taken an income of £7,252 per year. Or he could've taken tax-free cash of £39,287 and a reduced annual pension of £5,439. And while, I can't say with certainty, because Merlin didn't carry out the relevant analysis, it's likely the benefits under the BSPS2 would've been broadly comparable.

Both of those annual income figures fell below the £10,000 that it was recorded that Mr G expected to need from age 60. But Mr G had no expected need for tax-free cash at retirement. So, he could've taken tax-free cash, retained this and used it to supplement the annual income from the pension to meet his expected income needs between age 60 and age 67. And then from age 67 he'd have continued to receive his guaranteed income from the DB scheme and began receiving his state pension.

In addition, Mr G had other provisions he could use, to supplement the income from his DB scheme from age 60, to meet his stated objective. He held approximately £30,500 in two personal pensions, which he could've accessed flexibly from age 60 to help meet his needs. Mr G also had £30,000 in savings, and had surplus income each month, so could've increased this amount before retiring. And he was continuing to contribute to another workplace pension at a rate of £2,200 per year. It is reasonable to expect he'd have continued to build his pension benefits, either through this scheme or with another employer if he moved roles, until he retired. And even before accounting for any increases in his contributions or growth, it was likely that this pension would increase in value by in excess of £15,000 before Mr G reached age 60, giving him another pot from which he could potentially take benefits to meet his needs until age 67, when he'd begin receiving his state pension.

Merlin said that Mr G expected he and Mrs G would need an income of £15,000 from age 67. And that this would be met from their state pensions and Mrs G's DB scheme. But details of Mrs G's DB scheme were not gathered. So, how much it would provide was unconfirmed. It appears though that the benefits Mr G could've taken from the BSPS2 or the PPF, which would've been guaranteed, when added to their state pensions would have been sufficient to meet their recorded needs from age 67. Mrs G's DB scheme may well have then provided further income, in excess of their needs. But I think it's rarely the case that people complain of having too much money. And by remaining in the DB scheme Mr G would have had a higher safeguarded income.

So, I don't think Mr G needed to transfer to achieve these objectives that Merlin recorded. But by doing so he was exposing his pension fund to the volatilities of the investment markets. So, he was putting his otherwise safeguarded DB scheme pension income at unnecessary risk. I don't think that was in his best interests, particularly given his low attitude to risk.

I'm also conscious that Mr G was only 52 at the time of the advice – over seven years away from when he thought he might like to take benefits from his pension. His circumstances, objectives or aims could've changed over the years that followed. I also don't think his plans for age 60 were finalised – given he indicated he expected in fact to work to age 67. I don't doubt that Mr G liked the idea of potentially retiring early. I think, when asked, most people would say they would like to do so. But, when it had come to it, he may've felt differently or opted not to retire early. And overall, I think it was too soon for Mr G to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2, which, when combined with his other provisions, would've likely allowed him to meet his expected needs. And because by joining it he would retain the option to transfer out at a later date if his circumstances required it.

Merlin says the lump sum death benefits afforded by a personal pension, and the option of being able to leave his pension to his family on his death, appealed to and were important to Mr G. But Merlin's priority should've been to advise Mr G about what was best for his retirement.

Mr G's DB scheme provided a spouse's pension which could've been useful to Mrs G and was guaranteed and not dependent on investment performance. Merlin has said that Mr G didn't think this was particularly valuable. But while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. It would've been impacted by investment performance and reduced by any income Mr G drew in his lifetime. And given Merlin's recommendation was based on Mr G expecting to draw a significant amount from this in the early years of retirement and that Mr G was still relatively young and was recorded as being in good health the fund was likely to be significantly depleted by the time it came to be passed on, if not utilised entirely. So, it may not have provided the legacy Mr G might've thought it would.

If Mr G was concerned about leaving a legacy, insurance was an option. Merlin has said that this was considered and has provided evidence it obtained details of the potential cost of a whole of life policy for a sum equal to the CETV. But it said in the suitability report that Mr G didn't want to commit to paying these premiums. Notwithstanding that Merlin's role was to advise Mr G about what was in his best interests, basing the quote on the transfer value of Mr G's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Rather the starting point ought to have been to ask Mr G how much he would ideally like to leave to his family, which also would've served to illustrate that this wasn't in fact just a generic objective. And even though the whole of life premium appeared to be affordable based on Mr G's level of disposable income, this could've also been explored on a term assurance basis, which was likely to be a lot cheaper to provide.

Overall, I don't think different death benefits available through a transfer meant it was in Mr G's best interests. And ultimately Merlin should not have encouraged Mr G to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Merlin says Mr G was worried about his pension benefits, the prospect of these entering the PPF and him losing the option of taking these flexibly. I don't doubt that Mr G was likely to have been worried by what had happened to that point regarding the DB scheme. The consultation was likely to have been unsettling and he may well have had negative feelings about his former employer and might've 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 again, Merlin's role was to give impartial, objective advice.

There had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF

and still provide Mr G the option to transfer closer to retirement. Merlin has said that the BPS2 was not confirmed. But I think it is overstating the chance of it not being put in place. The restructuring of the BPS had been ongoing for a significant amount of time by the point it gave advice. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a significant lump sum payment into the BPS which enabled the provision of improved transfer value quotations. And members had been sent “time to choose” letters, with opting into the BPS2 one of the options offered to them. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BPS2 would go ahead.

But even if this hadn't happened, the PPF still provided Mr G with a guaranteed income and the option of accessing his benefits early. As I've said, I think Mr G could've met his objectives, if they were indeed correct, by taking benefits through the PPF. 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.

Merlin has said it believes Mr G made an informed decision to transfer. And I can see that Merlin gave information about risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr G to transfer. And I think he relied on that advice. If Merlin, a professional adviser whose expertise he had been recommended, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr G received from Merlin was unsuitable.

I'm conscious that the advice was given when the deadline for deciding to opt into the BPS2 was approaching. And the suitability report was dated the day of that deadline. But if, as Merlin says, Mr G had indicated on 7 December 2017 at the time of the fact-find that he was concerned about entering the PPF and losing the option of flexibility, I think it could've suggested he opt into the BPS2 in the interim, before the deadline, pending it providing full advice. Because by opting into the BPS2, Mr G would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BPS2. So, I think, based on what Merlin had recorded, it could've made this suggestion to Mr G. And again, I think he'd have likely taken on board Merlin's suggestion, given that he came to it for advice. So, if Mr G had received suitable advice not to transfer, I think he'd likely have ended up in the BPS2. And I think Merlin should compensate him on this basis.

Our Investigator recommended that Merlin also pay Mr G £300 for the distress caused by the unsuitable advice. Merlin has questioned whether Mr G was likely to have been distressed. But I don't doubt he has likely been caused some distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

### **Putting things right**

A fair and reasonable outcome would be for Merlin to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr G would have most likely remained in the occupational pension scheme and opted to join the BPS2 if suitable advice had been given.

Merlin 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>.

Merlin 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 the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Merlin based the inputs into the calculator on.

For clarity, I understand Mr G has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, 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 G's acceptance of the decision.

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

- calculate and offer Mr G redress as a cash lump sum payment,
- explain to Mr G 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 this DC 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 Merlin's offer to calculate how much of his 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 his 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Merlin 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.

In addition, Merlin should pay Mr G £300 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £190,000, 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 £190,000, I may recommend that the business pays the balance.

## **My final decision**

Determination and money award: I uphold this complaint and require Merlin Financial Services Limited to pay Mr G the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Merlin Financial Services Limited pays Mr G the balance.

If Mr G accepts this decision, the money award becomes binding on Merlin Financial Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr G can 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 any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 December 2023.

Ben Stoker  
**Ombudsman**