

The complaint

Mr W complains that he was given advice by Pennymatters Limited to transfer his deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension. He says the advice was unsuitable and not in his best interest.

What happened

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 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. 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 W's employer would be set up – the BSPS 2.

In November 2017 Mr W came across an unregulated investment firm online. They referred him to IPS Financial Advice Ltd (IPS), a firm regulated in Ireland, for pension transfer advice. Mr W asked to transfer his BSPS pension to a Recognised Overseas Pension Scheme (ROPS) registered in Malta.

IPS provided Pennymatters with a background form which included some basic details about Mr W and a risk profile report. IPS also provided Pennymatters with details about Mr W's BSPS benefits.

The documents showed:

- Mr W was 30 years old, single and earning £34,000 a year.
 - He was expecting a state pension of £8,296 per year and a pension from his BSPS of £4,097 a year (the latter was the BSPS pension calculated as of the date Mr W left the BSPS scheme which was in May 2016).
 - His desired territory for retirement was Malta
 - He was transferring his benefits to a defined contribution scheme as his defined benefit scheme had closed
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- He had met with financial advisers and had completed paperwork
 - His attitude to risk was recorded as balanced.
 - The transfer value from the BSPS was £96,796.27

With regards to how he would be invested once transferred IPS said:

'Again – Intend to invest in Euro equity fund, Emerging Markets, Global Equity Fund and Absolute Return Fund – 25% split. Looking at funds which have seen double digit returns over the last 5 years.

Risks – usual equity caveats

Charges – up to 1.7% AMC and 0.5% for trading account'

Based on the above, Pennymatters then issued a transfer analysis report (TVAS) and a report which detailed the Background/Objectives as *'to establish what factors there are to consider in the case of a potential final salary transfer to a prospective money purchase scheme, which could be onshore or a QROPS.'*

Pennymatters also issued a transfer advice declaration form which said:

To be completed by an Independent Financial Adviser (IFA) who is giving pension transfer advice to a pension scheme member with safeguarded benefits with more than £30,000.

It then showed the IFA's details as an adviser from Pennymatters and their FCA authorisation number.

The form went on to say:

'In relation to the potential transfer of the plan holder's safeguarded benefits, I hereby declare that:

In my view appropriate independent advice has been given to the plan holder [Mr W] to quantify the issues surrounding a potential transfer of benefits out of the British Steel Pension Scheme.

I, as an IFA, have permission under Part 4A of the Financial Services and Markets Act 2000 or resulting from any other provision of that Act, to carry on the regulated activity in Article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the Order") (pension transfer advice).'

The TVAS, report and transfer declaration were returned to IPS with an invoice to Mr W of £660 plus VAT for the documentation they issued.

The new pension provider then requested the transfer of Mr W's BPS benefits. The BPS administrators asked for more information from Mr W including a pension liberation questionnaire and a declaration from his FCA regulated financial adviser. The transfer advice declaration provided to the trustees was the one issued by Pennymatters.

Mr W subsequently transferred his BPS benefits to a ROPS registered in Malta.

In 2023, Mr W complained about the advice he received and that he suffered financial loss by giving up his DB benefits. Pennymatters say they didn't advise Mr W to transfer out of the BPS nor did they facilitate the transfer. They had no involvement with Mr W's investments and they were only tasked to evaluate and quantify a potential transfer of benefits from the British Steel Pension Scheme.

Our investigator upheld the complaint. Pennymatters disagreed and so the complaint was passed to me for an ombudsman's 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.

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations, regulator's rules, guidance and codes of practice, and what I consider to have been good industry practice at the time. 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.

Provisional findings

I previously issued a provisional decision upholding the complaint. I said:

I agree with Pennymatters that based on the information available they didn't provide Mr W with a personal recommendation to transfer his BPS benefits or how to invest once the monies were transferred. However, whilst Mr W's complaint is that Pennymatters gave him unsuitable advice, as a service we have an inquisitorial remit which allows me to consider what lies at the heart of his complaint. And it's clear to me that the complaint ultimately relates to Pennymatters' involvement in Mr W's pension transfer advice process which is what I've considered here.

Pennymatters was a FCA regulated financial advisory firm who were providing a service to Mr W in relation to a possible pension transfer and investment in a ROPS. They were making arrangements with a view of him transferring his pension into a ROPS and investing it mainly in equity funds. And they were charging a fee for this. In accordance with the FCA's Principles for Businesses they had to:

- conduct their business with integrity (PRIN1)
- conduct their business with due skill, care and diligence (PRIN2)
- pay due regard to the interest of their customers and treat them fairly (PRIN 6)

The Pension Schemes Act 2015 introduced the obligation for pension trustees to check that consumers had taken advice from an authorised independent adviser before giving up safeguarded benefits over £30,000. This is set out in Section 48 of the Act. An authorised independent adviser is a person who has permission under Part 4A of the Financial Services Act 2000.

This requirement for advice was brought in to protect consumers and making sure they receive appropriate advice before giving up valuable benefits. Financial advisers generally tend to complete a transfer advice declaration, like Pennymatters did, which can be shown to trustees and enable them to release safeguarded funds.

IPS wasn't an authorised independent adviser for the purposes of Section 48, so they couldn't issue a transfer advice declaration which would be needed to complete a transfer. And this is where Pennymatters involvement becomes crucial. Both IPS and Pennymatters would have known that a transfer couldn't happen without confirmation that Mr W received UK regulated advice.

In my view the transfer advice declaration gave the reasonable impression Pennymatters had given pension transfer advice. The form states at the beginning that it should be completed by the IFA who gave the advice and it includes Pennymatters relevant permissions and authorisations. Also there was no apparent other reason why this form

needed to be completed other than to provide it to the DB trustees. So I think Pennymatters ought to have reasonably known that this is how such a declaration would be used and interpreted.

In my view Pennymatters knowingly helped IPS to circumvent UK legislation. They knew the law required Mr W to receive advice from an adviser with specific UK pension transfer advice permissions and they produced paperwork which gave the impression he had received this, even though they say they didn't advise him.

I can't even see that Pennymatters had any real insight to what IPS's advice process looked like. They said: *'We had no detailed knowledge or visibility of the products being used....The only information that we had was that given by [IPS], and we wrote the reports based upon their information. We were paid a fixed fee in this regard and did this, we believe, in line with what we were meant to do at the time.'*

The starting assumption for a DB transfer is that it is unsuitable for most people and it needs to be demonstrated that it is in a consumer's best interest. (COBS 19.1.6 G)

Mr W was planning to transfer into an overseas pension with significant charges and based on the limited information they had into investments which were likely higher than his balanced attitude to risk.

Based on the limited information I have seen I can't see that it was in Mr W's best interest to transfer his DB pension. He had no recorded investment experience or knowledge and he was many years from retirement. The critical yield needed to match his BSPS benefits in the ROPS was 8.1% which based on Mr W's balanced attitude to risk was very unlikely to be achieved, so would leave him with lower benefits in retirement.

Pennymatters has pointed to the fact that Mr W signed the basic information form saying he wanted to retire in Malta. They say Mr W was likely concerned about the Brexit referendum and therefore was looking to move to an EU country. Given that there is no further information around this from the time of the advice, in my view this is just unfounded speculation.

Mr W says a move abroad in retirement was never intended. However, even if he said at the time it was, he was 30 years old and so 37 years away from retirement which made such an objective without further enquiries highly uncertain. Also the fact alone that someone might move abroad in the future does not automatically make a transfer out of a DB scheme and/or a transfer to a ROPS suitable.

As I said initially, Pennymatters didn't recommend a transfer to Mr W. However, without their involvement and them issuing the transfer advice declaration, Mr W couldn't have transferred. It's true that his transfer value quotation expired and the BSPS trustees asked for an adviser declaration. However, the only one BSPS has on file is the one from Pennymatters.

In my view Pennymatters should not have issued a transfer advice declaration without giving advice to Mr W. They carried out business in a way that wasn't in the best interest of Mr W.

In my view they ought to have either refused to issue the transfer advice declaration or offered to provide advice to Mr W.

If they had refused to provide the declaration, IPS might have approached another business for their assistance. However, on balance I think any reasonable adviser would have rejected this proposal.

And if Pennymatters had provided advice to Mr W, they would have had to properly consider the receiving scheme and intended investments. And I think they ought to have recommended against a transfer. I can't see any persuasive reason why it was in Mr W's best interest to give up guaranteed benefits.

I appreciate Mr W likely thought transferring out of the BSPS was a good idea given the uncertainties of the scheme and he says he was under the impression he would be getting better returns overseas which is why he looked at the investment through a ROPS . However, I think on balance he would have listened to an adviser telling him this wasn't in his best interest and why.

Overall, I think if Pennymatters didn't act in Mr W's best interest and didn't treat him fairly. If they had acted differently, Mr W likely would not have transferred his BSPS pension.

I acknowledge that several other parties were involved in Mr W's transfer and they might also have contributed or caused the same losses. However, I'm considering Pennymatters' involvement here and their actions. I appreciate they seem to think they only played a negligible role in Mr W's pension transfer. However, I disagree. They could have prevented Mr W transferring his DB pension and in my view they played a significant role in enabling this unsuitable transfer.

So in the circumstances I think it's fair and reasonable that they compensate Mr W for all of his losses he suffered by transferring out of the BSPS. If they feel other parties are also responsible, they are free to pursue them if they wish once they paid Mr W in full.

Responses to my provisional decision

Mr W accepted my provisional decision. Pennymatters disagreed and provided further comments. I've considered these carefully, however they do not change my mind. I'll explain why.

Pennymatters reiterates that they didn't advise Mr W, that they had no input on the investment selection and that they didn't arrange the transfer. They say they were asked to provide a G60 report which is the running of a transfer analysis. It isn't a request for a recommendation or advice service. However, I never disputed any of this.

Where Pennymatters have acted not in Mr W's best interest is when they completed a transfer advice declaration that gave the impression they had given advice. They were aware that Mr W was looking to transfer his DB pension to a ROPS and that he was being advised by a firm outside the UK who didn't have the necessary authorisation and permissions. They had no insight what Mr W was being told by IPS and they knew Mr W was planning to invest in an overseas pension with fairly high costs.

Without the declaration completed by a UK regulated adviser with the relevant permissions, the transfer could not have proceeded. And Pennymatters would have known this. So my view remains that they should only have completed the declaration if they had actually given advice. Without their involvement, Mr W wouldn't have been able to transfer out of his DB scheme.

Pennymatters helped IPS to circumvent UK legislation which was designed to protect Mr W. IPS needed Pennymatters' transfer declaration in order to transfer Mr W's benefits from a DB scheme. And I think Pennymatters ought to have known that their declaration would be used in this way. There was no other reason why such a declaration needed to be issued. If Pennymatters had just wanted to confirm they had carried out a transfer analysis, they could

have done this in a separate confirmation which in no way resembled a transfer advice declaration needed for the purposes of Section 48 of the Pension Schemes Act 2015.

I appreciate Pennymatters say they were only paid a fixed fee for the report and that other parties were involved. Again, this is not disputed. However, I'm considering Pennymatters' actions here and I remain satisfied that their actions were material to Mr W transferring his DB pension and investing into a ROPS. If they had not issued the declaration they would have more likely than not prevented the transfer and all losses to his pension so I think it's fair and reasonable to hold them responsible for Mr W's losses.

Putting things right.

My aim is to put Mr W as much as possible back into the position he would have been in if it wasn't for Pennymatters inappropriate actions. As said above I think he likely would not have transferred out of the BPS. If Mr W had not transferred out, he would have needed to make a choice between staying in the BPS and moving with it to the PPF or choosing the BPS2. Mr W was many years from retirement and his initial income in the BPS2 would have not been reduced like in the PPF. It also offered the possibility that he might be able to transfer out in future if his circumstances changed. So I think he likely would have ended up in the BPS2

Pennymatters must 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>.

Pennymatters should use the FCA's BPS-specific redress calculator to calculate the redress. If Pennymatters does not yet have access to the calculator it should contact the supervision department of the FCA to seek access to it as soon as possible. A copy of the BPS calculator output should be sent to Mr W and our Service upon completion of the calculation together with supporting evidence of what Pennymatters based the inputs into the calculator on.

Mr W is a long way from retirement age and so his plans for retirement will be uncertain. Compensation should therefore be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance. This is age 65 for the BPS2.

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 W'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, Pennymatters should:

- calculate and offer Mr W redress as a cash lump sum payment,
- explain to Mr W 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 W receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr W accepts Pennymatters' offer to calculate how much of their redress could be

augmented, request the necessary information and not charge Mr W 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 W's end of year tax position.

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

I also think the realisation what benefits he has lost and the uncertainty and risks being invested through a ROPS would have caused Mr W some worry and distress. I think paying him additional compensation of £300 for this is reasonable in the circumstances.

My final decision

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 uphold the complaint and require Pennymatters Limited to pay Mr W the compensation amount 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 Pennymatters Limited pays Mr W the balance.

If Mr W accepts this final decision, the money award is binding on Pennymatters. My recommendation is not binding on them. Further, it's unlikely that Mr W can accept a final decision and go to court to ask for the balance. He may want to consider getting independent legal advice before deciding whether to accept my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 December 2023.

Nina Walter
Ombudsman