

The complaint

Mr J complains about the advice given by Truly Independent Limited (Truly) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the 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. The BSPS was closed to further benefit accrual from 31 March 2017.

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 J's employer would be set up – the BSPS2.

Mr J approached Truly in around August 2017 to discuss his pension and retirement needs. Truly completed a fact-find to gather information about Mr J's circumstances and objectives. It also carried out an assessment of Mr J's attitude to risk, which it said was 'balanced'.

Mr J had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. This showed that he had over 37 years service in the BSPS. He was entitled to a pension of about £28,160 at the date of leaving the scheme. The CETV was about £690,000.

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 their choice was 11 December (and was later extended to 22 December 2017).

On 3 November 2017, Truly advised Mr J to transfer his pension benefits into a SIPP and invest the proceeds in a fund that met his attitude to risk. The suitability report said the reasons for this recommendation were that he was thinking about retiring early, he wanted some cash for holidays, he wanted to leave the fund to his wife and he wanted control of his fund as he didn't trust his employer or the DB scheme.

Mr J complained in 2022 to Truly about the suitability of the transfer advice. He had been contacted by the industry regulator, the Financial Conduct Authority, ('FCA'), and had received information to the effect that the DB transfer may not have been in his best interests.

Truly didn't uphold Mr J's complaint. It said that the advice Mr J had received was in his best interests and was suitable for him.

Mr J referred his complaint to the Financial Ombudsman Service. An Investigator upheld the complaint as he didn't think the advice was suitable for Mr J, he thought that Truly should perform a loss assessment to determine if he had suffered a loss. Our Investigator also said Truly should pay him £300 for any distress he suffered due to the advice.

Truly disagreed, it didn't provide any detail about why this was, but it asked that an ombudsman consider the complaint. The Investigator wasn't persuaded to change their opinion, so both parties were informed that an ombudsman would consider the complaint in due course.

After this the regulator developed, and now provides access to, a BSPS specific redress calculator. Both parties to the complaint have been informed that I'm likely to award compensation based on this.

However, in August 2023, Truly contacted the Financial Ombudsman Service to say that it now accepted what the Investigator had said and that it didn't want an ombudsman to consider the merits of the complaint. It said it was prepared to calculate and offer compensation on the same basis as the Investigator had recommended. The complaint was closed at this point.

Later on, Truly wrote to Mr J and said it had carried out a loss assessment using the FCA's redress calculator and provided detail about the calculations. It said, having done so, the calculation showed that Mr J had not incurred a financial loss and so he was not owed any redress. However, Truly said that it would pay £300 for any distress or inconvenience suffered by Mr J. A copy of this correspondence was provided to the Financial Ombudsman Service.

Mr J has seen a copy of the calculations and a copy has been provided to the Financial Ombudsman Service. Our Investigator has looked at the calculations and told both parties that they think the calculations have been performed correctly.

Mr J hasn't accepted the offer made and has also said that he thinks the compensation may have been higher if Truly had calculated it earlier, so this may have impacted him negatively.

So, as no agreement has been reached, I'm issuing 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.

As I've said above, Truly has recently informed us that they are willing to accept the Investigator's view that the advice wasn't right for Mr J. So, I don't think I need to consider this further. I'll focus in this decision on the redress method.

Putting things right

The aim is to put Mr J back in the financial position he would have been in at retirement had he remained in the DB scheme. Truly carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BPS retirement benefits that they would have been entitled to under either BPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS 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.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated 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 Truly which are personal to Mr J. These include Mr J's personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and 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 calculation in Mr J's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. I'm satisfied that Mr J has not suffered a financial loss by transferring his pension. I think the calculation carried out by Truly is appropriate in the circumstances and no redress for financial losses is due to Mr J.

Mr J thinks that the calculation should have been performed at an earlier time but the regulator has set out what it considers the appropriate method of compensation to be in instances of unsuitable pension transfer advice. And this requires Truly to use the assumptions from the same financial quarter in which the calculation is carried out. I appreciate that the assumptions used in the redress calculation have changed significantly over the last 12 months, which has had an impact on the calculation. But I'm satisfied the regulator's redress method puts Mr J back, as far as possible, into the position he would have been in had he not transferred his BPS benefits. And I'm conscious that the way the regulator requires firms to calculate redress is consistent with the approach a court would take.

Truly has still offered to pay £300 as recommended by our Investigator for the distress and inconvenience this matter has caused him. While the loss assessment has determined that Mr J hasn't been financially disadvantaged by the unsuitable advice, I accept that finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice – would have caused him some concern. Mr J has said that he has been worried about the possible impact of the transfer on his retirement and he has thought about this a lot. So, I think Truly's agreement to pay Mr J £300 for the distress and inconvenience caused is fair and reasonable in the circumstances.

My final decision

I uphold this complaint and require Truly Independent Limited to pay Mr J a sum of £300 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 22 December 2023.

Andy Burlinson
Ombudsman