

The complaint

Mr H complains that he was given unsuitable advice by AMG Wealth Solutions LLP ('AMG') to transfer the benefits from his defined benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employer's DB scheme) 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 private pension arrangement.

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

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in 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 2017 (and was later extended to 22 December 2017).

In November 2017, the DB scheme administrators sent Mr H information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr H had 26 years and 4 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £329,593.98.

Mr H was referred to AMG by his financial adviser who didn't possess the necessary permissions from the regulator to provide advice about the transfer of a DB scheme to a personal pension.

On 17 January 2018 AMG completed a fact-find to gather information about Mr H's circumstances and objectives. It was noted on the fact-find that Mr H was aged 44, that his wife was aged 39 and that they had two financially dependent children. It also noted that Mr H had a total annual income of £30,000 and that Mrs H earned £46,000 a year. Their home was documented as being valued at £150,000 and mortgage free. In addition Mr and Mrs H had savings of £60,000 and vehicles worth £25,000. It was further noted that they had joint life and critical illness cover of £75,000; Mr H had further life and critical illness cover of £35,000 along with death in service cover from his employer of 4 times his salary. It was also documented that Mr H and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme.

AMG also completed a risk profile report with Mr H concluding that his attitude to risk was 'highest medium' or 7 on a scale of 1 to 10. AMG also completed a pension transfer

questionnaire on 17 January 2018 where Mr H's objectives for transferring his DB scheme were noted. These were: that he no longer trusted his employer; he wanted the option to retire early at age 60; that he wanted choice and flexibility on how he drew his pension benefits; to move away from the BPS and to have control of his pension plan; to have a monthly income in retirement of £1,000 and to benefit from the flexible death benefits associated with a personal pension plan.

On 31 January 2018, AMG sent Mr H its suitability report in which it recommended he transfer his BPS DB pension benefits to a personal pension plan. AMG said Mr H would benefit from the flexibility provided by a personal pension plan by being able to access his benefits flexibly from age 55. It also said he would also benefit from being able to consolidate any future pensions into a single arrangement and from being able to nominate beneficiaries in the event of his death. Finally AMG said transferring to a personal pension plan would mean he could uncouple his pension from his employer and take control of his investment.

On 9 February 2018, AMG sent Mr H a transfer value analysis report ('TVAS') which stated he needed to achieve an annual investment return on his personal pension of 6.99% in order to be able to match the benefits offered by the BPS at the scheme's normal retirement age of 65.

Mr H accepted AMG's recommendation and the transfer took place in early 2018.

In May 2022 Mr H made a complaint to the Financial Ombudsman Service about the advice he'd received from AMG in early 2018. We referred Mr H's complaint to AMG. AMG looked into Mr H's complaint and issued him with its final response letter in November 2022. AMG said it had provided Mr H with suitable advice based on his circumstances. It said it had exercised reasonable skill and care when advising Mr H, providing him with comprehensive information on which to make an informed decision.

Because Mr H believed he may have been more financially secure if he had remained in his DB scheme and moved with it to the BPS2, AMG said that it had undertaken a redress calculation in accordance with the regulator's (the Financial Conduct Authority – 'FCA') guidance FG17/9. AMG noted that Mr H said that he wanted to be compensated for the financial loss its advice had caused him however, having undertaken the redress calculation in accordance with the regulator's guidance, it said that no loss had been sustained. In an attempt to settle Mr H's complaint, AMG offered to pay him £500 in full and final settlement which, it said, excluded any admission of liability on its part but included an amount of £300 which was in line with what it thought the Financial Ombudsman Service might award for distress and inconvenience suffered.

Unhappy with the outcome of AMG's investigation, Mr H said he wanted to continue with his complaint to the Financial Ombudsman Service. Whilst the complaint was waiting to be allocated to one of our Investigators, AMG ran a further loss calculation for Mr H in January 2023 which still showed that he'd suffered no financial loss.

Our Investigator looked into Mr H's complaint and in February 2023 she recommended that it was upheld as she didn't think it was in Mr H's best interests to transfer his guaranteed benefits to a personal pension plan, nor did she think a compelling need for him to do so had been identified.

Our Investigator said she didn't think there was any reasonable prospect of Mr H improving on his guaranteed scheme benefits based on investing in line with his attitude to risk. She also thought the alternative death benefits available through the personal pension weren't worth Mr H giving up the guarantees associated with his DB scheme for. Our Investigator

said that AMG wasn't just there to transact what Mr H may have felt he wanted but rather to understand what was in his best interests and make a recommendation accordingly.

Our Investigator thought that AMG should have advised Mr H to opt into the BPS2 so she recommended that AMG should calculate whether Mr H had suffered a loss as a result of its advice to transfer.

In March 2023, AMG re-ran the redress calculation again which continued to show Mr H hadn't sustained a financial loss. AMG said it was willing to pay Mr H £300 compensation. Our Investigator put AMG's offer to Mr H but he said he didn't accept it and that he still wanted us to continue looking at his complaint.

In April 2023 AMG undertook a further redress calculation using the FCA's recently established BPS-specific redress calculator to work out if Mr H had suffered a financial loss as a result of its advice. AMG said it had completed the calculation and this showed Mr H hadn't suffered a loss; it asked our Investigator to forward the new calculation to Mr H, which she did. Mr H asked for his complaint to be referred for an Ombudsman's decision.

In November 2023, AMG carried out the calculation again as the previous one had by now expired; the calculation again showed that Mr H had suffered no loss. AMG reiterated that it was happy to pay £300 compensation to Mr H.

Our Investigator told Mr H that she had checked the calculation and that it had, in her view, been carried out correctly. Our Investigator said that there was no shortfall in Mr H's pension and that he was on track to be able to replicate his DB scheme benefits in retirement. Our Investigator said that AMG's offer to pay Mr H £300 compensation for the distress and inconvenience he had been caused was in line with awards made by this Service in similar complaints.

Mr H advised our Investigator that he didn't accept AMG's offer and wanted his complaint referred for an Ombudsman's 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.

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I understand AMG hasn't conceded that the advice it gave Mr H was unsuitable. Nonetheless, in order to conclude the matter, it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr H in detail.

That said, I will comment that I agree with our Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable and they should only recommend one where they can clearly show, based on contemporary evidence, that it was in the consumer's best interests. I don't think that was the case for Mr H. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme seem too high to ensure he would be financially better off by transferring out of the DB scheme.

- Mr H didn't need to improve on his BPS benefits in order to receive his desired income in retirement; his scheme benefits would have comfortably provided him with the retirement income he envisaged needing.
- The difference in death benefits from a personal pension wasn't worth giving up the guarantees offered by the DB scheme for. That's especially the case as the both the BPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- Mr H didn't need to give up the guaranteed benefits of his DB scheme in order to take early retirement or have flexible access to his pension funds. That's because Mr H was a member of his employer's DC scheme which provided him with the flexibility he claimed he needed – he wasn't committed to take its benefits in a set way. Mr H was aged only 44 at the time of the advice so had at least 16 years (and possibly 21 years) to go before retirement during which he would have built up a significant fund in his employer's DC scheme which he would be able to access flexibly at whatever age he chose to retire. I can't see that AMG explained to Mr H that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.
- Mr H could have taken lump sums from his DC scheme as and when required and adjusted the income he took from it according to his needs. So, I think if Mr H retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early - *if* that was what he ultimately decided.
- I understand that Mr H may have legitimately held concerns about how his employer had handled his pension and that he thought it would be better if he had 'control' of his pension benefits. But it was AMG's role to objectively address those concerns and to explain to him that he wasn't severing links with his employer in any event as he remained a member of his employer's new DC scheme.

Overall, I can't see persuasive reasons why it was in Mr H's best interests to give up his DB scheme guarantees.

Putting things right

I'll focus in this decision on how to put things right for Mr H as no agreement could be reached.

The aim is to put Mr H back in the financial position he would have been in at retirement had he remained in the DB scheme. AMG carried out a calculation using a specific BPS 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. 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 determines.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 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 AMG which are personal to Mr H. These include Mr H's personal details, his individual benefits from the BSPS 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 BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65. This is in line with the Investigator's recommendation and what the FCA suggests will usually be a reasonable assumption – and I think this is fair here.

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 H'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. So, I'm satisfied that Mr H has not suffered a financial loss by transferring his pension. Overall, I think the calculation carried out by AMG is appropriate in the circumstances and no redress for financial losses is due to Mr H.

I agree with our Investigator that AMG's offer to compensate Mr H for any distress and inconvenience he experienced as a result of realising he was unsuitably advised to move his DB scheme, and that he could have suffered a financial loss as a consequence, is fair and reasonable in the circumstances and is in line with awards made by this Service in complaints with similar circumstances.

I've noted Mr H's comment that £300 doesn't seem very much should the markets drop in the future and the value of his personal pension plan decrease. I've thought carefully about the amount of compensation I am awarding Mr H here and I am mindful that we don't award compensation for what may or may not happen in the future, we award it for trouble and upset caused by a financial business in relation to the complaint at hand. And any award for distress is not intended to punish AMG. Nor is it intended to make up for any loss of expectation that a redress calculation may result in. I'm satisfied that an award of £300 is in line both with the Financial Ombudsman Service's approach to such awards in general and with awards we have made in similar complaints. So I'm not awarding any more than the £300 recommended by the Investigator.

My final decision

My final decision is that I uphold this complaint and require AMG Wealth Solutions LLP to pay Mr H 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 H to accept or reject my decision before 29 February 2024.

Claire Woollerson

Ombudsman