

The complaint

Mr H complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017. He says the advice was unsuitable for him and believes this has caused a financial loss.

Hugh James Solicitors trading as Hugh James Independent Financial Advisers is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "HJS".

What happened

In March 2016, Mr H's employer 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 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 personal pension arrangement.

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

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr H was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to HJS which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr H was 50 years old and not married. He had accrued several years' worth of service with BSPS and was a deferred member.
- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £183,775. The normal retirement age (NRA) was 65.
- Mr H was contributing to a new defined contribution (DC) pension scheme. This pension isn't the subject of any complaint.

HJS set out its advice in a suitability report. In this HJS advised Mr H to transfer out of the BSPS and invest the funds in a type of personal pension plan. HJS said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred out in 2018. In 2022 Mr H complained to HJS about its advice, saying he shouldn't have been advised to transfer out to a personal pension but HJS didn't uphold his complaint.

Mr H then referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld. In response, HJS said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

As the complaint couldn't be informally resolved, it came to me for 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, although HJS didn't initially agree it had done anything wrong, in the interest of bringing complaints like this to a close, HJS said some months ago it would be willing to accept the investigator's view and run a calculation to see if the pension transfer had incurred any loss for Mr H.

HJS completed its redress calculation in mid-2023, using the FCA's BSPS-specific calculator, which indicated Mr H had not incurred a loss and the value of his transferred pension was more than the amount needed to replicate the benefits he would have been due under the DB scheme.

I can understand this might well have come as a surprise, and certainly a disappointment, to Mr H. But I believe we've previously explained how economic and market turbulence in the bond market can affect how DB schemes like his were and are valued. And in short, buying the benefits similar to Mr H's DB scheme – the BSPS2 – would now be considerably cheaper than it might have been several years ago.

When Mr H was sent the calculation showing there was no loss, we asked him whether or not he accepted this but we didn't hear back from him. And it doesn't appear that this happened before the calculation expired. The calculations are usually valid for 3 months from the point they are run. So, the issue I'm essentially being asked to make a decision about here is whether HJS has done what we've asked it to do – carry out a redress calculation in accordance with the steer from the financial regulator, the FCA.

I accept it now seems quite a while since HJS carried out the calculation; this was back in 2023. The calculation showed that, when it was run, the estimated cost of replicating the benefits Mr H would have been able to take from age 65 under the BSPS2 was £171,431. To replicate the benefits the PPF would have provided from age 65, the estimated cost was £166,421. So, as the value of his transferred pension at the point of calculation was £210,856, HJS was correct when saying that the calculation showed that Mr H hadn't incurred a loss. And 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 App4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

We contacted Mr H again on 5 February 2024 and asked if anything had changed regarding his marital status or whether the previous value of his transferred pension had fundamentally changed. However, we didn't hear anything back. Therefore, I think it is reasonable to progress this complaint on the basis of the information we already have. As this shows he'd be able to buy a pension with similar benefits to his DB scheme and still have a surplus, I'm afraid Mr H isn't due any redress when using the FCA mandated calculator.

HJS wants to bring matters to a close. I think this is reasonable as it has carried out the actions we'd expect of it and asking for yet another calculation would change nothing, based on the figures I've set out above. Issuing a final decision is therefore the common-sense approach to bring this matter to a close, but it's also fair and reasonable to all the parties.

For the avoidance of any doubt here, I've still looked at Mr H's case and his points of complaint in great detail. Having done this, I agree with the points made by our investigator who comprehensively set out why he thought the complaint ought to be upheld. I'm also sorry that it's taken so long for Mr H's complaint to reach this stage.

So, in summary, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income within the BPS2. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So I think HJS ought to have advised him against transferring away from the BPS.

As I don't think I need to consider this in any further detail, I'll focus on clarifying the redress methodology.

Putting things right

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. HJS has carried out a calculation using a BPS-specific calculator provided by the FCA which is what I would expect it 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 HJS which are personal to Mr H. These include Mr H'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 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. I'm satisfied that Mr H has not suffered a financial loss by transferring his pension.

I think the calculation carried out by HJS is appropriate in the circumstances and no redress for financial losses is due to Mr H. I am sorry to disappoint Mr H.

Our investigator recommended that HJS should pay Mr H for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr H in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr H. So I agree the recommended payment of £150 for distress and inconvenience. HJS should pay Mr H this amount in addition to the redress I've set out above if it hasn't already done so.

My final decision

I uphold this complaint but Hugh James Solicitors trading as Hugh James Independent Financial Advisers doesn't need to pay any redress.

However, I direct Hugh James Solicitors trading as Hugh James Independent Financial Advisers to pay Mr H £150 for the distress and inconvenience 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 27 March 2024.

Michael Campbell
Ombudsman