

The complaint

Mr W complains about the advice Financial Solutions Wales Ltd ('FS') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice wasn't suitable for him and may have caused a financial loss.

Professional representatives have helped Mr W to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr W's.

What happened

In March 2016, Mr W's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' 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 W's 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.

In September 2017 the BSPS trustees gave Mr W details of his DB pension's enhanced cash equivalent transfer value, which was £144,541.

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.

Later the same month, October 2017, Mr W approached FS for advice about his pension. It conducted a fact-find with him. Amongst other things it noted that Mr W was 45 years old. He was unmarried but lived with his partner and they had a son. They were both working. Mr W had relatively recently joined his employer's newly set up defined contribution pension scheme. Mr W's preferred retirement age was 60.

FS obtained a transfer value analysis report and ran some cash flow models. In December 2017 it recommended that Mr W should transfer his DB scheme benefits to a named personal pension. Mr W accepted FS' recommendation and the transfer went ahead.

In 2022 Mr W complained to FS that its advice wasn't suitable for him. FS didn't uphold his complaint. It said it didn't agree with Mr W that he would be unable to match the benefits he would have received from the BSPS2 from his personal pension. It also said that transferring allowed Mr W to achieve his other financial objectives.

Mr W asked the Financial Ombudsman Service to look into his complaint. One of our Investigators considered it. He didn't think FS' advice was in Mr W's best interests. So the Investigator recommended FS establish if Mr W had suffered a financial loss as a result of its advice. Our Investigator also recommended FS make a payment of £200 to address Mr W's distress and inconvenience arising from the unsuitable advice.

FS didn't initially accept our Investigator's complaint assessment. As the matter wasn't resolved informally the complaint was referred for an Ombudsman's review.

While the matter was awaiting an Ombudsman's attention we wrote to the parties. We said the regulator, the Financial Conduct Authority ('FCA') was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. We said that Mr W had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023.

Soon after FS told us it had performed a redress calculation, using the current methodology. It said the calculation showed Mr W hadn't suffered a loss. We put that to Mr W but he didn't accept it.

In October 2023 we wrote to FS. We noted that while it had previously carried out a redress calculation, since then, the FCA had developed a BPS specific calculator for establishing redress for BPS cases. We invited FS to take the necessary steps to carry out an up-to-date redress calculation.

FS gathered the required information and performed the redress calculation using the FCA's BPS calculator. The calculation showed Mr W had not suffered a loss. However, FS said it would pay Mr W £200 to address his distress.

Mr W still wasn't happy that his complaint had been resolved. So it's been referred to me to make a final determination.

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.

It's evident from the above that FS is willing to take the necessary steps to offer redress. So I don't intend to examine the suitability of its advice to Mr W in detail. Save to say that I agree the advice wasn't suitable for Mr W for broadly similar reasons to those our Investigator gave.

In particular I don't think Mr W needed to make a decision to transfer when he did. That's because, if he'd opted to join the BPS2 then he would have kept the potential option of transferring out of the DB scheme nearer to his retirement age. Mr W was only 45 years old at the time of the advice. He was still around 15 years away from his preferred retirement age and 20 years away from the DB scheme's normal retirement age. A lot could happen in that time. And if he'd remained in the DB scheme, he would have kept the secured benefits the scheme offered and wouldn't have to put his pension funds at investment risk. So, I don't think a recommendation that he transfer his DB funds when he was so far from retirement was in his best interests.

Overall, I can't see persuasive reasons why it was in Mr W's best interest to give up his DB scheme guarantees when he did.

Putting things right

What remains in contention is whether or not FS' offer to resolve Mr W's complaint is fair and reasonable.

I can understand that consumers like Mr W might have an expectation that, because they received unsuitable advice, they must be entitled to a form of redress to put that right. And that redress would be as well as any payment to compensate for distress.

However, the purpose of a redress calculation is not to put Mr W into a better position than he would have been had he not transferred. Instead, as one of our Investigators has already explained to Mr W, the aim is to put him back in the financial position he would have been in at retirement had he remained in the DB scheme.

FS carried out its recent calculations using the specific BSPS calculator provided by the FCA, which is what I would expect it to do in the circumstances.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

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

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses 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've checked the inputs that FS entered which are specific to Mr W. These include his 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 hadn't been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and taken his DB benefits at age 65.

I've noted that FS' calculation assumes Mr W is married when Mr W has confirmed that, while he was living with his partner at the time of the advice, he is still unmarried. However, correcting that anomaly would not mean that Mr W would be entitled to redress. That's because the relevance of marital status is to allow for the possible increase in costs for the price of matching the DB benefits where a spouse's pension may be payable following the

death of the scheme member. Spouse's pensions are usually only guaranteed where the scheme member was married. That's not the case for Mr W.

So, as FS has assumed Mr W's partner would be entitled to a spouse's pension in its calculation that would only serve to make the overall cost to replace the DB pension more expensive. That, in turn, would reduce the gap between the cost to replace the pension and Mr W's current personal pension value. In other words, if FS had recorded that Mr W was single, then the surplus value of his current pension compared to the cost of matching his DB benefits would have been greater than FS' calculation shows.

Overall, based on what I've seen, FS has generally carried out the calculation appropriately. I'm satisfied it's done so 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 W's case shows that there is no shortfall to his pension and he has more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr W has not suffered a financial loss by transferring his pension.

FS has agreed to pay £200 to address the distress and inconvenience this matter has caused Mr W. I'm aware he doesn't think that is enough. He's told us that the matter has caused him some anxiety. I don't doubt that's the case particularly given the uncertainty of the situation at the time Mr W sought advice. But I think it's likely that, even some of those BPS members who didn't take advice and remained in the scheme suffered similar anxiety, wondering if they'd made the right choice. I think that was possibly a consequence of the circumstances they found themselves in. And, while I don't wish to downplay how this has affected Mr W I've seen no specific evidence he was particularly hard hit by the situation.

Also, as FS' recent calculations have shown, Mr W hasn't lost out financially as a result of the advice. But I accept that the uncertainty he's experienced as a result of FS' advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for FS' advice. But, in the circumstances, I think our Investigator's recommendation of a £200 payment to address that distress is fair and reasonable.

My final decision

I uphold this complaint and require Financial Solutions Wales Ltd to pay Mr W a sum of £200 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 February 2024.

Joe Scott
Ombudsman