

The complaint

Mr D complains about the advice AJH Financial Services Ltd ('AJH') 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 believes it has caused a financial loss.

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

What happened

In March 2016, Mr D'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')¹, 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 D'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.

Mr D approached a financial adviser for advice about his pensions. That adviser didn't have the required regulatory permissions to advise on pension transfers and introduced Mr D to AJH.

AJH conducted a fact-find with Mr D. Amongst other things it noted that he was 55 years old and married. He and his wife were both working. They owned their home outright. They had no other debts. Mr D had relatively recently joined his employer's newly set up defined contribution ('DC') scheme. He was also a deferred member of two other DB schemes² as well as another small DC pension. He had a low attitude to risk.

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 BSPS trustees gave Mr D details of his DB pension's cash equivalent transfer value, which was £166,048.16.

¹ The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

² Mr D also sought advice about transferring from those DB schemes. But AJH's actions in connection with those pension transfers are not the subject of this decision.

In December 2017 AJH met with Mr D. The file doesn't include a contemporaneous note of that meeting. But, from entries elsewhere it transpires that AJH advised Mr D not to transfer out of the BPS.

In January 2018 Mr D emailed a note to AJH. He said he wanted to go against its advice and transfer his BPS benefits to a personal pension. Mr D then met with AJH again and signed the appropriate forms to enable that to go ahead on 15 January 2018. 11 days later, on 26 January 2018, AJH sent Mr D its suitability report setting out its analysis. It said that having considered the relevant growth rate (the critical yield) and cash-flow modelling, it "was unable to support a transfer away from the scheme". But it said as Mr D had provided a letter setting out his intention to proceed AJH would treat him as an insistent client.

On that basis AJH went on to recommend that Mr D should transfer his BPS benefits to a named personal pension. Mr D accepted AJH's recommendation and the transfer went ahead.

In 2023 Mr D complained that AJH's advice wasn't suitable for him. AJH asked Mr D to give it some information in order to respond to his complaint. AJH later said Mr D didn't give it all the information it needed to reply.

Mr D asked the Financial Ombudsman Service to consider his complaint. One of our Investigator's looked into it. He didn't think the insistent client process AJH had followed was robust. In particular he noted that AJH had decided to treat Mr D as an insistent client and asked him to sign the forms to go ahead with the transfer before it had provided its suitability report.

The Investigator said AJH should carry out a redress calculation to establish if Mr D had suffered a financial loss as a result of the transfer. He noted that Mr D had already retired from work and had begun taking income from his personal pension. So the Investigator said AJH should calculate redress based on Mr D retiring at age 60.

Mr D disputed that he would have taken his BPS benefits from that scheme (or its replacement) at age 60 but for AJH's actions. So, he said redress should be based on the scheme's normal retirement age of 65. AJH said that while it didn't agree that was the appropriate retirement age to use it would perform the calculation based on Mr D retiring at 65. Having done so it said Mr D hadn't suffered a financial loss as a result of transferring. In an effort to bring matters to a close it also agreed to make a payment of £300 to address Mr D's distress and inconvenience arising from the matter.

Mr D still didn't believe the complaint was resolved. He said he had made additional contributions to his personal pension which would require the involvement of an actuary to establish if he'd suffered a loss.

As the parties were unable to agree the matters been passed to me to issue a final determination.

After our Investigator advised AJH that an Ombudsman would consider the complaint it asked for more time (until 2 February 2024) to make further submissions. Its own deadline has passed without it submitting anything further for me to consider. And I think it's unlikely that any further comments AJH made at this time would persuade me to change my decision below. So, I've decided to proceed without waiting to see what additional comments it wished to make.

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.

AJH hasn't accepted it gave Mr D unsuitable advice or inappropriately treated him as an insistent client. But, 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 or its insistent client process in this case in detail.

That said, I will briefly comment that I agree with the Investigator's view that AJH didn't apply a robust process for treating Mr D as an insistent client.

It's apparent that AJH had a discussion with Mr D in December 2017 in which it told him it wouldn't recommend he transfer from his BPS scheme. But AJH hasn't provided a contemporaneous note of that meeting. So, I can't be certain exactly what was discussed and the extent to which AJH made it clear to Mr D that transferring wasn't in his best interests and could well result in him being worse off as a result.

Mr D then wrote to AJH saying he wanted to go against its advice and continue with the transfer. Mr D then met with AJH again in order to sign the forms to do so. But at that time, there's no evidence that AJH had given Mr D the reasons for its recommendation that he should not transfer in writing. I find that this undermined the process. That's because I don't see how AJH could expect Mr D to make an informed decision about going against its recommendation when it hadn't given him all the information he needed in order to make that decision. As far as I can tell, at that time, it had only given him some undocumented information at a meeting. But as there's no evidence it gave that information in writing, it's unlikely Mr D could have considered it in detail or discussed the complexity and intricacy of it with others. But AJH believed it had given him enough information on which to make a determination that could start him down the road of the insistent client process without giving him enough detail to reasonably make that decision.

In fact AJH didn't provide its suitability report until some 11 days after Mr D had signed the forms for the transfer to go ahead. And, while that suitability report did say that it couldn't support a transfer, by that time AJH had already asked Mr D to complete the relevant forms. In other words, it was already a done deal that the transfer would proceed before AJH gave Mr D information in writing about the decision he was making.

A much clearer process would have been for AJH to provide its advice as a whole, taking into account Mr D's objectives and attitude to risk. That advice should have considered the overall picture – both of transferring out of the BPS scheme together with the choice of pension and Mr D's retirement plans. AJH should then have clearly set out in one document why transferring out of the scheme wasn't in Mr D's best interests. Instead, it apparently gave Mr D undocumented advice not to go ahead with the transfer and only after he'd said he wanted to go against that advice provided its suitability report.

For the above reasons I'm not persuaded that AJH gave Mr D all the facts with which to make an informed decision about whether or not he wanted to go ahead with a transfer on an insistent client basis. So, I don't think its advice process was suitable.

However, given that AJH has already carried out redress calculations, the issue now isn't the suitability of its advice process but whether or not it's done enough to put things right. Mr D is of the opinion it hasn't.

It's notable that, while the parties disagreed over the appropriate date to use as Mr D's age of retirement, in an effort to resolve the matter, AJH agreed to do the calculation using the date most favourable to Mr D, which was his 65th birthday. In those circumstances I don't find this is a matter I need to determine.

Mr D said AJH's calculation is flawed because it used the FCA's BPS calculator to calculate redress. He said that in his circumstances AJH would need actuarial input in order to fairly calculate redress. But I don't think that's right.

As I explain in more detail below, AJH used a calculator, which the FCA specifically developed for BPS redress calculations. But there are some cases where the FCA's calculator isn't appropriate. Mr D believes his is one such case. He says that's because he made other contributions to his personal pension outside of his BPS transfer. He says that if those aren't "stripped out" of the calculation, then the calculator won't produce a fair result.

Apart from his BPS funds, Mr D also made contributions to his personal pension from three other sources. So, when looking at the current value of his personal pension now, that is an accumulation of the contributions from the BPS and the three other sources as well as any investment returns on those contributions.

The FCA's guidance for DB redress calculation is that where a firm is required to make an adjustment to a consumer's current DC pension value, for example to allow for contributions from other sources not included within the calculation, then the firm must use an actuary or an approach approved by an actuary. And this is why Mr D thinks AJH should employ an actuary to assist with the redress calculation.

However, the FCA's guidance to firms for using the BPS calculator says:

"Where additional contributions have been made to the same pension, you will need to apportion funds...

The DC pension provider may be able to assist you in this process. Alternatively, you should consider using an actuary."

In this case Mr D's current (DC) personal pension provider has already done the appropriate work. It's been able to revalue how much of Mr D's current personal pension value is attributable to his BPS transfer up to the appropriate date for the redress calculation. It's also provided the same revaluations for the other contributions made to Mr D's personal pension from the other sources. And the personal pension provider's figures show that those four contributions to Mr D's personal pension make up 100% of his current personal pension value.

I've seen nothing which calls into question the personal pension provider's revaluations. And in those circumstances, I'm satisfied AJH was reasonable to use the figures the personal pension provider gave to it. So I have no reason to question the accuracy of Mr D's current pension value which AJH used in its redress calculation. Therefore, I don't think that AJH needs the involvement of an actuary in order to be confident that its redress calculation is fair.

I'll add that the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr D into a better position than they would have been had they not transferred. It also isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back, as near as possible, into the financial position they would have been in at retirement had they remained in the DB scheme.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. The FCA has developed its redress methodology and the calculator to apply those assumptions fairly.

In essence the calculations look to establish whether or not a consumer like Mr D has sufficient funds in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS2 or the PPF, had they not transferred out. The calculator uses economic and demographic assumptions as set out by the FCA in order to do so. Firms can't change these.

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 will determine.

The calculator 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 AJH entered which are specific to Mr D. These include his 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 hadn't been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and taken his DB benefits at age 65.

There is one anomaly with AJH's recent calculation, in that one of its inputs for Mr D's benefit entitlement from his DB scheme inflated his BPS benefit entitlement by £300. AJH entered a figure of £747.50 for one particular tranche of Mr D's pension when the correct figure should have been £447.50. However, that error would only work in Mr D's favour, as it would make the future costs to replace his BPS pension more expensive, which would mean that he would be more likely to be entitled to redress. However, even with that mistake, the redress calculation shows that Mr D has a surplus of over £14,800 in his personal pension.

Overall, the above anomaly aside, AJH has 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 D'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 he has not suffered a financial loss by transferring his pension. And as AJH has performed the necessary redress calculation, I don't think it needs to do anything further in respect of any potential financial loss.

That said, while the recent calculation shows Mr D hasn't lost out financially, I accept that the uncertainty he's experienced as a result of the transfer has caused some distress and concern by finding out it may not have been suitable. I'm conscious this upset wouldn't have

happened if AJH hadn't facilitated the transfer. So, in the circumstances, I think a £300 payment for that distress is fair and reasonable.

My final decision

I uphold this complaint and require AJH Financial Services Ltd to pay Mr D a sum of £300 to address the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 March 2024.

Joe Scott
Ombudsman