

## **The complaint**

Mr H complains about the advice Estate Capital Financial Management Limited ('ECF') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice might not have been suitable for him and may have caused a financial loss.

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

## **What happened**

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the BPS (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')<sup>1</sup>, or a new defined-benefit scheme ('BPS2'). 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 BPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017 Mr H approached ECF for advice about his pension. It conducted a fact-find with him. Amongst other things it noted that he was 53 and married to Mrs H who was 50. They were both working, They owned their own home subject to a mortgage. They also owned a second investment property that was also mortgaged. They had £34,000 in savings. Mr H's preferred retirement age was 60. He had relatively recently begun contributing to his employer's newly set up defined contribution pension scheme.

Shortly after, the BPS trustees gave Mr H details of his DB pension's enhanced cash equivalent transfer value, which was £533,472.

In October 2017, members of the BPS were sent a "time to choose" letter which gave them the options to either stay in the BPS and move with it to the PPF, move to the BPS2 or transfer their BPS benefits elsewhere.

The following month, November 2017, ECF produced a suitability report setting out its analysis and recommendations. It recommended Mr H should transfer the benefits from his DB scheme to a named SIPP. Mr H accepted ECF's recommendation and the transfer concluded in 2018.

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<sup>1</sup> 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.

In 2021 Mr H complained to ECF that its advice might not have been suitable for him. ECF didn't uphold his complaint as it believed its advice met his objectives.

Mr H asked the Financial Ombudsman Service to consider his complaint. One of our Investigators looked into it. He didn't think ECF's advice was in Mr H's best interests. So he said ECF should establish if Mr H had suffered a financial loss as a result of its advice and pay him £350 for the distress and inconvenience arising from its advice.

ECF didn't accept our Investigator's complaint assessment. It continued to argue that its advice was suitable for Mr H as it allowed him to achieve his financial objectives.

The matter was referred for an Ombudsman's review.

ECF later made an offer to settle the complaint without an Ombudsman's intervention but Mr H rejected that offer.

While the complaint was awaiting an Ombudsman's attention we wrote to the parties. We said the regulator, the Financial Conduct Authority ('FCA') had developed a BSPS specific calculator for establishing redress for BSPS cases. And that if an Ombudsman were to later uphold the complaint they would most likely instruct ECF to carry out another redress calculation using the FCA's BSPS calculator.

ECF then wrote to us. It asked if it could accept our Investigator's opinion that the complaint was unsuitable and perform a loss assessment using the FCA's calculator. It later gathered the required information to do so and in November 2023 it performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr H had not suffered a loss. However, ECF said it would offer to pay him £350 for his distress.

Mr H hasn't replied to ECF's offer. So, in order to conclude the matter, the complaint has been referred to me to issue 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.

ECF didn't initially accept that its advice was unsuitable. But in an attempt to resolve the matter, it asked if it could do so and determine fair redress using the FCA's calculator. So, as the suitability of advice is no longer an issue in resolving the complaint – and ECF has already done a redress calculation – I don't see the need to address the suitability of its advice to Mr H in this decision, save to say that I agree it wasn't in Mr H's best interests at the time.

### **Putting things right**

What remains at issue for me to determine is whether or not ECF's offer of redress is enough to fairly resolve the issue.

I can understand that consumers like Mr H might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case.

The purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr H into a better position than they would have been had they not transferred. And the calculation isn't designed to punish or fine a business for giving unsuitable advice. Instead,

the aim is to put the consumer back in the financial position they would have been in at retirement had they remained in the DB scheme.

In Mr H's case ECF carried out its recent calculations using the specific BSPS calculator provided by the FCA. That 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 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 ECF entered which are specific to Mr H. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his SIPP. 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.

Overall, based on what I've seen, ECF 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 H's case shows that there is no shortfall to his pension and he has significantly 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.

However, while the recent calculation shows Mr H hasn't lost out financially, I accept that the uncertainty he's experienced as a result of ECF's 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 ECF's advice. So, in the circumstances, I think ECF's offer to make a payment of £350 for that distress is reasonable.

**My final decision**

I uphold this complaint. I require Estate Capital Financial Management Limited to pay Mr H a sum of £350 to address the worry 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 21 February 2024.

Joe Scott  
**Ombudsman**