

The complaint

Mr H's representative has complained, on his behalf, that Estate Capital Financial Management Limited (ECFM) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

What happened

In March 2016, Tata Steel UK Ltd 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, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

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 BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the PPF or into a private arrangement, such as a PPP.

Mr H underwent an initial fact find with ECFM, also completing an attitude to risk questionnaire and a pension transfer questionnaire in early March 2017, from which he selected a number of pre-printed statement options best representing his motivations and attitude at the time. He also placed in order a series of objective statements according to his priorities.

On 21 July 2017, Mr H received a cash equivalent transfer value (CETV) relating to his BSPS benefits. This offered a transfer value in respect of his 38 years and 11 months' pensionable service of £577,429 and noted a preserved benefit (to be revalued) of £24,621 pa from his normal retirement age of 65.

Mr H attended a second meeting with ECFM on 30 August 2017. The information recorded about Mr H across these two meetings can be summarised as follows:

- Mr H was 57 years old, married and in good health, with two children - neither of whom were financially dependent on him.
- He was earning £43,000 pa from full time employment - a net monthly income of £2,200 - and his wife earned around £1,150 net pm. Their joint monthly income was £3,350 and expenditure was £800, leaving a current monthly surplus of £2,550.

- Mr H jointly owned his home with his wife, valued at around £190,000 with no outstanding mortgage. Had no other debt or liabilities.
- They held between them across joint and individual accounts around £190,000 in cash and deposit based savings. They held no other investments and weren't recorded to be saving for any specific goal.
- Mr H had joined the replacement defined contribution workplace scheme.
- They each held a death in service benefit - Mr H at four times' his salary and his wife at twice her salary.
- Mr and Mrs H each also held a term assurance with Phoenix Life for £20,000 and £15,000 respectively.
- Both Mr and Mrs H intended to retire at age 60.
- Mr H was categorized as having a "cautious-balanced" attitude to risk.

As a result of the RAA taking effect and TATA Steel paying £550 million to the BPS, the underfunding reduction applied to transfer values was reduced from 8% to 5% and a revised CETV of Mr H's benefits was provided on 18 September 2017 of £596,258.

Two transfer analysis (TVAS) reports were run, also on 18 September 2017, one on the basis of a transfer to an Aegon retirement choices self invested personal pension (SIPP) and the other on the basis of a transfer to LV= flexible transitions account using a discretionary fund manager (DFM).

Two days later ECFM provided their suitability letter in which it was recommended that Mr H transfer his benefits from the BPS to an LV= flexible retirement account and utilise the services of a DFM - Cazenove Capital. This recommendation was based on the July 2017 transfer value.

Mr H signed a copy of his fact find, attitude to risk assessment, investment questionnaire and client agreement on 25 September 2017. The subsequent day an illustration was produced by LV= detailing the proposed investment of the (updated) transfer value. £3,010 was to be invested into the "Balanced index series 2" and £590,295 was to be invested with Cazenove.

The product charges were tiered according to the value held within the account. The balanced index investment carried an annual charge of 0.13% and the Cazenove DFM charge was recorded as being 0.6% (lower than it was said to be in the suitability letter). An initial adviser fee of 1% applied, with ongoing advice to be charged at 0.5% each year.

Mr H complained to ECFM in December 2021, but it declined to uphold the complaint. Mr H therefore referred the matter to this service.

Having assessed the complaint, our investigator thought that it should be upheld. In summary, the investigator considered that it was unlikely that Mr H would be financially better off by transferring, given his attitude to risk and the critical yield just to match the scheme benefits.

She also wasn't persuaded that objectives such as flexibility of income or lump sum death benefits were sufficient reasons for Mr H to have transferred. Nor did she think that the recommended investment was appropriate, given the timescale until Mr H's retirement.

The investigator recommended that ECFM undertake a loss calculation in accordance with the regulator's guidance (FG17/9) for such complaints – and on the basis that Mr H would have opted to join the BPS 2.

She said that any redress should in the first instance be paid to Mr H's pension plan, but if this wasn't possible, it should be paid directly to Mr H, with a notional deduction for the (assumed basic rate) income tax he would have paid on the pension benefits.

She also said that ECFM should pay Mr H £200 in respect of the concern and distress he would have been caused by the matter.

ECFM didn't agree with the investigator's findings, but later said that, although it considered it had no obligation to do so, it had undertaken a loss calculation on the basis of an assumed retirement age for Mr H of 60 and a transfer into the PPF. Having done so, it said that Mr H had suffered no financial loss as a result of the transfer.

It did, however, offer to pay Mr H £1,000 by way of settlement in respect of the matter without admission of liability.

Mr H's representative said that Mr H didn't accept this outcome, and requested that the matter be reviewed by an ombudsman.

The (new) investigator then wrote to both parties to confirm that the FCA had developed a BPS-specific redress calculator to calculate redress for cases which were included in the BPS consumer redress scheme. But, he said, the FCA was also encouraging businesses to use the calculator for non-scheme cases.

The investigator further said that, when issuing my decision, I may require ECFM to use the FCA's BPS-specific calculator to determine any redress due to Mr H.

The investigator said that if either party didn't think it was appropriate to use the BPS-specific redress calculator in the circumstances of Mr H's complaint, they should let him know by 5 June 2023.

ECFM then undertook the loss calculation on the new basis.

The investigator concluded that Mr H had sufficient funds in his PPP to replicate the defined benefits in retirement. And so no redress was therefore due.

He also said that ECFM had confirmed that it would pay the £200 recommended by the original investigator.

Mr H's representative requested that the matter be referred to an ombudsman, however, saying that Mr H had told it about the impact the matter had had on him. He'd said the following in summary:

- The matter had caused him anxiety, sleepless nights, marital arguments and general feelings of apprehension for what the future held.
- Further physical effects had been high blood pressure and anxiety attacks. He'd also developed double vision and tinnitus, along with a general feeling of being stressed and unwell.
- He honestly believed that the worry over his financial future had contributed to this.
- It had also impacted on his wife, as she'd intended to retire early but currently remained in work.

The matter was then referred to me for review.

I issued a provisional decision on the complaint on 24 January 2024, in which I set out my reasons for upholding it. The following is an extract from that decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Consideration of the merits of the case

As ECFM has offered to undertake the recommended redress calculation and pay Mr H £200 in respect of the distress and inconvenience caused to him, I don't intend to address the key issues relating to the suitability of the advice in any depth.

But suffice to say that I agree with the investigator's summary. I can't see persuasive reasons as to why it was clearly in Mr H's best interest to relinquish his defined benefits and transfer them to a personal pension plan. And I also haven't seen anything to persuade me that Mr H would have insisted on transferring, against advice to remain in the defined benefit scheme.

So, as with the investigator, I'm upholding the complaint as I think the advice Mr H received from ECFM was unsuitable.

Award for the impact the matter has had on Mr H

I've carefully considered what Mr H has said in the course of the complaint relating to this. Mr H has said that, as a result of the transfer, he's been facing an uncertain future, and that the financial uncertainty caused by the transfer has caused him health issues.

Mr H has told us that the impact hasn't just been on him, but on his family. Mr H has said that he's suffered both mental and physical effects.

I think that, on a fair and reasonable assessment of the facts here, it's clear that Mr H has been impacted by what has happened. Mr H, or rather his representative, has articulated this from the beginning of his complaint – in the complaint form and then in his most recent comments. I don't think there can reasonably be any doubt that Mr H feels the effects of the transfer keenly, and has had significant concerns for his financial future.

Awards which this service might make in respect of, for want of a better phrase, distress and inconvenience, are subjective by their nature and very much intended to take into account the particular circumstances of a case and the impact on the individual – but also whether that impact was reasonably proportionate to the business' error. There is no "one size fits all", although the level of some awards might be similar in nature.

Our website sets out the types of award which this service might make in certain example situations, but again these are for guidance only. They cannot, for obvious reasons, allow for all possible situations. They do, however, enable me to think about the kind of award which might be appropriate here, given what Mr H has told us about the impact this matter has had on him.

Mr H raised his concerns with ECFM in December 2021, and ECFM responded with its final response letter in February 2022. It declined to uphold the complaint at that stage.

But in December 2022, it said that it had undertaken the recommended calculation in line with the regulator's guidance for such cases. It said that Mr H hadn't suffered a financial loss and was better off as a result of the advice to transfer.

As with others in Mr H's position, a further redress calculation undertaken in accordance with the FCA's BSPS specific guidance has determined the same outcome – that Mr H has suffered no financial loss as a result of the transfer.

And so I think it could reasonably be argued that there were indications, albeit on the basis of the assumption that Mr H would have transferred into the PPF and retired at age 60, from December 2022, that Mr H hadn't incurred a financial loss – and so in that sense any concerns Mr H had about his pension provision might reasonably have been mitigated from that point.

Therefore, I've thought about the guidance on our website where a financial matter might have caused an individual considerable distress for a reasonable length of time. But given that it is ECFM which will be paying the award, I ought to be mindful here of the opportunity and amount of time that ECFM actually had to put matters right (or as was the case here to notify Mr H of the "no loss" outcome) after being notified of the complaint.

Having done so, and taking into account the timeline here as set out above, I think a higher award than £200 would be appropriate.

I've then thought about whether Mr H has needed to put considerable effort into the resolution of his complaint, but I don't think this could reasonably be said to be the case, certainly with regard to his dealings with ECFM – Mr H has been represented in the matter and I don't think it could be said that ECFM has been uncooperative.

Therefore, taking into account the above factors, I think an award of £400 seems appropriate here.

Putting things right

The aim of this decision is to put Mr H back in the financial position he would have been in at retirement had he remained in the defined benefit scheme. ECFM has carried out a calculation using a specific BSPS 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 BSPS 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 ECFM 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 PPP. 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 that he would have taken his DB benefits at age 65.

*Overall, based on what I've seen, and taking note of what the investigator has already said about the anomaly relating to the pensionable service and Mrs H's date of birth, I think 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>.*

As with the investigator, I don't think that the errors in the calculation will have made a significant difference here, such that the overall outcome would be different. Mr H's representative also hasn't suggested that this would be the case.

But for the reasons set out above, I currently think that Estate Capital Financial Management Limited should also pay Mr H the higher sum of £400."

In response, Mr H's representative has said the following:

- I'd set out that, although there were errors in the calculation, these wouldn't make a significant difference to the outcome. However, as I'm not an actuary, my thoughts in this regard were speculative.
- The DISP rules also required a business to recalculate if it had made an error in the calculation. The FCA's guidance was that, where a business had to correct a calculation, it must do so by way of a new calculation using any updated economic assumptions if a new quarter had begun.
- If the current calculation was left to stand, there would always be doubts over its accuracy and Mr H should be entitled to certainty that it has been undertaken correctly.
- With the introduction of the FCA's BPS-specific calculator, the burden on businesses such as ECFM to prepare another calculation wasn't significant.

ECFM has made no further comment in response to the provisional 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.

I've noted the further comments from Mr H's representative, and would remark as follows.

Whilst it's fair to say that I'm not an actuary, I don't consider that I need to be to have a high degree of confidence that a difference of 5 days in Mr H's recorded membership of the BPS, along with a difference of 18 days in Mrs H's date of birth, would transform a gain of some £74,000 into an overall loss.

As I noted in the provisional decision, Mr H has clearly been caused anxiety by this matter, and it's unfortunate that he has residual concerns over the calculation and that he feels he hasn't received the required reassurance around this.

Nevertheless, Mr H is entitled to a calculation which uses accurate inputs. And I appreciate that Mr H would like the calculation to be based on entirely accurate information.

On the basis that a further corrected calculation will offer Mr H the reassurance that he needs to be certain that he's not incurred a financial loss by transferring, ECFM should prepare a fresh calculation using corrected dates for Mr H's period of membership and his wife's date of birth.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would more likely than not have remained in the occupational pension scheme and opted to join the BPS 2 if suitable advice had been given.

Estate Capital Financial Management Limited must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

Estate Capital Financial Management Limited should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr H and our service upon completion of the calculation.

The calculation should use the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of my final decision.

As set out above, and to manage Mr H's expectations, I think it's unlikely that a new calculation will demonstrate a loss. But if it does, as explained in policy statement PS22/13 and set out in DISP App 4, Estate Capital Financial Management Limited should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:

- its redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and

- a straightforward way to invest their redress prudently is to use it to augment their defined contribution pension

- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Estate Capital Financial Management Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of its redress augmented,

and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, businesses may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Estate Capital Financial Management Limited should also pay Mr H £400, for the reasons set out in my provisional decision.

My final decision

My final decision is that I uphold the complaint and direct Estate Capital Financial Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 February 2024.

Philip Miller
Ombudsman