

## **The complaint**

Mr U 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.

Pensionhelp Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Pensionhelp".

## **What happened**

In March 2016, Mr U'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 U'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 U 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 Pensionhelp 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 U was 41 years old and married. He had accrued many years' worth of service with BSPS and was a deferred member.
- The cash equivalent transfer value (CETV) of Mr U's BSPS was approximately £359,799. The normal retirement age (NRA) was 65.

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

Mr U 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, Pensionhelp said it hadn't done anything wrong and was acting on the financial objectives Mr U 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'll explain more about below, Pensionhelp has agreed to settle this complaint. But for the avoidance of any doubt here, I've still looked at Mr U'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 U's complaint to reach this stage – I understand the distress and inconvenience caused by him having to bring the complaint at all.

So, in summary, I don't think the advice given to Mr U by Pensionhelp 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. I therefore think Pensionhelp 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 now focus on the redress methodology.

### **Issues arising with regard to any redress that might be due**

As I've said above, Pensionhelp didn't initially agree it had done anything wrong. However, in the interest of bringing complaints like this to a close, Pensionhelp has recently said 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 U. However, Pensionhelp has told us that despite trying to resolve these issues and settle the case, Mr U and his advisers are prolonging matters unnecessarily.

For example, Pensionhelp says it has already used the BPS-specific calculator established by the regulator for the purpose of calculating whether redress is due. The established practice in using this calculator is for the consumer's pension balance to be considered at a certain point in time together with what the cost would be to buy a pension with similar benefits to the one they were unsuitably transferred from. If the consumer has a surplus in their transferred pension fund balance after using this FCA calculation tool, then it's possible that no redress might be due. The points in time used to capture all this information are commonly at the beginning of a financial quarter.

I've noted Pensionhelp has indeed carried out such a calculation. It looks to me that it used the BPS calculator, the correct input details and it also established there was no loss incurred. It's my understanding that a factor in this "no loss assessment" has been a pension sharing order (PSO) which means Mr U's now former wife, is entitled to a substantial portion of the funds. Mr U is now classified as a single person.

So, in basic terms, by incorporating that Mr U's transferred pension balance has grown and his circumstances have changed, the calculation shows there has been no financial loss

incurred as a result of Mr U transferring away, back in 2018. This BPS calculation was completed in the financial quarter starting 1 October 2023.

Whilst we've checked that the inputs that were put into the BPS-calculator are probably correct, Mr U hasn't accepted the complaint as being closed and has specifically said he wants an ombudsman's final decision. Pensionhelp therefore needs to calculate the redress again using the current financial quarter (commencing 1 January 2024). However, I want to make it clear to Mr U's representative that it must promptly submit the required information about Mr U's current pension balance to Pensionhelp, to enable this recalculation to take place.

Pensionhelp complains that this whole process conclusion is being deliberately delayed by Mr U simply because the calculation is coming out at no loss under the calculation rules set up by the FCA. The implication here is that economic and market conditions might change to mean a more favourable outcome for Mr U in the future. I don't think I need to comment on this but as the calculation has already been carried out once, I think this further calculation should be the final one. I think it's appropriate for Pensionhelp to do a Q4 (January 2024) calculation and that this should close the complaint.

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr U, as far as possible, into the position he would now be in but for Pensionhelp's unsuitable advice. I consider Mr U would have most likely opted to join the BPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. Pensionhelp should use the benefits offered by BPS2 for comparison purposes.

Pensionhelp 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>.

Pensionhelp 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 U and our Service upon completion of the calculation.

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 U's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Pensionhelp should:

- calculate and offer Mr U redress as a cash lump sum payment,
- explain to Mr U before starting the redress calculation that:
  - the 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 the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr U receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr U accepts Pensionhelp's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr U for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr U's end of year tax position.

Redress paid to Mr U as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Pensionhelp 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 U'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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance. *I should clearly state here that these are maximum limits and they are highly unlikely to be relevant to the redress Mr U might or might not be due.*

Our investigator recommended that Pensionhelp should pay Mr U for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr U in his particular circumstances. This pension at the time represented almost all of his retirement provision. In his situation I think the thought of losing material benefits would have impacted heavily upon him. So I agree the recommended payment of £200 for distress and inconvenience is fair and reasonable. Pensionhelp should pay Mr U this amount in addition to the redress, if a loss exists, as I've set out above.

### **My final decision**

I am upholding this complaint and I now direct Pensionhelp Limited to pay Mr U the compensation amount, if any is due, as set out in the steps above.

Pensionhelp should also pay £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 3 March 2024.

Michael Campbell  
**Ombudsman**