

The complaint

Mr B complains about the outcome of the review carried out by Sense Network Limited (“Sense”) in connection with the FCA’s consumer redress scheme for the British Steel Pension Scheme (“BSPS”) – to make my findings easier to follow, I’ll refer to this as the “redress scheme”.

What happened

The sequence of events isn’t in dispute, so I’ve only set out a brief summary of what happened.

Mr B had built up 32 years and 1 month’s pensionable service in the BSPS between January 1984 and February 2016 during two periods of service. The BSPS was a defined benefits (“DB”) pension scheme that provided a guaranteed lifetime income to members. At the date of leaving the BSPS, his total annual pension was £28,913.18. In September 2017, the BSPS issued two transfer values totalling £685,032.91 in respect of both periods of service. By that point, his total annual pension had been revalued to £29,436.24 – it would continue to be revalued annually until the scheme normal retirement age of 65.

Mr B sought advice from Sense on his options. In October 2017, Sense recorded the following information about Mr B and his wife, Mrs B:

- They were both aged 56 and in good health. They had one adult child who lived overseas and not financially dependent on them;
- Mr B was unemployed after recently leaving his role at British Steel. He didn’t have any plans at that stage to return to employed work but hadn’t ruled it out. His pension provision comprised the following: (1) entitlement to a state pension from age 67; (2) his preserved DB pension in the BSPS and (3) a workplace defined contribution (“DC”) plan valued at £9,200;
- Mrs B was employed as a part-time receptionist by the NHS and paid gross annual income of around £8,400. Her pension provision comprised the following: (1) entitlement to a state pension from age 67 and (2) entitlement to two DB pensions in the NHS Pension Scheme and Local Government Pension Scheme – a note in the fact find document stated this was expected to provide a combined annual pension of around £6,000 from age 65;
- They considered their assets jointly. Their assets comprised their main residence valued at £250,000, an investment property portfolio valued at around £885,000 (comprised of eight properties and all in Mrs B’s name), total cash savings of around £215,000 and total investments of around £66,000. They had received inheritances which they used to build the investment property portfolio;
- The investment property portfolio generated gross annual rental income of around £35,000 before the deduction of annual running costs of around £7,000. Since the properties were in Mrs B’s name, the income was paid to her for tax purposes;

- They didn't have any debts or liabilities;
- It was noted that the rental income generated by the investment property portfolio more than covered their discretionary and non-discretionary spending. After paying for bills and essentials, they had surplus disposable income of around £1,100 available every month;
- Their joint annual income need in retirement was around £24,000 net of income tax (in 2017 terms). Their target investment timeframe was 10 years when they would both be age 66. They didn't have any plans to retire before that age; and
- Mr B was assessed as having a "Moderate Investor" risk profile.

Sense recorded Mr B's objectives in connection with his DB pension as follows:

"1) You will not be financially reliant on the British Steel pension income in retirement and wish to avoid regular receipt of taxable income that will simply increase the value of your taxable estate for Inheritance Tax purposes.

2) Given your very real and significant concerns regarding funding of the British Steel Pension scheme you wish to break all ties and move the available funds to an individual plan which is under your own control. You have sat in trustee presentations regarding funding for New British Steel Pension Plan and you remain of the opinion that the loss of the sponsoring employers financial commitment to the scheme will lead to further funding issues each and every year.

3) You therefore wish to remove any chance that your accrued Pension Benefits will end up within the Pension Protection fund as you are very aware of the 10% reduction in benefits and also that no later transfer out will be available should that scenario happen.

4) You are very conscious of the letter dated 26 September 2017 which warns that a further CETV figure will not likely to be available for a 12 month period if you elect to join New British Steel Pension Scheme. You therefore wish to act now on the information available and are conscious that the deadline for the CETV on offer is the 11th December 2017"

On 27 October 2017, Sense advised Mr B to transfer the value of DB pension to a SIPP provided by James Hay to enable him to meet his recorded objectives. The transfer to the SIPP was completed shortly afterwards and invested in a model portfolio to align with his 'Moderate Investor' risk profile. Sense's initial advice charge was £6,000. The ongoing advice charge was 0.5% of the SIPP fund value.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms are required to use the FCA's BPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as “suitable” and the case is closed; or
- The advice is rated as “unsuitable” – if so, the case progresses to a calculation and the payment of redress if it’s shown the consumer suffered a financial loss.

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service (“FOS”) to look at whether the review was carried out correctly in line with the redress scheme rules.

Sense’s review of the advice it gave Mr B

In August 2023, Sense completed its review of the advice it gave Mr B to transfer out of the BPS. It completed a single DBAAT in respect of Mr B’s two periods of pensionable service in the BPS. This generated a suggested suitability rating of “potentially suitable” based on Sense’s answers. It finalised the rating as “suitable” and closed Mr B’s case.

Sense confirmed the review outcome to Mr B and told him that it wouldn’t be taking any further action.

FOS’s assessment

Mr B disagreed with Sense’s assessment of his case. So he referred the matter to FOS.

One of our investigators recommended that this complaint be upheld because she had concerns Sense hadn’t followed the FCA’s redress scheme rules. She explained the reasons why in her assessment. To put things right, our investigator recommended that Sense amend the review outcome on Mr B’s case under the redress scheme to “unsuitable” and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Mr B accepted our investigator’s view. However, Sense didn’t accept it and provided substantial comments in response. In summary, it stated that its advice considered all of Mr B’s circumstances, addressed his objectives and was suitable. It also thought its answers on the DBAAT were correct and supported its view that the advice was suitable. It requested that an ombudsman review the complaint afresh.

This complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

Mr B has specifically complained about the outcome of Sense’s assessment of his case under the redress scheme. Therefore the scope of this final decision is limited to evaluating the adequacy of Sense’s assessment of Mr B’s case under the redress scheme.

I’ve considered all the evidence afresh including Sense’s comments in response to our investigator’s assessment. I’d like to clarify that the purpose of this decision isn’t to repeat or address every single point raised by the parties to this complaint. So if I haven’t commented

on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The FCA's BSPS DBAAT

The redress scheme rules are set out in CONRED 4 in the FCA's rulebook.

The FCA's default position (COBS 19.1.6G) requires firms to start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer if it can *clearly* demonstrate it's in their client's best interests. This presumption of unsuitability is referred to within CONRED 4 Annex 21, which covers the instructions for case reviews under the redress scheme. The CONRED rules also refer to COBS 9.2.1R(2), COBS 9.2.2R and COBS 9.2.3R, which are the suitability rules.

As noted above, firms are required to use the FCA's BSPS DBAAT when assessing cases. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Sense's review of the advice it gave Mr B

In its role as assessor, Sense answered that none of the 12 examples of unsuitability applied to Mr B's case. This generated a suggested rating of "potentially suitable". Sense finalised the advice rating as "suitable" based on the following rationale:

"More than enough other income to meet needs. Does not need this income from the scheme"

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Sense didn't follow the redress scheme rules when it assessed Mr B's case. Before I go into the specific examples of unsuitability which I think are relevant, I think it's necessary to first address the following points regarding Sense's inputs in the DBAAT.

- **Incorrect completion of a single DBAAT:** In section 4.1R in CONRED 4 Annex 21, it states that where the consumer had more than one period of service in the BPS, the assessor must complete a separate DBAAT for each period. But Sense didn't follow this instruction in Mr B's case. Rather, it incorrectly combined his two periods of service and completed a single DBAAT, contrary to the redress scheme rules; and
- **Incorrect comparator scheme:** The advice to transfer was after 12 October 2017. Therefore, in line with CONRED 4 Annex 21 1.3R (7) (c), Sense should've selected the BPS2 as the comparator scheme. But it incorrectly used the BPS.

In the DBAAT it completed, Sense recorded that Mr B's objectives connected to his DB pension as follows:

"To control capital - and have flexibility of income

Wishes to break all ties with British Steel and remove worry that pension will end up in pension protection fund"

In the DBAAT, Sense stated that Mr B's preferred retirement age was 60. But I cannot see reference to this in the contemporaneous evidence. Rather, the target investment timeframe in connection with the BSPS benefits was 10 years when Mr B and his wife would be age 66. I cannot see any reference to Mr B planning to take his BSPS benefits earlier than age 65.

In addition to the errors identified above, I think Sense, in its role as assessor, should've answered "yes" to the following examples of unsuitability based on the redress scheme instructions in CONRED 4 Annex 21:

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer "yes" to this question where the following apply:

- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme.

In the suitability report it stated in reference to Mr B, *"You want flexibility to change any plans as and when the right project/opportunity arises"*. In explaining his rationale for recommending the transfer, Sense's adviser stated that transferring, *"allows you the flexibility to draw a tax-free lump sum and a reduced income to meet your changing needs. This option is not available with a Defined Benefit pension"*.

Mr B didn't have an objective to take his DB pension early. He didn't have any immediate lump sum or income needs in connection with his DB pension. Rather, as noted above, it seems he didn't plan to retire earlier than age 65.

Flexibility of income might sound attractive, but I cannot see that Mr B had any concrete need for it *specifically* in connection with his DB pension. The evidence indicates that Mr B and his wife required joint annual income in retirement of around £24,000 net of income tax (in 2017 terms). And so the provision of a guaranteed and escalating DB pension income to help meet this need is likely to have been something he valued when he retired. If he did require flexibility, there were alternative, lower risk options available. Mr B and his wife considered their assets jointly. To meet any flexible needs they could've alternatively used:

- their cash savings of around £215,000, investments valued at £66,000 or the DC workplace pension valued at £9,200; and/or
- the excess income generated by the existing investment property portfolio – at that time, the gross annual income was around £35,000 before the deduction of annual running costs of around £7,000. It was noted that the rental income generated by the investment property portfolio more than covered their discretionary and non-

discretionary spending. After paying for bills and essentials, they had surplus disposable income of around £1,100 available every month; and/or

- the significant tax-free cash lump sum projected to be available under the comparator scheme (had Mr B been advised to retain his DB pension).

So it's clear that Mr B already had and would continue to have access to substantial, liquid funds that could've been used to meet any flexible income needs – this would've enabled him to retain his DB pension so that the guaranteed and escalating income it provided contributed towards the core retirement income need. I don't believe that the transfer from the BSPS to the SIPP provided any clearly defined advantage over and above the flexibility that already existed from other sources. This wasn't addressed by the assessor when completing the DBAAT.

Overall, it's my view that at the time of the advice, Sense failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income under the DB pension.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 5: an aim of the transfer is to preserve or protect the value of the consumer's pension benefits but the comparator scheme(s) benefits would meet the consumer's needs

Under reference 10.17E, the assessor is required to answer "yes" to this question where the following apply:

- (1) (a) the level of comparator scheme benefits meets the consumer's income needs

Sense recorded that Mr B was concerned about the prospect of transferring to the PPF or a reduction in benefits. In the suitability report it stated, in reference to Mr B's objectives, the following:

"You therefore wish to remove any chance that your accrued Pension Benefits will end up within the Pension Protection fund as you are very aware of the 10% reduction in benefits and also that no later transfer out will be available should that scenario happen."

So it seems to me it was important to Mr B that he didn't expose the value of his DB pension to the risk of receiving a lower level of income under the PPF. While it's true that a transfer to the PPF would've resulted in a 10% reduction in benefits, there was also a risk that the transfer to the SIPP would expose Mr B to unlimited downside risk where the reduction in benefits could be greater than 10%. The benefits available under the SIPP option would be dependent on the performance of underlying investments and annuity rates available at retirement – in other words, there were no guarantees regarding the level of benefits paid.

According to the TVAS reports, the BSPS and PPF were projected to provide the following total benefits (in respect of both periods of service):

	<i>At age 60 based on a full pension</i>	<i>At age 60 based on a reduced pension and maximum tax-free</i>	<i>At age 65 based on a full pension</i>	<i>At age 65 based on a reduced pension and maximum tax-free</i>

		cash lump sum		cash lump sum
<i>BSPS</i>	£26,673	£19,635 plus tax-free cash £130,908	£35,057	£24,791 plus tax-free cash £165,281
<i>PPF</i>	£26,097	£21,317 plus tax-free cash £141,262	£30,949	£24,442 plus a tax-free cash £161,966

Mr B and his wife viewed their finances jointly. They required joint annual income in retirement of around £24,000 net of income tax (in 2017 terms).

The projected figures in the table above support the case that the comparator scheme benefits would meet the stated income need from age 65. And as shown above, in the event of a transfer to the PPF, the income need would've been met by that scheme. This wasn't addressed by the assessor when completing the DBAAT.

If there was a shortfall then this would've only lasted for two years until they started drawing their state pensions – any shortfall for the two-year period between age 65 and 67 could've been covered by utilising their existing savings, investments and/or tax-free cash available under the comparator scheme. But it was highly unlikely there would be a shortfall bearing in mind Mrs B had an entitlement to two DB pensions in the NHS Pension Scheme and Local Government Pension Scheme – a note in the fact find document stated these were expected to provide a combined annual pension of around £6,000 from age 65. I think it's reasonable for me to rely on those two DB pensions bearing in mind Sense based its advice on the concept of joint finances.

Under this alternative route, once their state pensions started from age 67 they would be in receipt of five sources of guaranteed and escalating income that would provide a combined level of income in excess of the stated income need – and on a lower risk basis than compared to the recommended SIPP alternative. In my view, taking DB pension income in excess of the stated income need doesn't automatically transform it into an unsuitable solution, as Sense appears to believe. Any excess income could be reinvested for future use. For example, on the first death, the survivor's pension income would reduce (the DB pensions in payment would reduce by 50% and the deceased's state pension would stop). So having access to that reinvested excess income at a later date would be suitable.

While I acknowledge that Mr B and his wife's estate was then above the inheritance threshold, the primary concern here, in my view, was to ensure that the retirement income need was secure. I don't accept that reducing the value of their estate for inheritance tax purposes trumped the need for secure retirement income during their lifetime, particularly since their adult child wasn't financially dependent on them.

Mr B was clearly concerned about the value of his DB pension reducing so much so that he wanted to avoid a transfer to the PPF. In my view, the pension transfer to the SIPP led to greater risk for no clearly defined benefit. There was also the obvious concern of relying heavily on the existing investment property portfolio to meet the income need, which was the basis of Sense's advice (such that Mr B could relinquish his DB pension). There were several risks with the rental income which may have resulted in lower than expected income being received in the future. Given this risk and Mr B's concerns, I don't think it was suitable for him to expose his main retirement provision to unnecessary risk when it's clear that a combination of his DB pension and other assets and sources of income would meet the stated income need once he retired.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 5.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when:

- the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk; and/or
- the consumer would not have been able to match the rate of return to replicate the benefits being given up if they invested in line with their attitude to risk.

The critical yield figures at age 65 for both periods of service ranged between 6.46% and 9.72% depending on whether Mr B selected a full pension or a reduced pension with a tax-free lump sum. Sense recommended that Mr B invest the value of his SIPP into a model portfolio that aligned with his *'Moderate Investor'* risk profile.

Sense's cashflow models were based on the recommended portfolio achieving a net annual investment return of 4%. At the time of the advice, the regulator's upper projection rate was 8%, the middle projection rate 5%, and the lower projection rate 2%. So taking into account Mr B's *'Moderate Investor'* risk profile, expected growth rate and investment timeframe, it's my view that the critical yield figures ranging between 6.46% and 9.72% were likely to be unobtainable. Sense agrees because in its suitability report it stated, *"It's important to confirm our discussions in this regard, the yields quoted are clearly not obtainable and therefore if fixed income is required the analysis suggests no transfer should be considered"*. But it dismissed this at the time because it didn't think it was suitable for Mr B to take the DB pension – but I disagree for the reasons explained above.

It's my view that the transfer analysis showed it was likely Mr B would be financially worse off as a result of the pension transfer. And so I don't agree that the transfer analysis supported Sense's recommendation to transfer.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 9, particularly given my view that Mr B didn't require flexibility from these benefits (Example 3) and the comparator scheme(s) benefits would've met his income need (Example 5).

Conclusion

Based on the above considerations, it's my opinion that Sense failed to follow the FCA's redress scheme rules when it assessed Mr B's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 3, 5 and 9 in the DBAAT for both periods of service. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Sense's non-compliant conduct was the effective cause of Mr B's decision to transfer. This was a complex

transaction involving many factors. In my view, Mr B was reliant on Sense, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views about what was right for him.

One of the key drivers for the pension transfer was due to Mr B's concerns about the PPF. It's my view that Mr B didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Sense to provide expert advice on this point, but I think it failed to do this. It's therefore my view that Sense failed to adequately allay Mr B's misapprehensions and that he therefore made the decision to transfer from an uninformed position regarding the PPF.

Overall, it's my view that Sense's conduct is more likely than not to have caused Mr B to transfer to the SIPP when this wasn't in his best interests. Given Mr B's reliance on Sense to provide suitable advice, I think it's unlikely he would've still decided to transfer to the SIPP against its advice had it advised him not to transfer.

Putting things right

Sense must do the following:

1. Calculate and pay any redress due in line with the redress scheme rules. In line with Section 13.11R in CONRED 4 Annex 21, Sense must carry out a separate calculation for each period of Mr B's service in the BSPS; and
2. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr B's case.

My final decision

I uphold this complaint. I direct Sense Network Limited to follow the steps set out above.

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

Clint Penfold
Ombudsman