

## The complaint

Mr B complains that Tideway Investment Partners LLP ('Tideway') gave him unsuitable advice to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a self-invested personal pension (SIPP).

## What happened

Mr B was advised to transfer his DB pension in 2017. He complained to Tideway in 2021 who rejected his complaint.

One of our investigators found Tideway had given unsuitable advice and asked Tideway to carry out a loss calculation in line with FCA guidance.

Tideway subsequently offered to settle the complaint in line with the investigator's recommendation in March 2023. They carried out loss calculations which showed Mr B hadn't suffered a financial loss by transferring.

Mr B asked for an ombudsman decision and noted at this point that he had suffered significant distress and inconvenience realising that he has lost valuable guarantees due to the inappropriate advice he received. He found the uncertainty of his future retirement stressful and he was worried about the loss of dependant benefits he potentially could have received for his disabled daughter if he had remained in the BSPS. He asked the ombudsman to consider additional compensation for this distress.

He later submitted further details about his daughter and said that due to her medical conditions she would be financially dependent for life. He asked for additional compensation for these lost benefits.

The complaint was passed to me for a decision. I requested further evidence about Mr B's daughter's conditions and reviewed the scheme rules about dependant pension provisions in the BSPS. Having reviewed these I provisionally decided in Late December 2023 that it was reasonable to take into account potential dependant benefits when calculating redress.

I explained that in the event of Mr B's death after retirement a dependant pension for an adult child would have been paid at the discretion of the trustees of the BSPS. The discretion would have also been with regard to how long such a pension would be paid. This would have been decided at the time of his death and would have been by no means a guaranteed benefit. There is uncertainty how dependent his daughter will be (it would need to be wholly or substantially) in adult life and whether this would be for the rest of her life. I thought the bar for this benefit to be paid by the trustees would have been reasonably high and would have been considered based on medical evidence at the time of Mr B's death.

Nonetheless, I thought that given her health issues on balance there was a realistic chance she could have qualified in future. So I didn't think it would be fair to completely disregard this potential benefit. However, equally I didn't think it would be fair to assume this definitely would have been paid. So in the circumstances I thought it was reasonable to assume a likelihood of 50% that it would have been paid.

How much his daughter would have been paid would have depended on whether Mr B was married or not at the time of death (25% of his pension if he was married and 50% if not). I thought it was reasonable to apply the same marital assumptions as in DISP APP 4 which would be that Mr B chances of being married at retirement age is 30%; and 70% that he would not be married. I averaged these assumptions and benefit percentages and considered a reasonable level of benefits to assume was 42.5% of Mr B's DB pension.

I recommended that Tideway should work out the value of providing such a benefit for his daughter. Half of this value would be the compensation element for Mr B (accounting for the 50% likelihood that it would have been paid).

I didn't agree with Mr B's representatives that this compensation should be paid separately even if the loss calculation for Mr B's own benefits ('primary calculation') showed there was no financial loss and that it couldn't be offset with any gains from the primary calculation.

I explained that buying a life insurance policy now for his daughter (as suggested by Mr B) would not replicate the dependant's pension as I was aiming to redress a dependant pension should he die after retirement. The loss calculation would work out how much it would cost to replicate his DB income at 65 and the value of a dependant pension (as I had recommended).

I explained that if there is a gain in the primary calculation that this additional money can be used by Mr B to make provisions for his daughter should he die after retirement.

Since then many months have passed during which the details of calculations have been discussed.

Tideway carried out another loss calculation for Mr B's benefits using the FCA BPS calculator which showed no loss. With regards to the dependant pension, they said an actuary would need to make an assumption on the dependant's life expectancy and they thought Mr B's daughter's life expectancy would likely be reduced. They noted that Mr B might not want to divulge further medical information about his daughter, so rather than do a calculation they offered to pay £7,500 in full and final settlement.

This offer was rejected by Mr B and he asked for the calculations to be carried out as I had suggested. He said his daughter's life expectancy wasn't reduced and offered to provide medical opinions from her doctors. I agreed that medical reports were a reasonable next step. I also considered Mr B's comments about the distress the matter had caused him and recommended Tideway should pay him £300 in addition to any financial loss calculated.

Whilst waiting for the medical reports, Tideway carried out an updated calculation for Mr B using the FCA calculator. This showed a gain in Mr B's SIPP compared to his DB benefits of £66,734. They also attempted to carry out a calculation for the dependant benefits using the BPS calculator as a basis. They calculated the value of the dependant pension as £60,065. So after offsetting the losses with the gains from the primary calculation, Tideway concluded there was no overall financial loss. They offered to pay £300 for the distress caused as I had recommended.

Although I thought Tideway's methodology to calculate the value of the dependant benefit with the BPS calculator was pragmatic I thought it was slightly flawed and suggested an amendment which calculated a loss of £11,951.

Tideway responded with an alternative redress method which showed a loss amount of £4,349. I suggested to either go with the higher amount I had calculated using their

suggested methodology or alternatively use an actuary. As they had assumed normal life expectancy in their previous calculation I enquired whether they would be willing to use the same in actuarial calculations. I also informed Mr B's representatives that if Tideway accepted the loss of £11,951 I would consider this fair.

Mr B responded to say he wanted an actuary to calculate the losses which was also the preferred method of Tideway at this point. Tideway subsequently instructed an actuary to calculate the dependant pension. Generally as a service we wouldn't check calculations which are provided by an independent professional actuary. However, as Tideway sent two differing calculations and some of the information provided wasn't clear, I asked our independent actuary to review the calculations.

After some clarifications and noting that the actuary had included a cap on payments of benefits which I hadn't instructed, new calculations were produced which showed a value of dependant benefits of £68,265.

When offsetting this value with the gain from the primary calculation, there is a financial loss of £1,531. Compensation of £300 for the distress caused would be paid in addition to this.

Mr B still disagreed with the outcome, so I'm now issuing a final decision on this complaint.

### **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.

After reviewing the calculations again with the support of our actuary, I'm satisfied the calculations provided are fair and in line with what I recommended.

Mr B noted that the dependant calculation didn't account for any ongoing charges he was paying in his pension. I think this is acceptable in this case considering that this is a discretionary additional benefit which would have been paid to his daughter upon his death, separately to his own pension. So it's reasonable for any compensation payment to be paid directly to Mr B and so ongoing adviser charges in the pension won't apply to this sum.

It's reasonable to assume that he can invest the payment of £1,531 without significant ongoing charges. And the majority of the money that compensates for the value of the dependant benefits is the gain in Mr B's pension (£66,734). Ongoing charges have been factored in when calculating this gain.

The original recommendation was that the loss amount should be paid into Mr B's pension. If it was instead paid as a cash lump sum a notional deduction could be made to allow for income tax that would otherwise have been paid. Mr B's income tax rate in retirement was presumed to be 20%, so after allowing for tax free cash, any notional deduction would be 15%.

Mr B disagreed with this notional deduction and provided arguments and comments from his new financial adviser that he would likely not be paying income tax in retirement. I disagree that this is likely given the value of his personal pension provisions and that his state pension alone nearly uses up all his personal income allowance.

However, given my findings above that the dependant pension is a discretionary additional benefit I consider it reasonable for any remaining compensation payment to be paid directly to Mr B without a notional income tax deduction in this case. Tideway has agreed to this.

Mr B has previously asked that a higher amount for the distress this matter has caused him as he is particularly anxious about the future of his daughter.

I have recommended £300 as I think this is a reasonable amount having considered the general stress and anxiety Mr B feels with regards to the loss of guaranteed benefits and the uncertainty of his new pension. I carefully thought about whether a higher award would be reasonable given the additional potential dependant benefits he lost. However, for reasons I have previously explained to Mr B and which I'll repeat below I think the amount of £300 is fair.

Mr B's daughter's health and the potentially lost dependant benefits were not mentioned in the original complaint submissions nor after the investigator's view (which didn't recommend any award for distress). I would have expected Mr B to raise this earlier if this aspect caused him particular worry. And as I said before the dependant pension was not a guaranteed benefit that he lost. I have recognised that his situation is unusual and I did decide that the loss of such potential benefits should be considered in calculations. However, my view remains that the award for distress here is fair in the circumstances.

### **Putting things right**

Tideway have offered to pay Mr B the financial loss calculated as £1,531 plus £300 for the distress caused which I consider fair and reasonable.

Tideway should pay Mr B the sum of £1,831 in cash without any further deductions.

The payment should be made immediately once Mr B has accepted the decision and bank details have been provided.

### **My final decision**

I uphold this complaint and require Tideway to pay Mr B the sum of £1,831.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 October 2024.

Nina Walter  
**Ombudsman**