

The complaint

Mr S complains that Dobson & Hodge Limited (D&H) gave him unsuitable advice to transfer deferred benefits from his defined benefit (DB) pension with British Steel (BSPS) to a personal pension.

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 pension 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 S's employer would be set up – the BSPS2. This was, however, intended to receive deferred benefits only. The main defined benefit occupational benefit scheme had been replaced by a new defined contribution scheme.

In November 2017 D&H advised Mr S to transfer his BSPS pension benefits into a personal pension.

In 2022, Mr S complained that the advice he had been given was flawed and when this wasn't resolved he referred his complaint to the Financial Ombudsman in early 2023.

Our investigator upheld his complaint and found the advice given was unsuitable. He said if Mr S had been advised to remain in the scheme, he likely would have decided to move his pension to the Pension Protection Fund (PPF). He recommended D&H to carry out loss calculations as per rules set out by the Financial Conduct Authority (FCA). As Mr S had retired in September 2021 at age 56 this should be used as the assumption when Mr S would have retired from the PPF had he transferred his benefits there.

Mr S's representatives disagreed with the assumption that he would have chosen to go to the PPF. They also thought the assumed retirement age in the loss calculation should be 65. They said Mr S wouldn't have retired early if he had remained in the DB scheme and the advice should have been for him to continue working and contribute into his occupational DC pension. They said he was currently looking for a part-time job as he was worried the monies in his pension will not last through retirement.

As no agreement was reached this complaint was passed to me for an ombudsman's 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 previously explained to the parties that I agreed with the investigator that the advice had been unsuitable. I didn't think Mr S had a need to take a risk with his pension and could meet his objective of retiring early by staying in the BSPS. And I couldn't see that flexibility was needed to the extent that it justified overall lower benefits.

With regards to the redress elements I said:

It has been confirmed Mr S did retire in September 2021 at age 56 and the fact find in 2017 suggests that he was looking to retire early (at age 57) if possible. Taking the decision to retire is based on multiple factors and whilst continuing to work would give someone a higher pension later in life, it's a reasonable objective to retire earlier on a lower income as long as this covers reasonable expenditure in retirement. Based on what I've seen (and which D&H actually confirmed in their suitability report), Mr S could likely meet his income objectives by staying in the DB scheme and taking benefits early. And his income would have been guaranteed and would have increased. So on balance I think it's reasonable to assume that Mr S would have retired from the DB scheme at the same time than he did from his DC pension (i.e. September 2021).

His representatives also argue that D&H should do a comparison against the PPF and BSPS2 and then use what is the most advantageous to Mr S. However, I disagree this is a reasonable approach and it would be benefitting from hindsight. My aim is to put him back into the position he likely would have been in if he had been advised not to transfer.

Mr S was 52 at the time of the advice and said he was considering retiring at age 57. So it could be argued that the PPF with its more beneficial early retirement factors and a possibly larger tax free cash lump sum might have been more attractive. And in hindsight this might have been the best option for him. However, I need to consider what he likely would have chosen in 2017. His early retirement plans could have still changed and the BSPS2 offered a higher initial income and revaluation factors. It also still offered the possibility of a later transfer, so kept Mr S's options open. And the BSPS2 offered a more generous spouse's pension which given Mr S's pension income was the main household income I think would have likely been important to him.

In summary, with suitable advice in 2017, I think Mr S would have moved to the BSPS2 in 2018 and subsequently would have retired in September 2021.

I'm intending to ask D&H to carry out a calculation in line with DISP APP4 (and the assumptions as set out above) and using the most recent version of the FCA BSPS calculator. I believe Mr S when he says this matter has caused him stress and anxiety and I've also taken into account that he is worried he might run out of funds. So in the circumstances I think D&H should pay additional compensation of £300 for the distress their actions have caused.

Both parties agreed with my findings.

D&H subsequently carried out loss calculations as per my instructions in December 2023. I reviewed the calculations and I explained to Mr S's representatives that I was satisfied that they correctly showed Mr S had not suffered a loss by transferring his pension. D&H was still offering to pay compensation of £300 for any distress the matter had caused Mr S.

Mr S rejected the calculations and asked for a final decision. He feels the redress method is unfair and that pegging compensation to economic assumptions which change frequently result in varying amounts of compensation for complainants.

I considered Mr S's comments, however my decision remains the same. Both he and D&H agreed to my provisional findings. I understand he is disappointed that the loss calculation shows that he hasn't suffered a loss and no compensation is due in this regard. However, the loss calculation has been carried out in the way I would expect and in line with the redress methodology set out by the FCA.

The aim here is to put Mr S as much as possible back into the position he would be in if he had not transferred his DB benefits. The calculation showed that his current DC benefits significantly outweighed the amount needed to buy an annuity that replicated his DB benefits. Given Mr S has already retired, he should be able to buy an annuity which gives him a guaranteed income going forward in line with what he could have received from the BPS2 and have money left over. So not only has he not lost out but is in a better financial position than if he had not transferred.

He was given unsuitable advice, however in hindsight and with the change in annuity rates since the transfer, he has benefitted.

So I can't agree that the loss calculation is unfair. I still acknowledge that Mr S worried about his pension after the transfer, so I remain satisfied compensation of £300 is reasonable in the circumstances.

My final decision

I uphold the complaint and require Dobson & Hodge Limited to pay Mr S £300 for any distress this matter has caused him (unless they have already paid him).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 February 2024.

Nina Walter
Ombudsman