

The complaint

Mr W complains that he was given unsuitable advice by CST Wealth Management Limited ('CST') to transfer the benefits from his defined benefit ('DB') scheme with British Steel ('BSPS') to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr W's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employer's DB scheme) 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 private pension arrangement.

In May 2017, the 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 W's employer would be set up – the BSPS2.

In June 2017, the DB scheme administrators sent Mr W information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr W had 12 years and 6 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £169,498.77.

Mr W wasn't sure what to do about his pension so he contacted CST to seek some advice. An initial meeting was arranged between CST and Mr W in August 2017. CST completed a fact-find to gather information about Mr W's circumstances and objectives and made some further enquiries of Mr W in the weeks that followed.

CST noted that Mr W was aged 39, his wife was aged 36 and that they had two financially dependent children, one aged 11 and one aged 14. Further, CST recorded that Mr W earned £37,000 per year. His wife also worked and was a member of her employer's occupational pension scheme. Their home was documented as being valued at £180,000 with a repayment mortgage of £110,000 that had an outstanding term of 14-15 years. Mr W was also noted as having an unsecured loan of £12,000 and an outstanding credit card balance of £6,000. No savings or investments save for £800 in his bank account were noted. Finally, CST recorded that Mr W was a member of his employer's new defined-contribution ('DC') pension scheme to which he was contributing 6% of his annual salary and his employer 10%. Mr W also had two other small DC pension plans with fund values of £8,013 and £173.35 respectively.

Mr W also told CST he was hoping to retire at age 55 or 58 and that he was aiming to achieve a pension 'pot' of about £300,000. CST carried out an assessment of Mr W's attitude to risk ('ATR') which was mutually agreed to be 'highest medium', or 6 on a scale of 1 to 10.

On 23 August 2017, CST sent Mr W a transfer value analysis report ('TVAS') which stated he needed to achieve an annual investment return on his personal pension of 6.38% in order to be able to match the benefits offered by the BSPS at the scheme's normal retirement age of 65. If he took early retirement at age 57, Mr W would need to achieve an annual investment return on his personal pension of 7.36% in order to be able to match the benefits offered by the BSPS.

On 25 August 2017 Mr W completed a pension transfer questionnaire where his objectives for transferring his DB scheme were noted. These were: that he no longer trusted his employer; he wanted the option to retire early between the ages of 55 and 60; that he wanted choice and flexibility on how he drew his pension benefits; to move away from the BSPS and to have control of his pension plan; to have the maximum possible lump sum at retirement; and to benefit from the flexible death benefits associated with a personal pension plan.

On 8 September 2017, CST sent Mr W its suitability report in which it noted that Mr W's projected annual pension from his DB scheme at his normal retirement date ('NRD') of age 65 was £13,748, or £9,111 if he took a tax-free lump sum of £60,741. Having set out the options available to Mr W, including moving to a stakeholder pension or transferring his CETV to his employer's new DC scheme, CST recommended he transfer his BSPS DB pension benefits to a SIPP invested with a discretionary fund manager. CST said the plan would benefit Mr W by allowing him to access his benefits flexibly. It also said Mr W would benefit from the flexi-access death benefits offered by the plan and be able to take advantage of all the new 'pensions freedoms'.

Mr W accepted CST's recommendation on 16 September 2017.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Following a processing delay, the transfer took place in late January 2018; at the same time Mr W also transferred another pension into the SIPP.

In October 2021, Mr W, through his representative, complained to CST about the advice he received, believing it may have been unsuitable because the benefits that would have been available to him under the BSPS2 weren't matched by the SIPP. Mr W also said that the critical yield cited by CST in the suitability report was unachievable so he was likely to be substantially worse off as result of transferring. Mr W said he was entitled to financial redress as result of CST's unsuitable advice.

CST looked into Mr W's complaint but didn't think it had done anything wrong. It said it had acted in Mr W's best interests by providing suitable advice based on his stated key objectives.

Unhappy with the outcome of his complaint to CST, Mr W complained to the Financial Ombudsman Service. Our Investigator looked into Mr W's complaint for him and issued her findings in September 2022. She recommended that Mr W's complaint was upheld as she thought CST's recommendation was unsuitable for Mr W. Our Investigator thought that CST should have advised Mr W to opt into the BSPS2 rather than the PPF because although he had indicated he wanted to retire early, he was a long way from retirement at the time of the advice so his plans could well have changed during that period. She also thought that, as Mr W was building up a fund in his employer's new DC scheme, that could be used flexibly to bridge any income gap at retirement. Our Investigator said CST should undertake a

redress calculation to ascertain whether Mr W had suffered a loss as a result of its advice to transfer. And she also recommended that CST should pay Mr W £200 to address the distress and inconvenience caused by the receipt of its unsuitable advice.

CST replied and said it disagreed with our Investigator's findings, however, it said in the interests of pragmatism it was prepared to accept our Investigator's view on a 'without prejudice' basis in order to bring the complaint to a close. CST said it had undertaken a redress calculation – which it had forwarded to Mr W representative – which showed no financial loss had been suffered as a result of the transfer.

Mr W's representative replied to say that he disagreed with CST's redress calculation and wasn't prepared to settle the complaint on that basis. Rather, Mr W said he wanted the complaint referred for an Ombudsman's final decision. In the meantime, Mr W said he wanted to instruct a third party to review CST's calculations.

Mr W's representative subsequently indicated in March 2023 that a review of the calculations wouldn't be forthcoming thus, as agreement could not be reached, the complaint was referred for an Ombudsman's decision. In April 2023, Mr W said he had spoken to his current financial adviser about CST's redress calculation and he had pointed out a number of issues in respect of the inputted information relating to the SIPP charges. He also said the redress calculation was now out of date and that CST's offer hadn't included any compensation for distress and inconvenience caused.

In May 2023, our Investigator wrote to both Mr W and CST to say that the regulator (the Financial Conduct Authority – 'FCA') had now developed a BSPS-specific redress calculator which it was encouraging businesses to use.

In October 2023 our Investigator wrote to CST to ask it to carry out an up-to-date redress calculation using the regulator's BSPS-specific redress calculator.

After Mr W had provided CST with the input data it needed for the calculator, CST ran a BSPS-specific redress calculation in December 2023 which showed that Mr W had sustained no financial loss. The calculation was valid for three months from the point CST provided it to Mr W on 14 December 2023.

Our Investigator told Mr W that he had checked the calculation and that it had, in her view, been carried out correctly. Our Investigator said that there was no shortfall in Mr W's pension and that he was on track to be able to replicate his DB scheme benefits in retirement.

Mr W replied to our Investigator to say that he wanted an Ombudsman to consider his complaint. He said that he hoped the Ombudsman would consider making the maximum possible compensation award for distress and inconvenience suffered. He also said that it was unfair, when the Financial Ombudsman Service had agreed that he had received unsuitable advice, that a 'point in time' calculation dictated whether he received any compensation for the advice at all. Mr W said a movement in the financial markets meant he had been negatively affected at the point his redress calculation had been carried out. He said had it been carried out much sooner, he would have received potentially life changing compensation.

As agreement between the parties could not be reached, the complaint was passed to me for a final decision. During my consideration of the complaint, I noticed that the issue of compensation for distress and inconvenience caused had regrettably gone unaddressed when our Investigator issued her recent opinion about the redress calculation CST had carried out in December 2023.

Consequently, I asked our Investigator to write to the parties to explain that I had thought about compensation and whether any was fairly due in the circumstances of this complaint. Our Investigator explained to both CST and Mr W that I agreed that compensation of £200 was fairly and reasonably due to Mr W for the distress and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and could have suffered a financial loss as a consequence. I also asked our Investigator to say that I had thought about compensation awards that I'd made in complaints with similar circumstances and was satisfied that an award of £200 is in line with those and with the Financial Ombudsman Service's approach to compensation in general. Our Investigator gave both parties the opportunity to comment in response.

CST replied to our Investigator to say that whether pension transfer advice is suitable or not is subjective but it was indisputable that Mr W was now over £17,000 better off than he would have been had it advised him to transfer to the BPS2 as the Financial Ombudsman Service stated it should have done. CST went on to say that it had consistently advised Mr W and his representative that he was financially better off. Thus, it said, any distress and inconvenience he had suffered was caused by the FCA, the Financial Ombudsman Service and by the advice he'd received from his representative all of which had advised him that he had probably suffered a loss. Notwithstanding its strong views, CST said it was willing to agree to pay Mr W compensation of £200 as it was keen to draw a line under the matter.

Mr W replied to our Investigator to say that he was disappointed that I was only considering awarding him compensation of £200 because he didn't think that it properly reflected the impact CST's unsuitable advice had caused him. Mr W said it had taken over two years for his complaint to reach this stage which had detrimentally affected him. He went on to say that an amount of £200 did not align with the Financial Ombudsman Service's guidance for compensation. Mr W thought his circumstances were more analogous with our guidance for awards of at least £1,500.

The complaint was passed back 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.

I understand CST hasn't conceded that the advice it gave Mr W was unsuitable. Nonetheless, in order to conclude the matter, it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr W in detail.

That said, I will comment that I agree with our Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable and they should only recommend one where they can clearly show, based on contemporary evidence, that it was in the consumer's best interests. I don't think that was the case for Mr W. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme seem too high to ensure he would be financially better off by transferring out of the DB scheme.
- The difference in death benefits from a personal pension wasn't worth giving up the guarantees offered by the DB scheme for. That's especially the case as both the BPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- Mr W didn't need to give up the guaranteed benefits of his DB scheme in order to take early retirement or have flexible access to his pension funds. That's because

both the BPS2 and the PPF gave members an early retirement option. Also Mr W was a member of his employer's DC scheme which provided him with the flexibility he claimed he needed – he wasn't committed to take its benefits in a set way. Mr W was aged only 39 at the time of the advice so had at least 18 years (and possibly 26 years) to go before retirement during which he would have built up a significant fund in his employer's DC scheme which he would be able to access flexibly at whatever age he chose to retire. I can't see that CST explained to Mr W that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.

- Mr W could have taken lump sums from his DC scheme as and when required and adjusted the income he took from it according to his needs. So, I think if Mr W retained his DB pension, this combined with his new workplace pension, would have likely given him the flexibility to retire early - *if* that was what he ultimately decided.
- I understand that Mr W may have legitimately held concerns about how his employer had handled his pension and that he thought it would be better if he had 'control' of his pension benefits. But it was CST's role to objectively address those concerns and to explain to him that he wasn't severing links with his employer in any event as he remained a member of his employer's new DC scheme.

Overall, I can't see persuasive reasons why it was in Mr W's best interests to give up his DB scheme guarantees.

I have noted Mr W's comment that he has been unfairly disadvantaged by having his complaint assessed right now due to the recent shift in financial market conditions.

I appreciate many consumers like Mr W feel anger and frustration at the situation they now find themselves in. They approached advising firms like CST for the benefit of their expertise. So consumers feel understandably shocked and disappointed to learn that some advisers made recommendations to their – often financially inexperienced – clients to take actions that could make those clients poorer and which weren't in their best interests.

So I can understand consumers like Mr W might have an expectation that, because they received unsuitable advice, they are in future danger of suffering a financial loss as a result and should be compensated in line with the potential for an unquantified loss. But, while the advice might not have been in their best interests, it's not necessarily the case that they have – or will have – lose out. And the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr W into a better position than they would have been had they not transferred. It also isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back, as near as possible, into the financial position they would have been in at retirement had they remained in the DB scheme.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. And for consumers like Mr W, the FCA has developed a BPS specific calculator which applies those assumptions fairly.

I've thought carefully about both CST's and Mr W's comments regarding the issue of compensation and I appreciate the strength of feeling that they have both expressed. However, I remain of the view that, in the circumstances of this case, a compensation award of £200 is fair.

I have explained above that I think CST provided Mr W with unsuitable advice to transfer his DB scheme. And I accept that Mr W will have experienced concern and worry for a period of time as a result of realising he was unsuitably advised to move his DB scheme and that he could have suffered a financial loss as a consequence. But CST provided Mr W with the first of its redress calculations in October 2022 – just under a year from when he first made his complaint. That calculation reassuringly showed that no financial loss had been suffered. That being the case, I am not fully persuaded that Mr W's concerns that he could have suffered a financial loss extended beyond this point such that I should be revising my opinion about the compensation I should require CST to pay.

I've also taken into account the fact that, fortunately for Mr W, he is also many years from retirement. That is not to say he would not have been concerned upon realising the unsuitable advice he had received may have caused him a financial loss, just that he was not at risk of the impact of that advice crystallising in the near future. In order to agree with Mr W that the impact of CST's advice upon is analogous with the Financial Ombudsman Service's guidance for compensation awards of at least £1,500 I would need to see some evidence that CST's unsuitable advice had caused Mr W sustained distress or daily disruption to his life that had impacted his health but no such evidence has been provided.

I've thought too about the comments made by CST in relation to compensation. I can't agree with it that any distress and inconvenience experienced by Mr W was caused by the FCA or the Financial Ombudsman Service because he was advised (presumably by both organisations) that he had probably suffered a loss. And I am not party to the advice Mr W received from his representative so I am unable to comment on what that included. But I do know that the regulatory framework under which CST operates entitles Mr W to make a complaint about the advice he received and for the complaint process he embarked upon to run its full course. The Financial Ombudsman Service at no time advised Mr W he had *probably* suffered a financial loss rather it found the advice he received to transfer his DB scheme unsuitable from which a *possible* financial loss could follow. And, as CST is well aware, whether it did was dependent on the outcome of a prescribed loss calculation.

Putting things right

The aim is to put Mr W back in the financial position he would have been in at retirement had he remained in the DB scheme. CST carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them 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 BPS 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. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation determines.

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 CST which are personal to Mr W. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension.

The calculation also assumes that if Mr W had not 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. This is in line with the Investigator's recommendation and what the FCA suggests will usually be a reasonable assumption – and I think this is fair here.

Overall, based on what I've seen, 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>.

The calculation in Mr W's case shows that there is no shortfall to his pension – indeed he has a surplus of £17,000 – so he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr W has not suffered a financial loss by transferring his pension.

That said, while the recent calculation shows Mr W hasn't lost out financially, I accept that the uncertainty he's experienced as a result of CST's advice has caused him some distress and concern in finding out it may not have been suitable. I'm conscious this upset wouldn't have happened but for CST's advice. So, for the reasons I've explained, I think CST's offer to pay Mr W compensation of £200 for the distress and inconvenience its unsuitable advice caused him is fair and reasonable in the circumstances.

My final decision

My final decision is that I uphold this complaint and require CST Wealth Management Limited to pay Mr W a sum of £200 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 March 2024.

Claire Woollerson

Ombudsman