

The complaint

Mr R has complained that Macsen Wealth Management Ltd (Macsen) has completed a calculation as part of the Financial Conduct Authority's (FCA) British Steel Pensions Scheme (BSPS) consumer redress scheme and reached the conclusion he isn't owed any compensation, despite Macsen having previously found that the advice provided to Mr R regarding his BSPS pensions transfer was unsuitable.

What happened

Mr R met with Macsen in January 2018 and was advised to transfer his defined benefit (DB) pension with British Steel into a personal pension.

In February 2023, following concerns that a significant number of former members of the BSPS may have been wrongly advised, the FCA launched a consumer redress scheme. This required firms to review the advice they had given to consumers to transfer out of the BSPS and, if the advice was found to be unsuitable, to undertake a calculation to determine whether this had resulted in any financial loss. And, if a financial loss was identified, to make a redress payment to consumers to compensate them.

On 26 June 2023 Macsen contacted Mr R to inform him that the advice he had been given in 2018 had been found to be unsuitable as part of their review under the BSPS consumer redress scheme. On 14 August 2023 Macsen wrote again to Mr R to explain that a calculation had been completed using the FCA BSPS Calculator, and that these calculations indicated that Mr R hadn't suffered any financial loss as a result of the unsuitable advice. As such, Macsen informed Mr R that no compensation was payable to him under the scheme.

Mr R was disappointed with this outcome and sought assurance from this Service that Macsen had correctly applied the redress scheme rules relating to the loss calculations.

Our investigator wrote to both parties and confirmed Macsen had used the FCA BSPS Calculator to undertake the calculations, as directed under the scheme rules. However, our investigator found that some of the inputs Macsen had used to complete the calculator were incorrect. Firstly, our investigator said that Macsen had used an incorrect retirement age of 55 and, secondly, that Macsen hadn't accounted for an initial adviser charge.

At the time the calculations were completed Mr R was age 57 and hadn't taken any benefits from the transferred BSPS pension. Our investigator explained that under the Redress Scheme rules firms were instructed to assume a consumer would take their pension benefits at their normal retirement age of 65, unless this assumption could be rebutted by evidence specific to the consumer. Our investigator referred Macsen to DISP 4.3.17 which provided various examples of how a firm might demonstrate an applicable rebuttal, and said that Macsen had not done so in this case.

Moving on to the initial adviser charge, Macsen stated it hadn't been included in redress calculations on the basis that Mr R was a former adviser and an informed client, and thus wouldn't require future advice. However, our investigator explained there was no provision to allow a business to exclude an initial adviser charge from calculations on this basis. Our

investigator also noted he hadn't seen any evidence to indicate Mr R had ever been an adviser in any case. As Mr R did not have any other arrangements in place regarding ongoing advice at the time of the calculations and, therefore, Mr R would likely incur costs if he sought advice in future, our investigator found an initial adviser charge should've been added when completing the calculations.

For both these reasons, our investigator said Macsen hadn't completed the calculations in line with the relevant scheme rules and guidance.

Macsen didn't agree with our investigator's findings and highlighted the rule set out under *Annex 21R 13.30 DISP 4.3.17 (2a)*, which states that redress calculations should be completed with reference to "...*the consumer's demands, needs and intentions at the time of the pension transfer advice*". Macsen argued that, at the time of advice – as confirmed both verbally and in writing - Mr R wanted to retire at 55. Although it transpired that Mr R did not, in fact, retire at age 55, Macsen argued that Mr R's subsequent decision was irrelevant and that the calculation should be based only on Mr R's stated intentions at the time. As such, Macsen argued that 55 was the correct retirement age to use for calculation purposes.

In support of the argument that Mr R had clearly expressed an intention to retire at 55, Macsen listed Mr R's objectives as set out at the time of the advice. Macsen said Mr R wanted to retire early as his wife was 10 years older than him, her health was failing, and he wanted to spend as much time with her as possible. Macsen pointed to the cash flow forecast completed by the adviser to demonstrate how Mr R could achieve these objectives, noting that – as highlighted in the suitability report – this forecast suggested Mr R would not be able to meet all his objectives by the age of 55 if he remained in the scheme. (Macsen also noted that, according to this forecast, Mr R would've achieved his objectives by age 58 if he had stayed in the scheme.)

In addition, Macsen provided emails sent by Mr R to their adviser after the initial meeting, which they said supported their argument that Mr R's intention was to retire at age 55. In these emails Mr R said that:

- his main objective was to retire at 55, which was achievable in terms of cash flow if he transferred but not if he moved to BSPS2 or PPF
- he valued the ability to retire at 55 more than the income guarantees provided by remaining in the scheme
- he wanted to repay his mortgage at 55 and, if enough funds remained, to purchase a van for travelling
- his wife's health issues formed a significant part of his decision-making on this matter

Furthermore, Macsen said that Mr R had already made his decision around early retirement, so they simply followed his instructions regarding the transfer. They added that their compliance consultants were adamant that a retirement age of 55 be used for the calculations.

Our investigator responded to Macsen's arguments and said that, whilst he agreed *DISP 4.3.17* does refer to "*the consumer's demands, needs and intentions at the time of the pension transfer advice*", this was because these demands, needs and intentions were an important source of information about what the consumer would've been likely to have done, had they not been given unsuitable transfer advice and had thus gone into the BSPS2 or PPF. And determining what the consumer would've most likely done – in terms of retirement age – is the key question here.

However, in this case, Mr R's intentions from the point of sale are not the only source of information available. Our investigator drew Macsen's attention to the Redress Scheme rules set out in *DISP 4.3.17*, which makes reference to also taking into account "...any information gathered by the firm subsequently about the consumer's reasons or plans for accessing pension benefits from their DC pension arrangement". Our investigator reminded Macsen that, despite being 57 at the point the calculations were run, Mr R hadn't yet taken his benefits from his SIPP. As – unlike the BSPS2 scheme - the SIPP was designed to offer flexibility and to facilitate early retirement, and as – despite this - Mr R still hadn't taken retirement benefits from the SIPP, our investigator found that, whatever his intentions in 2018, Mr R most likely wouldn't have taken benefits from his BSPS2 scheme early either. So, taking everything into account, our investigator said that the calculation should not be undertaken based on a retirement age of 55.

Macsen also argued that if age 55 were not deemed to be the appropriate retirement age to use in the calculation, then age 58 (being the age at which the forecast at the time of the advice suggested Mr R would've achieved his objectives if he had stayed in the scheme) should be used instead, rather than the default date of 65. However, although Mr R was not quite 58 at the time of the calculations, he did not appear to have any plans for imminent retirement. Furthermore, Mr R has since turned 58 and we understand he has still not retired. As such, our investigator explained same the same reasoning would apply as used to rebut the assumed retirement age of 55, and maintained that the correct assumption was that Mr R would've most likely retired at age 65.

Macsen didn't agree and, as our investigator was unable to resolve things, this complaint has been passed to me for a 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.

The rules that Macsen had to follow when calculating and paying redress are set out in the FCA Consumer Redress (CONRED) handbook under CONRED 4.4 "*Consumer redress scheme: calculating and paying redress*". The particular rule that's applicable here is CONRED 4.4.2R, the relevant section of which reads as follows:

"The first step is for a firm to calculate the amount of redress owed to a consumer:

- (1) in accordance with the relevant rules and guidance set out in DISP App 4 and DISP App 4 Annex 1, as modified by CONRED 4;*
- (2) by completing the BSPS calculator in accordance with the instructions set out in CONRED 4 Annex 21R;*
- (3) where requested by a consumer, by calculating the redress sum that would be payable by full or partial augmentation outside of the BSPS calculator in accordance with (1);*

and send the consumer a redress determination in the form of the letter set out in CONRED 4 Annex 13R."

I need to decide whether Macsen have applied these rules correctly, as directed by the FCA.

The aim of the calculation is to determine what – if any – compensation is required to put Mr R as much as possible back into the financial position he would have been in at retirement, *but for* the unsuitable advice from Macsen. To do this it is necessary to make some

assumptions, using the best information available, about what would've most likely happened if Mr R had not been advised by Macsen to transfer his BSPS benefits.

In Mr R's case, one assumption that has been used in the calculations undertaken by Macsen is that he would've ended up in the replacement scheme, BSPS2. Another is that Mr R would've retired at age 55.

I have a number of concerns with these assumptions. Were I to agree that Macsen had correctly used the retirement age of 55 in their calculations, then the relevant comparator scheme would've most likely been the PPF, not BSPS2. This is because the PPF generally would've offered more favourable terms than BSPS2 for those taking early retirement, due to the reduction factors. However, this point falls away because I do not agree that 55 is the correct retirement age in this case. Instead, I think the calculations should be based on an assumed retirement age of 65, which means BSPS2 is the more favourable comparator scheme, and the correct one in this case based on the Scheme rules.

My reasons for saying this are similar to those already set out by our investigator. Macsen has assumed that Mr R would have retired ten years earlier than the BSPS2 normal retirement date of 65, and this assumption reduces the value of the benefits he would've accrued. So, this assumption is not favourable to Mr R, and to agree it was justified, I'd need to see sufficient evidence to persuade me not only that retiring at age 55 was Mr R's intention at the time of the advice, but also that he was more likely than not to realise this goal.

Macsen has claimed that only Mr R's intentions at the time of advice are relevant, but this is not the case. As previously pointed out by our investigator, the Redress Scheme rules (*DISP 4.3.17*) also require "...any information gathered by the firm subsequently about the consumer's reasons or plans for accessing pension benefits from their DC pension arrangement" be taken into account. Whilst it does seem that at the time of the advice Mr R was attracted to the idea of retiring at age 55, the passage of time has revealed that he did not do so. Had Mr R remained in the scheme, I cannot see that the likelihood of his retiring early would've been any greater. As Mr R is now 58, is still working, and hasn't taken any retirement benefits, I find there is no basis for using any other retirement age assumptions other than the BSPS2 normal retirement date of 65.

The FCA BSPS Calculator uses the replacement scheme assumptions already discussed, in combination with personal data about Mr R's circumstances and wider economic and demographic information, to determine the total sum Mr R would currently need in his personal pension arrangement to secure equivalent retirement benefits to those he would've been entitled to under the correct comparator scheme. The generated outcome also includes an automatic allowance for ongoing advice fees of 0.5% per year and product charges of 0.75% per year (these percentages are set by the FCA and cannot be amended).

The calculation Macsen has already completed in Mr R's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate or exceed the benefits he would have received had he remained in the scheme and retired at age 55. This was because Mr R's current personal pension value, on current assumptions, would be sufficient to buy an annuity (including a spouse's pension if relevant) providing the same benefits as the BSPS2. However, as already established, the calculation should've been based on an assumed retirement date of 65.

I have checked the other inputs Macsen entered into the FCA Calculator. These include Mr R's personal details, such as length of service and marital status, as well as his individual benefits from the BSPS at the date he left the scheme, and the current value of his personal pension. These personal details are in line with what I'd expect to see.

I also note that Mascen has not entered an initial adviser charge into the calculations. Mascen has claimed that Mr R will have no need of future advice, and has made reference to Mr R's formerly having been a financial adviser himself to support this argument. I have seen no evidence to suggest Mr R was a former adviser, and even if I had this would make little difference. There is no provision within the Redress Scheme rules to exclude an initial adviser charge on this basis.

CONRED 4 Annex 21 13.30R sets out that "A firm must input the following information into the BSPS calculator to carry out the redress calculation..."

(4) *Data relating to the DC pension arrangement, including:*

(f) whether the consumer requires initial advice in future, and whether an initial adviser charge needs to be applied."

DISP 4.3.32 R explains the cost of initial adviser charges must be awarded if a consumer's assumed retirement date is after the valuation date and the consumer is not in an ongoing advice arrangement with any firm. As this applies in Mr R's case, this means an initial adviser charge capped at £3,000 must be applied using the calculation outlined within the rules.

In summary, a new calculation is needed in this case, factoring in an assumed retirement date of 65 and an initial adviser charge. In order to avoid raising Mr R's expectations, I need to make him aware that it is possible that this new calculation may not lead to a change in outcome. It is still possible that – even with the revised retirement date and initial adviser charge factored in – Mr still may not have suffered a financial loss, and thus no redress may be due to him.

Should this be the case, I understand that Mr R may find this disappointing, especially as he may be aware of other former BPS members who have received financial compensation as a result of unsuitable advice to transfer out of the scheme. However, as I've explained, each calculation is based on individual details and circumstances.

To provide Mr R with further assurance, I note that the FCA BPS calculator has been developed by qualified actuaries and is programmed with the relevant scheme information and benefit structures. The relevant economic and demographic data is updated on a quarterly basis. None of this information can be amended by the firms using the calculator. As such, provided the correct data is inputted – as Mascen must now do when running the new calculation – Mr R can safely rely upon the outcome.

Putting things right

I direct Mascen Wealth Management Ltd to recalculate the amount of redress owed to Mr R, using an assumed retirement age of 65 and including an initial adviser charge.

The rules that Mascen should follow when calculating and paying redress are set out in the FCA Consumer Redress (CONRED) handbook under CONRED 4.4 "*Consumer redress scheme: calculating and paying redress*". The particular rule that's applicable here is CONRED 4.4.2R, the relevant section of which reads as follows:

"The first step is for a firm to calculate the amount of redress owed to a consumer:

(1) in accordance with the relevant rules and guidance set out in DISP App 4 and DISP App 4 Annex 1, as modified by CONRED 4;

- (2) *by completing the BSPS calculator in accordance with the instructions set out in CONRED 4 Annex 21R;*
- (3) *where requested by a consumer, by calculating the redress sum that would be payable by full or partial augmentation outside of the BSPS calculator in accordance with (1);*

and send the consumer a redress determination in the form of the letter set out in CONRED 4 Annex 13R.”

My final decision

I find Macsen Wealth Management Ltd hasn't correctly followed the redress methodology set out in the FCA's BSPS consumer redress scheme and so I uphold this complaint and instruct Macsen to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 August 2024.



Ellie Clare
Ombudsman