DRN-3197277

The complaint

Mr P complains about the advice given by True Potential Wealth Management LLP (TP) to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a personal pension. He feels he has lost out as a result.

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 P's employer would be set up – the BSPS2.

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

Mr P contacted another adviser in 2017 for advice on his pension. As they couldn't provide DB transfer advice they introduced him to TP. TP sent Mr P an introductory email on 3 December 2017 asking him to confirm whether he required advice on his DB options.

Mr P completed a data form and an attitude to risk form. A day later, on 4 December, TP asked Mr P for further information about his circumstances and said he probably would need to see Mr P on 6 or 7 December as the transfer value was only valid until 11 December. A suitability report and pension transfer report was issued on 5 December. On 6 December Mr P received TP's recommendation to transfer to a personal pension which he accepted the same day.

The following was recorded about Mr P's situation at the time of the advice:

Mr P was 46, in good health, cohabiting with his partner who was a year younger than him and they had two children (who would be dependent for another seven years). He had a monthly net income of £2,600 and his partner a net monthly income of £667. Their combined net income was £3,267 and their typical expenditure was around £2,000.

Mr P owned two investment properties both worth around £85,000 with interest only mortgages of £55,000 each. They both provided rent of £450 per month. The family home was worth £110,000 with an outstanding repayment mortgage of £57,000 and a remaining term of 16 years which was expected to be repaid by the time Mr P retired.

Mr P had savings of £7,000 and loans of £18,800 which were expected to be repaid in 3.5 years and 6 years respectively.

Both Mr P and his partner were expecting to receive full state pensions at age 67 (£8,320 per year). In addition to his BSPS pension with a transfer value of around £133,000, Mr P had another DB pension which was expected to provide £5,400 per year at age 65, a personal pension valued at £32,400 and his current employer's defined contribution (DC) pension which was valued at £7,000 and was receiving combined employee and employer contributions of £5,040 per year. The value of this was plan was estimated to be £93,000 at age 65 (excluding growth and future salary increases). His partner was recorded to have minimal pension provisions.

It was recorded Mr P's partner would need £1,200 per month pre-retirement and £800 post retirement per month if Mr P predeceased her. These figures took into account the fact that Mr P had life cover in place (£180,000) which would repay all the debts on his death. It was recorded that the couple also had a joint required income of £1,200 per month in retirement.

Both Mr P and his partner were expecting to receive inheritance in the future but values were unknown.

Mr P's attitude to risk was recorded as balanced. Mr P had ticked a box on the risk questionnaire to say his attitude to risk was balanced. In the date form he had said he was cautious. TP said in their email to him that unless he said otherwise they would assume he was a balanced investor.

With regard to his capacity for loss the suitability report Mr P confirmed '*any loss of capital would not impact on his standard of living or future objectives.'* In the data form he answered the question 'if you transferred your pension and the value fell significantly (e.g. another 2008 crash) would it significantly impact your retirement?' with '*Maybe. Not sure.'*

The reasons for recommending the transfer were that Mr P didn't require a guaranteed income and neither the PPF or BSPS2 options could satisfy Mr P's requirements which were described as:

Having flexible access to income and capital (in retirement) as well as being able to leave lump sum death benefits for the future benefit of his partner and/or his children.

Mr P, through his representative, complained in 2020 about the suitability of the transfer advice. After TP rejected his complaint, Mr P referred his complaint to this service.

An investigator thought the advice TP had given Mr P was unsuitable and asked them to compensate Mr P for the losses he incurred by transferring his DB pension.

TP disagreed so the complaint was 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 starting assumption when advising on a transfer from a DB scheme is that it is unsuitable. TP should have only considered a transfer to be suitable if they could clearly demonstrate, on contemporaneous evidence, that the transfer was in Mr P's best interests

(COBS 19.1.6). And having looked at all the evidence available, I’m not satisfied this is the case here. I’ll explain why.

financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17 /9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The documents from the time of advice show that Mr P was looking to retire at age 65.

TP prepared a transfer analysis which showed that the average investment return required in the new pension to match the BSPS benefits at age 65 (critical yield) was quoted as 5.19% per year if Mr P’s benefits in retirement were taken as a lump sum plus a reduced pension. The critical yield to match the benefits available in the PPF at age 65 taken in the same form was 5.24%.

The closest discount rate to this time which I'm able to refer to was published by the Financial Ombudsman Service for the period before 1 October 2017. It was 4.4% per year for 18 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. I've taken this into account, along with the composition of assets in the discount rate.

Looking at the critical yields in the transfer analysis report, I think it wasn’t impossible Mr P could have more or less matched the benefits in the PPF or BSPS2 if he was invested in line with a medium risk strategy as suggested. However, there was still a distinct risk he wouldn’t. And I think the chances he could actually improve on his benefits were a lot less likely. I’m also not convinced Mr P was a balanced investor. He firstly said he was cautious and later ticked a box to say he had a balanced attitude to risk, but TP simply went on to assume he was a balanced investor, rather than explore with Mr P what his real attitude to risk was.

I appreciate TP say the investigator put too much weight on the critical yield. I do consider financial viability of a transfer very important as for the most people the value of their benefits will be highly relevant and a significant consideration. Having said that I agree with TP that whether the benefits in the DB scheme can be matched or exceeded after a transfer should not be the only consideration when assessing whether a transfer is suitable.

So I’ve considered Mr P’s circumstances and recorded objectives to see whether a transfer was in his best interest. However, I’m not persuaded it was. I’ll explain why.

The reasons for transferring his pensions were mainly flexibility and lump sum death benefits.

TP said Mr P’s required income would be met through at age 65 from his other DB pension income and the rental income from his buy-to-let properties. Two years later his state pension would be added to this. And so he didn’t need the guaranteed income from his BSPS scheme.

The same was explained for Mr P's partner. She had no requirement for a spouse's pension, but could meet her income requirements before her own retirement through her salary and the rental income and her state pension would replace her salary in retirement.

It's evident that Mr P and his partner had other assets and provisions than the BSPS pension, so they weren't entirely reliant on it which gave them some capacity for loss. However, the BSPS still made up a significant part of his pension provisions and provided very valuable benefits. I can't see any persuasive reasons why he needed to give them up and take unnecessary risks with his pension.

TP's retirement plans heavily relied on the rental income from the investment properties. However, this income wasn't guaranteed. One or both properties could be left without tenants at some point or not achieve the desired rent. The properties would likely also need maintenance during which a tenancy might not be possible and further costs would arise.

If Mr P chose to move to BSPS2 he could rely on fully guaranteed and increasing income from both his DB schemes. He would not have to rely on uncertain rental income or other non-guaranteed provisions. And even if the scheme still had fallen into the PPF later on, it would have provided enough to cover his income requirements. He also still could have retired early from BSPS2 if this became a real objective nearer the time.

Mr P had two flexible pension schemes which taking into account growth over the coming 19 years would have provided a decent amount of flexibility. He could have taken tax-free cash lump sums and income flexibly when and if required.

I appreciate that being so far away from retirement age Mr P likely wanted to keep the option open to take flexible benefits in retirement. However, he had other pensions, one with generous employer contributions and many years to build up further pension provisions. He could have accessed these pensions flexibly when he chose to retire. So in fact keeping the DB benefits would have given him a risk-free guaranteed income and he could still have flexible benefits through his other pension provision. He didn't need, in my view, to transfer his DB benefits for flexibility when he could have achieved this through his other pensions.

I haven't seen evidence that TP established a real need for flexibility beyond what his existing provisions could provide. I appreciate keeping his DB benefits might have given him a higher income than the £1,200 per month recorded as required. However, excess income could have been invested or used towards non-essential outgoings. In retirement Mr P and his partner might have wanted to spend more on holidays, entertainment, socialising or other hobbies. I don't think having potential guaranteed disposable income in retirement was a disadvantage.

With regards to death benefits I think Mr P's partner was fairly well looked after. Mr P had very generous death in service benefits through his employer and he had additional life cover of £180,000. His partner also would have inherited the investment properties and would have had a mortgage free family home. His children also would have benefitted from a dependant's pension until age 23.

If Mr P died in retirement, she still would have had her state pension, the rental income (and the properties as assets) and any lump sum benefits from Mr P's non-DB pensions.

Of course by transferring she could have potentially benefitted from a further lump sum, particularly if Mr P died early on. However, if he lived a long life and/or investment performance was not as good as expected there might not have been as much left as hoped.

I note Mr P said his father had died at 66 with cancer. And he was worried he could die early too. However, Mr P was only in his mid-forties and was reported to be in good health. So I don't think he needed to be overly worried about this, particularly as his partner would have had enough income from other means in the event of his death as explained above even if he died early.

In any event, whilst I appreciate death benefits are important to consumers, the priority here was to advise Mr P about what was best for his own retirement provisions. A pension is primarily designed to provide income in retirement. So I don't think different death benefits outweighed securing a large guaranteed, risk free and increasing income.

I've considered the fact that a transfer did provide Mr P with more flexibility and possibly more death benefits, particularly if he died before his life expectancy. And I don't doubt that making sure his partner was looked after if he predeceased her was important to him. However, I think if he moved to BSPS2 he still had adequate death benefits and flexibility from his remaining provisions and he could rely on a guaranteed income for life which would cover his income needs and quite possibly could provide him with higher benefits overall in retirement. It would give him peace of mind that he didn't really need to worry about his retirement income.

I'm not persuaded that giving up a significant amount of guaranteed income was in Mr P's best interest in return for benefits he didn't have a real need for.

concerns about financial stability of BSPS

Mr P approached TP at a time when BSPS members were concerned about their pensions. Lots of his colleagues at the time would have been transferring out of the scheme and he likely was worried his pension would end up in the PPF. So I think it's quite possible that Mr P came to TP leaning towards the decision to transfer. However, it was TP's obligation to give Mr P an objective picture and recommend what was in his best interest. Mr P should have been advised, in my view, to consider a move to BSPS2. TP also should have explained that even if BSPS2 failed and Mr P was moved to the PPF, the benefits provided would still be very valuable. And if TP had explained properly why not transferring his DB benefits was in his best interest I have no reason to believe he wouldn't have listened to the adviser.

Summary

Overall, I'm not persuaded based on the contemporaneous evidence provided that the advice given to Mr P was in his best interest. He was giving up a guaranteed, risk free and increasing income that was extremely valuable. By transferring he was risking obtaining overall lower retirement benefits and there were no other particular reasons in my view which would justify a transfer and outweigh this. I don't think his options with regards to his DB scheme were properly explored and they were too quickly dismissed on the grounds of Mr P not requiring fixed income and wanting flexibility and lump sum death benefits.

However, as described above I think the benefits the DB scheme would provide as well as the flexibility of his other pensions were underplayed. I can't see that other options how guaranteed income, flexibility and death benefits could be achieved without giving up the DB benefits from BSPS were meaningfully discussed. Too much reliance was put on Mr P's riskier rental income and the unexplained need for more flexibility than Mr P already had.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for the poor advice he was given. I consider he would have selected to move to BSPS2. So calculations should be made on this assumption.

TP argues that if a loss is calculated, redress should take form of a deferred annuity. However, the regulator's guidance sets out how redress should be paid and I see no reason to depart from this guidance.

TP must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr P's acceptance of the decision.

TP may wish to contact the Department for Work and Pensions (DWP) to obtain Mr P's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr P's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr P's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr P as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition TP should pay Mr P £350 for the distress and inconvenience this matter has caused him.

The compensation amount must where possible be paid to Mr P within 90 days of the date TP receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes TP to pay Mr P.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance**.**

My final decision

Determination and money award: I uphold this complaint and require True Potential Wealth Management LLP to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require True Potential Wealth Management LLP to pay Mr P any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require True Potential Wealth Management LLP to pay Mr P any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that True Potential Wealth Management LLP pays Mr P the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr P.

If Mr P accepts this decision, the money award becomes binding on True Potential Wealth Management LLP. My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 August 2022.

Nina Walter
Ombudsman