DRN-3479797

The complaint

Mr M complains about the advice True Potential Wealth Management LLP gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

A law firm replied to our Investigator's assessment of Mr M's complaint on True Potential's behalf. But, for simplicity, I will refer to the law firm's comments as being True Potential's.

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' 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')[1], 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 M's employer would be set up – the BSPS2.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. Those gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

Mr M approached True Potential for specialist pension transfer advice. The BSPS administrators had already given Mr M information about his BSPS entitlement and a quote for a cash equivalent transfer value ('CETV') for his DB fund. True Potential obtained a transfer value analysis ('TVAS') report. It also completed a fact-find with Mr M and an assessment of his risk appetite. Amongst other things, it recorded that:

- Mr M was 42 years old married to Mrs M, who was 39, with three dependent children under 12.
- Mr M earned around £50,000 a year, including bonuses.
- Mrs M was working and earning around £15,700 a year.

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- They had joint net income of £3,516 a month and outgoings of under £2,000 a month.
- Their home was worth £250,000 with an outstanding mortgage of £105,400, repayable at £748 a month. It was scheduled to be repaid by 2031.
- Mr and Mrs M had savings of around £6,500 to which they were adding £200 a month.
- Mr M wanted to retire at age 57 with an income of £2,000 a month.
- Mrs M would continue to work for two years after Mr M had retired.
- Mrs M has two defined contribution ('DC') pensions of her own but Mr M didn't know what those were worth.
- Mr M had recently started paying into his employer's DC scheme.
- He had a balanced attitude to risk.
- His DB scheme had a CETV of £374,346
- At age 65 the BSPS2 would pay him a full yearly pension of £21,881. Alternatively it would pay him a tax free cash ('TFC') lump sum of £101,652 and a reduced pension of £15,202.
- The growth rates required to match those benefits from an alternative pension (the critical yields) were 5.73% for a full pension and 5.02% if he took TFC and a reduced pension.
- The PPF would pay him a yearly pension of £19,796 or TFC of 105,063 and a reduced pension of £15,764. The critical yields were 5.06% and 4.79% respectively.
- At age 57 BSPS2 would entitle him to a full yearly pension of £14,536 or TFC of £71,403 and a reduced pension of £10,710. The critical yields were 6.82% and 5.79% respectively.
- The PPF entitlement at age 57 was a full pension of £14,240 or TFC of £79,718 and a reduced pension of £11,959. The critical yields were 6.29% and 5.98%.

On 6 November 2017 True Potential sent Mr M its detailed suitability report setting out its analysis and recommendations. Amongst other things it said Mr M:

- didn't want the pension fund to die with him and wanted to leave a legacy for his family;
- wanted flexible access to his fund and "*control of [his] destiny*";
- was concerned that BSPS2 might not reflect the true value of his fund and could go into the PPF in the future.

True Potential set out Mr M's entitlements under the BSPS2 and the PPF. it recommended that Mr M should transfer his DB funds to a named SIPP. It said he could meet all the critical yields, save for the yield of 6.82% for a full pension at age 57 by doing so. It summarised its analysis saying that transferring would allow Mr M to meet his objectives including:

- To provide varying levels of income at different stages of retirement.
- To provide sufficient death benefits.
- To enable Mr M to retain the value of his accrued fund.

Mr M accepted True Potential's recommendation and transferred his DB scheme benefits to the named SIPP. True Potential didn't apply an initial charge for making the transfer. The SIPP would charge Mr M 1.28% of his fund value for its services. True Potential would also charge Mr M 0.75% for its optional ongoing advice service.

Mr M complained to True Potential in 2021. He was concerned that its advice to transfer out of the DB scheme wasn't suitable for him. True Potential provided a comprehensive reply. It didn't uphold his complaint. In brief it said its recommendation allowed Mr M to meet his objectives.

Mr M referred his complaint to our service. In March 2022 one of our investigators recommended that the complaint should be upheld. In short, given Mr M's time horizon to retirement and the possibility he would be worse off by transferring, our Investigator didn't believe True Potential's advice was suitable for Mr M. The Investigator thought Mr M would have opted into the BSPS2 if True Potential had given suitable advice. He recommended True Potential should calculate if Mr M was owed compensation, including £400 to address his distress and inconvenience arising from the unsuitable advice.

In a lengthy response True Potential disagreed with our Investigator's complaint assessment. Amongst other things it said it wasn't required to guarantee or ensure, particularly with the benefit of hindsight, that the transfer would prove to be suitable for Mr M. Instead it was required to exercise due skill and care to allow Mr M to make an informed decision, and to take reasonable steps to satisfy itself its advice was suitable. It said it believed it had done so.

True Potential also said it couldn't have advised Mr M to opt into the BSPS2 as at that time it hadn't been established. It said if Mr M had opted in to the BSPS2, and it didn't go ahead, his BSPS pension funds would have moved into the PPF.

True Potential added that the Investigator had placed too much weight on the comparison between critical yields and discount rates (which I explain below). It said it wasn't required to consider discount rates. And, given that Mr M didn't want to take an annuity, critical yields were of limited relevance. It also said it had given Mr M appropriate risk warnings involved with a transfer. It understood Mr M had made a fully informed decision to do so.
It added that the regulator, the Financial Conduct Authority (FCA), had reviewed some of its advice files and hadn't found any issues with those.

The investigator wasn't persuaded to change their opinion, so the complaint was referred for an ombudsman's decision.

In January 2023 True Potential said that, while it didn't agree it had done anything wrong, in an effort to settle the complaint it was prepared to make a redress calculation. Mr M provided a letter of authority for True Potential to calculate any loss using the existing FCA method for doing so. On 30 March 2023 True Potential offered to settle Mr M's complaint for a sum of £9,984.

Mr M didn't accept True Potential's offer and has continued to correspond with us concerning the appropriate methods to calculate redress and the dates he feels is applicable for that. We have responded to that correspondence separately. And, as the parties don't agree that the matter is resolved the complaint's been passed to me to make a final determination.

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.

In bringing this complaint and in replying to it Mr M and True Potential have made a number of detailed points. I've considered everything on file. But in this decision I don't intend to address each and every issue raised. Instead I will focus on what I see as being the key points at the heart of Mr M's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of True Potential's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

True Potential's said that COBS 9 required it to use reasonable skill and care to ensure that Mr M had enough information to make an informed decision. Also to take reasonable steps to ensure the advice was suitable for Mr M without ensuring that it would prove suitable. But, while I agree True Potential was required to take reasonable steps to ensure that its personal recommendation to Mr M was suitable for him (COBS 9.2.1), additional regulations also apply to advising on transferring out of DB schemes. In particular advising firms are required to start with an assumption that a transfer from a DB scheme is unsuitable (COBS 19.1.6). So, True Potential should have only considered a transfer if it could clearly demonstrate it was in Mr M's best interests. Having looked at all the evidence available, I'm not satisfied it was in his best interests.

Uncertainty around the future of the BSPS or the BSPS2

The BSPS closed in March 2017 and at the time Mr M approached True Potential the situation had been evolving for some months. There was some widespread concern about what moving pensions to the PPF meant for BSPS members. It's also well-known that this was a period of uncertainty for people in Mr M's situation. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So in order to recommend that Mr M should transfer out of his DB scheme True Potential needed to be able to clearly demonstrate that doing so was in his best interests.

I don't dispute that when Mr M approached True Potential there was still the possibility that his pension could move to the PPF. In response to our Investigator's assessment of the complaint True Potential has argued that the BSPS2 may not have gone ahead. But I think True Potential has changed its position on that point. It's notable that True Potential's TVAS and suitability report make appropriate comparisons between Mr M's likely pension entitlement from the BSPS2 and his likely income from a SIPP. So I think True Potential, at the time of its advice, most likely felt the BSPS2 would be going ahead.

Further, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr M's employer would set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017. And the confirmation that Mr M's employer had made the required payment for it to go ahead was announced on 11 September 2017. And by the time that True Potential made its final recommendation, in November 2017, the BSPS trustees had provided details of the BSPS2 to scheme members in its "time to choose" information. And, as I've already said, True Potential's suitability report refers to Mr M's entitlement from the BSPS2. So, as I've said above, at that time, it appears True Potential believed it was more likely than not that BSPS2 would go ahead.

It follows that, while entry into the PPF was still a possibility, I think this was unlikely to be Mr M's only option. Further, even if Mr M remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think True Potential could have addressed that concern.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. While I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And I think it's likely, as I explain below, that Mr M could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF.

So, I'm not persuaded the uncertainty Mr M experienced when he entered into the advice process was sufficient reason for True Potential to recommend he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That's because to do so would unnecessarily expose those funds to the volatilities and risks of the investment markets. It follows that I don't think those concerns should have been a significant driver in True Potential recommending Mr M transfer out of the DB scheme altogether.

Financial viability

True Potential carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

True Potential said the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity. It said Mr M didn't want an annuity, he wanted to take his benefits flexibly. But the regulator required True Potential to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here. That's particularly the case as I don't think Mr M could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 14 full years. So, it's entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

True Potential provided Mr M advice 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. I'll explain that a discount rate is a measure of what an investment is likely to grow at in the future. We find it a useful tool to establish whether an investment is likely to match or exceed the required growth rates to make a DB transfer financially viable.

Prior to October 2017 this Service published similar rates on our website. I acknowledge that True Potential was under no obligation to refer to discount rates when giving advice. But it was free to do so. And under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. So those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

Mr M was 42 at the time of the advice and his preference was to retire at 57. The scheme's normal retirement age was 65. I've set out the applicable critical yields in the table below.

	Age 57		Age 65	
Scheme	Full pension	TFC and reduced pension	Full pension	TFC and reduced pension
BSPS2	5.73%	5.02%	6.82%	5.79%
PPF	5.06%	4.79%	6.29%	5.98%

The relevant discount rate closest to when the advice was given which I can refer to was published by this Service for the period before 1 October 2017, and was 4.2% for 14 full years to retirement at age 57. That rose to 4.5% per year for 22 full years to retirement at 65. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's balanced attitude to risk and also the term to retirement. The discount rate falls short of the critical yields required to match the benefits from either the BSPS2 or the PPF. The regulator's mid-level projection rate is broadly equivalent to some of the critical yields but is lower than others. So, depending on which scheme he'd have gone into and how he took his pension, there was some potential for Mr M to match the benefits available from a DB environment by transferring. Although, given that most of the critical yields were higher than the discount rates and the regulator's mid-level projection rate that seems unlikely.

But there would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 4.79% and the highest 6.82%, I think Mr M was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with his balanced attitude to risk.

True Potential said its calculations show that if Mr M were to take equivalent funds by drawdown from his SIPP as his entitlement from the DB scheme, then the SIPP funds would last him well beyond his life expectancy. But, as I've said above, there would be little point in Mr M putting his funds at risk only to match the benefits available under the scheme. Also True Potential's models are reliant on Mr M's investments increasing at a rate of 5% a year every year. But that is anything but guaranteed and transferring meant putting his funds at risk when he had no need to do so.

Further if his investments experienced an extended period of poor performance or suffered losses then Mr M could deplete his fund sooner than True Potential's models show. Also, as True Potential will know, past performance is no guarantee for future performance. So I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. So I think Mr M was likely to be worse off in retirement by transferring.

Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below. When doing so I've been mindful that True Potential's role was to find out what Mr M's wants and needs were and why. Its role wasn't simply to do what Mr M wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and income needs

True Potential said that transferring out of the DB scheme would allow Mr M to retire at age 57. However, it's not entirely clear how True Potential has arrived at all of its figures. For example it said that Mr M would require an income in retirement (based on 'today's' rates) of £2,000 a month. That appears to be a figure Mr M estimated he and his wife would need. But, that figure was around the same as Mr M's current monthly outgoings. And, by the time he retired he would have paid off his mortgage, which was then £748 a month. It's also likely that his children might not have been financially dependent upon him by then. But it's not clear if True Potential brought that to his attention when assessing his retirement income needs.

Also it seems that Mr M could, most likely, have met his income requirement in early retirement by taking benefits from the BSPS2 or PPF. For example, at age 57, the BSPS2 would pay Mr M either a full pension of £14,536 or TFC of £71,403 and a reduced pension of £10,710. His initial income from the PPF would have been broadly similar, although slightly higher if he took TFC. Either income stream falls somewhat below Mr M's estimated income requirement of £2,000 a month or £24,000 a year. But Mrs M intended to continue working for a further two years after Mr M retired. So her salary would have presumably made up the majority of their income requirement at that time. However, assuming she retired once she turned 60 (when Mr M was 62) they would need to make up the income until Mr M's state pension became payable at age 67.

It's notable that Mr M had another potential income source that True Potential didn't explicitly refer to in its suitability report. Mr M had started paying into his employer's DC scheme that year. I think it's reasonable to assume he could have anticipated continuing to contribute to that policy (or a similar one if he was to change jobs in the future) for the remainder of his working life. True Potential didn't record exactly how much he was paying into his DC pension. But, from experience, I know many of Mr M's colleagues – along with their employer – were contributing to their DC pensions at a combined rate of 16% of their salary a year. Assuming Mr M's contributions were at a similar level, and without factoring in Mr M's salary increasing, him improving his contributions or allowing for any investment growth, the fund could be worth around £120,000 by the time he reached 57. Mr M could then have used those funds to increase his income to meet his needs until his state pension became payable. In other words he didn't need to transfer his safeguarded benefits out of the DB scheme and put his pension funds at risk in order to take early retirement.

Further, I can fully understand Mr M's wish to retire early. I think most people would say they would like to retire early if given the chance. But for the majority, early retirement means a significant drop in income. That would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. I also think, generally, people will understand that having the opportunity to retire early isn't worth compromising their income security for across the remainder of their life. It seems to me that this is something Mr M was likely to reassess once he reached or neared age 57. And as such, I think early retirement was something that he aspired to, rather than a definite plan. In other words it was something that would be nice to have rather than a genuine need for Mr M. But there's no evidence that True Potential seriously challenged Mr M's objective of retirement at age 57 and questioned how realistic that was for him. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

At the time of True Potential's advice Mr M was still 14 full years away from 57. So he had no need to make an urgent decision to transfer out of his DB scheme as he could have opted to move into the BSPS2. Having done so, if he still felt he wanted to retire when he reached 57, and thought that the income from the BSPS2 wasn't enough for his needs, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 42 years old. But it doesn't appear that True Potential put that option to him.

True Potential also said the CETV had been enhanced and was unlikely to be matched from the BSPS2 in the future. One of the key differences between the BSPS2 and its predecessor was that the indexation levels weren't as generous in the BSPS2. And that lower indexation might well have led, in real terms, to a reduced CETV at a later date than that offered at the time of the advice. But I don't think the prospect of a lower CETV at some point in the future was reason to give up DB benefits at the time that True Potential gave its advice. As by doing so Mr M would be taking a risk with his pension he didn't need to take.

That said, it's true to say that Mr M couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take his BSPS2 (or PPF) benefits early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the SIPP would allow Mr M to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him it wasn't his only access to flexible income. As I've indicated above Mr M could have taken funds from his DC scheme in a flexible manner. And, if he wanted to he could have taken an income from that while leaving his DB funds untouched. So he didn't need to transfer out of the DB scheme in order to have some flexible access to funds.

It follows that I'm satisfied Mr M could have met his income needs in retirement through the BSPS2 or the PPF. So, I don't think it was in his best interests to transfer his pension just to have flexibility that he didn't need.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a SIPP was likely an attractive feature to Mr M. That's because whatever was left within it at the date of his death would be passed on to his family. If that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the BSPS2 or PPF would pay Mrs M half of Mr M's yearly pension after he died. And that pension would die with her. So Mrs M couldn't leave it as a legacy for their children if she died.

But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his DB funds to a SIPP because of this, the priority here was for True Potential to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr M was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr M's withdrawals from it in the meantime.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and had children. Both the BSPS2 and the PPF would have paid Mrs M 50% of Mr M's yearly pension on his death. Although the BSPS2 was more generous as it didn't make a spouse's benefit deduction for any TFC taken. Also, if Mr M was unfortunate enough to die while his children were still in full-time education, then the two schemes would also pay a dependents' pension. These were guaranteed and escalated they were not dependent on investment performance, whereas the sum remaining on death in a SIPP was. And there may not have been a large sum left in the SIPP if Mr M lived a long life or his fund don't perform as projected. In any event, True Potential should not have encouraged Mr M to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

Further, I'm aware that Mr M had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, I think True Potential should have instead explored life insurance. I've noted that, when it ran through the fact-find with him, Mr M said he had no interest in life insurance. So, it seems that leaving a legacy for his family in the event of his death wasn't a prime objective for him. Instead it was simply a benefit of transferring his pension. And, rather than dismissing this out of hand I think the starting point ought to have been for True Potential to ask Mr M how much he would ideally like to leave to his family. It could then have explored that on a whole of life or term assurance basis. That could have, potentially, allowed Mr M to leave a sustainable legacy for his family while preserving his safeguarded pension benefits.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr M. And I don't think that insurance was properly explored as an alternative.

The FCA's review,

True Potential told us the FCA had reviewed a number of its files where it had given advice in similar circumstances to Mr M's. It said the FCA didn't find it had done anything wrong. I wasn't party to what the FCA reviewed or what it found, nor do I need to be. Our function isn't a regulatory one. And while I'm required to consider the regulator's rules, guidance and standards, my role is to decide whether True Potential has acted fairly and reasonably in all the specific circumstances of this complaint not simply to look at what the FCA did. So the FCA's file review of other cases isn't relevant to that consideration.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr M. But True Potential wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

True Potential was in a good position to have analysed, tested, challenged and advised Mr M about what was in his best interests for retirement planning. It knows valuable pension pots like Mr M's DB scheme were paid into with the intention of providing for retirement. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme funds to a SIPP.

I appreciate the BSPS2 hadn't been established when True Potential gave its advice. But I think it was clear to all parties that it was likely to be going ahead. And, I think it would have been in Mr M's best interests to have opted into BSPS2 as that had more generous benefits than the PPF. By opting into the BSPS2, Mr M would have kept the option to transfer out of the scheme nearer to his retirement age if that was what he decided to do at that point.

Ultimately, I don't think the advice True Potential gave to Mr M to transfer was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a SIPP Mr M was unnecessarily putting his pension funds at risk. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme to a SIPP when he had the opportunity of opting into the BSPS2.

Of course, I have to consider whether Mr M would have gone ahead with the transfer anyway if it wasn't for True Potential's advice. And, after thinking about this carefully, I'm not persuaded he would have done so. That's because Mr M's BSPS pension accounted for the majority of his retirement provision at the time. So, if True Potential had given clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded Mr M's concerns about the future of the DB scheme was so great that he would have gone against True Potential's advice. That's because True Potential had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. Also that the future of the pension scheme was in the process of being taken out of the employer's hands. So True Potential could have allayed Mr M's concerns about the uncertainty of the scheme. And I don't think those would have been sufficient reasons for Mr M to insist on a transfer.

It follows that I don't think True Potential's advice to Mr M to transfer out of his DB scheme was suitable for him. And I think it should have advised him to opt into the BSPS2 instead. So, I think True Potential should compensate Mr M for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice. And, as learning that he has unnecessarily put his retirement income at risk, has been a source of distress and inconvenience for Mr M, I think True Potential should pay him £400 to address that.

Putting things right

A fair and reasonable outcome would be for True Potential to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would most likely have remained in the DB scheme and opted into the BSPS2 if True Potential had given suitable advice.

True Potential must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

I'm aware Mr M doesn't believe it is fair for True Potential to use this updated redress method, which will also use the assumptions that apply at the time of the calculation as set out by the FCA. That's because Mr M thinks True Potential should calculate any loss at the date our Investigator first recommended the complaint be upheld. But as my colleagues have previously explained to Mr M, our Investigator's recommendation was not a final decision but a proposed resolution, which both parties had the opportunity to disagree with.

So it wasn't binding on True Potential or Mr M. And True Potential chose to challenge that assessment using our long established procedures. That's something it was allowed to do and doesn't mean it was acting in an underhand manner.

It follows that I think it's reasonable for True Potential to use the most up-to-date method of calculation. That's particularly the case as the regulator believes that is a fair way to make a redress calculation. And I agree that's reasonable.

Further the regulator's guidance when calculating redress in cases like this is that the firm *must* use the regulator's most recent assumptions at the date of calculation. So that's what I think True Potential should do now.

When making the calculation True Potential (or providers acting for it) should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr M and our Service upon completion of the calculation.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, True Potential should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his SIPP or personal pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts True Potential's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, True Potential may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

True Potential should also pay Mr M £400 compensation to address his distress and inconvenience arising from its unsuitable advice.

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 M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that True Potential Wealth Management LLP pays Mr M the balance.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 20 September 2023.

Joe Scott
Ombudsman