DRN-3655797

The complaint

Mr D complains about the advice given by Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services ('Tavistock') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He thinks the advice may have been unsuitable as it has already caused him a financial loss.

What happened

In March 2016, Mr D's former employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (the 'BSPS') 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 (the 'BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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).

Mr D chose to join the BSPS2 to protect his position but as he wasn't sure what was best for him, he got in touch with a representative of Tavistock. Tavistock gathered information about Mr D's circumstances and objectives. It recorded that Mr D was 44, married with three children (one dependent). That Mr D and his wife ran their own company, with Mr D having left British Steel in 2013. They also owned their own home, which was subject to an interest-only mortgage of £89,000 ending in 2028. It recorded that Mr and Mrs D's monthly income exceeded their expenditure and Mr D had personal savings of around £5,000, but also kept a balance of £10,000 in the company business account.

Tavistock noted Mr and Mrs D hoped to retire at age 55 but that Mr D realised this would be difficult and he would need to make further provisions for his retirement. So, he agreed that retiring at his state pension age should be his target for now. It noted Mr and Mrs D intended to repay their mortgage by age 55 and had been making overpayments on an ad-hoc basis, which they would continue to do. Tavistock recorded that Mr D wanted the improved death benefits a transfer offered because he didn't want his DB scheme pension to cease on Mrs D's death. He thought transferring could provide a legacy for his children.

Tavistock completed an attitude to risk assessment with Mr D and noted he had a 'cautious/moderate' attitude to risk.

In February 2018 Tavistock produced a suitability report setting out its analysis and recommendations. It advised Mr D to transfer his BSPS benefits to a SIPP and invest his funds via a Discretionary Fund Manager ('DFM'), who would actively manage the invested funds on Mr D's behalf. Mr D accepted this advice and £336,251.73 was transferred from the BSPS to a SIPP.

In 2022 Mr D complained to Tavistock about the advice he received, believing it may have been unsuitable for him. He said since the transfer his funds had performed poorly and he was worried about the long-term impact on his retirement.

Tavistock maintained the advice was suitable as transferring would give Mr D flexibility of income and would provide death benefits that would be available to Mrs D and their children. And the adviser recalled Mr D was very unhappy with the way his former employer had changed the pension so he wanted to transfer out of it. He said Mr D was also keen to secure the enhanced cash equivalent transfer value ('CETV'). Tavistock said it had a responsibility to take the emotion out of the situation and ultimately made a recommendation that was in Mr D's best interests. It also made sure Mr D was aware of the risks of transferring. Unhappy with Tavistock's response, Mr D referred his complaint to the Financial Ombudsman Service.

One of our Investigators looked into the complaint and said it should be upheld. She said the advice to transfer, based on the income Tavistock thought Mr D might need from age 67, was difficult to justify when Mr D was so far away from his expected retirement. She noted that Tavistock had concluded Mr D would need to make further retirement provisions, whether he remained in the scheme or transferred out. So, she thought that him remaining in the DB scheme until his retirement needs were known was in his best interests. The Investigator didn't think taking advantage of an enhanced CETV, or the potential for higher lump sum death benefits was a good enough reason to transfer. She also didn't think Tavistock had done enough to allay Mr D's concerns over his employer's influence on the pension. The Investigator recommended Mr D should be compensated based on him having opted to join the BSPS2 and that Tavistock should pay him £300 for the distress and inconvenience caused by the unsuitable advice.

Tavistock didn't agree – it said the regulator had warned against basing advice on the growth rates required to match the DB scheme benefits (the critical yield), and the Investigator had placed too much emphasis on this. It had carried out cash flow analysis showing Mr D would have a sustainable fund in retirement, whilst also meeting his objectives of flexibility and improved death benefits. Tavistock said it also thought Mr D would've transferred his pension regardless. It questioned whether Mr D had taken any steps to fix his income, for example by taking an annuity and if not, this suggested he was happy with his existing arrangements, including the flexibility it gave him.

As no agreement could be reached, the complaint was referred 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'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 Tavistock'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave. I've summarised my findings below.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable and that a transfer should only be considered suitable if the advising firm can clearly demonstrate it is in the consumer's best interests. I'm also mindful that under COBS 9.2.1R Tavistock needed to take reasonable steps to ensure that its recommendation to Mr D was suitable for him. And having looked at all the evidence available, I'm not satisfied Tavistock took reasonable steps to ensure the advice to transfer was suitable for Mr D or that it was in his best interests.

Financial viability

At best, I think Mr D could've hoped to match the benefits he was entitled to through the BSPS2 at age 65 by transferring. But I think it was more likely that Mr D would receive pension benefits of a lower overall value in retirement if he transferred out of the DB scheme to a SIPP. I say this because:

- Tavistock carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). The TVAS showed that the critical yield at age 65 was 5.43% if Mr D took a full pension; if he took tax-free cash ('TFC') and a reduced annual pension it was 4.60%. The PPF critical yields were lower but as Mr D had already joined the BSPS2 and the scheme was almost certain to go ahead by the time the advice was delivered, Tavistock determined these were not as relevant.

- 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.

- The discount rate was 4.5% for 20 years to retirement at age 65. But Tavistock assessed Mr D's attitude to risk as cautious/moderate – which I take to mean low/medium. So, I think Mr D could've expected growth between the regulator's lower and middle projection rates of 2% and 5%, and I note Tavistock based its cashflow modelling on annual growth of 3.5%. As the critical yields were higher than the discount rate and the growth Mr D could likely achieve given his low/medium attitude to risk, I think Mr D was likely to receive benefits of a lower overall value at retirement.

- I recognise it's possible Mr D could've matched the TFC and reduced pension he was entitled to through the BSPS2 at age 65. But there would be little point in Mr D giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. Apart from his state pension, this represented Mr D's only other retirement provision, so I don't think he had the capacity to risk his pension funds in this way in any event.

- Tavistock says it carried out cash flow modelling showing that Mr D's funds would last him until age 90 if he transferred to a SIPP, even if it assumed modest growth of 3.5%. But significantly Tavistock recognised that whether Mr D transferred out of the BSPS or remained in it, he would need to build up further pension funds to support his retirement in later life. It's evident whatever other pension arrangements Mr D made, this would be on a defined-contribution basis. So, I think these were strong grounds for recommending that Mr D remained in his DB scheme, because he would still need to build up extra pension funds and those funds would be subject to investment risk.

Overall, I don't think it was in Mr D's best interests to transfer out of the BSPS as he was likely to receive lower overall benefits at retirement. I also don't think Mr D needed to risk his guaranteed pension in this way, given this represented his main pension provision and he had a low capacity for loss. So for this reason alone, I don't think Tavistock has shown that it was clearly in Mr D's best interests to transfer out of the BSPS.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable overall, as Tavistock argues here, so I've carefully considered these.

Flexibility and income needs

I don't think Mr D needed to transfer out of the BSPS in order to have flexibility in retirement. And I think he could've most likely met his income needs in retirement if he joined the BSPS2. This is because:

- Mr D was interested in retiring early but after discussions with Tavistock, recognised it wasn't likely to be affordable, though he would keep an eye on things as he got older. So, at the time of the advice, the aim was to retire comfortably at age 67. Tavistock says Mr D needed £3,000 per month in retirement, but in reality it was too early to say with any certainty what Mr D would need. And based on the income and expenditure analysis this appeared to be an overestimate, given Mr and Mrs D's children would no longer be dependent on them and their mortgage would be repaid.

- At age 65 Mr D could take around £85,000 in TFC and a reduced pension of around £13,000. By this time Mrs D would be in receipt of her state pension of around £8,000 per year and a small DB pension of her own worth around £1,000 per year (although this isn't likely accurate given Mrs D had around 12 years' service). And Mr D would also be entitled to a state pension of around £8,000 per year. So, together from Mr D's age 67, they'd have guaranteed income of at least £30,000 per year or around £2,300 net per month (taking account of their personal allowances). Mr D would've also had a significant tax-free sum to supplement whatever additional income they needed. So, I think being able to draw on the TFC as and when needed gave them sufficient flexibility of income.

- Furthermore, as is clear from the advice, Mr D agreed he needed to build up further pension provisions between then and his expected retirement, so that he would have additional security in his later years. So, I think Mr D could've had additional funds to draw on, which would give him extra flexibility if he needed it.

- Mr D was at least 10 years away from being able to access his pension, and 20 years from when he actually expected to retire. So, although having extra flexibility was likely appealing, it wasn't necessary at the time of the advice. And in any event, I don't think that was a decision he needed to make at this time – by joining the BSPS2, he retained the option to transfer out of the scheme closer to his retirement age if his circumstances required it. That a future CETV could've been lower should not have had an impact on what was suitable for his circumstances at the time of the advice.

- Tavistock says if Mr D hasn't yet purchased an annuity, it suggests he's happy with his SIPP and the flexibility it provides. But ultimately Mr D has a SIPP because of the advice Tavistock gave him; how he manages this going forwards is not relevant to the suitability of the advice Tavistock gave him in 2018.

Overall, I think that Mr D had more chance of meeting his income needs in retirement through the BSPS2 and using his TFC entitlement. And this provided him with a higher amount of guaranteed income for life, thereby decreasing his overall risk in retirement. So, I don't think it was suitable or in Mr D's best interests for Tavistock to advise him to transfer his DB pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't need.

Death benefits

I don't think Mr D should've been encouraged to give up his guaranteed pension in order to provide extra death benefits that could've been achieved in other ways without risking his own security in retirement. I say this because:

- Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr D, as it would to most people. But whilst I appreciate death benefits are important to consumers, Tavistock's role was to advise Mr D on what was best for his retirement. And the existing scheme already offered death benefits, by way of a spouse's pension, that could've been valuable to his wife in the event of his death. Under the BSPS2, this would be based on the pension available to Mr D before he took TFC, it was guaranteed and it escalated each year.

- The CETV figure would no doubt have appeared attractive as a potential lump sum, but the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr D drew in his lifetime. And the cash flow model showed the fund would be depleted by age 90 if Mr D transferred his benefits to a SIPP and took total income of £3,000 per month from age 67. So, it might not have provided the legacy that Mr D thought it would.

- Tavistock identified that Mr D had a need for life assurance because it noted Mrs D's income before or after retirement largely depended on Mr D. So, it provided some whole of life assurance quotes based on a sum assured of £336,250. Tavistock noted this was affordable now, but could become unaffordable in the future. But I don't think that this was a balanced way of presenting this option to Mr D. Ultimately, Mr D wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr D how much he would like to leave to his family, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. And I think Tavistock ought to have formally recommended this as a solution if Mr D genuinely wanted additional protection for his family.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr D. And ultimately Tavistock should not have encouraged Mr D to prioritise the potential for alternative death benefits through a personal pension over his own security in retirement.

Control and concerns over the financial stability of the DB scheme

Tavistock ought to have addressed Mr D's concerns about his former employer's influence over the DB scheme. Had it done so, I think Mr D would've most likely been assured by this.

- Mr D may have legitimately held concerns about how his former employer had handled his pension in the past and was inclined to transfer for this reason. But it was Tavistock's role to objectively address those concerns. As Tavistock said in its final response letter, it had to take the emotion out of the situation. But it seems to me that it did the opposite; as it said in the suitability report, it considered a transfer met Mr D's 'emotional requirements' at the time.

- I think Tavistock ought to have emphasised that the BSPS2 was well-funded and if there were future issues, it would still be covered by the PPF. So, even if Mr D might have perceived there to be risk attached to the BSPS2, I think Tavistock ought to have emphasised that he would be taking on greater risk by exposing his pension funds to the volatilities of the investment markets. Furthermore, it ought to have reassured Mr D that the BSPS2 trustees were in place to act in the best interests of all members, and as such, his former employer couldn't simply make changes to it without consultation.

- I also think Mr D's desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation was given on the basis he'd receive, and pay for, support with his pension by way of ongoing advice and using the service of a DFM. So, I don't think that this was a genuine objective for Mr D, it was simply a consequence of transferring away from his DB scheme.

I don't think that Mr D's concerns about his former employer should've led to Tavistock recommending Mr D transfer out of the DB scheme altogether. And I'm mindful he'd already chosen to join the BSPS2 in the interim, so I think that demonstrates he was prepared to stay in the DB scheme if Tavistock considered that to be suitable for him.

Overall, I can't see persuasive reasons why it was clearly in Mr D's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr D would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr D received from Tavistock was unsuitable for him. As such, Tavistock should calculate redress owed to him on the basis that he'd joined the BSPS2.

Mr D says that transferring his pension has already caused him a financial loss, following world events over the last few years that affected the value of his pension fund. And this has caused him a lot of worry. It's evident that the redress calculation I'm asking Tavistock to undertake will compensate Mr D for any financial loss he's experienced as a result of transferring his pension. But I also think that Tavistock should pay Mr D £300 for the distress and inconvenience the matter has caused him. I think Mr D's concern over the loss to his pension fund, and how this could affect his future retirement, is completely understandable. And ultimately if he hadn't been advised by Tavistock to transfer his pension, he wouldn't have been impacted by the events that caused his pension fund to drop. So, I think that it is fair for Tavistock to pay Mr D £300 to recognise the personal impact of its unsuitable advice.

Putting things right

A fair and reasonable outcome would be for Tavistock to put Mr D**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would most likely have joined the BSPS2 if suitable advice had been given.

Tavistock 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.

Tavistock 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 D and our Service upon completion of the calculation, together with supporting evidence of what Tavistock based the inputs into the calculator on.

For clarity, Mr D 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, 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 D'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, Tavistock should:

- calculate and offer Mr D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
    - the 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 the redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr D accepts Tavistock's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr D 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 D's end of year tax position.

Redress paid to Mr D as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Tavistock may make a notional deduction to cash lump sum payments to take account of tax that Mr D would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D'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.

Pay Mr D £300 for the distress and inconvenience the unsuitable advice caused him.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services pays Mr D the balance.

If Mr D accepts my final decision, the money award becomes binding on Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept my final decision.

Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services should provide details of its calculations to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 November 2023.

Hannah Wise
Ombudsman