DRN-3658196

The complaint

Mr D complains about the advice given by True Potential Wealth Management LLP ('True Potential') to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr D'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'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In October 2017 Mr D's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in the BSPS which would then move to the PPF, join 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 was concerned about what this meant for the security of his DB scheme, so he sought advice. Mr D met with his existing financial adviser, from another business, around November 2017 and they completed a fact-find to gather information about his circumstances and objectives. They also carried out an assessment of Mr D's attitude to risk, which they deemed to be 'balanced'. Mr D's adviser then passed this information to True Potential because they held the necessary regulatory permissions to advise on DB pension transfers. Mr D did not meet with True Potential's adviser.

On 17 November 2017 True Potential advised Mr D to transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in a balanced portfolio, which True Potential deemed matched Mr D's attitude to risk. In summary the suitability report said the key reasons for this recommendation were to provide Mr D with sufficient and varying levels of income at different stages of retirement and to provide sufficient death benefits for his family. And this was recommended in the context of Mr D wanting to take control of his pension given his concerns about the scheme and the restrictions or penalties for retiring early.

Mr D accepted the advice and around £382,000 was subsequently transferred to Mr D's new personal pension.
In 2021 Mr D complained to True Potential about the suitability of the transfer advice. Mr D said he'd been prompted to complain following receipt of a letter from the Financial Conduct Authority ('FCA').

True Potential didn't uphold Mr D's complaint. In summary it said it considered the options open to Mr D for his BSPS pension benefits, and in its view neither the option to remain nor to transfer to the new BSPS2 were suitable given his objectives at the time. It said the recommendation to transfer out of the scheme was suitable because it met Mr D's need for flexibility (he didn't need a fixed long-term income from this pension), it allowed Mr D's family to benefit from his full fund upon his death and it brought his pension under his control away from his employer, which was a key factor in Mr D's decision to seek advice. It said the critical yield, or growth rate required to match Mr D's DB scheme benefits was reasonably achievable given his attitude to risk and the recommended investment strategy. But it said it wasn't right to base the suitability of the transfer solely on the critical yield figure. It added that if Mr D was to replicate the benefits of his DB scheme through flexible drawdown, his pension fund would last beyond his life expectancy. Overall it said the recommendation placed Mr D in the position where he could meet his retirement goals.

Dissatisfied with its response, Mr D asked this service to consider his complaint. And an investigator upheld the complaint as they thought the advice was unsuitable for Mr D. In summary they said they thought it was clear Mr D would be worse off by transferring out. They didn't think Mr D needed to transfer out to enable him to retire early because he had other means he could've used to supplement his income including his savings and his current workplace pension – notwithstanding that they didn't think Mr D had firm plans or would've known his retirement income need at this time. And they didn't think he should've been advised to do so just to obtain higher death benefits. They added that while Mr D had concerns about the future of the DB scheme, they considered it was True Potential's role to allay those fears by highlighting the value of the pension even with the proposed reduction in benefits. In conclusion the investigator said it should compensate Mr D for the losses he incurred by transferring his DB pension and that compensation should be based on Mr D having opted to join the BSPS2.

True Potential disagreed. In doing so, it provided a substantive response, which I have read in full. But in summary it said that it was concerned about the way the complaint had been considered because it wasn't clear proper regard had been given for the relevant rules at the time or the context in which the advice was given. It added that it remained satisfied the transfer was suitable – but it was only required to take reasonable steps to ensure that it was, which it did. It disagreed with the investigator that Mr D's DB pension was the most significant part of his guaranteed pension – his state pension was and his private provision only needed to bridge the gap until this become payable. It also disagreed that Mr D couldn't have estimated his expenditure requirements when he wanted to retire in 15 years' time.

True Potential said the investigator placed significant reliance on the critical yields, which while it accepts is material, it believes it is of limited relevance because Mr D didn't want to purchase an annuity. It believes that Mr D would've proceeded with the transfer regardless of the advice it provided given his objectives, his non-reliance on his DB scheme income and his motivation to break all ties with his employer. It said Mr D made a fully informed decision to proceed with the transfer at the time and is now having second thoughts about his decision in the hope of getting redress – but says this isn't a basis for a valid complaint.

True Potential also asked for an oral hearing. It believed Mr D needed to be questioned further on his objectives and feelings towards the DB scheme at the time. It believes the investigator's findings are in stark contrast to the evidence from the time and an oral hearing will ensure the complaint is fairly determined.

The investigator didn't change their opinion, so the complaint was referred to me to make a final decision and to decide whether to hold an oral hearing.

I turned down True Potential's request for an oral hearing because I was satisfied I could make a decision on this case fairly without hearing oral evidence. So, I'm now providing my 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 Business ('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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

I can see that True Potential has said there are inconsistencies with how this service and the regulator consider the suitability of DB transfer advice cases and it points to the fact that FCA file reviews have shown no concerns with the advice it provided. It also says no consideration has been given for the material rules at the time in considering this case.

As I've set out clearly above, 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 in deciding what I think is fair and reasonable in the circumstances of this complaint. And it is only this complaint that I'm considering here – so it isn't appropriate for me to consider the suitability, or otherwise, of the advice True Potential provided in other cases.

I can also see True Potential has referred on several occasions to its requirement to take reasonable steps to ensure the advice it gave was suitable for Mr D – it didn't have to guarantee or prove that it would ultimately be suitable. And I agree that under COBS, True Potential was required to take reasonable steps to ensure that its personal recommendation to Mr D was suitable for him (COBS 9.2.1). But additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, True Potential should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. 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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr D was 43 at the time of the advice and the advice paperwork said his intention was to retire at 58. The critical yield required to match Mr D's benefits at age 58 if he opted into the BSPS2 was 6.39% if he took a full pension and 5.3% if he took a tax-free cash lump sum and a reduced pension. The critical yield to match the benefits available through the PPF at age 58 was quoted as 4.7% per year if Mr D took a full pension and 4.43% per year if he took a cash lump sum and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.2% per year for 14 years to retirement. 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 D 'balanced' attitude to risk and also the term to retirement. In my view 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. But here, assuming Mr D opted into the BSPS2 and took his full pension at 58, the critical yield was 6.39%. And this was significantly higher than the regulator's middle projection rate and over 2% higher than the discount rate. If Mr D chose to take his cash lump sum and a reduced pension at 58, the critical yield was still higher than both the middle projection and discount rates.

I think it was clear Mr D was likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with that attitude to risk. In my view, to have come close to achieving the level of growth required, it would have required Mr D to take a higher level of investment risk than I think he indicated he was prepared to take. And even then I think it's more likely than not Mr D would be worse off financially at retirement if he transferred out. I also think it's notable that True Potential didn't offer an opinion on Mr D's ability to achieve the critical yields relevant to the BSPS2 at age 58. Yet it said the critical yields at age 65 were achievable. Given its advice was predicated on Mr D retiring at age 58, I don't think that was fair to Mr D as he wasn't put in an informed position.

The respective critical yields required to match the benefits provided through the PPF were 4.7% and 4.43% - both of which were higher than the discount rate. And although they were lower than the middle projection rate, I think the opportunity to improve on the benefits provided by the PPF was limited if Mr D transferred out of the BSPS.

I can see that True Potential has said there was no regulatory rule or guidance requirement to refer to the discount rate. And I accept businesses didn't have to refer to it. But while I haven't based my findings solely on this, I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. 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. So, businesses, like True Potential were free to use the discount rate as this was considered a reasonable assumption of the likely returns. And in any event, I've considered this in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr D's attitude to risk, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

I can also see that True Potential says that the critical yield is of limited relevance here because it assumes Mr D would purchase an annuity on the same basis as the benefits provided by the DB scheme – but he wasn't likely to do that.

But I don't think the importance of the critical yield figure should be downplayed here. I still consider it gives a good indication of the value of benefits Mr D was considering giving up. It's also the case that the regulator required True Potential to provide it and so deems it a necessary and important part of the decision-making process. So True Potential needed to provide an analysis based on the critical yield and I think it is a relevant consideration here. I say this particularly given Mr D's circumstances and the fact that I don't think Mr D could realistically say with any certainty whether he would want to take a fixed regular income at retirement or not. He wasn't expecting to retire for at least another 15 years – so it's entirely possible that Mr D would want at least some guaranteed income in retirement, which he could achieve by taking benefits from the DB scheme.

Overall, even if the BSPS had moved to the PPF and Mr D's benefits were reduced, he was unlikely to be able to improve on those benefits by transferring to a personal pension. By transferring his pension it was highly likely Mr D would be financially worse off in retirement, particularly given the benefits available to him through the BSPS2 at age 58. So based on this alone, I don't think a transfer was in Mr D's best interests.

But I accept that financial viability isn't the only consideration when giving transfer advice, as True Potential has argued in this case. There might be other considerations, which mean a transfer is suitable, despite providing overall lower benefits. I've considered below whether such other reasons applied here.

Flexibility and income needs

It seems the main reason that True Potential recommended the transfer was for the flexibility and control it offered Mr D. The suitability report referred to the transfer providing Mr D with sufficient and varying levels of income at different stages of his retirement.

But having considered the evidence, I don't think Mr D needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

Firstly I've not seen anything to persuade me that Mr D needed access to his tax-free cash and defer taking his income, or that there was a need for variable income at different stages of his retirement. It strikes me that these were simply features or consequences of moving his pension to a personal arrangement rather than genuine objectives.

Mr D didn't, for example have a mortgage or other debts to repay by needing access to a lump sum while he was still working. And the only specific reference to Mr D wanting to generate a lump sum was to help his daughter out with a sum of £25,000 towards a house purchase when she reached 25. But this was in 15 years' time and around the same time as Mr D said he wanted to retire.

So Mr D had the option of taking his tax-free cash lump sum from his DB scheme to achieve this – the advice paperwork said Mr D could access around £85,000 as a lump sum. And that's only if Mr D couldn't generate the money from elsewhere, which I think is unlikely. This is because at this point, I think Mr D would've accumulated significant savings – it was recorded that he already had £13,000 and was adding to this at a rate of between £400 to £500 a month. So given the number of years he had in front of him to save, and even allowing for spending on other things, I think Mr D could've funded helping his daughter out from his savings.

Furthermore Mr D was contributing to his current workplace Defined Contribution ('DC') pension scheme – a combined employee and employer contribution of 16% of his salary. So over the course of 15 years to Mr D's intended retirement age, even without taking investment growth into account, this had the potential to produce a pension fund of not much less than £100,000. So Mr D's workplace pension would've provided him with the option, or flexibility, of accessing a lump sum to help out his daughter.

I can see that in response to the investigator's assessment True, Potential said it was surprised at their point that Mr D could've relied on his DC pension, which suggests it should've relied on Mr D's continued employment when he could've lost his job and no longer had any pension contributions from his employer. So it seems to suggest that it thinks it's unfair to assume Mr D would remain employed and continue contributing to a pension. But I disagree – I don't think it's unreasonable to assume that Mr D would've continued working and so continued to accumulate funds in his DC scheme. Mr D was in good health and I've not seen anything to show that Mr D's job was under specific threat.

Turning to Mr D's income need – the advice paperwork records that Mr D needed to generate £15,000 a year towards his share of the £2,000 net a month household income he said he needed in retirement. If Mr D opted into the BSPS2, at age 58 he could take a pension of around £17,700 a year. After accounting for inflation, it seems that Mr D's income need could've likely been met by opting into the BSPS2, taking a full pension at age 58 and topping up his income either through his savings or DC scheme. This would've meant that Mr D's other provisions, including his state pension due later on, could've simply supplemented his income to improve his standard of living in retirement.

If Mr D's income need increased the closer he got to retirement, or if he did need to access his tax-free cash from his DB scheme – albeit I've said he had other means at his disposal to meet any lump sum needs – Mr D was still entitled to a reduced pension of just under £13,000. So I still think Mr D could've met his income needs through BSPS2 – certainly until his state pension was payable at 68. I think any shortfall could've been met through savings. It's also clear that Mr D's wife had various other pensions because she was equally contributing to their overall retirement income – so it's possible his wife's pensions could've also made up any shortfall. But crucially here, Mr D would have likely had a significant pension to draw on flexibly through his DC scheme, as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr D would have had to sacrifice flexibility in retirement by opting into the BSPS2.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr D had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF.

At age 58 Mr D would've been entitled to a pension of around £14,600 a year. This was lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr D would've had his DC scheme to draw on until his state pension became payable, as well as savings and his wife's pension to supplement their household income. So, I still think Mr D could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he had to move with it to the PPF.
Overall, I'm satisfied Mr D could have met his income needs in retirement through the BSPS2 or the PPF at age 58. So, I don't think it was in Mr D's best interests for him to transfer his pension just to have flexibility that he didn't need.

Control and death benefits

The suitability report said the reason for the recommendation was to provide sufficient death benefits for his family.

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 personal pension was likely an attractive feature to Mr D. But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his BSPS benefits to a personal pension because of this, the priority here was to advise Mr D about what was best for his retirement provisions.

A pension is primarily designed to provide income in retirement not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr D's security in retirement. And I say potential, because the sum left on Mr D's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

I also think the existing death benefits within the DB scheme were underplayed. Mr D was married so the spouse's pension provided by the BSPS2 scheme would've been useful to his wife if Mr D predeceased her. I don't think True Potential made the value of these benefits clear enough to Mr D. They were guaranteed and escalated – under the BSPS2 the spouse's pension would also be calculated as if no tax-free cash had been taken. It's also the case that it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Also, I think True Potential ought reasonably to have known that Mr D had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his wife to receive if he hadn't already done so. And it also knew that Mr D was paying into the current DC scheme and he would've been able to nominate his wife as beneficiary of this plan too – again if he hadn't already done so.

Furthermore, if Mr D genuinely wanted to leave a legacy for his spouse and/or child over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think True Potential should've instead explored additional life insurance. And in my view the starting point ought to have been to ask Mr D how much he would ideally like to leave to his spouse, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be affordable to provide given Mr D's age, his recorded good health and the level of his disposable income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr D. And I don't think True Potential did enough to explore or highlight the alternatives available to Mr D to meet this objective.

Concerns about financial stability of BSPS

While not a key reason for recommending Mr D transfer his pension benefits, the advice paperwork makes reference to Mr Ds' concerns about his pension scheme and specifically about it moving to the PPF. It said Mr D wanted to control his own retirement. And I have no doubt that Mr D was concerned about his pension at this time – there was lots of negative sentiment about the PPF. I think this is likely the reason Mr D sought advice in the first place and it's possible that Mr D was considering transferring because of these concerns about his employer and what might happen.

It was True Potential's duty to give Mr D an objective picture and recommend what was in his best interests. At the time of the advice the available information from the scheme trustees indicated that, while not guaranteed, the new BSPS2 scheme would likely go ahead. I can see the suitability letter made reference to the trustees' confidence in the scheme when it set out the advantages and disadvantages of each of Mr D's options – so this should've helped alleviate Mr D's concerns here.

Regarding Mr D's concerns about his employer specifically and its attachment to the pension scheme, it's clear that he still worked for the same employer. And he hadn't indicated he intended to find alternative employment. He was also a member of the new DC pension scheme via his employer. So, Mr D wasn't going to achieve a separation from his employer by transferring, as he would remain tied to the employer in other respects. I think True Potential also should've mentioned that his employer and the BSPS2 trustees were not entirely one and the same. And the scheme trustees had a duty to act in the best interests of its members.

In terms of Mr D's specific concerns about the scheme moving to the PPF, despite the 10% reduction in starting benefits and the fact the increases in payment in the PPF were lower, importantly the income was still guaranteed. And the income available to Mr D through the PPF would've still provided a significant portion of his share of the overall household income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. So while I accept the suitability report referred to the advantages of remaining in the scheme and reference was made to the pension being guaranteed, I think True Potential ought to have specifically reassured Mr D that, even if there was a chance the BSPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or was led to believe.

Summary

I accept that Mr D was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr D. But True Potential wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr D was likely to receive lower overall retirement benefits at his intended retirement age of 58. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr D's best interests for him to transfer his DB scheme to a personal pension at this time when he had the opportunity of opting into the BSPS2.

So, I think True Potential should've advised Mr D to opt into BSPS2. I appreciate that the BSPS2 wasn't guaranteed to go ahead when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. And while Mr D intended to retire at 58, I'm mindful that was over 15 years away and Mr D's plans could've changed. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement.

And by opting into the BSPS2, Mr D would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, Mr D was married and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr D chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr D would've gone ahead anyway, against True Potential's advice.

I've considered this carefully, but I'm not persuaded that Mr D would've insisted on transferring out of the BSPS against True Potential's advice. I say this because, while Mr D was motivated to transfer when he approached True Potential, on balance, I still think Mr D would've listened to and followed True Potential's advice if things had happened as they should have and it recommended he stay in the scheme. Mr D had little investment experience – he certainly couldn't reasonably be described as an experienced investor or someone who possessed the necessary knowledge, skill or confidence to go against the advice they were given. Furthermore Mr D's pension accounted for the majority of his retirement provision at the time. So, if True Potential had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr D's concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If True Potential had explained to Mr D that he could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr D would've insisted on transferring out of his scheme.

In light of the above, I think True Potential should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr D.

So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish True Potential – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr D. Taking everything into account, including that I consider Mr D's retirement provision is of great importance to him given its significance in his overall retirement income provision, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary.

However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance /rules to be published.

Mr D didn't make a choice, so as set out previously I've assumed in this case that he doesn't want to wait for any new guidance.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr D.

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for True Potential's unsuitable advice. I consider Mr D would have most likely transferred his benefits into BSPS2 if suitable advice had been given. So True Potential should use the benefits offered by BSPS2 for comparison purposes.

True Potential must therefore 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.

For clarity, Mr D has no plans for his retirement. So in the circumstances and as per the usual assumptions in the FCA's guidance, compensation should be based on a normal retirement age of 65 in this case.

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 D's acceptance of the decision.

True Potential may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D'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 D's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr D'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 D 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/her/their likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.
The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr D within 90 days of the date True Potential 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 True Potential to pay Mr D.

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.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect True Potential to carry out a calculation in line with the updated rules and/or guidance in any event.

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

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

True Potential Wealth Management LLP should also pay Mr D £300 for the distress and inconvenience the unsuitable advice has caused.

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

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

If Mr D accepts this decision, the money award becomes binding True Potential Wealth Management LLP.

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 any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 December 2022.
Paul Featherstone
Ombudsman