DRN-3744712

The complaint

Mr M complains about the advice given by True Potential Wealth Management LLP to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). Mr M says that the alternatives he had were not fully considered. And it was not looked at how he could meet his retirement aims by remaining in his DB scheme. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the DB pension scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ('PPF') – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

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

Mr M contacted an adviser in 2017 for advice on his pension planning. This business completed a fact find and risk profile questionnaire. As they couldn't provide DB transfer advice they introduced him to True Potential. As far as I can see True Potential didn't complete further fact find or risk profile documents.

The information gathered at the time of advice showed that Mr M:

- Was aged 52, married and had three children, one of whom was financially dependent.
- Was employed by Tata Steel and earned £33,000 a year. This gave him £2,000 a month after tax. Their expenditure was below this.
- Owned their own home with a value of £170,000, he and Mrs M had a mortgage of £16,000.
- Had no other debts.
- Was a member of the Tata Steel Group Personal Pension.
- Had £5,000 in savings (I note this was initially recorded as being £15,000 on the fact find).

The assessment of Mr M's attitude to risk said that he could take a 'balanced' risk. It was also assessed that Mr M had enough tolerance and capacity for loss to make the DB transfer.

On 11 December 2017, True Potential advised Mr M to transfer his pension benefits, which were worth just over £400,000, into a SIPP and invest the proceeds in one of its managed funds. The suitability report said the reasons for this recommendation were that Mr M wanted to:

- Retire at age 60.
- Have enough income in retirement, he wanted £15,000 a year or £1,200 a month.
- Make sure his wife had enough income in retirement.
- Be able to transfer his retirement funds to his wife or children on his death.

Mr M complained in 2022 to True Potential about the suitability of the transfer advice. This was because:

- He felt he could have met his retirement aims by staying in the DB scheme, this wasn't properly considered.
- The pension was his largest guaranteed asset, so he shouldn't have been advised to risk it.
- He had a lower attitude to risk than 'balanced', given the answers he wrote on the attitude to risk questionnaire.
- He hadn't decided to transfer out of the DB scheme when he met True Potential.

True Potential didn't uphold Mr M's complaint. It said:

- The advice process that it used in DB transfer cases had been looked at by the industry regulator and found to be fit for purpose.
- Mr M had decided to transfer out of the BSPS scheme regardless of whether True Potential advised him to or not.
- The PPF and BSPS2 would not have met Mr M's retirement or life cover needs.
- The flexibility and potential income from the SIPP did meet Mr M, and his family's, needs at the time.
- The transfer didn't have too much risk for him.
- It wasn't reasonable to rely solely on critical yield analysis.

Mr M referred his complaint to our service. An Investigator upheld the complaint and recommended that True Potential pay compensation. The Investigator said that Mr M could have met his retirement aims within the BSPS. And the BSPS was likely to be his primary pension and so it wasn't right that he was advised to risk it. His attitude to risk wasn't properly assessed and the transfer wasn't financially viable.

The Investigator also thought the retirement and death benefits attached to the DB scheme were underplayed. Overall, he thought Mr M should've been advised to opt into the BSPS2, the details of which were known at the time of the advice. The investigator recommended that True Potential should compensate Mr M for the losses he incurred by transferring his DB pension and that compensation should be based on him having opted to join the BSPS2.

True Potential disagreed, saying:

- It wasn't persuaded that the Financial Ombudsman Service was applying the rules and regulations from the time correctly

- Whilst it believed the transfer was suitable for Mr M, it was only required to take reasonable steps to ensure that this was the case.
- It exercised reasonable skill and care when it advised Mr M and so it met its regulatory obligations.
- It isn't reasonable to rely solely on critical yields and transfer value analysis reports (TVAS), indeed the FCA has said that a business should not do this when advising customers.
- Mr M would have transferred in any event due to the situation with the BSPS schemes and his employer.
- It wasn't clear at the time of advice that BSPS2 would go ahead. So, it wasn't possible to advise him to go into this.
- Mr M wanted to capitalise on the significant enhancement to his transfer value. It wouldn't have been advising him correctly if it had not taken advantage of this.
- Full information was provided at the time and Mr M gave no indication that he didn't understand it.
- If Mr M's wider circumstances are considered, then the advice was suitable for him. it provided flexibility and the enhanced life cover that he wanted.

The investigator didn't change their opinion, so the complaint was referred to me to make 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 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.

True Potential says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr M. I agree that under the FCA's Conduct of Business Sourcebook ('COBS') 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). However, 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. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr M'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

True Potential carried out a Transfer Value Analysis ('TVAS') 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 has said that that BSPS2 may not have gone ahead so the only worthwhile comparison it could provide was with the benefits available to Mr M through the PPF. Whilst the point of sale documentation does contain information about the BSPS2 I think it's reasonable to say the advice concentrated on Mr M remaining in the BSPS and then moving the PPF.

Information about the BSPS2 was provided in the suitability letter and the TVAS. But I think True Potential overestimated the chance of the BSPS2 not happening. Mr M had received his "time to choose" pack by the time the advice was given. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. So, I think Mr M should have been advised about the BSPS2 on the basis that it was a viable option available to him.

According to the fact-find and suitability report, Mr M said he wanted to retire at age 60, although he may retire at age 65. The relevant critical yields for the BSPS2 at age 65 was 6.37% if he took a full pension or 4.66% if he took tax-free cash and a reduced pension. The critical yield required to match the benefits provided through the PPF was 4.77% if Mr M took a full pension, or 4.27% if he took tax-free cash and a reduced pension.

The suitability letter also provided the same percentages for Mr M at age 60. In general these were 1 to 2 percentages higher. The comparison with the BSPS2 provided critical yields of 8.56% for a full pension and 5.99% with tax free cash. And the relevant percentages at this age for the PPF were 6.21% and 5.55%.

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

The 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% for 12 years to retirement, that is to Mr M's age 65 and 3.4% for a period of 7 years to retirement, his age 60. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

Mr M has said that his attitude to risk was lower than the 'balanced' risk tolerance the business recorded. I agree that the questions asked were simplistic and were asked by the first firm Mr M saw. Mr M seems to have had had limited contact with True Potential. So, I don't think True Potential can be said to have properly assessed his attitude to risk. That said, he was informed that True Potential was recommending he proceed on this basis and it's reasonable to assume he would take some risk with a longer term investment. But for the avoidance of doubt I agree that his attitude to risk was likely to be lower than 'balanced', particularly as this pension accounted for the vast majority of Mr M's retirement provision.

In this case the critical yield was over 4.77% if Mr M took a full pension from the PPF at age 65. And the majority of the critical yields, including those that mirrored Mr M's planned retirement date and tax free cash objectives were much higher than this. So, I think Mr M was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his tolerance to risk, particularly if he retired early as he wanted to.

True Potential says that it isn't right to consider the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this alone, I don't think it should be discounted.

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 were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And 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.

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 M's likely 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.

Given Mr M was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests.

Of course, 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 and in Mr M's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It doesn't appear that Mr M was looking for flexibility in retirement. This is because based on the evidence I've seen, I don't think he had any genuine need to access his tax free cash earlier than the normal scheme retirement age and leave his funds invested until a later date. There is mention of Mr M taking a lump sum to help his children purchase a property, but it doesn't appear this was envisaged before he retired, so he could've simply taken his tax-free cash from the DB scheme to meet this need.

I also can't see any evidence that Mr M had a strong need for variable income throughout his retirement. Instead, Mr M's objective was to have a level income of around £15,000 per year as he didn't expect to have any remaining debt or to need to support his children financially.

To my mind, Mr M's objective was best met by taking a guaranteed income from a DB scheme.

Overall, I'm satisfied Mr M could have met his income needs in retirement through the DB scheme at 65. Taking what True Potential recorded at face value, Mr M wanted £15,000 per year, or £1,200 per month.

The suitability report firstly looked at the situation if Mr M ended up in the PPF. In this case Mr M was entitled to an annual income of around £19,288 at age 65. Or he could take around £100,254 in tax free cash and a pension of £15,091. And at age 60 he could receive a pension of over £15,618 without any tax-free cash or a pension of £12,643 and tax-free cash of around £84,008. I think these amounts largely met Mr M's recorded retirement aims.

There was a similar analysis based on Mr M's pension entitlement moving to BSPS2. And the amounts provided were higher. The pension he could have received was around £22,008 at age 65, or he could have taken tax free cash of £99,743 and an income of £14,961. The amounts at age 60 were very similar to those the PPF would have provided. So, again, it's reasonable to say this option would have met his recorded aims, even if Mr M retired at age 60.

Mr and Mrs M would both receive state pension in retirement. And Mr M was building up a fund which could be used flexibly in his employers' new group personal pension. So, I don't think there is any doubt that Mr M could have met his retirement aims by remaining in the DB scheme. In fact the advice was given on the basis that Mr M didn't really need this DB scheme as his needs would be met with the state pension. This is acknowledged in the suitability letter in which the DB scheme income is described as being 'surplus to requirements'. But I can't agree that Mr M's main pension, having been built up over the course of over 30 years of work, could be said to be 'surplus' to his requirements.

True Potential may argue that once Mr M's state pension became payable he would have too much income. But Mr M could've reinvested any surplus income for the benefit of his children in a tax-efficient manner such as within a trust.

In summary, even if Mr and Mrs M could have got by without the income form Mr M's DB scheme once their state pensions became payable this isn't a good reason to transfer in itself. This income would have been an important foundation for their retirement, providing a guaranteed amount that would've covered Mr and Mrs M's main expenses, from age 60, meaning that any income received above this could've allowed them to enjoy their retirement fully.

Death benefits

Other than Mr M's general concerns about his employer and the scheme, it seems he was advised to transfer, in the main, due to the different death benefits, and the ability to leave a legacy to his children, that the transfer offered. The suitability letter says that the main reason Mr M shouldn't think about electing to join the BSPS2 was that he would be unable to leave a lasting legacy to his children, as only one of them was dependent.

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 M. 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 scheme to a personal pension because of this, the priority here was to advise Mr M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think True Potential explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr M predeceased her. There was also provision for a children's pension which would have provided a pension up to his children's age 23. I understand this could have benefitted one of Mr M's children. I don't think True Potential made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, True Potential should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

True Potential argues that the spouse's pension provided under the BSPS2 or the PPF wouldn't have been sufficient to provide for Mrs M in the event of Mr M's death. But if Mr M retired at age 60, his wife would've been entitled to Mr M's full pension in the unlikely event that he died within five years of his retirement and then 50% thereafter. This means that in reality, Mrs M's income need of around £15,000 per year would've been covered under the PPF or the BSPS2 until she was aged 58 (Mrs M was around seven years younger than Mr M). At this point the pension income would halve and Mrs M wouldn't be entitled to her own state pension for another nine years. So, there was potentially a shortfall between Mrs M being aged 58 and 67. True Potential may argue that this is why a transfer was necessary.

However, it is noted in the fact-find that in retirement Mr and Mrs M's basic income needs were only £1,000 per month – Mr M said that £1,250 per month would make him comfortable. So, Mrs M's shortfall between ages 58 and 67 would be in the region of £400 per month or around £5,000 per year. Mr M would've been paying into his employer's group personal pension for around eight years before he retired at age 60. And it is also noted in the fact-find that Mr M had savings of £5,000. So overall, in the unlikely event that Mr M passed away at age 65, I think Mrs M would've had sufficient provision through the DB scheme and the money purchase pension to cover her expenses until her state pension became payable.

If Mr M passed away later in life I also think Mrs M was provided for. As I've said above, Mr M would've been building up funds in his money purchase pension that he wouldn't have had reason to drawn on given his retirement needs were already being covered by his DB scheme and state pension. So, this could've been a sizable fund that Mr M could pass on to any beneficiary of his choosing. For this reason, I don't think Mr M needed to transfer out of the DB scheme to ensure his wife was provided for in the event of his death.

And in any event, if Mr M genuinely wanted to leave a legacy for his spouse and children, 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 life insurance.

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.

Control or concerns over financial stability of the DB scheme

It's clear that Mr M, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and it's recorded that he said he preferred to have control over his pension fund.

So it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was True Potential's obligation to give Mr M an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. But even if there was a chance the BSPS2 wouldn't go ahead, I think that True Potential should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would've still provided enough to meet his recorded aims. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to True Potential recommending Mr M transfer out of the DB scheme altogether.

Suitability of investments

True Potential recommended that Mr M invest in a 'balanced portfolio'. And Mr M thinks this wasn't right for him. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the investments in the managed fund wouldn't have arisen if suitable advice had been given.

Time to retirement and enhanced transfer value

True Potential has said that the establishment of BSPS2 was still not guaranteed and even if Mr M chose the BSPS2 he might have ended up in the PPF after all. And then a transfer at a later date, closer to retirement, would not have been possible. And if his scenario played out then Mr M would lose out on the enhancements to the transfer value that were on offer at the time of advice.

I do think it was more likely than not at the time BSPS2 would go ahead. However, I appreciate there was still a risk of Mr M ending up in the PPF and not being able to transfer in future.

But, overall and as set out above, I think a guaranteed income from the PPF would have still been valuable and it would have met Mr M's aims. And he could have still retired early if he wanted to. He would have had some flexible benefits through his other pensions. So I don't think this scenario had to be avoided at all cost.

I also don't see that potentially lower transfer values from BSPS2 in the future were reason enough to transfer immediately.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension 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.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a SIPP Mr M was, in my view, likely to obtain lower retirement benefits at either age 60 or

65. 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 personal pension now when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn’t been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. So, I don't think that it would've been in Mr M’s 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 M would’ve retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, Mr M 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 M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think True Potential should’ve advised Mr M to opt into the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against True Potential's advice. True Potential argues that this is the case, it says that regardless of the advice given, Mr M made an informed choice to proceed with the transfer due to the situation with the scheme and his employer. And it believes Mr M would’ve transferred in any event.

I accept that True Potential disclosed some of risks of transferring to Mr M, and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr M to transfer out, and I think Mr M relied on that advice. Mr M has confirmed this is the case. He has said that he was concerned about the situation with his employer and the scheme, but, ultimately, he would have accepted the advice he was given. And I think that is reflected in the suitability report as it states Mr M’s objective was to assess his options and that he wanted to know what the best course of action was for his retirement. I don’t think this suggests Mr M’s mind was made up about transferring regardless of the advice he received.

Mr M was also a relatively inexperienced investor and this pension accounted for the majority of his non state retirement provision at the time. So, if True Potential had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests, I think he would’ve accepted that advice.

I’m not persuaded that Mr M’s fear about the PPF was 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. And if True Potential had explained Mr M was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would’ve carried significant weight.

In light of the above, I think True Potential should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that True Potential pay Mr M £250 for the distress caused by the unsuitable advice. I don’t doubt that Mr M has been caused distress and concern in relation to his retirement planning. As he says, it has caused him some worry and sleepless nights. And I’m conscious this wouldn’t have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr M whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for the new guidance to come into effect.

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 M.

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

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

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 M's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M'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 M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr M within 90 days of the date True Potential receives notification of his/her 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 M.

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.

True Potential should also pay Mr M £250.

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 True Potential Wealth Management LLP to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Where the compensation amount does not exceed £170,000, I would additionally require True Potential Wealth Management LLP to pay Mr M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £170,000, I would only require True Potential Wealth Management LLP to pay Mr M any interest as set out above on the sum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that True Potential Wealth Management LLP pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

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 2 February 2022.

Andy Burlinson
Ombudsman