

The complaint

Mr O complains about the advice given by The Tavistock Partnership Limited (Tavistock) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss and this has caused him some stress and anxiety.

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

Mr O approached Tavistock in May 2017 to discuss his pension and retirement needs. He wanted some advice on his individual retirement, and some further help with understanding the information he had received from the BSPS about the changes within this scheme.

Tavistock completed a fact-find to gather information about Mr O's circumstances and objectives. This showed that he was aged 56, in good health and married. He was employed by Tata Steel and earned £46,000 per annum. Mrs O was also employed. They owned their own home valued at £250,000 and this was subject to a mortgage of £108,000. They had savings and shares totalling £28,000.

Tavistock also carried out an assessment of Mr O's attitude to risk. It said this was '3 on a scale of 1 to 10' which was described as 'cautious to moderate'.

In respect of Mr and Mrs O's pension arrangements:

- Mr O had received a cash equivalent transfer value ('CETV') from the BSPS in September 2017. He'd also received an earlier one, but the transfer advice was based on this later one. This showed that he had around 27 years' service. He was entitled to a pension of about £24,400 at the date of leaving the scheme. The CETV was about £600,000.
- He had also joined his employers new defined contribution ('DC') scheme. The fact find recorded that he was contributing 6% of his salary into this and his employer was contributing 10%.
- Mrs O had a DB pension that was estimated to provide an annual income of £3,000 a year and they both would receive state pensions at their age 67.

In October 2017, members of the BSPS were sent a 'Time to Choose' letter which gave them the options to either stay in the 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 (and was later extended to 22 December 2017)

On 16 November 2017, Tavistock advised Mr O to transfer his DB pension benefits into a personal pension and invest the proceeds in a fund that it said matched his attitude to risk.

The suitability report said that Mr O wanted to retire at age 65. His mortgage was due to run until he was 71 and he wanted to use the tax-free cash from his pension to repay this, the monthly repayments were £750 and the amount outstanding was £108,000. He did want to continue working but he wanted to have the peace of mind that the mortgage would be clear and he could afford the property in his retirement. And he wanted to repay this as soon as he could, or at 65.

I understand that Mr O withdrew £150,000 as tax-free cash shortly after the transfer went ahead and repaid his mortgage, made some house improvements and purchased a new car.

Mr O complained in May 2022 to Tavistock about the suitability of the transfer advice. He didn't think the advice was right for him and finding out that he may have lost out had caused him some anxiety.

Tavistock didn't uphold Mr O's complaint. It said that the advice was suitable for him. It met his objectives of clearing his mortgage and completing home improvements. Tavistock was satisfied that Mr O was fully informed before he went ahead with the transfer.

Mr O referred his complaint to the Financial Ombudsman Service saying that he shouldn't have been advised to use his pension to repay debt or make some house improvements when he didn't really need to. He also may have used the BSPS ill health pension when he couldn't work due to ill health later on.

An Investigator upheld the complaint and recommended that Tavistock pay compensation. He said that given the returns needed to match the DB scheme it was likely that Mr O would receive lower benefits at retirement. And whilst he did want tax-free cash to repay his mortgage the DB scheme would have provided enough at his retirement for him to do this. And his mortgage was affordable and reducing, so he didn't need to repay it straight away. This wasn't a good reason to transfer.

Mr O agreed with what the adjudicator said.

Tavistock disagreed, and asked for an ombudsman to consider the complaint, but it didn't say why it disagreed. The complaint has been 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 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 largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Tavistock should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr O's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

- Tavistock was required to carry out a transfer value analysis ('TVAS') report by the regulator. I've not seen the full TVAS but some of this information that it would have provided is in the suitability report. This calculated the critical yield which was how much Mr O's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme. It showed this was 6.66% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 4.23%.
- To match the full pension the PPF would've paid from 65 the critical yield was 4.63% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.11%.
- The discount rate, which represents a reasonable assumption about future growth, was 3.5% for 8 years to retirement in this case. And given this, and Mr O's recorded attitude to risk, and the regulator's lower and middle projection rates of 2% and 5%, I think Mr O was always likely to receive pension benefits, from age 65, of a substantially lower value than those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk.
- Mr O's main goal was to repay his mortgage of £108,000. He did go on to do this soon after the transfer with the tax-free cash he withdrew from the scheme. So, it's clear that this was an aim he had. But it wasn't Tavistock's role just to put in place what Mr O might've thought he wanted. Its role was to advise him on what was in his

best interests. And even if Mr O indicated this was something he was considering, I don't think this meant a transfer was in his best interests.

- Mr O was paying £750 a month to his mortgage, but this was affordable. And the longer he kept repaying the mortgage the more the amount he owed would reduce. So, there was no need to repay his mortgage at the time of advice. That said he clearly wouldn't want to continue to pay this into his retirement so I've looked to see if he could have met his aims if he remained in the DB scheme.
- Mr O wanted to retire at age 65 with at least £19,000 a year. The BSPS2 would provide him with a pension of around £28,750 at this time or tax-free cash of about £130,000 plus a reduced pension of £19,500. The PPF provided similar amounts at this age. And Mr and Mrs O would receive their state pensions in time and Mrs O had the pension provision I've outlined above. Mr O also would have his DC scheme benefits which, by 65, may have built up to be a significant amount.
- I think this met their needs; in fact it seems to provide in excess of what they said they needed. Mr O would be able to receive enough income and more than enough tax-free cash to pay his borrowing and fund the other things he wanted to do. It looks likely that they may have been some scope for Mr O to retire a few years early, or they could use the income to fully enjoy their retirement.
- Mr O gave up a guaranteed and increasing income to withdraw the amounts he did. And there was a significant risk that he would have lower retirement benefits because of this. I don't think it was right to say this lower income wasn't important due to Mr and Mrs O's other provisions. The pension under the BSPS2 or PPF appears to have been a more appropriate way to meet Mr O's income needs in retirement – which is the primary purpose of a pension.
- Whilst Mr O's aim for tax-free cash was clearly important to him. I don't think that Tavistock should have advised him to alter his retirement provisions, at a significant potential overall cost, without fully exploring any alternatives he could have used to meet these aims.
- Overall, as Mr O had no plans to stop working prior to age 65 and he didn't have a pressing need to clear any of his outstanding debt as this appears to be affordable, I don't think transferring to obtain flexibility was in his best interests.
- Tavistock said Mr O was interested in the improved death benefits a transfer offered to his family by way of alternative death benefits. He wanted cash rather than a pension for Mrs O. But the priority here was to advise Mr O about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.
- While the CETV figure would no doubt have appeared attractive as a potential lump sum, 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 O drew in his lifetime. And so may not have provided the legacy that Mr O may have thought it would.
- If Mr O had wanted to leave a legacy for his family, Tavistock could've explored life insurance as an alternative. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. There are some whole of life quotes on file, but these are expensive and don't seem to reflect the actual amounts

Mr O may have wanted to leave to his family. Life cover doesn't seem to have been considered in any detail.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr O. I don't think that insurance was properly explored as an alternative. And ultimately Tavistock should not have encouraged Mr O to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- It was recorded that Mr O did want to control his pension fund although there was very little detail about how he would do this. 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 seems to have been given on the basis he'd receive, and pay for, ongoing support with his pension. So, I don't think that this was a genuine objective for Mr O – it was simply a consequence of transferring away from his DB scheme.
- Mr O may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was Tavistock's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr O with guaranteed income and the option of accessing tax-free cash. Mr O was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr O's best interests 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 O 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 O received from Tavistock was unsuitable for him.

Our Investigator recommended that Tavistock also pay Mr O £300 for the distress caused by the unsuitable advice. Mr O said that finding out that he may be worse off in retirement has caused him a lot of anxiety. Particularly when he had to stop work due to ill health. He said he worried a lot about his financial future at this point. I don't doubt that Mr O has been caused concern in relation to his retirement planning, in what was already a difficult time for employees of the company he worked for. 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.

Mr O says that he may have been able to use his employer's pension early as he stopped work for a period due to ill health. I've mainly looked at the suitability of the advice here rather than fully consider this issue. But it's worth noting that to qualify for an ill health pension the scheme rules say that he would have needed to be 'permanently incapacitated' and unable to carry out 'any gainful employment'. From what Mr O has said I don't think this would have applied here. And in any event Mr O did indicate that he was happy with the compensation below.

Putting things right

A fair and reasonable outcome would be for the business to put Mr O, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr O would most likely have remained in the occupational pension scheme and 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 O 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 O 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 O'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 O redress as a cash lump sum payment,
- explain to Mr O before starting the redress calculation that:
 - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr O receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr O accepts Tavistock's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr O for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr O's end of year tax position.

Redress paid to Mr O as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Tavistock may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr O'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.

Tavistock should also pay Mr O £300 for the distress and inconvenience the poor 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 The Tavistock Partnership Limited to pay Mr O 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 The Tavistock Partnership Limited pays Mr O the balance.

If Mr O accepts this decision, the money award becomes binding on The Tavistock Partnership Limited.

My recommendation would not be binding. Further, it's unlikely that Mr O can accept my decision and go to court to ask for the balance. Mr O 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 O to accept or reject my decision before 15 December 2023.

Andy Burlinson
Ombudsman