DRN-3764239

The complaint

Mr P complains about the advice Tuto Money Limited trading as Eadon & King ('Tuto') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice wasn't suitable for him and may have caused a financial loss.

What happened

In March 2016, Mr P's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company.

The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr P's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017 the BSPS trustees gave Mr P details of his DB pension's cash equivalent transfer value, which was £441,898.

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.

Mr P approached an independent financial adviser for advice. That adviser conducted a fact-find with Mr P. The adviser then referred Mr P to Tuto which, unlike the initial adviser, had the required regulator's permission to advise on pension transfers.

After gathering more information Tuto produced a suitability report setting out its analysis and the reasons for its recommendations. Amongst other things Tuto noted Mr P was 49 years old and single. He had no dependents. He was working. He owned his own home outright and had no debts. He had savings totalling around £100,000. He had relatively recently joined his employer's defined contribution ('DC') pension scheme. His preferred retirement age was 58 at which time he would require an income of £9,600 a year.

Tuto recommended Mr P should transfer his DB benefits to a named personal pension. Mr P accepted Tito's recommendation and the transfer went ahead.

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

After receiving a letter from the regulator, the Financial Conduct Authority ('FCA'), in 2022 Mr P complained, via the Financial Ombudsman Service, to Tuto. He said that its advice may not have been suitable for him. Tuto said it believed its advice to transfer was suitable for Mr P.

Mr P asked the Financial Ombudsman Service to look into his complaint. One of our Investigators considered it. He didn't think Tuto's advice was in Mr P's best interests. So he recommended Tuto establish if Mr P had suffered a financial loss as a result of its advice. Our Investigator also recommended Tuto make a payment of £300 to address Mr P's distress and inconvenience arising from the unsuitable advice.

Tuto didn't initially accept our Investigator's complaint assessment. As the matter wasn't resolved informally the complaint was referred for an Ombudsman's review.

While the matter was awaiting an Ombudsman's attention, in November 2023 we wrote to the parties. We pointed out that the FCA had developed a BSPS specific calculator for establishing redress for BSPS cases. We advised Tuto that if an Ombudsman were to later uphold the complaint they would instruct it to carry out another redress calculation using the FCA's BSPS calculator. In an attempt to resolve the complaint we invited Tuto to take the necessary steps to carry out an up-to-date redress calculation.

Tuto agreed to carry out the calculation. It gathered the required information and in December 2023 it performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr P had not suffered a loss.

The matter has since been referred to me to make a final determination.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand Tuto hasn't accepted that it gave Mr P unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr P in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for similar reasons. In doing so 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 - including the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').

In particular, the FCA says that a firm like Tuto should only consider recommending a transfer where the contemporary evidence clearly demonstrated that it's in the client's best interests. But, in this instance I'm not convinced a transfer was clearly demonstrated to be in Mr P's best interests.

For example I don't think Mr P needed to make a decision to transfer when he did. That's because, if he'd opted to join the BSPS2 then he would have kept the potential option of transferring out of the DB scheme nearer to his retirement age.

Mr P was 49 years old at the time of the advice. He was still over eight years away from his preferred retirement age and 16 years away from the DB scheme's normal retirement age of 65. A lot could happen in that time and he could revisit, as many other people do, his plans to retire early. And if he'd remained in the DB scheme, he would have kept the secured benefits the scheme offered and wouldn't have to put his pension funds at investment risk. So, I don't think a recommendation that he transfer his DB funds when he did was in his best interests.

Additionally, Tuto's suitability report said that Mr P wanted to retire at age 58 on an income of £9,600 a year. The cash flow model within Tuto's report showed that Mr P could have taken early retirement at his preferred age of 58, after taking a tax free cash lump sum ('TFC'), and met his income needs from both the PPF and the BSPS2. So he had no need to put his DB funds at investment risk in order to retire early.

Further, Tuto said transferring would allow Mr P to access his funds flexibly in retirement. It's true to say that Mr P couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr P had any concrete need to vary his income throughout retirement.

Also, Mr P had already built up savings of around £100,000, which he was adding to at a rate of £250 a month. So, by the time he was 58, he could have added in the region of a further £27,000 to his savings. In addition he and his employer were also contributing to his DC pension scheme. And Tuto estimated that by the time he reached 58 he could have around £50,000 invested in that pension. So, his DC pension alongside his savings would have given him some flexible access to cash if he needed it.

I understand that the option of drawing income flexibly might seem like something that would be nice to have. But I can't see Mr P had any genuine need for flexibility that would be worth giving up guaranteed benefits from his DB scheme for.

Overall, I can't see persuasive reasons why it was in Mr P's best interest to give up his DB scheme guarantees when he did.

Putting things right

Given that Tuto has already ran calculations to establish If Mr P has suffered a financial loss as a result of its advice, what remains at issue now is whether or not it's done enough to put things right.

I can understand that consumers like Mr P might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr P into a better position than they would have been had they not transferred. Also compensation isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back in the financial position they would have been in at retirement had they remained in the DB scheme.

In Mr P's case Tuto carried out its recent calculations using the specific BSPS calculator provided by the FCA. That is what I would expect it to do in the circumstances.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF. As I've said above, the FCA updates the relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs that Tuto entered which are specific to Mr P. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and taken his DB benefits at age 65.

Overall, based on what I've seen, Tuto has carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

The calculation in Mr P's case shows that there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied he has not suffered a financial loss by transferring his pension.

However, while the recent calculation shows Mr P hasn't lost out financially, I accept that the uncertainty he's experienced as a result of Tuto's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for Tuto's advice. So, in the circumstances, I think our Investigator's recommendation of a £300 payment for the distress is fair and reasonable.

My final decision

I uphold this complaint and require Tuto Money Limited to pay Mr P a sum of £300 to address the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 February 2024.

Joe Scott
Ombudsman