DRN-3768208

The complaint

Mr R complains about the advice given by True Potential Wealth Management LLP ('TPWM') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr R'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 of the BSPS 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr R'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.

On 22 September 2017, the BSPS provided Mr R with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £423,489.99.

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 or move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr R says he contacted TPWM for advice about his pension, as a lot of his colleagues were taking advice given the uncertainty regarding the scheme.

TPWM completed a fact-find to gather information about Mr R's circumstances and objectives. Mr R was 47, in good health, living with his partner and had one dependent child. He was employed earning around £37,000 per year, with his partner also employed. He had a mortgage for just under £60,000 with a remaining term of 13 years as well as personal loans totalling roughly £28,000. Mr R had savings and premium bonds worth around £5,000. Their household income exceeded their monthly expenditure.

In addition to the benefits held in the BSPS, Mr R was also a member of his employer's new defined contribution scheme. TPWM didn't record ay information about the contributions being made to that plan. Rather it just said its value at the time was around £2,000.

TPWM said Mr R hoped to retire at age 55. He would then look to clear his outstanding debts using tax-free cash ('TFC') after which he expected to need an income of £13,692 per year. It said he was looking to transfer so that he had control over his pension and the flexibility to access benefits from 55 without restriction so that he could meet these goals. It also noted that the spouse's pension was not needed as he wasn't married, and he was interested in alternative death benefits which could benefit his partner and daughter.

TPWM also carried out an assessment of Mr R's attitude to risk, which it deemed to be 'balanced'.

On 10 November 2017, TPWM advised Mr R to transfer his pension benefits into a True Potential SIPP and invest in a particular fund. The suitability report said the reasons for this recommendation were it would allow Mr R to take varying levels of income throughout his retirement and enable him to pass the fund on to his beneficiaries in the event of his death. TPWM was also to provide ongoing servicing of the pension, for a further cost.

Mr R complained in 2022 to TPWM about the suitability of the transfer advice. TPWM didn't uphold Mr R's complaint. It said it believed the advice was suitable based on Mr R's objectives at the time. And it said an independent review of the advice supported this.

Mr R referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. He felt Mr R was likely to receive lower benefits at retirement by transferring, because of the high returns needed to match the benefits he was giving up. And he didn't think any of the other reasons for transferring meant it was in his best interests. So, he recommended that TPWM compensate Mr R for any losses caused by the unsuitable advice and pay him £300 for the distress he'd incurred.

TPWM didn't agree with our Investigator's assessment of the complaint. It said it was required to take reasonable steps to ensure the advice was suitable for Mr R, which it thought it had done, not guarantee that it would be. It said the Investigator had used a significant degree of hindsight, which it thought was unreasonable. TPWM still considered the transfer was suitable, based on what Mr R had said about his objectives. And it disagreed with the Investigator that it was too far from Mr R's retirement for his plans and needs to be known. It also argued that Mr R had made a fully informed decision to proceed with the transfer. And it said that the BSPS2 was not a confirmed option at the time of the advice.

The investigator wasn't persuaded to change their opinion, so the complaint was referred for a final decision.

TPWM then said, although it didn't agree with the Investigator's opinion, it would potentially look to make an offer to resolve matters. It said it had carried out a calculation in January 2023 and didn't think Mr R had suffered a loss. So, it would pay the amount recommended for distress. I understand Mr R still wanted his case to be decided by an ombudsman, so it has been referred to me.

Since then, the regulator, the Financial Conduct Authority ('FCA'), has developed a BSPS-specific redress calculator. Our Investigator made both parties aware of this and that we may require this to be used for any calculation of redress.

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 TPWM'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.

TPWM says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr R. I agree that under COBS, TPWM was required to take reasonable steps to ensure that its personal recommendation to Mr R was suitable for him (COBS 9.2.1). But it was also required, under COBS 2.1.1R to ensure it acted in accordance with his best interests. And, as I've mentioned above, additional regulations and guidance apply to advising on transferring out of DB schemes. These say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that TPWM should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr R's best interests (COBS 19.1.6G). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

- TPWM was required, by the regulator, to produce a transfer value analysis ('TVAS'). This included calculating critical yields which showed how much Mr R's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.

- TPWM calculated critical yields to match the benefits that the BSPS2 and PPF would provide at age 65, the scheme normal retirement age, and age 55, the age at which it says Mr R was interested in retiring.

- The critical yield to match the full starting pension the BSPS2 would've paid from age 65 was 5.7%. And to match the maximum TFC and reduced starting pension the BSPS2 would've provided it ws 4.78%. To match the full starting pension the PPF would've provided the critical yield was 4.58% and to match the maximum TFC and reduced pension from the PPF was 4.28%.

- For retiring at 55, the critical yields to match the benefits from the BSPS2 were 8.48% for the full annual starting pension and 6.51% for maximum TFC and a reduced starting pension. For the benefits the PPF would've offered the relevant critical yields were 6.72% and 6.25% respectively.

- 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. TPWM has said it was not required to consider these discount rates. But the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension, using reasonable assumptions. And the discount rates give a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so, while TPWM was not obliged to use the discount rate, it would, in my view, be a reasonable assumption to consider. And TPWM was free to consider it. The relevant discount rate at the time was 4.4% for 17 years to retirement – relevant if Mr R retired at age 65. And for 7 years to retirement – retiring at age 55 – it was 3.4%

- There would be little point in Mr R 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 given Mr R's 'balanced' attitude to risk, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low medium and high rate returns respectively, I think he was always unlikely to improve on the benefits he'd have received under the BSPS2 or the PPF at the normal retirement age, by transferring. And if he had retired early, I think Mr R was likely to receive benefits of lower value than he'd have been entitled to under the BSPS2 or the PPF.

- TPWM has said we have placed too much weight on an analysis of the critical yield and the discount rate. And in the suitability report it sent to Mr R it said it felt the critical yield for retiring at age 55 was inflated and not a true reflection of the value of the plan. As the regulator required TPWM to calculate critical yields and consider the cost of the guarantees being given up, I do think an analysis of the critical yield is a relevant consideration here. And I think it's statement to Mr R, downplaying the importance of this apparently because it was deemed unachievable, was misleading.

- And the critical yields aren't the only thing that, in my view, indicates Mr R would be worse off in retirement by transferring. The TVAS said that to purchase an annuity at age 55 to match the TFC and reduced pension the BSPS2 would've offered would cost an estimated £585,912.75. And to match an annuity paying equivalent benefits to the full pension, this figure would be £676,359.43. A personalised illustration for the SIPP said though that if the mid-rate of growth was achieved until age 55, after accounting for fees and charges, the value of the SIPP was likely to only be £431,000. And if 'high' growth was achieved it would still only be £537,000 – both significantly below what would be needed to replicate the guaranteed benefits that he'd given up. So overall, I think Mr R was always likely to be worse off in retirement by transferring.

- TPWM said that Mr R wanted to retire at age 55, he wanted flexibility to be able to access his benefits without penalty and vary his income to meet his requirements. It also said he needed access to TFC so that he'd be able to clear his mortgage and loans at that time and reduce his outgoings.

- Mr R could've taken benefits under the BSPS2 or the PPF from age 55. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited until his normal retirement age. This reduction was not a penalty. And I don't think TPWM did enough to make that clear to Mr R.

- TPWM estimated that under the BSPS2 Mr R could've taken £68,402 in TFC and an annual pension starting at £10,260. Or under the PPF he could've taken TFC of £75,473.97 and a starting pension of £11,350.09. In response to the complaint, it said neither of these options would've allowed Mr R to meet his objectives and that he was aware of that. But in the suitability report TPWM said in respect of both *"the income is sufficient to meet your retirement expenditure".*

- Mr R had debts of around £88,000 at the time of the advice, made up of his mortgage and personal loans – which is what TPWM says he wanted to clear with TFC at age 55. But when he came to retire at that age, these debts were likely to be significantly reduced. Mr R had over seven years until he could access benefits from his pension. In that time, he'd have needed to continue with repayments to his debts. Based on the repayment figures that TPWM recorded in the fact find, in that time his repayments across his debts would've exceeded £66,000. And there was no suggestion he was struggling to make these payments as his income exceeded his outgoings. It's true that the debts would've incurred interest, so the reduction to the balances wouldn't have equated to the full amount of the repayments. But, on balance it appears likely that the amount he would need to repay at age 55 was likely to be a lot lower. And that the TFC offered by the BSPS2 or the PPF would've been sufficient to clear these, with a sizeable surplus left over. And that was before even accounting for any overpayments Mr R might choose to make in the time until retirement – which given he had surplus income, was an option for him.

- The annual income that both the BSPS2 and PPF would've paid from age 55 after taking TFC were both lower than Mr R's estimated income need of £13,692. But the income from the DB scheme would've continued to escalate while in payment. And Mr R was likely to have other provisions he could access.

- From age 67 he'd have received state pension, which, combined with his DB scheme, would've likely been sufficient to meet his needs from that point.

- As I've said, based on repayments he'd be making to his debts, it appears likely that Mr R could've cleared the balances and had a sizeable portion of his TFC still available to use towards his income needs until he received his state pension.

- Mr R was a member of his employer's new workplace pension. And it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles, until he retired. TPWM failed to record any information about the level of contributions being made to this, which I think was a failing on its part. In similar complaints I've seen, combined employer and employee contributions tend to be between 10% and 16%, although they can be higher. Even assuming contributions at 10%, and before accounting for increases in salary, contributions, or investment growth, Mr R was likely to have a pension pot through this scheme of roughly £26,000, which he could've accessed flexibly.

- And Mr R was recorded as having an income surplus each month. The figures TPWM stated in the suitability report suggested that this surplus was almost £900 per month. Whereas the figures in the fact find put this surplus at just over £350 per month (although some of the 'spending' was recorded as savings). Even assuming the lower surplus figure, this indicates Mr R could've built up savings of over £32,000 prior to retirement, which could've been used to help meet his income needs.

- Taking all of this into account I don't think Mr R needed to transfer in order to retire early. And I don't think he had a genuine need to be able to vary his income in retirement. Rather I think this was just a feature of a personal pension which might've sounded appealing at the time. But TPWM's role wasn't that of wish fulfilment, it was to give Mr R objective advice about what was in his best interests.

- And, in any event, Mr R was still several years away from when he could retire. I don't doubt that Mr R likely aspired to retire early. I think, when asked, most people would say they would like to do so. But, for the majority, early retirement means a significant drop in income. So, when it had come to it, he may've felt differently or opted not to retire early. And so, I think it was too soon for Mr R to make an irreversible decision to transfer out of his DB scheme. Particularly when he had the option of joining the BSPS2, because by joining it he would retain the option to transfer out at a later date if his circumstances required it.

- TPWM says the lump sum death benefits afforded by a personal pension, and the option of being able to leave his pension to his family, particularly his daughter, appealed to Mr R. But TPWM's priority should have been to advise Mr R about what was best for his retirement, not what was the best vehicle to leave a legacy on his death.

- Mr R's DB scheme provided a spouse's pension. TPWM downplayed the significance of this and said it would never come into payment as Mr R was not married to his partner. But he was still relatively young and his marital status could've changed – and I understand he is now married. TPWM has suggested that Mr R was less concerned with leaving benefits to his partner at the time, but I don't think this meant completely disregarding the potentially valuable spouse's pension was appropriate.

- 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. It would've been impacted by investment performance and would've been reduced by income Mr R drew in his lifetime. Given TPWM's recommendation was based on Mr R expecting to draw 25% of this fund immediately at age 55 and then draw a higher income for at least the first twelve years of his retirement and that Mr R was still relatively young and was recorded as being in good health, the fund was likely to be significantly depleted by the time it came to be passed on, if not utilised entirely. So, it may not have provided the legacy Mr R might've thought it would.

- And if Mr R was concerned about leaving a legacy, insurance could've been explored instead. This could've been considered on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. And, given Mr R had a surplus income and was recorded as being in good health, was likely to be a viable alternative.

- Overall, I don't think different death benefits available through a transfer meant it was in Mr R's best interests. And ultimately TPWM should not have encouraged Mr R to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- TPWM said Mr R wished to take control of his pension. But I think Mr R's desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own – indeed it was recorded he had no previous investment experience. And the recommendation was on the understanding he was going to take ongoing advice about how his pension was invested from TPWM. So, I don't think that this was a genuine objective for Mr R – it was simply a consequence of transferring away from his DB scheme.

- I don't doubt that Mr R was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what was happening. But again, TPWM's role was to give impartial, objective advice. Mr R's employer and pension scheme were not one and the same. And Mr R intended to continue in his job and was paying into a new pension scheme with his employer. So, the relationship may not have irretrievably broken down as suggested.

- Mr R may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. Which was expected to provide better benefits than the PPF and still provide Mr R the option to transfer closer to retirement. TPWM has said that the BSPS2 was not confirmed at the time of the advice so was not a genuine option for Mr R. But I think it is overstating the chance of this not happening. The restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a significant lump sum payment into the BSPS which enabled the provision of improved transfer value quotations. And members had been sent "time to choose" letters, with opting into the BSPS2 one of the options offered to them. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead.

- But even if this hadn't happened, the PPF still provided Mr R with a guaranteed income and the option of accessing his benefits early. Mr R 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 R's best interest to give up his DB benefits and transfer them to a personal pension.

TPWM says that Mr R made an informed decision to transfer. So, I've thought carefully about whether Mr R would always have looked to proceed. I can see that TPWM did give information about some of the risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr R to transfer. And I think he relied on that advice. If TPWM, a professional adviser whose expertise he had sought out, had explained why it wasn't in his best interests to transfer I think he'd have accepted that advice.

As a result, I'm upholding this complaint as I think the advice Mr R received from TPWM was unsuitable.

While Mr R indicated to TPWM he would like to retire early, his circumstances could've changed, and I don't think his plans were finalised. By opting into the BSPS2, Mr R would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think, had he received suitable advice not to transfer, I think Mr R would've opted into the BSPS2. And I think TPWM should compensate him on this basis.

Our Investigator recommended that TPWM also pay Mr R £300 for the distress caused by the unsuitable advice. I don't doubt that Mr R has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the TPWM to put Mr R**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr R would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

TPWM 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.

TPWM 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 R and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what TPWM based the inputs into the calculator on.

For clarity, Mr R has not yet retired. 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 R's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, TPWM should:

- calculate and offer Mr R redress as a cash lump sum payment,
- explain to Mr R before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment this DC pension
- offer to calculate how much of any redress Mr R receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr R accepts TPWM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr R for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr R's end of year tax position.

Redress paid to Mr R as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, TPWM 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 R'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.

In addition, TPWM should pay Mr R £300 for the distress caused by the disruption to his retirement planning.

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

<u>Determination and money award</u>: I uphold this complaint and require True Potential Wealth Management LLP to pay Mr R the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that True Potential Wealth Management LLP pays Mr R the balance.

If Mr R 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 R can accept my decision and go to court to ask for the balance. Mr R 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 R to accept or reject my decision before 8 December 2023.

Ben Stoker
Ombudsman