DRN-3784107

The complaint

Miss M complains about the advice True Potential Wealth Management LLP ('True Potential') gave to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

Professional representatives have helped Miss M to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Miss M's.

What happened

Provisional decision

On 16 September 2022 I issued a provisional decision and invited True Potential and Miss M to comment on it. For ease of reference I've copied the relevant extracts from that provisional decision below.

"*What happened*

Miss M was introduced to a Firm of financial advisers, which I'll refer to as Firm C, by a friend around February 2019 in order to discuss her pension and retirement needs.

Firm C completed a fact-find to gather information about Miss M's circumstances and objectives. It found that:

- *Miss M was 55 years old, single and in reasonable health.*
- *She had some previous investment experience, as she'd held endowments in the past and had invested into personal pension plans for a number of years. Those were worth £2,616 and £2,477.*
- *She had no dependents but wanted to ensure that her pension passed to her godchildren on her death.*
- *She ran her own business and had a second job. She had a net monthly income of £2,300.*
- *Her home was worth around £138,000. She had an interest only offset mortgage with an outstanding balance of around £109,000 with an interest rate of 4.75% costing around £411 a month.*
- *She had an interest free loan of around £15,000 provided by a debt charity.*
- *She had cash savings of £1,000. She also held premium bonds worth £1,000.*
- *Her DB pension scheme had a cash equivalent transfer value ('CETV') of £442,720.*
- *She had outgoings of around £2,097 a month. Clearing her mortgage using tax free cash ('TFC') from her pension would reduce that sum to £1,686 a month. Miss M could then use the monthly surplus to reduce her loan. After repaying that her outgoings would decrease to around £1,350 a month.*
- *Miss M anticipated she would require an income in retirement of £15,000 a year.*

Miss M also answered questions about her attitude to risk. Having gathered that information Firm C declined to give Miss M advice about transferring her DB pension. But as Miss M said she wanted to proceed, it introduced her to True Potential for it to give Miss M advice.

On 22 March 2019, True Potential advised Miss M to transfer from her DB scheme into a personal pension. True Potential's suitability report recommending the transfer said the reasons for it were that in transferring she could release enough funds to pay off her mortgage. She could then focus some of the surplus on paying off her loan and still have enough income in retirement to meet her needs and provide for her godchildren on her death. Miss M went ahead with the transfer.

In 2020 Miss M complained to True Potential about the suitability of the transfer advice because, amongst other things:

- *Her overarching objective when seeking advice was to obtain a secure income in retirement. She didn't need to access her pension for at least 11 years.*
- *She'd received a generous CETV and was considering using that to pay off her mortgage. But she didn't know if that was the right thing to do.*
- *True Potential told her that she would be better off rather than worse off by transferring.*
- *It uploaded its reports and documents to an online portal without attempting to explain those to Miss M.*
- *Miss M's DB scheme provided an income of £25,078 a year guaranteed for life from age 65. If she chose to receive a pension commencement lump sum, she was guaranteed to receive £118,124 and a reduced income of £17,718 a year. An alternative plan would have needed to achieve average returns of 8.92% or 7.3% respectively or a total fund value of £923,751 to match the DB benefits.*
- *If Miss M had wanted to use TFC earlier than her retirement she could have taken the DB benefits prior to age 65 and still achieved her retirement income of £15,000 a year. True Potential didn't explore that possibility.*
- *True Potential recorded the growth rate required for an alternative pension to match the DB scheme benefits – known as the critical yield – as being "N/A" at age 55 when in fact the required critical yield was over 46%.*
- *True Potential's proposed alternative pension plan showed that the fund would be worth around £361,000 if it grew at 2.4% a year. This sum was far lower than the £923,751 she required to match the income from her DB scheme.*
- *True Potential didn't explain the annual charges and effects of inflation on the growth of an alternative pension plan.*
- *Miss M didn't use the transferred funds to pay off her mortgage.*
- *True Potential's advice was inaccurate, unfair and misleading and the recommendation to transfer was unsuitable and so not in Miss M's best interests.*

True Potential didn't uphold Miss M's complaint. It said, amongst other things:

- *The only way for Miss M to meet her objectives of paying off her mortgage and to leave death benefits to her godchildren was by transferring out of her DB scheme.*
- *Miss M was in a poor financial position.*
- *Paying off her mortgage was very important to Miss M because of the security that would bring. Miss M was paying her mortgage at a high rate of interest. She didn't have enough disposable income to convert it to a repayment mortgage.*
- *If Miss M had taken the benefits from her DB scheme at 55 the scheme would have paid her TFC of £53,855 only, with a reduced annual pension of £8,708. That wasn't enough to allow Miss M to pay off her mortgage of £109,000.*
- *Had Miss M deferred taking a decision on her DB scheme until retirement she would*

have had 12 years of uncertainty, would not have made any impact on her debt and wouldn't have secured death benefits for her godchildren.

- *Paying off her mortgage and increasing her surplus income would allow Miss M to pay her other debts more quickly giving her a disposable income of £964 a month. She could use that income to save for her retirement. That could increase her retirement funds by around £115,560 which would replace the TFC drawn from the DB scheme.*
- *Miss M confirmed the accuracy of the information in the suitability report.*
- *True Potential had deemed Miss M to be a balanced investor.*
- *The assumed growth rate for the recommended personal pension at the time was 5.57%.*
- *Miss M said she needed £15,000 a year income in retirement. She anticipated receiving a state pension of £8,579, which left a shortfall of £7,049 a year. That represented just 2.09% of Miss M's expected pension funds from her personal pension and was easily sustainable.*
- *True Potential's calculations showed that Miss M could have an income equivalent to the DB scheme for the rest of her expected lifespan by transferring out of the scheme.*
- *The critical yields were higher than could have been achievable. But True Potential didn't use critical yield alone to decide on the suitability of a recommendation to transfer out of a DB scheme. It felt the age at which funds would run out was a better measure.*
- *The DB scheme benefits would be difficult to match but it didn't meet Miss M's goals and as such was unsuitable for her.*

Miss M referred her complaint to our service. An investigator upheld the complaint and required True Potential to pay compensation. Our investigator thought that True Potential had over-assessed Miss M's attitude to risk. She said that the critical yields were too high to be met. Similarly the transfer value comparator (TVC) which True Potential included in its suitability report showed a shortfall of around £452,000 between the DB scheme value and True Potential's recommended replacement.

The investigator said that, overall, Miss M was likely to receive substantially lower benefits after transferring from the DB scheme. The investigator added that Miss M didn't have a pressing need to repay her debts. She said Miss M could have considered a life insurance policy if she wished to leave a legacy to her godchildren. The investigator concluded that True Potential's advice was unsuitable.

True Potential disagreed, saying amongst other things:

- *It hadn't overstated Miss M's attitude to risk. But even if it had found Miss M to be a low to medium risk taker it would still have recommended a transfer.*
- *Miss M was in a very poor financial position. Her priority was to release TFC to secure her home.*
- *Miss M didn't require an income of £25,000 at retirement, so a critical yield to match that wasn't relevant.*
- *Critical yield is not the sole factor nor the most significant factor in deciding on suitability of transferring out of a DB scheme.*
- *If Miss M needed to match the benefits of her DB scheme then it would not have recommended the transfer.*
- *A personal pension could provide the death benefits to Miss M's godchildren that she wanted to achieve.*
- *Miss M would have sufficient income in retirement after transferring out of the DB scheme.*

- *Miss M would benefit more from removing the risk of losing her home rather than the income her DB scheme provided at retirement.*
- *It followed all of the regulator's rules when giving advice.*

The investigator wasn't persuaded to change her opinion, so the complaint was referred to me to make a final decision.

What I've provisionally 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.

Both Miss M and True Potential have made many points in bringing the complaint and replying to it. I've carefully considered everything on file. But in this decision I don't intend to address each and every issue or point raised. Instead I will focus on the issues I see as being at the heart of Miss M's complaint and the reasons for my decision.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for broadly the same reasons given by the investigator.

Request for an oral hearing or to dismiss the complaint

Prior to my consideration of the evidence True Potential asked that I convene an oral hearing. A hearing is where both parties to a complaint meet with an ombudsman for the purposes of evidence gathering. The decision on whether or not to hold such a hearing is entirely at the discretion of the relevant ombudsman.

True Potential said that the evidence Miss M gave in bringing her complaint was in contrast to that she gave when Firm C's agent was gathering information from her. Amongst other things, True Potential felt that it was important to hear from Miss M in person to find out what her financial position would have been now if she hadn't gone ahead with the transfer.

I declined True Potential's request for an oral hearing. I explained that it was unlikely I would allow the parties to cross-examine each other. I added that I had no powers to take evidence under oath. I said I was satisfied I could gather enough information in writing to come to a fair and reasonable conclusion on the complaint.

True Potential has since restated that it thinks I should hold an oral hearing. It added that I was "obliged to rely on what the documented and contemporaneous file records." And that should I "wish to rely on any allegations then fairness would demand" that I hold a hearing. It said that if I did "not consider the issue can be decided without cross examination" then I should dismiss the case without considering its merits on the basis this dispute is more suited to a court.

As I've said previously I'm satisfied that an oral hearing isn't required and True Potential's recent comments haven't persuaded me otherwise. So I've considered its request that I dismiss the case as more suited to a court. It might help if I explain that our rules (the DISP rules, as set out in the Financial Conduct Authority's (FCA) Handbook) allow me to dismiss a complaint without considering its merits in certain circumstances, where I consider it appropriate. DISP 3.3.4A(5) says that I may dismiss a complaint where I consider that dealing with it would "seriously impair the effective operation of the Financial Ombudsman

Service". And DISP 3.3.4B gives examples of complaints that would "seriously impair" our "effective operation", which includes:

"(1) where it would be more suitable for the complaint to be dealt with by a court or a comparable ADR entity"

And I consider that this is the DISP rule that True Potential wishes me to apply now. Although I note it actually referred to DISP 3.3.4(10) when it asked me to consider dismissal. However, that paragraph applies only to complaints brought to our service before 9 July 2015, which is not the case here.

Having considered True Potential's request carefully I'm satisfied that a fair and reasonable conclusion can be reached without a requirement for the parties to submit to cross-examination. It's notable that, in making its dismissal request, True Potential wants to occupy two opposing positions at the same time. On the one hand it has argued that I should rely on the "contemporaneous evidence". That would be the evidence available to True Potential at the time it gave its advice. On the other it believes that I can only come to a fair conclusion by taking oral evidence from Miss M about what her position would likely be now if she hadn't gone ahead with the DB transfer. In other words that would be to rely on evidence that was anything but contemporaneous with True Potential's advice. The two arguments do not sit well together.

In any event, what I am considering now, is the suitability of True Potential's advice in 2019. In order to consider that fully and fairly I've made enquiries of both True Potential and Miss M. Having done so I'm satisfied that I can arrive at a fair and reasonable conclusion based on the evidence in front of me, without the requirement to take evidence orally or to submit either party to cross-examination. It follows that I do not intend to dismiss the case without considering its merits. And I've set out my analysis of the evidence below.

The regulator's position

The FCA states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, True Potential should have only considered a transfer if it could clearly demonstrate that it was in Miss M's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

One of the tools True Potential used when preparing Miss M's suitability report was a TVC. This compares the size of the total fund that would be required to match the benefits of Miss M's DB scheme if the funds were reinvested into a low risk alternative arrangement. True Potential's calculation shows that, in order to match those benefits, her fund would need to grow by an additional £452,877 in the next ten years. So in order to have an equivalent return from transferring out of the DB scheme the new pension pot would need to more than double in size. That seems a highly unlikely prospect.

I've noted that True Potential has occasionally made contradictory comments when looking at the financial viability of transferring out of the scheme. For example at one point it said that if Miss M had wanted to match the benefits of her DB scheme then it would have advised her not to transfer. In other words, it acknowledged that its recommendation to transfer would not match the scheme benefits. But at other times, it said Miss M could match the DB benefits for the rest of her expected life by drawing down an income from her investments. But it can't have it both ways, either True Potential knows an alternative arrangement was unlikely to match the scheme benefits or it didn't. And I'm satisfied it was *aware that Miss M was highly likely to be worse off by transferring out of the scheme. If that was not the case I don't think it would have said that if Miss M's goals had been to match the DB benefits it wouldn't have made the recommendation to transfer.*

I've seen that True Potential said in its suitability report that it wasn't concerned that the size of the TVC was substantial because it didn't believe that the assumptions the TVC was based on applied to the investments it was recommending. But, I don't think its comments in terms of giving Miss M regulated advice were appropriate. The regulator required True Potential "to act honestly, fairly and professionally in accordance with the best interests of its client". In addition, True Potential was required to provide information that was clear, fair and not misleading. So, True Potential's advice had to be clear and Miss M needed to understand the implications of it.

The purpose of the TVC is to give some context to the CETV from the DB scheme. The regulator has said that many consumers struggle to understand the underlying value of a guaranteed income. It added that some consumers may even regard the CETV as more like a lottery win, than a sum of money that will provide in their retirement until they die. So advising firms like True Potential should use the TVC to help their clients understand the inherent value in their existing DB scheme. That's the case even where the consumer concerned has indicated that they're comfortable giving up the guaranteed income of a DB scheme. So True Potential should have used the TVC as a method to discuss with Miss M her understanding of the benefits she would be giving up by transferring out of the DB scheme. But that's not what True Potential did. Instead its report essentially implies that the TVC didn't apply to Miss M's situation and overall I think its remarks undermine the TVC's worth in explaining what Miss M would be giving up. And I think that in taking that approach True Potential wasn't providing advice that was clear, fair and not misleading.

Prior to introducing the requirement for advising firms to provide TVC figures, the regulator instead required firms to produce a different form of transfer value analysis. That, generally, used a calculation of critical yields as a comparator for what the consumer would be giving up by transferring out of the DB scheme. And it's notable that True Potential's transfer analysis documents also referred to critical yields as well as TVC figures.

True Potential gave Miss M advice 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 our service published similar rates on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Miss M's benefits at age 65 was 8.92% if she took a full pension or 7.3% if she took TFC and a reduced pension. The relevant discount rate closest to when the advice was given which I can refer to was published by our Service for the period before 1 October 2017, and was 3.8% per year for 10 years to retirement. 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.

I've taken this into account, along with the composition of assets in the discount rate, Miss M's (at most) balanced attitude to risk and also the term to retirement. There would be little point in Miss M giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 7.3% I think Miss M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

True Potential took issue with our investigator concluding that its advice was unsuitable, in part, because she found that the critical yield figures weren't achievable. True Potential noted that the regulator no longer requires advising firms to refer to critical yields. But I note that True Potential's suitability report refers to the critical yield figure on more than one occasion. So, if it thinks this measure is of little value then it's not clear why it decided to include it in its own report. And I note that it said the critical yield was not achievable if Miss M chose to take her DB benefits at age 55. But it said that the critical yield was achievable if Ms M took an annuity at age 75. And on that occasion it referred to a – fairly low – critical yield of only 0.7%. But the report doesn't explain why it's focusing on a critical yield calculated at age 75 or how that compared to the high level of critical yield at age 65 when Miss M was likely to take a regular retirement income.

I'm aware that one of the reasons the regulator decided to move away from using critical yield figures and to focus on TVCs was because of a concern that many consumers wouldn't fully understand what the critical yield figures mean. And I've noted that, when replying to our investigator's assessment it appears that True Potential has itself become confused as it's referred to the discount rate as being the critical yield rate. But the two things aren't the same. The discount rate is what we consider to be a likely achievable growth rate based upon a combination of assets including Bank of England bond rates and also equity returns. True Potential's pointed out that we've referred to a rate that we stopped publishing in 2017, when it gave its advice around 18 months later in 2019. And while I think that's a reasonable comment to make, the reason we still refer to the discount rate is because the rates involved in calculating it have not changed significantly since we finished publishing them. So discount rates remain a reasonable indicator of whether or not an investment return is achievable. But in any event it's not the only measure we use. And, in this case I've also looked at the regulator's projection rates, the critical yields and the TVC. None of those, in my view, would support a transfer away from Miss M's DB scheme as being in her best interests on financial grounds.

True Potential said that its cashflow models show Miss M would've been able to meet her needs despite the high critical yields. True Potential hasn't actually shown us the workings of its cashflow models, its only given the ages by when it says Miss M will deplete her funds if she accesses those at the same rate as her DB scheme. And, while it hasn't shown us its calculations it does say that its assumption is that the personal pension it advised Miss M to invest in will continue to perform at least the mid-level investment return level.

But, as True Potential knows, past performance is no guarantee for future performance. And even if I accepted that the personal pension funds could grow at the rates True Potential predicted, if Miss M lived longer than expected, or there was a period of poor investment performance, there was a real possibility that her funds could run out sooner than its cash-flow models show. I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term, rather than projecting historic returns forward, particularly over such a long period of time. So overall, I think it ought to have been clear to True Potential that Miss M was likely to be worse off financially if she transferred out of the DB scheme.

Also I need to think about Miss M's capacity to absorb investment losses. Apart from her state pension, Miss M only had around a further £5,000 invested in pension funds and she had very little in the way of savings; so I don't think she was in a position to absorb any losses if the personal pension didn't perform as predicted. True Potential's argued that the fact Miss M didn't need to take an income until her normal retirement age and the scale of the personal pension investment gave her that capacity for loss. But I don't think it's reasonable to say that the very fund that could be subject to losses was itself capable of protecting her from those losses. This was Miss M's only significant source of retirement *income outside of her state pension, and as such any losses she suffered would undoubtedly lead to a reduced retirement income. That's not a risk she would have needed to take if she'd have stayed in her DB scheme.*

For the reasons given above, I don't think a transfer out of the DB scheme was in Miss M's 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, despite providing overall lower benefits. I've considered these below.

Flexibility and TFC

As I've said above I think the TVC, critical yields and discount rate were all too high for an alternative arrangement to match the scheme benefits in monetary terms, on the basis of reasonable assumptions. So I think that made it all the more important that the other reasons for transferring were sufficiently compelling.

True Potential has focused on Miss M's desire to take TFC early in order to pay off her interest only mortgage and the loan owing to the debt management charity. I've seen that True Potential clearly set this out as being one of Miss M's financial objectives. In contrast Miss M says that, while this was something she was considering, and one of the reasons she was looking for advice, she could afford her mortgage and debt repayments and as such had no need to take her TFC when she did.

I've noted that, when she made her complaint, Miss M said that her objective at the time she asked for advice was to "obtain a secure income in retirement". But, the suitability report doesn't at any point suggest that Miss M gave this as being her overarching objective. And, in answer to my enquiries, she's confirmed that she doesn't have any evidence, beyond her recollection, that was the case. Further, the suitability report refers on several occasions to Miss M's principal objective being to take TFC to consider paying off her mortgage. And I note that, after she received that report, she didn't challenge or object to True Potential's summary of her objectives at the time. And Miss M has acknowledged that she was interested in taking advice on whether or not to use her DB pension to pay off her mortgage. So I'm satisfied that, at the time True Potential gave its advice, Miss M's principal concern was around releasing funds to take TFC, rather than securing her income in retirement. So I think it was reasonable for True Potential to proceed on that basis. But that doesn't mean its advice to transfer out of the scheme was suitable.

While True Potential has recorded that Miss M's objective was to take TFC straightaway, I've seen no evidence it discussed with Miss M in detail why she felt she needed to do that. In fact there's no evidence it discussed anything with Miss M at any point, she only spoke with Firm C's adviser. And, at that time Miss M was meeting her regular mortgage and loan repayments with a small amount left over each month which she was using to buy premium bonds. So it's not the case that she couldn't afford her outgoings and, at that time, she estimated that her loan from the debt charity would be paid off in around two years. That was long before she was due to retire. Once that loan was repaid her disposable income would increase by around £350 a month. But, in transferring out of the DB scheme Miss M would be giving up a risk free and increasing annual retirement income that was guaranteed for the rest of her life. But I can't see that True Potential explored with her why she was prepared to give up such valuable benefits in the long-term for a shorter term gain.

Further, I've noted True Potential's argument that, by taking TFC and paying off her mortgage and other debts, Miss M could reinvest the resultant disposable income into saving for her retirement. But, to my mind, it seems illogical for Miss M to decide to take money out *of one pension, simply to allow her to pay money into another pension that was unlikely to match the benefits she'd be giving up.*

Also I can't see that True Potential fully considered Miss M's other options. For example, as I've said above, without transferring her funds Miss M could have expected to pay off her loan to the charity in around two years. That would have freed up disposable income for her. And, when she reached the DB scheme retirement age of 65 one option would have been to take her TFC from the scheme at that point. That would have allowed her to comfortably pay off her interest only mortgage, with money left over, and also benefit from the guarantees provided by her DB scheme.

Another alternative would have been for Miss M to take her DB benefits sooner. While the lump sum payable at age 55 wouldn't have been enough to cover both her mortgage and her debt. It would have allowed her to pay off the loan as well as, if she chose to do so, contribute a significant sum towards her offset mortgage which would have reduced her outgoings. It also would have given her an additional income, for the rest of her life, increasing with indexation, which she could have used for a more comfortable lifestyle. But I can't see that True Potential explored this option with Miss M.

In fact, I can't see that True Potential discussed its recommendation with Miss M at all. It seems that rather than talking her through its analysis and recommendation it instead simply made its suitability report and other documents available to Miss M through its online portal. It then said, if she wanted to go ahead, to sign the appropriate forms. True Potential told us that it wasn't required to meet with or speak to Miss M. I agree that's the case. But that doesn't mean it had ensured she understood the implications of its advice. Similarly, there's no evidence that True Potential effectively advised Miss M about the long-term nature of pension planning. That is the need for a pot of funds to provide an income for many years ahead.

True Potential's role was to discern what Miss M's wants and needs were and why she wanted to transfer her pension. Its role wasn't simply to do what she wished without appropriate analysis and challenge of her motives for doing so with the implications of taking those actions with her. But I've seen no evidence of such a challenge even though that was in Miss M's best interests. And I don't think True Potential met its obligations to challenge her objectives in light of what she would be giving up. Nor did it fully explore what she could achieve through other means without giving up the benefits from her DB scheme. This is because based on the evidence I've seen, I don't think she had a genuine need to access her TFC earlier than the normal scheme retirement age.

So, I'm satisfied Miss M could have met her income needs in retirement through the DB scheme at 65 or sooner if she preferred. True Potential recorded that Miss M needed £15,000 a year in retirement. And under the DB scheme, after taking TFC of over £118,000 Miss M was entitled to an annual income of over £17,000 from the scheme at 65, which was comfortably more than her needs without factoring in her state pension. She would also have paid off her loan by then and the lump sum would have allowed her to pay off her mortgage in full. So, while I can see that the prospect of reducing or paying off her debts at age 55 would have been attractive for her, that doesn't mean it was in her best interests. And this is something that True Potential should have brought to her attention. But it didn't do so.

I'll add that True Potential has said that Miss M had a poor credit history and was paying a higher level of mortgage interest as a result. It said she would have struggled to continue to meet her mortgage repayments had those been subject to upward fluctuations in the market. I haven't seen anywhere on file where True Potential has actually done an analysis of Miss M's credit score. So it appears that it was basing its conclusion about Miss M's credit worthiness on the fact that she had a loan from a debt charity, which would likely indicate a *poor credit history. But I note that Miss M had been repaying that debt for over nine years at the time of True Potential's advice, so it's possible that her credit score could have improved. But even if that wasn't the case, as I've already said, Miss M was scheduled to repay her debt charity loan in around two years, which would have given her greater capacity to absorb any increase in mortgage payments that happened after that. Further, if mortgage repayments had become unaffordable Miss M could have looked into taking her DB benefits at that point which would have given her TFC as well as an extra, guaranteed and index linked income. So I don't think she needed to take TFC at the point that she did*

Further, I asked Miss M how she'd used her TFC. Miss M provided evidence to show that, rather than paying off her entire mortgage, she'd instead paid around £44,000 off it. She used the rest of her TFC for other things. And while True Potential can't have known for certain exactly what Miss M would do with her TFC once received, her evidence supports her position that she wasn't in desperate need to pay off her mortgage at the time. As, had that been the case, I believe she would have done so.

Death benefits

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. At the time of the advice Miss M didn't have a partner or any dependents but she did wish to leave a legacy for her godchildren. As such I can understand that the lump sum death benefits on offer through a personal pension was likely an attractive feature to Miss M.

But whilst I appreciate death benefits are important to consumers, and Miss M might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Miss M about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think True Potential explored to what extent Miss M was prepared to accept a lower retirement income in exchange for higher death benefits for her godchildren.

It's worth noting that the death benefits available from the personal pension would decrease over time. So the funds available for Miss M's godchildren on her death would continue to reduce as Miss M drew down sums for her income needs. And that amount would likely be further reduced the longer Miss M lived for. So, depending on her lifespan and the funds she'd taken from her personal pension, the fund might not have a large – if indeed any – sum left at the time of Miss M's death. In any event, True Potential should not have encouraged Miss M to prioritise the potential for higher sums being available at her death through a personal pension over her security in retirement.

Further, if Miss M genuinely wanted to leave a legacy for her godchildren, which didn't depend on investment returns or how much of her pension fund remained on her death, I think True Potential should have instead explored life insurance or term insurance. True Potential's said that, as money was tight for Miss M then she couldn't afford life insurance. But, while she did take regular medication, Miss M had no serious health issues that I'm aware of and she was channelling at least £100 a month into buying premium bonds. That was money she could have diverted to pay for life or term insurance.

Also, I note that True Potential has made conflicting statements about the significance of death benefits. In response to our investigator's assessment of the complaint True Potential told us that the provision of death benefits was not a significant driver for its recommendation. But True Potential has noted death benefits as being one of Miss M's principal objectives in its suitability report. The report has a separate section dealing with death benefits. It says that death benefits in the DB scheme are "poor" and it describes the death benefits on offer from the personal pension as being a "much better" solution. And it *mentions death benefits on numerous occasions. So, if True Potential didn't intend to stress the importance of death benefits then I think its suitability report is misleading.*

Summary

I don't doubt that access to TFC and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Miss M. But True Potential wasn't there to just transact what Miss M might have thought she wanted. The adviser's role was to really understand what Miss M needed and recommend what was in her best interests.

True Potential was in a good position to have analysed, tested, challenged and advised Miss M about what was in her best interests for retirement planning. It knows valuable pension pots like Miss M's DB scheme were paid into with the intention of providing for retirement. But Miss M's chosen path was to give up that income in retirement for the chance of getting hold of a large lump sum of cash, which, while no doubt being a mouth-watering temptation, she had no obvious need for, rather than long-term planning.

Ultimately, I don't think the advice True Potential gave to Miss M was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Miss M was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer to outweigh this. True Potential should not have advised Miss M to transfer out of the scheme just to repay debts that were affordable, and the potential for higher death benefits for her godchildren wasn't worth giving up the guarantees associated with her DB scheme.

So, I think True Potential should have advised Miss M to remain in the scheme.

Of course, I have to consider whether Miss M would've gone ahead anyway, against True Potential's advice if it had recommended she remain in the scheme. I've considered this carefully, but I'm not persuaded that Miss M would've insisted on transferring out of the DB scheme, against True Potential's advice. I say this because Miss M was an inexperienced investor with at best a balanced attitude to risk and this pension accounted for the vast majority of her retirement provision. So, if True Potential had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would have accepted that advice. That's particularly the case as Firm C had already declined to advise her to transfer out of her DB scheme for the reasons she'd given.

In light of the above, I think True Potential should compensate Miss M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. Further as the unsuitable advice has clearly been a source of distress and inconvenience for Miss M, I think it's fair and reasonable that True Potential pays her £300 compensation on top of the sums set out below."

<u>Developments</u>

Miss M accepted my provisional decision, True Potential didn't. It provided two detailed responses, dated 24 September 2022 and 11 October 2022, which we received readable versions of on 25 and 26 October respectively. The replies are similar but not identical. Amongst other things they said:

- I had failed to reply to its request for an oral hearing. It said the first time it had become aware I had declined that request was when it received my provisional decision.

- In rejecting the oral hearing I was in breach of the rule set out in DISP 3.5.6.
- In making her complaint Miss M provided "*false and inaccurate*" information "*evidenced by points as simple as the accusation that* [True Potential] *advised* [Miss M] *to opt out of her pension scheme*." As such deciding the complaint without an oral hearing would be unfair.
- I had unfairly taken True Potential's statements out of context. For example, it was factually correct to say that if Miss M wanted to replicate the DB scheme benefits it would not have recommended transferring. But it also factually accurately said that Miss M could take the same benefits from a drawdown product that would last beyond her life expectancy. "*That is not to say that* [True Potential] *were recommending she did that, nor that it would be suitable for her objectives, as demonstrated in our suitability report, complaint response and submissions to FOS*." It had not said that its recommendation would not match the DB scheme benefits but instead, using FCA regulated analysis, had shown that it *could* be matched.
- Eight months after it had given Miss M advice, the FCA visited it and reviewed seven of its advice files, all of which it deemed suitable and with similar comments about the suitability of TVCs. As such it's said that the implication in my provisional decision that it hadn't acted honestly, fairly and professionally in accordance with the best interests of its client was incorrect and potentially defamatory.
- The FCA's review also included cases where the critical yield exceeded our discount rate, but the FCA found the advice suitable.
- It believed that DISP 3.6.4R did not permit us to have regard to discount rates when determining a complaint.
- My decision acknowledged that firms were not required to refer to discount rates and so I couldn't conclude that it acted unreasonably in not doing so.
- Critical yields are of limited relevance and are not the only factor to consider. And critical yield calculations do not take into consideration many other circumstances affecting the individual such as – amongst others – objectives, financial circumstances, lump sum needs etc.
- Critical yields assume an individual will be buying an annuity, which rarely occurs and Miss M wasn't considering. She required immediate TFC to stabilize her precarious financial position, with no option of obtaining a better mortgage rate. So, the critical yield didn't provide a comparison between the DB scheme benefits and those Miss M wished to achieve.
- The FCA issued an alert in January 2017 advising against firms attaching too much weight to critical yields and said they should consider other factors such as the clients personal circumstances.
- The FCA's consultation document CP 17/16, Advising on Pension Transfers, acknowledged that the current method of performing a transfer value analysis was based around critical yields. But said the environment had changed and annuities were no longer the default position with flexible drawdown becoming increasingly popular. True Potential said that those were documents I needed to have regard to.
- The discount rate, which factors weightings to phase into low risk assets prior to retirement, is not a viable method of assessment for someone who wanted to access benefits immediately.
- True Potential had advised Miss M to invest for the long-term and as such to maintain a higher return. In those circumstances the discount rate understates the likely return from drawdown. And adjusting for that would demonstrate that the transfer was financially viable.
- If Miss M took expected withdrawals of £7,409 a year from a fund of £332,040 from age 67, ignoring investment growth, that fund would last her 45 years. So it was inconceivable that the fund would be depleted.
- Miss M was in a "*highly precarious*" financial position at the time of the advice.
- It was clear from the fact-find why Miss M would want to repay her mortgage as she

was working two jobs and subject to mortgage interest rate risk.

- Life insurance wasn't affordable for Miss M and recommending she take her DB benefits while buying a life insurance policy would have left her with a shortfall of income in retirement.
- Firm C had not, as I said, declined to advise Miss M to transfer out of the DB scheme but had declined to provide advice because it did not have the relevant FCA permissions to provide such advice.
- True Potential believed that Miss M would always have found a way to transfer out of her DB scheme.
- It said it was possible Miss M had provided "*false information*" to True Potential at the time of its recommendation and is now seeking redress to pay the remainder of her mortgage, "*which she is unable to do any other way*". It said this could be discussed at an oral hearing.
- My provisional decision failed to acknowledge that alternative solutions wouldn't have met Miss M's needs and as such is flawed and based on Miss M's false information.

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.

Having done so, I'm not going to depart from my provisional decision. And I'll deal with what I see as being True Potential's key objection to my provisional decision below.

Oral hearing request

True Potential said that I hadn't previously replied to its oral hearing request and the first time it knew I had declined that request was when it received my provisional decision. But that's not accurate. I wrote to True Potential on 18 August 2022 explaining why I didn't think I needed to hold an oral hearing in order to fairly decide the complaint. And True Potential responded to that letter on 8 September 2022. So it had clearly received it and read it. And while it continued to argue that it felt an oral hearing was appropriate I addressed those comments in my provisional decision and gave it the opportunity to respond at that stage.

True Potential said that Miss M had made false and inaccurate statements when making her complaint. And as such an oral hearing was required. True Potential has referred to evidence of Miss M making false and inaccurate statements such as:

"*the accusation that* [True Potential] *advised* [Miss M] *to opt out of her pension scheme*"

It's not in doubt that True Potential advised Miss M to transfer the benefits from her DB scheme to a personal pension. So to anyone unfamiliar with DB transfer terminology there is nothing within he statement above which is inaccurate. But, when referring to DB schemes, the term *opting out* would only refer to someone who was an active member of a DB scheme. That is they were (generally) still working for the employer sponsoring the scheme and still making contributions into it. That wasn't the case for Miss M who had already left the pension scheme at the time of True Potential's advice. That meant she was a deferred member rather than an active member. So True Potential wasn't in a position to advise her to "*opt-out*" because that wasn't possible. Instead it advised her to *transfer out* of the scheme. In other words the "*false and inaccurate*" information True Potential refers to above is the use of the term "*opt out*" rather than *transfer out*.

But while Miss M might have used an incorrect term when raising her complaint, I think True Potential must have understood that was an innocent error. I don't see a mistake in terminology of that nature, that clearly isn't material as to whether or not True Potential's recommendation for Miss M to transfer was suitable, as a deliberate attempt to provide "*false and inaccurate*" information. And it certainly doesn't warrant an oral hearing to address.

I would also point out that, in my provisional decision, I found that Miss M *had* more likely than not told True Potential that her principal concern was to take TFC, rather than securing her income in retirement. So it was reasonable for True Potential to proceed with its advice on that basis. And I've seen no other disputed facts, that are material to my decision, that would warrant holding an oral hearing.

Further True Potential's said that in declining its oral hearing request I was in breach of DISP 3.5.6. But that paragraph (3.5.6) is an instruction as to what a party requesting an oral hearing must do. It places no procedural onus on me whatsoever. And DISP 3.5.5 makes clear that where I decide that I can fairly decide a complaint without holding an oral hearing then I should do so. That's the situation here. I've previously explained to True Potential why I don't think an oral hearing is required and it hasn't provided any evidence that persuades me otherwise. So I'm satisfied that I can fairly and reasonably decide this complaint without convening such a hearing. And, as I've said previously, the decision on whether or not to hold an oral hearing is entirely at my discretion.

Matching the DB scheme benefits

True Potential said that I took some of its comments out of context. In particular, it said that it was factually correct to say that if Miss M wanted to replicate the DB scheme benefits it would not have recommended transferring. But it also factually accurately said that Miss M could take the same benefits from a drawdown product that would last beyond her life expectancy. It added: "*That is not to say that we were recommending she did that, nor that it would be suitable for her objectives, as demonstrated in our suitability report, complaint response and submissions to FOS*." So its point was that it hadn't said that its recommendation would *not* match the DB scheme benefits but instead, using FCA regulated analysis, had shown that it *could* be matched.

True Potential seems to be saying that, if Miss M had wanted to recreate her DB scheme benefits then it wouldn't have recommended a transfer. But matching the DB scheme benefits wasn't suitable for her objectives. So its advice wasn't based on matching those benefits but in achieving her objectives. I'm grateful for its clarification but it doesn't change my stance on the suitability of its advice.

As I said in my provisional decision and as I expand upon below, the objectives True Potential refer to weren't in my view worth giving up the DB scheme benefits for.

The FCA's review, TVC, critical yields and discount rates

True Potential told us the FCA had reviewed seven of its files where it gave similar advice to that given to Miss M about the suitability of using TVCs as a comparator. I wasn't party to what the FCA reviewed or what it found, nor do I need to be. I don't work for the FCA and our function isn't a regulatory one. And while I'm required to consider the regulator's rules, guidance and standards, my role is to decide whether True Potential has acted fairly and reasonably in all the specific circumstances of this complaint.

True Potential complied with the FCA's requirements for it to provide a TVC. And, as I said in my provisional decision, I understand that the reason for requiring a firm to do so is to allow consumers like Miss M to have an understanding of the value of the guaranteed benefits they are giving up. The TVC will nearly always be higher than the transfer value being offered. If the TVC has the effect of discouraging a consumer from transferring, because they don't want to take that level of risk – that would be consistent with the regulator's expectation that most people would be better off remaining in their DB scheme.

True Potential produced the TVC calculation before essentially saying it wasn't relevant because Miss M didn't wish to buy an annuity. Even though the regulator required a comparison using the CETV and TVC. And the TVC clearly demonstrated that Miss M was giving up benefits that were of greater cash value than the personal pension she was transferring to. So, in dismissing the relevance of the TVC in its suitability report, I believe True Potential was undermining its value. And without putting its advice into context of being absolutely clear why it would cost Miss M an additional £452,877 to replicate the risk free benefits of her DB scheme, I think True Potential's advice was not clear, fair and not misleading. So I stand by the comments in my provisional decision, based as they are on a full analysis of all the evidence.

Similarly, the FCA might have found True Potential's advice to be suitable in cases where the critical yields exceeded our discount rates. But that doesn't automatically mean that True Potential acted fairly and reasonably when giving advice to Miss M.

I said in my provisional decision that critical yields weren't the only measure I used when looking at the financial viability of advice to transfer. I also considered the TVC, discount rates, and the regulator's projections. True Potential's said that DISP 3.6.4R doesn't permit us to use discount rates. But True Potential is mistaken. DISP 3.6.4R says:

"*In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*

> *(1) relevant:*
>
> > *(a) law and regulations;*
> > *(b) regulators' rules, guidance and standards;*
> > *(c) codes of practice; and*
>
> *(2) (where appropriate) what he considers to have been good industry practice at the relevant time*."

So DISP 3.6.4R simply sets out that I must take into account what is relevant. It's certainly not prescriptive about anything I should omit. And, for the reasons I gave in my provisional decision I'm satisfied that our discount rates remain relevant.

Further, I didn't at any point conclude that True Potential had acted unfairly simply because it hadn't referred to our discount rates. And as I've said previously I think discount rates are a reasonable additional consideration when seeking to find out what level of growth was likely to be achievable at the time of the advice.

Similarly, True Potential said the critical yield is of limited relevance because it is also based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. I accept that Miss M most likely indicated that she didn't intend to buy an annuity. I'm also aware of the FCA's advice as set out in its alert of January 2017 and the comments in its consultation paper CP 17/16 that annuities were no longer the default position for people investing in or looking to take their pension. I'm also aware of the amendments the FCA made to its COBS guidance after analysing the responses to its consultation paper. But that doesn't make the critical yield completely irrelevant either. That's because, where a critical yield is much higher than a reasonable achievable investment return, it's an indication that it will be difficult to better the DB pension benefits overall, even when using drawdown. And I don't believe that Miss M had the capacity for loss to protect her from the multiple risks associated with drawdown products.

Further Miss M was still some 12 years from her intended retirement date. So it's certainly possible that between the date of True Potential's advice and Miss M taking her retirement income, that she could change her mind and want at least some guaranteed income in retirement (which she could achieve by taking benefits from the DB scheme). And as such critical yields still have some value in comparing the benefits of a DB scheme against the proposed alternative personal pension.

I'll repeat that I didn't only look at a comparison between critical yields and discount rates. And I've noted that True Potential said its cashflow models showed Miss M wouldn't deplete her funds before her anticipated life expectancy. While I haven't seen those models I accept True Potential's evidence here. But I understand that True Potential's cashflow models were based on the personal pension fund consistently performing at the regulators mid-level rate, when given the known volatility of the markets, that seems an unlikely prospect.

I also accept that True Potential's models would have involved Miss M leaving her residual funds invested after taking TFC initially. And I note that True Potential said that, even without investment growth, based on Miss M withdrawing £7,049 a year her pension pot of over £332,000 would last her for 45 years. So the prospect of her depleting her funds was inconceivable. But, that comment makes certain assumptions including:

- Miss M would not take any further income from her personal pension until she turned 67;
- She would limit any drawdown from that point to £7,049 a year.
- The fund would not suffer losses or be reduced by fees.

But, as I'm sure True Potential are aware, pensions freedoms mean that people aged 55 or over, like Miss M, can take funds out of their personal pension plans as and when they see fit. So, one of the risks inherent with moving benefits from a DB scheme to a drawdown arrangement is that the individuals concerned will access those funds earlier or at a higher level than when they took advice. And that gives considerable scope for funds to be depleted sooner than anticipated

Further, while I accept that Miss M told Firm C's agent that she would only need an income of £15,000 in retirement at age 67 that was her estimate at that point. She still had 12 years to her preferred retirement age and in that time her needs could change. And a change in needs or circumstances could lead to her wanting to access her funds earlier or at a higher level than at the time of True Potential's advice. So there was the potential for Miss M to deplete the funds earlier than her life expectancy by transferring out of the scheme. Whereas her income from the DB scheme would be at least £17,718 a year if she took it at age 65 and £8,700 a year if she took it immediately, at age 55. And that income would be guaranteed and increasing with the relevant indexation levels. So I don't think it was financially viable for Mis M to transfer out of the scheme.

Miss M's circumstances

True Potential said that Miss M's finances were in a "*highly precarious*" position at the time of its advice. But, while she certainly wasn't awash with cash I don't think it's fair to say her position was precarious. The fact-find showed that she had a disposable income of around £200 each month from a net income of around £2,300. And she was meeting her mortgage and debt repayments without any recorded difficulty. So, while it's evident that she was considering the advantages of paying off her mortgage early, there's no evidence that she was in any way desperate to do so. In other words early repayment of her mortgage might have been something that would be nice to achieve, but it wasn't essential to her. And that was further evidenced because Miss M chose not to pay off her entire mortgage after she received the TFC.

Also, True Potential said Miss M would always have found a way to transfer. And that she might have given it "*false information*" at the time of its recommendation. I don't know what false information True Potential believes Miss M gave. It's notable that it didn't ever speak with Miss M directly and relied on the evidence provided by Firm C. And while that information does indicate that Miss M was interested in taking TFC and repaying her mortgage, it doesn't show that she was in a dire financial position or desperate to pay off her mortgage. Instead it seems that this is how True Potential has interpreted that evidence, without seeking clarification from Mis M at the time. And, as I've said previously, I think that if True Potential had clearly set out why a transfer wasn't in Miss M's best interests, I don't think she would have gone ahead with it. True Potential hasn't provided any other evidence that persuades me to change that position.

Further, True Potential suggested that Miss M is now seeking redress to pay the remainder of her mortgage which – it said – she's unable to do by any other means. But True Potential hasn't provided evidence to support that statement. And, in contrast, I've seen that while Miss M still has an outstanding balance of around £52,000 on her mortgage. She also had funds in her personal pension (as of April 2022) of over £243,000 which she could use to repay her mortgage if she chooses. So it's not the case she has no other means with which to do that.

Death benefits

True Potential has repeated that life insurance wasn't affordable for Miss M. But I don't know how it's arrived at that conclusion. Miss M could have diverted the £100 a month she was paying into premium bonds towards life insurance if providing a legacy for her godchildren was of such significant importance to her. Further, the starting point for True Potential ought to have been to ask Miss M how much she would ideally like to leave to her godchildren. It could then have looked into cover on a whole of life or term assurance basis, for that sum. Miss M had no significant ongoing health concerns, so such a policy was likely to be a lot cheaper to provide than some other policies on the market. But True Potential hasn't presented any evidence that it put this possibility to Miss M. And given that the potential for securing higher death benefits meant giving up the guaranteed benefits from her DB scheme, I don't think those were worth it.

Firm C's actions

True Potential said that Firm C hadn't declined to provide transfer advice but, instead, didn't have the relevant regulatory permissions to do so. That is simply not accurate. Firm C has told us, and the FCA's register confirms, that it did hold the relevant permission to give DB transfer advice. Also, Firm C said that it chose not to give Miss M advice because her objective of seeking a pension transfer in order to pay off debts didn't match its internal policies for giving such advice.

Summary

I accept that when Miss M approached Firm C for advice, her goals at the time included considering taking TFC to pay off her mortgage. She also clearly expressed an interest in leaving funds to her godchildren in the event of her death. But there's no evidence on file that either of those goals was an absolute must have. I think it's worth repeating that True Potential's role wasn't simply to transact what Miss M might have thought she wanted. I don't find achieving either of those goals was worthwhile giving up a guaranteed, index linked, income in retirement for. So I think True Potential's advice should have gone further and included challenging Miss M's motivation for her objectives in light of what she would be giving up. But it didn't do so. It should have clearly explained to Miss M that it was in her best interests to remain in the DB scheme. And, had it done that unequivocally I think she would have accepted that advice.

It follows that I think True Potential should compensate Miss M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Miss M it should also pay her £300 to address that.

Putting things right

A fair and reasonable outcome would be for True Potential to put Miss M as far as possible, into the position she would now be in but for its unsuitable advice.

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

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

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

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

Miss M didn't make a choice, so as set out previously I've assumed in this case she doesn't want to wait for any new guidance.

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

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, while Miss M has taken some funds from her personal pension, as far as I'm aware she has no plans at present to retire any earlier than age 65. So, compensation should be based on her 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 Miss M's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Miss 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 Miss 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 her 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 Miss M within 90 days of the date True Potential receives notification of 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 Miss 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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

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

Where the compensation amount does not exceed £160,000, I would additionally require True Potential Wealth Management LLP to pay Miss M any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require True Potential Wealth Management LLP to pay Miss M any interest as set out above on the sum of £160,000.

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

If Miss M accepts my final decision, the money award becomes binding on True Potential Wealth Management LLP.

My recommendation would not be binding. Further, it's unlikely that Miss M can accept my decision and go to court to ask for the balance. Miss M may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 November 2022.

Joe Scott
Ombudsman