DRN-3801769

The complaint

Mr M complains, via a professional third-party representative, about the advice given by True Potential Wealth Management LLP ('TPWM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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 M'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 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 M's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and agreed steps carried out shortly after.

On 18 September 2017, the BSPS provided Mr M 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 £290,181.38.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr M spoke to another business, which I'll call Firm S. TPWM says Mr M was subsequently referred to it by Firm S, for advice about his pension, as Firm S didn't have the relevant permissions to give advice.

A fact-find was completed to gather information about Mr M's circumstances and objectives. It recorded that Mr M was 42, in good health, married with two dependent children. He and Mrs M were both employed full time. They owned their home, with an outstanding mortgage due to run for a further ten years but had no other debts or liabilities. They didn't have any savings or other assets, but their income was recorded as exceeding their outgoings each month.

In addition to the benefits held in the BSPS, Mr M was also a member of his employer's new defined contribution ('DC') pension scheme, with the fact find recording he was making contributions equivalent to 6% of his salary, with his employer paying 10% of his salary. It was also noted that Mr M had very limited investing experience.

The fact find said that Mr M hoped to retire at age 57, depending on his circumstances at the time. It said he was interested in transferring because he wanted the flexibility to be able to access his pension from age 55 without incurring penalties, to ensure his family benefitted from the pension in the event of his death and to be in control of his pension and have the ability to manage his own fund.

On 30 November 2017, TPWM advised Mr M to transfer his pension benefits into a True Potential SIPP and invest in the providers growth portfolio. The covering correspondence accompanying this report indicated it was the first direct correspondence TPWM had with Mr M. And that the recommendation was based on information gathered and provided by Firm S.

The suitability report said TPWM recommended the transfer because it thought this was the best way to meet Mr M's stated objectives of having the flexibility to take benefits when he wanted and to ensure his family would benefit in the event of his death. The report said it was satisfied that the recommendation was in line with Mr M's attitude to risk, which it had assessed as being that of a 'Capital Growth Investor'. The report explained *"The capital growth investor may be willing to accept high risk and chance of loss in order to achieve higher returns on his or her investments. Significant losses over an extended period may prompt the capital growth investor to shift to a less risky investment."*

I understand the transfer went ahead in line with TPWM's recommendation.

Mr M complained, via his representative, to TPWM in 2021 about the suitability of the transfer advice. His representative said the transfer should not have been recommended as it was highly unlikely that Mr M's existing pension benefits would be matched by transferring.

TPWM didn't uphold Mr M's complaint. It said it thought the advice was suitable based on his circumstances and objectives of having control and flexibility in when he could take his pension benefits and being able to leave as much of the fund as possible to his family in the event of his death.

Mr M referred his complaint to our service. One of our Investigators considered the complaint. He thought it should be upheld and that TPWM should compensate Mr M for any loss the DB transfer had led to and pay him £300 for the distress he'd been caused. He noted the pension made up the majority of Mr M's retirement provisions and he had no previous investment experience, so the Investigator didn't think Mr M's attitude to risk was as high as TPWM had suggested. And overall, he didn't think Mr M had a genuine need to transfer, there were other ways to meet his goals and there was no guarantee he'd improve on his pension benefits by transferring. So, the Investigator thought suitable advice would've been not to transfer and that Mr M would likely have joined the BSPS2 had this been given.

Mr M's representatives largely accepted the Investigator's findings. But they said they didn't think making an overall 15% notional deduction from the compensation amount to account for income tax was fair as this didn't account for ongoing charges that Mr M may incur. And they provided commentary about Mr M's current financial position and revised retirement objectives when explaining this.

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 M, 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 M had said about his objectives. It also argued that Mr M had made a fully informed decision to proceed with the transfer, and that he would have still sought to proceed if it had recommended against doing so, such was his strength of feeling. 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. They also made TPWM aware of the representative's comments.

TPWM said that it believed the information about Mr M's circumstances now supported that a transfer was suitable and that he'd have always gone ahead as he wasn't going to rely on the BSPS pension.

The Investigator didn't agree, noting that they still believed the advice given in 2017 to be unsuitable based on the circumstances as they were at the time. As agreement could not be reached, the complaint was referred for a decision by an ombudsman.

In August 2022 the regulator, the FCA, launched a consultation on changes to its DB transfer redress guidance. So, our Investigator wrote to Mr M to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to ask if his preference was to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. The Investigator explained though that if the complaint hadn't been settled in full and final settlement by the time the new rules came into effect, we'd expect TPWM to carry out a calculation in line with the updated rules and guidance – if we still concluded that the complaint should be upheld.

Mr M's representatives initially said it didn't think it was necessary or appropriate for Mr M to make a decision. They later said Mr M would prefer to have redress calculated under the existing rules, before any new rules came into effect.

In early 2023, before the new rules on redress came into effect, TPWM told our service that, although it didn't agree with the Investigator's opinion, it would potentially look to make an offer to resolve matters. I understand it approached Mr M and his representatives for information to calculate an offer. There seems to have been a dispute over which information was necessary and whether this was provided. The result of which was that a calculation doesn't appear to have been carried out before the new redress rules came into effect.

The FCA has also recently developed a BSPS-specific redress calculator and is encouraging business to make use of this. Our Investigator made both parties aware of this and that we may require this to be used for any calculation of redress.

TPWM did not object and said it'd be willing to complete a calculation using the redress calculator without the need for a decision, to resolve matters informally. Mr M's representatives however said they believed it was unfair to use this calculator as Mr M had indicated a preference for redress to be calculated under the old rules. So, they believed it should be calculated on that basis.

As agreement could not be reached, I'm now providing a final decision on the matter.

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.

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

Financial viability

TPWM carried out a transfer value analysis ('TVAS') report, as required by the regulator. This was produced on 28 November 2017. The report explained it gave an indication of the likelihood of being able to match or exceed the benefits provided by the DB scheme, specifically the BSPS2, by transferring.

This set out that at age 65, the normal scheme retirement age, Mr M was estimated to be entitled to a full pension starting at £18,071 per year or a tax-free cash ('TFC') sum of £83,652 and a reduced annual pension starting at £12,547 under the BSPS2. The report included a calculation of various critical yields - the annual growth rate required of a new pension to allow Mr M to purchase equivalent benefits that would match the guaranteed benefits of his DB scheme at retirement. It said, for retiring at age 65, the critical yield was 5.48% to match the full pension the BSPS2 would've provided or 4.81% if he were to take TFC and a reduced pension.

The same exercise was repeated in respect of the benefits available from age 57 under the BSPS2. The report said Mr M could receive a full starting pension of £14,107 per year. And the critical yield to match that level of benefit was 7.96%. Or he could receive TFC of £69,244 and a reduced starting pension of £10,386. With the critical yield to match that level of benefit said to be 6.96%.

The TVAS also looked at the benefits that the PPF would provide, and the critical yields required to match those. It said, under the PPF at age 65, Mr M would be entitled to an annual pension starting at £16,262.62 per year, or TFC of £86,386.59 and a pension starting at £12,968.26. The critical yield to match the full pension was calculated as being 4.77% and to match the TFC and reduced pension 4.46%.

At age 57, the report said the PPF would pay a pension starting at £11,714.71 per year, or TFC of £65,545.38 and a reduced pension starting at £9,840.21. The critical yield to match these benefits from age 57 were 6.23% and 5.88% 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. 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.

Mr M was 42 at the time of the advice. The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.5% per year for 22 years to retirement at age 65. And for 14 years to retirement if he retired at age 57, the discount rate was 4.2%. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

TPWM recorded that Mr M's attitude to risk was that of a 'Capital Growth Investor' and that he may be willing to accept high risk and the chance of loss in order to achieve higher growth. But based on the available information Mr M appears to have been an inexperienced investor. His BSPS pension made up the majority of his retirement provisions and he had no other savings or investments at the time. So, while he did have over ten years to build up other retirement provisions, I don't think he had the capacity to accept any significant losses to his pension. And indeed, in the attitude to risk questionnaire that Mr M completed, several of the questions were regarding hypothetical scenarios. And to the ones that asked Mr M directly about his attitude, he said he was only somewhat comfortable with investments that may experience large losses and he was only willing to accept moderate risk. So, like our Investigator, I think Mr M's true attitude to risk was likely lower than TPWM said.

TPWM has said it was entitled to rely on the information Mr M gave. But I also note that TPWM doesn't appear to have gathered any of this information. Rather it seems this information was gathered by Firm S, and not corroborated by TPWM, with its first contact with Mr M appearing to be the point at which it issued its recommendation.

I've taken into account the discount rates, critical yields, what I've said about Mr M's attitude to risk, along with the composition of assets in the discount rate and also the term to retirement. There would be little point in Mr M 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 I think Mr M was unlikely to receive benefits of a substantially higher overall value than the DB scheme at retirement, as a result of transferring, particularly in the event of retiring early, which TPWM said was his objective. This would be the case even if the scheme moved to the PPF. And indeed, I note the suitability report suggested that the critical yield to match the full pension the BSPS2 was expected to provide at age 57 was not likely to be achievable.

TPWM has said that, if growth of 5% per annum was achieved it estimated that Mr M could take the same benefits as the BSPS2 on a drawdown basis from either age 57 or age 65 and the fund would last significantly beyond his life expectancy. But achieving a return of 5% consistently was not guaranteed. And this estimate was based on a number of other market conditions remaining static. Whereas, under the DB scheme, the benefits were guaranteed.

Taking all of this into account, from a financial viability point of view, I don't think I can reasonably conclude that a transfer was in Mr M's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

TPWM says Mr M was interested in retiring from age 57, circumstances dependent, and wanted the flexibility to be able to draw his benefits early, without incurring penalties.

The BSPS2 and PPF would've both allowed benefits to be taken from age 57. So, Mr M didn't need to transfer to access his benefits early.

Once Mr M began taking benefits under either the BSPS2 or the PPF it is true that they couldn't be varied – he'd receive an escalating annual pension without the facility to alter this. And it is true that if Mr M drew his benefits at age 57 under either the PPF or the BSPS2 the amount he could take would be subject to actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by retiring early Mr M would've been receiving his pension for several years longer. It was a trade-off, rather than a 'penalty'. And I don't think TPWM did enough to objectively explain this.

I also don't think Mr M needed to transfer to meet his income objectives. The fact find noted that Mr M expected to need an income of £15,000 per year in retirement. The suitability report though said he needed £18,000. The full pension available under the BSPS2 from age 65 would've met Mr M's stated income needs. And would've been guaranteed, for the rest of his life.

The pension available under the BSPS2 from age 57, wouldn't on its own have met Mr M's expected income needs. But Mr M was a member of the new defined contribution pension scheme his employer had put in place after the BSPS had closed. And, I haven't seen any suggestion he intended to change employer prior to retirement. Again, it was over 14 years until he was apparently considering retirement. He and his employer's contributions to this new scheme were recording as combining to be equivalent to 16% of his salary. So, before even accounting for increases in salary, investment growth or Mr M increasing his contributions, by age 57 this fund was likely to be worth in excess of £75,000.

This could've been used to supplement Mr M's income from his DB scheme to provide the income he expected to need. I think the same outcome could've been achieved using the benefits the PPF was expected to provide. And that was before allowing for any savings or other assets Mr M may build up in the meantime – which given his and Mrs M's combined household income exceeded their outgoings by a significant amount could have been quite substantial. Or accounting for any income Mrs M would still receive for the first few years of Mr M's retirement – she was younger than Mr M by six years, was recorded as expecting to work longer (to age 60) and earned a higher salary. Or any pension benefits she my build up in the meantime.

Taking all of this into account, I don't think Mr M *needed* flexibility with his pension as I think he could've achieved his income objectives without giving up the guarantees the DB scheme afforded him. And while he may've been drawn to this, TPWM wasn't there just to put in place what Mr M might've thought he wanted.

I'm also conscious though that Mr M was only 42 at the time of the advice - still a significant amount of time away from retirement. I don't think it's likely his plans were finalised or set in stone and would've likely been subject to change, just as his circumstances and needs may have altered. And indeed, the suitability report made this observation. With that in mind, I think it was too soon to make any kind of decision about transferring out of the DB scheme.

TPWM has argued that the CETV was likely to be lower if Mr M deferred a decision about transferring and joined the BSPS2. But what CETV the BSPS2 may offer in the future is ultimately unknown. I don't doubt that the CETV figure was appealing. But Mr M was an inexperienced investor who came to TPWM for advice. I think the guarantees the DB scheme provided were more appropriate for Mr M based on his circumstances at the time. Which I think TPWM should've explained.

So, I don't think it was a suitable recommendation or in Mr M's best interests to make an irreversible decision and give up his guaranteed benefits when he did just to have flexibility that he didn't *need*.

Death benefits

TPWM says Mr M wanted his family to benefit from his pension in the event of his death and was drawn to the alternative death benefits a personal pension provided.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr M. But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

The BSPS2 and the PPF provided existing death benefits, by way of a spouse's and dependents pension (although given the age of Mr M's children and the qualifying criteria, the likelihood of the dependents pension being utilised was fairly small). Nevertheless, these benefits, particularly the spouse's pension, were likely to be useful. They were guaranteed and they escalated – and were not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

TPWM said that the spouse's pension would not have been sufficient alone to meet Mrs M's expected income needs in retirement, in the event of Mr M's death. But she'd have also benefitted from the death benefits of the new workplace defined contribution pension Mr M was contributing to. And she was expecting to work longer than Mr M, so had time to build up pension provisions of her own. And would've been entitled to state pension. So, I still think the spouse's pension could've been useful to her.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr M drew in his lifetime. Mr M was recorded as being in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy – a significant period of time over which benefits could be drawn. So, the value of the DB scheme could've been significantly depleted by the time it came to be passed on, particularly if he did draw funds earlier, and may not have provided the legacy that Mr M may have thought it would. In any event, TPWM should not have encouraged Mr M to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Furthermore, if Mr M genuinely wanted to leave a further legacy for his family, beyond the new defined contribution pension, which didn't depend on investment returns or how much of his pension fund remained on his death, I think TPWM should've instead explored life insurance. Mr M was recorded as being in good health. So based on this, and his age at the time, it's likely this would've been available at a reasonable cost, and it could've been considered on a term assurance basis if cost was an issue, which was likely to be a lot cheaper to provide. The fact find indicated Mr M has a surplus income at the time, so had money that could've been used to pay the premiums each month. But I can't see that TPWM considered this.

Overall, I don't think different death benefits available through a transfer to a personal pension meant that a transfer was in Mr M's best interests.

Control or concerns over financial stability of the DB scheme

I think Mr M's desire for direct control over his pension benefits was overstated. Mr M was not an experienced investor. So, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And indeed, it appears the intention was that Firm S would manage Mr M's pension for him moving forward, based on what happened here. So overall, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from the BSPS.

I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr M, like many employees of his company, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism.

Mr M had been told, in recent correspondence from the scheme, he was going to need to make a choice about his pension – which I doubt is something he'd done or contemplated before. And he might've felt unequipped to do so. I also don't doubt Mr M had likely heard negative things about what could happen, including entry into the PPF. And it's quite possible he was leaning towards the decision to transfer because of his concerns. But that is why it was even more important for TPWM to give Mr M an objective picture and recommend what was in his best interests.

TPWM has said that the BSPS2 was not a confirmed option. But I think TPWM is overstating the chance of the BSPS2 not happening. Again, the restructuring of BSPS had been ongoing for a significant amount of time by the point TPWM advised Mr M. Mr M's employer had agreed actions with The Pensions Regulator, and these had been carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations, like the one Mr M received in September 2017. The "time to choose" paperwork was clear that opting into the BSPS2 was an option. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident that the BSPS2 would go ahead. And the TVAS TPWM carried out used the revaluation rates and anticipated scheme details of the BSPS2 when providing a comparison. So, it appears, contrary to what TPWM now argues, that it too seems to have considered at the time that the BSPS2 was likely to come about. And I think the BSPS2 should've alleviated some of Mr M's concerns about the scheme moving to the PPF.

While Mr M might've had a significant distrust towards his employer, the BSPS2 and its trustees and Mr M's employer were separate. They weren't one and the same, something which I think could've been discussed in more detail. I've also seen no indication Mr M was planning to find work elsewhere. He was also again part of the new defined contribution pension scheme the employer had set up and was contributing willingly to that plan. So, I think the issue of distrust could've been addressed with objective advice about the BSPS2. And the BSPS2 would've still enabled Mr M to transfer at a later date.

In addition, even if there was a chance the BSPS2 wouldn't go ahead, I think that TPWM should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. Although the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. He could've drawn this from age 57, as TPWM indicated he intended to. And he wasn't likely to improve on this income from that point by transferring.

So, I don't think that Mr M's concerns about the BSPS should've led to TPWM recommending he transfer out of the DB scheme altogether.

Suitability of investments

TPWM recommended an investment strategy for Mr M's SIPP. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But again, TPWM wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to understand Mr M's circumstances, separate his concerns stemming from the consultation and his unconfirmed plans for retirement from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr M was unlikely, in my view, to improve his retirement benefits and had no other particular reason to transfer which would justify giving up these guarantees. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme to a SIPP. And I think TPWM should've recommended that he not transfer and instead move to the BSPS2.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But, as I've already explained, I think it was clear to all parties that it was likely to be going ahead – particularly as it was referred to in the "time to choose" documentation and TPWM carried out its transfer analysis in comparison to the benefits it provided. So, contrary to what TPWM has said, I do think this was an option that it could've recommended at the time.

Mr M had over 14 years before he reached the age at which he'd indicated he might like to retire, and at least 12 years until he could begin to access his pension benefits. In the circumstances, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement, in the event his plans, which were unconfirmed, changed. And by opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think TPWM should've advised Mr M to opt into the BSPS2.

Of course, I have to consider whether Mr M would've gone ahead anyway, against TPWM's advice. TPWM argues that Mr M made an informed decision and so, would've looked to transfer.

I don't doubt that Mr M likely had a negative opinion relating to the BSPS and may've been leaning towards transferring. But ultimately TPWM advised Mr M, an inexperienced investor, to transfer his benefits, and I think Mr M relied on that advice. And if TPWM had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M's concerns about the consultation or the potential appeal of alternative death benefits, control or flexibility were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had been recommended, didn't think it was suitable for him or in his best interests. So, I don't think Mr M would have insisted on transferring.

In light of the above, I think TPWM should compensate Mr M for the unsuitable advice.

Mr M's representatives have said that he asked for redress to be calculated under the previous redress rules set by the regulator. And as a result, they feel redress should be calculated under those previous rules and that not doing so is unfair. But I disagree. Our Investigator was clear, when asking about Mr M's preference for redress, that if full and final settlement had not taken place by the time the new rules came into effect, we'd expect TPWM to use those new rules to calculate any redress. And while I note there were discussions about TPWM potentially looking to settle the matter informally before the rules changed, and these went as far as TPWM asking for information in order to carry out a calculation, I understand no such calculation was completed and no offer made.

Therefore, when putting things right I see no reason to require TPWM to depart from using the regulator's current defined benefits pension transfer redress methodology.

I've thought about Mr M's representatives' point regarding the 15% deduction from any redress payable, to take into account the tax Mr M would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representatives feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr M back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr M for the impact of the unsuitable advice.

Our Investigator recommended that TPWM also pay Mr M £300 for the distress caused by the unsuitable advice. I don't doubt that Mr M 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 business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely elected 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 M and our Service upon completion of the calculation.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 M's acceptance of my final decision.

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

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts TPWM's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

Redress paid to Mr M 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 M'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 M £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 £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 uphold this complaint and require True Potential Wealth Management LLP to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that True Potential Wealth Management LLP pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on True Potential Wealth Management LLP.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 August 2023.

Ben Stoker
Ombudsman