

## **The complaint**

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

For the sake of clarity, while Mr M's original complaint was about the advice he received to transfer one of his DB pension schemes, the advice in question included a recommendation that Mr M also transfer his DB pension scheme with British Steel ('BSPS') – it was one piece of advice covering both DB pensions. Tavistock didn't investigate the suitability of the BSPS transfer. But in line with our inquisitorial approach and because I understand in any event Mr M wanted to complain about his BSPS pension – he just wanted to complain about each one separately – I've followed the investigator's approach here and considered the advice Tavistock gave as a whole covering both Mr M's DB pensions.

## **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 August 2017, scheme members were told that terms had been agreed for a Regulated Apportionment Arrangement ('RAA') (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) and that when it took effect they would have a choice - either move into the new scheme - BSPS2 - or remain in the existing scheme and move with it to the PPF.

Mr M was concerned about what the recent announcements by his employer meant for the security of his DB scheme, so he sought advice. Mr M met with Tavistock in October 2017 and it completed a financial planning questionnaire to gather information about his circumstances and objectives. Amongst other things, this recorded that Mr M was aged 56; he was married; he had one non-dependent child; he and his wife owned their unencumbered home; he had a small credit card debt; he and his wife jointly had around £20,000 in savings; he had two DB pensions he wanted advice on; and he wanted to retire at 57, have a lump sum of £40,000, work part-time, and draw an annual income of £12,000. Tavistock also carried out an assessment of Mr M's attitude to risk, which it deemed to be 'Low medium'.

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 BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

On 21 November 2017 Tavistock advised Mr M to transfer both his DB pension benefits into a personal pension arrangement and invest the proceeds within a range of investments, which Tavistock deemed matched Mr M's attitude to risk. The suitability report said the reasons for this recommendation were: to provide Mr M with flexibility and control over his retirement income and to enable Mr M to reduce his working hours; and to provide the best outcome in terms of inheritability – the ability for Mr M to pass on what remained of his pension fund to his family upon his death despite the transfer likely being less beneficial from an income perspective.

Mr M accepted the recommendation and sometime afterwards the amounts of around £223,700 and £157,600 were received into the new personal pension.

In 2022 Mr M complained to Tavistock about the suitability of the transfer advice. He said that upon reflection he was concerned about the advice he received and wanted things investigated.

Tavistock didn't uphold Mr M's complaint. In summary it said its file was clear that Mr M wanted to retire at 57 and that it was satisfied he had a very clear picture of what he wanted to achieve. It said Mr M wanted a better quality of life away from full-time work and the flexibility of taking his pension benefits when required which the transfer provided. It said Mr M was given a detailed report and the necessary information to make an informed decision about whether to go ahead. It said the recommendation report was very clear that Mr M would not be better off by transferring and that he was comfortable with this and understood the risk he was taking. In conclusion it said it believed the advice was suitable.

Dissatisfied with its response, Mr M referred his complaint to us. An investigator upheld the complaint and required Tavistock to pay compensation. In summary they said that one of the key reasons for the recommendation was that it provided Mr M with flexibility. But they didn't think Tavistock had demonstrated a compelling reason why Mr M needed flexibility. They said Mr M's objective of wanting to retire at 57 could've been achieved by taking early retirement from one or both of his DB schemes. Because Mr M was willing to do part-time work, they said it might have been possible for Mr M to draw on just one of his DB pensions to supplement his part-time income allowing him to defer taking the other one until he decided to give up work completely. They said this would've given Mr M the flexibility he appeared to need. And they said there was nothing to indicate Mr M needed access to a cash lump sum greater than his DB schemes could provide. They also said that enhanced death benefits wasn't a compelling reason to transfer either. They said while the critical yield analysis wasn't required because Mr M wanted to retire within six-months, it appeared Mr M would likely be worse off in terms of income if he transferred to a personal pension arrangement. They said it was Mr M's intention to retire in 2018 although this was delayed due to unforeseen circumstances. So they said redress for Mr M's BPS pension should be based on the benefits available to him through the PPF because this offered more favourable terms for taking early retirement in this case. And because Mr M had retired at 61, this is the age the loss calculation for both DB schemes should be based on.

Tavistock disagreed and said that it wanted an Ombudsman to review the complaint – but it didn't provide any further representations.

Because things couldn't be resolved informally, the complaint was referred to me to make a final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Tavistock's actions here.

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

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

#### *Financial viability*

In many cases like this, it is appropriate to consider the financial viability of the transfer – that is to what extent there was an opportunity for a consumer to improve on the benefits available through the DB scheme by transferring to a personal pension arrangement. Typically, in my view, there would be little point in a consumer giving up the guarantees available to them through a DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But in Mr M's case, while Tavistock carried out a transfer value analysis report showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB schemes (the critical yield), because Mr M intended to retire within around six months of the advice, the critical yields weren't provided. In any event, Tavistock's recommendation to Mr M was not because it believed Mr M would be better off in terms of the overall level of benefits available to him through his DB schemes by transferring – indeed Tavistock set out in the suitability report, which included reference to its cashflow modelling, that in all likelihood in terms of the level of income Mr M would receive, it would be less than he'd get through the DB schemes.

So, I don't think I need to consider this aspect of things – it's not disputed that Mr M was unlikely to match or improve on the income available to him through his DB schemes by transferring to a personal pension arrangement. Tavistock's recommendation to Mr M was based on other considerations – primarily flexibility and better inheritability or death benefits. So, because financial viability isn't the only consideration when giving transfer advice, as Tavistock believes is the case here - there might be other considerations which mean a transfer is suitable and in a consumer's best interests, despite providing overall lower benefits - I've considered this below.

#### *Flexibility and income needs*

The main reason Tavistock recommended the transfer was because it said it would provide Mr M with flexibility – it would allow him to take control of his retirement income (when and how he took his pension benefits) and enable him to reduce his working hours.

But having considered the evidence, I'm not persuaded Mr M needed flexibility – I think the reference to flexibility was simply a feature or a consequence of moving to a personal pension arrangement rather than a genuine objective of Mr M's. But in any event, I don't think Mr M needed to transfer to achieve flexibility if that's what he required.

Mr M was 56 at the time of the advice and it was recorded that he wanted to retire in around six months' time. And as I said earlier on, I think this was a genuine intention of Mr M's – I think he'd formulated a plan. Mr M indicated that he wanted to take a cash lump sum to pursue one of his hobbies and that he'd already been offered some part-time work to occupy some of his time. He also indicated that he might do more work on a consultancy basis with his current employer.

But I think Mr M could've achieved things by remaining in his DB schemes. Firstly, Mr M already had the option of early retirement available to him – he didn't have to transfer out to achieve this. Secondly, despite reference in one section of the suitability report to Mr M wanting access to the maximum tax-free cash possible, his objective and apparent need was for a lump sum of £40,000 (I note he ultimately only accessed £20,000.) And based on Tavistock's analysis, at age 57 if Mr M moved with the existing BPS to the PPF he would've been entitled to a lump sum of around £40,000. Alternatively, Mr M's other DB scheme offered a lump sum of around £22,000 at age 57. So it appears Mr M already had the option to access what he indicated he needed by taking the early retirement option from either of his DB schemes, depending on his precise needs at the time.

As to Mr M's income need – I haven't seen anything to indicate that Mr M had a strong need to vary his income throughout retirement. It was recorded that once Mr M retired, or stopped working full-time, his expenditure would reduce (a significant portion of his current expenditure was for savings and pension contributions) and his income need was £12,000 a year throughout retirement. If Mr M chose to take his tax-free cash from the BPS, through the PPF at age 57 he would be entitled to an income of around £6,055 a year.

And from his other DB pension, he could take a full pension of around £4,500 a year or a lump sum and reduced pension of around £3,300 a year. So combined this would give Mr M access to a bit less than or just over £10,000 depending on what options he chose. I think Mr M could then supplement this income from the part-time work he intended to do to meet his income need – for example he'd already been offered a job at one day a week on £200 a day.

Notwithstanding this, I'm mindful that Mr M's wife's intention was to continue working until she was 61. And she was earning £25,000 a year. So, based on Mr M and his wife's current household expenditure of around £2,300 a month, her income alone was sufficient to meet just over 70% of their expenditure. This means Mr M would only need around £500 a month to generate the same combined level of income he and his wife currently enjoyed. But on the basis that Mr M said their household expenditure would reduce to around £1,086 a month when he retired or stopped working full-time, Mr M's wife's income alone would more than cover this amount. I think this means Mr M had several options available to him, and indeed flexibility, by retaining his DB pensions.

For example Mr M could choose to draw the benefits from his BPS to generate the cash lump sum he needed. He could then either save the income he received if it wasn't needed for use later on, or he could use it along with this part-time work to increase his disposable income. He could then defer taking his other DB pension to allow for an increased starting income when the time came for him to draw on its benefits and he wanted to stop work altogether. Alternatively, as I said above, Mr M could draw on both schemes' benefits at 57 if he chose to. And this would still allow Mr M and his wife to generate sufficient joint income when she retired at 61. It was recorded that her pensions would provide an income of around £7,200 a year, plus a lump sum. So combined, Mr M and his wife would likely receive close to, if not in excess of £18,000 a year (allowing for increases / escalation) against a target of £12,000. Mr M also had his defined-contribution workplace pension (albeit a small balance) and he and his wife would also receive their state pensions at 67 to further supplement things.

Overall, I think Mr M could've likely met his retirement income needs by retaining his DB scheme benefits based on his intended retirement age of 57 and given Mr M's documented intention to carry out part-time work to supplement things. I don't think Tavistock did enough to explore this option with Mr M. So, I don't think it was in Mr M's best interests for him to transfer his pensions just to have extra flexibility, that I'm not persuaded he really needed.

### *Death benefits*

The other key reason for Tavistock's recommendation was to provide greater inheritability – the ability for Mr M to pass on what remained of his pension fund to his family upon his death.

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 pension benefits 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 - not as a legacy provision tool. And I don't think Tavistock fully explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB schemes were underplayed. Mr M was married, so the spouse's pension provided by the DB schemes would've been useful to his wife if Mr M predeceased her. I don't think Tavistock made the value of this benefit clear enough to Mr M.

Both schemes' spouse's pension were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was. So, it's possible that there might not be much left, if any, if Mr M lived a long life, he took more from his pension than anticipated, if investment returns were poor or his fund experienced a significant drop in value. In any event, Tavistock should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr M genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Tavistock should've instead explored life insurance. I appreciate that the suitability report mentioned a whole of life policy with either a sum assured of £381,000 or £223,000 – this was discounted by Mr M because he didn't want to take out a whole of life protection plan. I imagine the cost was a factor here too given the quotes were around £600 and £200 a month respectively. But I don't think that this was a balanced way of presenting this option to Mr M.

Basing the quote on the transfer value(s) of Mr M's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr M wanted to leave whatever remained of his pension to his family, which would be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr M how much he would ideally like to leave to his spouse and/or children, and this could've been explored on a whole of life or term assurance basis (written in trust if appropriate) which was likely to be cheaper to provide.

Overall, I don't think different death benefits available through a transfer to a personal pension arrangement justified the likely decrease of retirement benefits for Mr M. And I don't think that insurance was properly explored as an alternative

### *Summary*

I accept that Mr M was likely motivated to transfer out of the BPS and that his concerns about the scheme were real. And I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But Tavistock wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed 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 two sources of guaranteed, risk-free and increasing income, which would broadly meet his income needs. By transferring, Mr M was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr M shouldn't have been advised to transfer out of the schemes just to have flexibility or the option of having access to a greater level of tax-free cash that I'm not persuaded he really needed, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB schemes. So, I don't think it was in Mr M's best interests for him to transfer his DB schemes to a personal pension.

So, I think Tavistock should've advised Mr M to remain in both of his DB schemes.

And in relation to his BPS benefits, I think it should've advised him to remain within the scheme and move with it to the PPF. I say this because, While Mr M didn't start drawing an income from his pension until 2022 at age 61, it is clear from both what Mr M has said and the advice paperwork at the time that it was his intention to retire in 2018 at age 57.

So in terms of Mr M's BPS benefits, I think that it would've been in his best interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it would be offset by the more favourable reduction for very early retirement; particularly as it was likely Mr M would choose to access his tax-free cash.

While Mr M wouldn't later be able to transfer out of the PPF, the evidence suggests there was no apparent reason for him to need to do so.

Of course, I have to consider whether Mr M would've gone ahead anyway, against Tavistock's advice.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of either of his DB pension schemes against Tavistock's advice. I say this because, while as I've already said Mr M was likely motivated to transfer when he approached Tavistock – particularly in relation to his BPS benefits given the situation at the time - on balance, I still think Mr M would've listened to and followed its advice if things had happened as they should have and Tavistock had recommended he not transfer out of the schemes. I've seen nothing to indicate Mr M was either an experienced investor – in fact it appears he had no prior investment experience - or someone who possessed the requisite skill, knowledge or confidence to against the advice they was given, particularly in complex pension matters. Mr M's pensions accounted for pretty much all of his private retirement provision and neither his attitude to risk nor his capacity for loss was high. So, if Tavistock had provided Mr M with clear advice against transferring out of both DB schemes, 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 BPS were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So, if Tavistock had clearly explained that Mr M could meet all of his objectives without risking either of his guaranteed pensions, I think that would've carried significant weight. So, I don't think Mr M would've insisted on transferring out of his DB pension schemes if Tavistock had given suitable advice that he not do so.

In light of the above, I think Tavistock should compensate Mr M for the unsuitable advice, in line with the rules for calculating redress for non-compliant pension transfer advice.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr M. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish Tavistock – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr M. Taking everything into account, including Mr M's age and the fact he is now drawing on his pension and he is worried about its ability to sustain his retirement income need, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

### **Putting things right**

A fair and reasonable outcome would be for Tavistock to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice.

I consider if suitable advice had been given, Mr M would most likely have remained in both occupational pension schemes. And in relation to his BPS benefits, I think he would've remained with the scheme and moved with it to the PPF.

Tavistock must therefore undertake a redress calculation for each DB pension 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>.

For the BPS pension, Tavistock should use the FCA's BPS-specific redress calculator to calculate the redress.

A copy of the BPS calculator output should be sent to Mr M and the Financial Ombudsman upon completion of the calculation.

For clarity, as I set out above, Mr M retired at 61 and started drawing his pension benefits. So, for both calculations compensation should be based on a retirement age of 61.

The calculations 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 calculations demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Tavistock should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
  - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
  - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Tavistock's offer to calculate how much of their 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 their 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 will be treated as income for tax purposes. So, in line with DISP App 4, Tavistock may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr 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.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.



## **My final decision**

Determination and money award: I uphold this complaint and require Tavistock Partners (UK) Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Tavistock Partners (UK) Limited pays Mr M the balance.

Tavistock Partners (UK) Limited should also pay Mr M £300 for the distress and inconvenience the matter has caused.

If Mr M accepts this decision, the money award becomes binding on Tavistock Partners (UK) Limited.

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 2 November 2023.

Paul Featherstone

**Ombudsman**