DRN-3938720

## The complaint

Mr P complains about the advice The Tavistock Partnership Limited ('Tavistock') gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He's concerned the advice may not have been suitable for him and might have caused a financial loss.

It was Tavistock's appointed representative, rather than Tavistock itself, which gave Mr P advice. But, as Tavistock is responsible for the appointed representative's actions I will refer to it throughout this decision.

## What happened

In March 2016, Mr P's employer announced that it would be examining options to restructure its business, including decoupling the BSPS 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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

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

In August 2017 Mr P approached Tavistock for advice about his pension. He completed an online questionnaire concerning his attitude to risk. Tavistock assessed his risk tolerance as at the low end of moderate to adventurous.

On 18 September 2017, the BSPS provided Mr P 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 £297,765.

Mr P had an initial meeting with Tavistock on 25 September 2017. The following day it emailed him a request for information. It also asked him to complete a fact-find questionnaire. He returned the completed information on 12 October 2017. Amongst other things Mr P recorded that he was 53 years old and married to Mrs P, who was 50 years old. They were both working and earning £31,500 and £32,000 a year respectively. Both hoped to retire at age 55. They had one non-dependent adult son. Mrs P was entitled to her own DB pension from age 55. They had cash and other savings totalling around £190,000. They owned their own home outright. They were paying finance on a car and credit card debts at £600 a month. They had a second investment property valued at £120,000. Mr P had also begun paying into his employer's recently set up defined contribution ('DC') pension..

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

In November 2017 Tavistock obtained a transfer value analysis report ('TVAS'). Amongst other things it set out the growth rates required to match the benefits from the BSPS2 and the PPF (the critical yields). Tavistock also ran some cashflow models looking at how Mr P could take income from a personal pension plan by way of draw down. Tavistock sent Mr P an 'Occupational Defined Benefit Pension Transfer and Recommendation Report' setting out its analysis and recommendations. Such documents are generally referred to as suitability reports and that's the term I'll use in this decision.

Tavistock recommended Mr P should transfer his DB scheme funds to a named personal pension. Amongst other things Tavistock noted that the critical yields could not be reached at age 55. It added:

"Should the required Critical Yield not be met then it is likely that you will receive a lower income in retirement than if benefits had been retained with the existing scheme… On a standalone basis, transfer would not be appropriate if priority was to increase income[sic]."

In brief, Tavistock recommended the transfer because it would allow Mr P:

"the opportunity of better pension benefits and perhaps, greater flexibility in retirement."

Mr P accepted Tavistock's recommendation and transferred his DB funds to the named personal pension.

In 2022 Mr P complained to Tavistock that its advice might not have been suitable for him. Tavistock didn't uphold his complaint as it believed the advice was suitable. It added that he was determined to transfer regardless of its advice.

Mr P asked us to consider his complaint. One of our Investigators looked into it. She didn't think Tavistock's advice was suitable for Mr P. She recommended his complaint be upheld. In short she didn't think Mr P would be better off by transferring and she didn't think Tavistock's cashflow models were realistic. She noted that Mr P had since retired at age 57. And, given his desire for early retirement, she believed that Tavistock should have advised Mr P to remain in the DB scheme and allow his benefits to transfer to the PPF. She said Tavistock should establish if Mr P had suffered a financial loss as a result of its unsuitable advice and if so pay him compensation.

Tavistock asked for the complaint to be referred for an Ombudsman's review. But, despite prompting to do so, it didn't give any specific reason for disagreeing with our Investigator's opinion.

The complaint was subsequently referred to me for 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 Business ('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.

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 recommending a transfer if it could clearly demonstrate it was in Mr P's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave.

*My findings*

Tavistock obtained a TVAS report which showed the relevant critical yields to match the benefits from the BSPS2 and the PPF. It did so for several scenarios including if Mr P took early retirement at age 55. The lowest critical yield for Mr P taking pension benefits at age 55 was 29.07%. Tavistock concluded that transferring to a personal pension could not meet the required critical yield at age 55. It said, on that basis Mr P would likely have a lower income in retirement. It added that, "on a standalone basis" if the reason for the transfer was to increase income it would not be appropriate.

In other words Tavistock recognised that transferring would most likely mean Mr P would be worse off in retirement by doing so. I agree with Tavistock's analysis here. But I don't think it did enough to make it clear to Mr P that he was, most likely, making himself poorer in retirement by transferring.

Tavistock noted that Mr P would prefer to keep his withdrawals from a personal pension below his tax threshold. It said he only wanted to draw an income £11,500 a year. Tavistock's cashflow models showed that if Mr P and his wife had total expenditure of £15,720 a year, Mr P could comfortably drawdown £11,500 a year from age 55 and still have funds remaining in his personal pension beyond his life expectancy. But I don't think Tavistock's cashflow models were likely to be representative of Mr P's actual circumstances in retirement.

The information Tavistock gathered about Mr P's circumstances included an assessment of his household's regular outgoings. That showed Mr and Mrs P had regular outgoings of £2,735 a month. That figure included repayments of finance at £600 a month, which Mr P might have anticipated repaying before age 55. But that would have only reduced their joint expenditure to £2,135 a month. That is equivalent to £25,620 a year (net). So it's not clear why Tavistock's cashflow models assumed that Mr and Mrs P's expenditure would only be 61% of that figure.

Further, using the same expenditure level of £15,720, another of Tavistock's cashflow models shows, after allowing for income from others sources, Mr and Mrs P could comfortably manage their expenditure with Mr P remaining in the DB scheme. And given his other savings he had no need to transfer in order to be able to afford to retire early. But by doing so he was putting his otherwise safeguarded DB scheme pension income at unnecessary risk. I don't think that was in his best interests.

While acknowledging that transferring might mean that Mr P would most likely be worse off in retirement, Tavistock said that doing so gave him flexibility. It's true to say that Mr P couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take a tax free cash ('TFC') lump sum, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. It's also the case that Mr P could have taken 25% of his entire personal pension fund as TFC whereas the DB schemes have stricter rules about how much can be taken as a lump sum. But, if Mr P was insistent that he wanted flexible access to funds then he already had liquid assets that he could access in a flexible manner.

Mr and Mrs P had savings of around £190,000. And, if he'd chosen to take TFC then, assuming he took benefits from the PPF, he could have added a further lump sum to those savings of around £51,200 at age 55. That would have boosted their liquid assets to around £241,000. So, while I can see why a higher TFC sum and more choice over how much to take and when might have been an attractive prospect to Mr P, if he wanted to access funds flexibly he could have done so from his savings.

It follows that I'm satisfied Mr P could have met his flexible income needs in retirement while remaining in the DB environment. In any event, there's nothing on file which indicates that Mr P had any concrete need to take TFC at all or to vary his income throughout retirement. I'm aware that Mr P wanted to access his funds In a tax efficient manner. However, initially at least, if Mr P took retirement income from the PPF at age 55 then his yearly income would be below his tax threshold. So he wouldn't have been paying any additional tax by remaining in the scheme and moving to the PPF.

Further, it's likely that eventually Mr P's income would go beyond his tax threshold and he would have to pay tax, particularly after his state pension became payable at age 67. But, that would also be the case if he took income by drawdown, as his state pension would attract income tax. So transferring might not have given him the tax efficiency he was looking for.

Also, even if remaining in the DB scheme would mean that Mr P paid more in tax than transferring to a personal pension, that would only be the case because his income was higher from the DB scheme than by transferring. In other words he would have more money to spend, save or enjoy as he chose by remaining in the scheme. In contrast reducing the amount he drew down from his personal pension to avoid paying tax might mean the Exchequer didn't benefit so much but neither would Mr P. He would simply have less to spend by doing so.

So, I don't think it was in his best interests to transfer his pension just to have flexibility that he had no obvious need for.

Tavistock also said Mr P wanted his family to have access to his full pension fund, rather than a fixed income, in the event of his death, which he could achieve by transferring. But Tavistock's priority here was to advise Mr P about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension that would have paid Mrs P 50% of his yearly pension entitlement. That could have been valuable to her in the event of Mr P's death.

While I have little doubt the CETV figure would have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance any sum remaining as a death benefit would have been reduced by any income Mr P drew from his personal pension in his lifetime. So it may not have provided the legacy he may have thought it would. And there may not have been much left in his personal pension if he lived a long life, the investments performed poorly, or if he took large sums from the fund early in his retirement.

Further, if Mr P 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, then life insurance may have met his needs.

I've noted Tavistock looked into the cost of life insurance. Its suitability report said the premiums for Mr P would be around £305 a month. So it didn't think that was viable on grounds of cost. But I don't think Tavistock presented this option in a balanced way. Tavistock based the quote on the full transfer value of Mr P's DB scheme, £297,765. In other words it essentially assumed he'd require a life policy to pay the same as his CETV (before drawing down any sums from it). But unless he died almost immediately after transferring, that figure wouldn't be realistic as a likely legacy.

Ultimately, Mr P wanted to leave whatever remained of his pension to his family, which could be a lot less than his CETV depending on how much he drew from it and the investment performance. So a fairer manner in which to provide Mr P with realistic life insurance options would have been for Tavistock to ask him how much he would ideally like to leave as a legacy, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr P. And ultimately Tavistock should not have encouraged Mr P to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

I've noted that in response to his complaint Tavistock said that Mr P would have insisted on transferring regardless of its advice. But it's not clear from the evidence on file how it arrived at that conclusion.

I don't doubt Mr P, like many of his colleagues, 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 regarding the likelihood of a solution. I also don't doubt Mr P was worried about the prospect of his pension moving to the PPF. And it's quite possible he'd heard negative things about it.

So, perhaps, Mr P was leaning towards the decision to transfer when he asked Tavistock for advice. But that is why it was even more important for Tavistock to give Mr P an objective picture and recommend what was in his best interests.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And, for those like Mr P who were planning on taking early retirement, the benefits from the PPF were more generous than those from the BSPS2. In fact, in Mr P's case the benefits from the PPF for TFC and a reduced pension were over 12% higher at age 55 than they were from the BSPS2. So, rather than facing a 10% reduction Mr P was actually looking at a pension increase by moving to the PPF. So, I think a move to the PPF was most likely in Mr P's best interests, rather than it being something so concerning that it justified a transfer.

Further, other than his employer's recently set up DC pension, Mr P had no experience of the investment markets. And, by transferring to a personal pension he was unnecessarily putting his pension funds at risk. Mr P's BSPS pension accounted for the majority of his retirement provision. He was an inexperienced investor who had no need to put his pension funds at risk and he engaged Tavistock for its expertise. So, if Tavistock had given clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted the expert professional advice he had sought out.

It follows that I don't think Tavistock's advice to Mr P to transfer out of his DB scheme was suitable for him. Instead I think it should have advised him to allow his DB funds to move to the PPF. So, I'm upholding the complaint as I think the advice Mr P received from Tavistock was unsuitable for him.

**Putting things right**

A fair and reasonable outcome would be for Tavistock to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would most likely have remained in the occupational pension scheme and moved with it to the PPF to join the BSPS2 if Tavistock had given suitable advice.

Tavistock 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.

Tavistock should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to C and our Service upon completion of the calculation together with supporting evidence of what Tavistock based the inputs into the calculator on.

Mr P has confirmed he retired at age 57 and began drawing an income then. So compensation should be based on retirement at age 57.

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 P 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, Tavistock should:

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P 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 personal pension
- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Tavistock's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr P 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 P's end of year tax position.

Redress paid to Mr P 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 P'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**

<u>Determination and money award</u>: I uphold this complaint and require The Tavistock Partnership Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that The Tavistock Partnership Limited pays Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on The Tavistock Partnership Limited.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 21 November 2023.

Joe Scott
**Ombudsman**