DRN-3972962

The complaint

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

What happened

In March 2016, Mr B'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 B'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 September 2017 the BSPS provided Mr B 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 £76,496.

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 B approached True Potential for pension advice. It conducted a fact-find with him. Amongst other things it recorded that he was 30 years old and married to Mrs B who was 32. They had no dependents. They were both working. They owned their own home subject to a mortgage which was due to be repaid in 26 years. Otherwise they were debt free. Mr B had recently started paying into his employer's defined contribution ('DC') pension scheme. Together with his employer they were contributing 16% of his salary.

After obtaining a transfer value analysis ('TVAS') report, in November 2017 True Potential gave Mr B its suitability report setting out its analysis and recommendations. It recommended that Mr B should transfer his DB funds to a named SIPP. In short it said that doing so would:

- Provide varying levels of income at different stages of retirement.
- Provide sufficient death benefits to his wife.

Mr B accepted True Potential’s recommendation and transferred his DB scheme funds to the named SIPP.

Mr B complained to True Potential, via the Financial Ombudsman Service in 2022, that the advice to transfer wasn’t suitable for him. True Potential didn’t uphold his complaint. In brief it said that transferring allowed him to achieve his objectives, including bringing the pension under his control.

Mr B asked us to consider his complaint. One of our Investigators looked into it. Amongst other things he thought the advice was unsuitable as – by transferring – Mr B wasn’t likely to improve on the benefits he was already guaranteed by remaining in the scheme. Also the Investigator didn’t think the different death benefits available from the SIPP justified the likely lower benefits Mr B would receive during retirement. Our Investigator recommended that True Potential calculate if Mr B has suffered a loss as a result of its unsuitable advice and if so pay compensation, including £300 to address Mr B’s distress and inconvenience.

True Potential didn’t agree with our Investigator’s complaint assessment and asked for the case to be referred for an Ombudsman’s review.

While the complaint was waiting for an Ombudsman’s review True Potential asked Mr B to complete a letter of authority so it could gather the necessary information to enable it to calculate a loss assessment. Mr B told us he provided that authority but True Potential hasn't done the loss calculation.

As the matter remains unresolved it's been passed to me to make a final determination.

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 True Potential'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, True Potential should have only considered recommending a transfer if it could clearly demonstrate it was in Mr B'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.

Reasons for my decision

After consulting its TVAS True Potential said that the growth rates required (the critical yields) to match the benefits from the DB scheme were achievable. It also said that if Mr B transferred to a SIPP and accessed equivalent benefits to those provided by the DB scheme then the funds would last beyond his life expectancy. But I don't find the figures in True Potential's TVAS reliable.

On True Potential's file is a copy of Mr B's "time to choose" letter, although some of the pages are missing. But the file version does include Mr B's entitlement from the BSPS2, as calculated by the scheme, at ages 60 and 65, both for a full pension and a reduced pension together with a tax free cash ('TFC') lump sum, which are as follows:

Age	60	65
Full pension	£6,627.00	£7,737.70
Reduced pension	£4,768.09	£5,345.83
TFC	£31,787.29	£35,638.87

However, the figures shown in True Potential's TVAS are all below those sums as shown in the table below:

Age	60	65
Full pension	£4,757	£7,098
Reduced pension	£3,521	£4,903
TFC	£23,478	£32,692

Given that the figures in the "time to choose" letter were given by the scheme itself, then I find that those are more reliable than the figures True Potential calculated in its TVAS. Also considering that True Potential had the "time to choose" letter on file its puzzling why it didn't use the figures that contained rather than recalculating those itself. But, in any event, I'm struggling to understand how True Potential arrived at its figures. And, if the amounts it's quoted for Mr B's pension entitlements are incorrect then all of its other figures – including critical yields and how long Mr B's fund would last for – would also be incorrect. So it's difficult to have confidence in the numbers that True Potential produced in support of its recommendation for Mr B to transfer.

Further, the "time to choose" letter also sets out what's known as early retirement factors. Those are the amounts that a pension will be reduced by for taking benefits earlier than the scheme's normal retirement age. The reduction is a recognition that, by taking a pension earlier, it's likely that it will have to last longer and so cost the scheme more. The early retirement factor for Mr B taking his benefits at age 60 would be a reduction of 15%[1]. So assuming that True Potential's statement that Mr B's full yearly entitlement from the BSPS2 at age 65 is £7,098, that would mean Mr B would be entitled to a pension of £6,033 at age 60. But True Potential has given a figure of £4,757 at age 60. That is a reduction of some 33%. I don't know how it arrived at that sum.

Similarly, True Potential said that if Mr B's pension investments made a year-on-year return of 5% – something that would not be impossible, although it might be a tall order – then by age 60 his fund could be worth £221,000. It said that amount would last him well beyond his life expectancy by taking benefits (as shown in its TVAS) equivalent to those from the DB scheme. True Potential hasn't shown how it's arrived at that figure but, as far as I can tell, it doesn't allow for charges associated with the SIPP or for inflation.

In contrast there is an illustration on file produced by the SIPP administrators which shows what Mr B's pension could be worth at age 60 once invested in the SIPP and assuming investment growth of 5% a year. That shows that adviser and SIPP product charges would reduce the growth by 1.37% a year. The illustration also makes an adjustment for inflation assumed to be 2.5% a year. At age 60 the illustration calculates that rather than being worth £212,000, Mr B's fund would be worth around £103,000. That is less than half the figure True Potential used in its suitability report. So I'm not persuaded that it displayed Mr B's likely benefits from a SIPP in a fair and balanced way in its suitability report.

However, even if I accept that True Potential's figures are all accurate, I don't think that makes its recommendation to transfer reasonable. True Potential said the critical yields to match the BSPS2 benefits lie somewhere between 4.5% – for Mr B taking TFC and a reduced pension at age 60 – and 5.13% for Mr B taking a full pension at age 65. A reasonable method of looking at likely growth rate is a measure called the discount rate, which we used to publish on our website. For Mr B the appropriate discount rate was 4.7% whether he retired at age 60 or 65. So the discount rate was broadly comparable to the critical yields, particularly if he took TFC and a reduced pension from age 60. But there would be little point in Mr B giving up the guarantees available to him through his DB scheme only to achieve a similar level of benefits outside the scheme. That's because, in order for the potential to match or improve slightly on the DB scheme benefits, he would need to put those funds at risk. And, if there was an extended period of poor performance or his investments suffered losses that could result in him being significantly worse off in retirement. For that reason alone I don't think that a transfer was in Mr B's best interests.

True Potential also said that by transferring Mr B had the opportunity to retire early and access his funds flexibly. It's true to say he couldn't have had the same level of flexible access to his DB funds as he could from a SIPP. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the SIPP would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect for him, I'm not persuaded that Mr B had any concrete need to vary his income throughout retirement. But, even if he believed he did, there was no need for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.

True Potential noted that Mr B and his employer had begun contributing to a recently set up DC pension scheme. Mr B and his employer were together contributing around 16% of Mr B's salary to that pension. He could have anticipated continuing to contribute to that

---

[1] This is shown as a factor of '0.85' in the "time to choose" letter. In other words Mr B would receive £0.85 of pension at age 60 for each £1 he was entitled to at age 65. It is equivalent to a reduction of 15%.

pension (or a similar one if he were to change jobs in the future) for the remainder of his working life. And given he was still only 30 years old that could have been for another 37 years or so until his state pension age. But True Potential noted that Mr B's preferred retirement age was 60. It said that, without allowing for Mr B's salary – and therefore his pension contributions – increasing or any investment growth, by the time he reached 60 then the fund could be worth £152,000.

The nature of a DC pension means this already provided Mr B with flexibility – he wasn't committed to take its benefits in a set way. Mr B could have taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr B retained his DB pension, this combined with his new workplace pension would have likely given him flexible access to pension funds if that was what he needed.

In addition, if True Potential had advised Mr B to join the BSPS2 and he had later decided he needed greater flexibility than the scheme provided, then he could have chosen to transfer from that scheme nearer to his retirement age. And I think this was something that he could have explored closer to his intended retirement age; it wasn't a decision he needed to make straightaway. So I don't think a transfer was in Mr B's best interests.

True Potential also said transferring would allow Mr B to leave any residual pension funds to his family on his death. But True Potential's priority should have been to advise Mr B about what was best for his retirement, not what was the best vehicle to leave a legacy on his death. And the spouse's pension the DB scheme would pay could have been valuable to his wife in the event of his death. That didn't rely on how much was left in Mr B's fund or investment performance, whereas any death benefits from his SIPP did. And there may not have been a large sum left in the SIPP if Mr B lived a long life, he took large sums from it in early retirement, or if his investments suffered a prolonged period of poor performance. In any event True Potential should not have encouraged Mr B to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

True Potential added that transferring allowed Mr B to take control of his pension. But I think True Potential has overstated Mr B's desire for control. He had no experience of investing in the financial markets. And I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think this was a genuine objective for Mr B – it was simply a consequence of transferring away from his DB scheme.

Mr B may have legitimately held concerns about how his employer had handled his pension and the prospect of it entering the PPF. But it was True Potential's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr B with guaranteed income and the option of early retirement. He was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might have thought, and I don't think any fears he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr B's best interests to give up his DB benefits and transfer them to a SIPP. I also haven't seen anything to persuade me that Mr B would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice True Potential gave to Mr B was unsuitable for him.

Putting things right

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

True Potential 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.

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

For clarity, Mr B 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, 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 B 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, True Potential should:

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

Redress paid to Mr B as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, True Potential 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 B'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.

Also, as I think that learning that he might have unnecessarily put his pension funds at risk was a source of distress and inconvenience for Mr B, I think True Potential should also pay him £300 to address that.

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 True Potential Wealth Management LLP to pay Mr B 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 True Potential Wealth Management LLP pays Mr B the balance.

If Mr B 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 B can accept my decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 4 December 2023.

Joe Scott
Ombudsman