DRN-4047634

The complaint

Mr A complains about the advice Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services ('Tavistock') gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr A'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'). 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 A'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.

On 16 October 2017, the BSPS provided Mr A 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 £326,304.

The same month (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 A asked Tavistock for pension advice. It conducted a fact-find with him and assessment of his attitude to risk. Amongst other things it recorded that Mr A was 47 years old and lived with his partner, Ms P, who was aged 55. They were both working. Ms P had recently also started receiving pension income. Mr A had no children or other financial dependents. He had also started contributing towards his employer's recently set up defined contribution ('DC') pension scheme. Together with his employer they were contributing a sum equivalent to around 16% of his salary into that. He had a second small DC pension pot worth £7,067. He owned his own home which was worth £110,000 subject to an outstanding mortgage of £65,000. He had existing debts which he was paying by means of an Individual Voluntary Arrangement (IVA) which would be repaid in 2019. He also had a loan which he would repay in 2022.

After obtaining a transfer value analysis ('TVAS') report, on 21 November 2017 Tavistock sent Mr A its Occupational Defined Benefit Pension Transfer and Recommendation Report ('Suitability Report'), which set out its analysis. It recommended Mr A transfer his DB scheme benefits to a named personal pension. It noted that by transferring Mr A was unlikely to achieve the growth rates required to match the benefits from the BSPS2 or the PPF. It said that if his sole objective was to match the scheme income then a transfer would not be suitable. But it recommended the transfer because:

- He could retire at his preferred retirement age of 58.
- It would allow him to take control of his pension.
- He could leave any residual pension to his partner or his family on his death.
- He would meet his household costs in retirement of £15,000 a year from his state pension and other income sources; so he didn't need another monthly income.
- Transferring would allow him to take his pension benefits in a flexible manner convenient for him.

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

Mr A complained to Tavistock in 2022 that the advice to transfer might not have been suitable for him. Tavistock didn't uphold his complaint. amongst other things it said transferring allowed him to achieve his objectives. Notably, he had lost faith in his employer, wanted flexible access to his funds, autonomy over his pension pot, and the provision of death benefits. Transferring met those objectives.

Mr A referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. He thought Tavistock's advice was unsuitable for Mr A. In brief the Investigator said Tavistock's assessment that Mr A's household income needs in retirement of £15,000 a year was unrealistic. The Investigator didn't think Mr A would be better off by transferring. And his desire for flexibility and control was overstated. The Investigator also didn't think that different death benefits were worthy of a lower income in retirement for. So he recommended the complaint be upheld.

To put things right the Investigator 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. He added that it should also pay Mr A £250 to address the distress and inconvenience he experienced as a result of learning he had received unsuitable advice to transfer.

Tavistock didn't agree with our Investigator's complaint assessment. In brief it said it believed it had correctly assessed Mr A's income needs in retirement, which Mr A could achieve from a transfer.

The Investigator wasn't persuaded to change his opinion. So as the matter wasn't resolved informally it's been 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 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.

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 A'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

Tavistock obtained a TVAS report which showed the relevant critical yields to match the benefits from both the DB scheme at Mr A's preferred retirement age of 58 and the scheme's normal retirement age of 65. Having done so it noted the critical yields were unlikely to be achieved by transferring. It said that if Mr A's sole objective was to match the scheme benefits, its advice would be not to transfer and to remain within the scheme. I agree with Tavistock's analysis here. So I don't intend to do an in-depth analysis of a comparison between the DB scheme benefits and those from the named personal pension. Save to say that I think by transferring Mr A was, most likely, potentially making himself poorer in retirement.

Tavistock said Mr A and Ms P together required a net income in retirement of £15,000. It arrived at that figure by running through their regular outgoings which it said were £1,940 a month. That figure included discretionary and leisure costs of £85 a month. Tavistock noted that by the time Mr A was 58 he would have repaid his loan and IVA debt, which would reduce his outgoings by around £548 a month. And, after he finished his mortgage, when he turned 62 – in 2032, his outgoings would reduce by a further £476 a month. And factoring those things in it said Mr A and Ms P agreed they would only need a joint income of £15,000 a year in retirement. Ms P was already receiving a pension of £12,000 a year, which would reduce to £7,000 a year once her state pension became payable at age 67. And they could meet their income needs from other sources, including Mr A's transferred pension, in retirement.

I agree with Tavistock that the figures as presented do show that Mr A and Ms P should have been able to afford their regular outgoings with an income of £15,000 in retirement. But I think Tavistock could have done more to check the accuracy of Mr A's expenditure figures.

Mr A and Ms P kept their incomes separate. Mr A paid all the household bills. Ms P paid for holidays and other lifestyle expenses.

Mr A had a net income of around £474 higher each month than all of his outgoings (including his mortgage, loan/debt repayments and discretionary expenses). So, according to those figures, he had a disposable income of around £5,688 a year. But he had no savings and only £350 in the bank. So Mr A's spending was clearly a lot more than Tavistock recorded.

Similarly, prior to beginning to receive her pension income some months before Tavistock gave its advice Ms P had acquired credit card debts of over £20,000. She was soon to pay those off using the tax free cash ('TFC') lump sum from her pension. But that debt indicates that together Mr A's and Ms P's income only just met, or fell behind, their actual outgoings. So it seems likely that their actual regular outgoings were underestimated. And that could mean their income needs in retirement would be significantly higher than they expected, even after Mr A settled all his loans and debts. I think Tavistock should have identified this anomaly and challenged Mr A as to what his likely retirement income needs would be.

I accept that it's common for people to reduce their spending in retirement. However, prior to Ms P receiving her pension, the couple had a net income of around £48,000 a year. And given the absence of savings, it appears they were spending all of that income. Paying off Mr A's debts would reduce his outgoings by £12,288 a year. But they would still have to find a further reduction in spending of around £20,700 in order to bring their outgoings down to £15,000 a year. That would seem a tall order.

However, even if Mr A and Ms P could get by on only £15,000 a year I don't think that meant a transfer was in Mr A's best interests. Tavistock acknowledged in its suitability report that Mr A could retire early and meet his income needs while remaining in the BSPS2 or the PPF. So he had no need to transfer in order to be able to take early retirement. But by transferring he was exposing his pension fund to the volatilities of the investment markets. So he was putting his otherwise safeguarded DB scheme pension income at unnecessary risk. I don't think that was in his best interests.

Also, as I've said above, Tavistock acknowledged that the critical yields were unlikely to be achieved. In those circumstances it said Mr A would receive a "lower income in retirement". In other words he was, most likely, making himself poorer by transferring. For that reason alone I don't think a transfer was in Mr A's best interests. So I've gone on to think about the other reasons Tavistock said supported a recommendation to transfer.

Tavistock said that meeting the critical yield wasn't important to Mr A as he was looking to access his benefits flexibly, which he couldn't achieve from the BSPS2 or the PPF. It's true to say that Mr A 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 TFC, 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.

But while I can see why that might have been an attractive prospect for him, I'm not persuaded Mr A had any concrete need to vary his income throughout retirement. But, if he believed he did there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to have some flexible access to retirement funds.

Tavistock noted that Mr A and his employer had begun contributing to a recently set up DC pension scheme. Mr A and his employer were together contributing a sum equivalent to 16% of Mr A's salary to that pension. He could have anticipated continuing to contribute to that pension (or a similar one if he were to change jobs in the future) for the remainder of his working life. And Tavistock noted in its suitability report that by the time Mr A reached 65 his DC pension could be worth £137,000 if it had a growth rate of 1% a year or £224,000 if the pension managed a growth rate of 3.9% a year. So, potentially, Mr A could look forward to a significant sum in his DC pension pot in the future.

The nature of a DC pension means this already provided Mr A with flexibility – he wasn't committed to take its benefits in a set way. Mr A 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 A retained his DB pension, this combined with his new DC pension, would have likely given him flexible access to pension funds if that was what he needed.

Also, if Tavistock had advised Mr A 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.

In addition Tavistock essentially said that Mr A didn't need the regular income from his DB scheme as, by the time his state pension became payable, he would have sufficient income from other sources and his DB pension wouldn't be needed. That might have been so, but I think it's rarely the case that people complain of having too much money. And by remaining in the DB scheme Mr A would have had a higher safeguarded income which he could use to spend and improve his lifestyle, use as an emergency fund or to save and leave as a legacy if he chose. So I don't think having an extra guaranteed income would have provided too much of a burden for him.

Tavistock also recommended the transfer because it would allow Mr A to leave any residual pension to his beneficiaries on his death. Mr A wasn't married to Ms P and he had no financial dependents. So, unless Mr A married in later life, which couldn't be discounted, the spouse's benefit from the DB scheme was unlikely to be of value to him and his pension would die with him. In contrast he could leave any sums remaining in his personal pension on his death to Ms P or his wider family. But I don't think the possibility of more attractive death benefits was a sufficient reason to recommend a transfer.

Tavistock's priority was to advise Mr A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to beneficiaries after death. But in transferring out of his DB scheme Mr A was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his beneficiaries that they may not receive for many years to come.

I don't doubt that the CETV figure would have appeared an attractive sum to be able to leave as a legacy. But, in reality, the amount remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance the fund would be depleted by Mr A's withdrawals from it in his lifetime. So, how much would remain in it on his death depended on a number of factors. 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 it early in his retirement.

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

I understand Mr A approached Tavistock because he was concerned about the stability of the BSPS and the actions of his employer. Tavistock said transferring would allow Mr A to take control of his pension. I can certainly understand Mr A's concerns about the safety of his pension. His employer had been consulting about the future of the scheme and there was still a possibility, albeit a slim one, that the BSPS2 wouldn't go ahead. I'm also aware that many scheme members were concerned that, in time, the BSPS2 itself might also move to the PPF. And that had likely motivated Mr A to seek advice.

But Tavistock's role was to objectively address any concerns Mr A might have had. Its job wasn't to simply transact what he might have thought he wanted to happen. And the PPF would have still given Mr A a guaranteed income worth roughly 90% of his BSPS entitlement. He would be unlikely to improve on these benefits by transferring. He could also have still taken early retirement from the PPF and, as the table below shows, the benefits from it at age 58 could be more generous than they were from the BSPS2 at the outset if he chose to take TFC:

Age 58	BSPS2	PPF
Full pension	£13,087	£12,617
TFC and Reduced pension	£63,840 £ 9,576	£70,178 £10,532

So, entering the PPF was probably not as concerning as Mr A might have thought, and I don't think any fears he held about this meant transferring was in his best interest.

Further, while Tavistock said transferring gave Mr A autonomy to control his pension, I think it has overstated his desire for this. He wasn't an experienced investor. And I can't see he had an interest in or the knowledge to be able to manage his pension funds on his own. Tavistock's recommendation seems to have been given on the basis it would continue to provide Mr A with ongoing financial advice about his investments. In other words he would be handing over the management of those investments to Tavistock and paying it to do so. It follows that I don't think that controlling his pension investments was a genuine objective for Mr A – it was simply a consequence of transferring away from his DB scheme.

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

Also, as I'm aware that learning he might have compromised his security in retirement has been a source of distress and inconvenience for Mr A, I think Tavistock should pay him £250 to address that.

Putting things right

A fair and reasonable outcome would be for Tavistock to put Mr A, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr A would most likely have remained in the occupational pension scheme and opted 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 Mr A and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Tavistock based the inputs into the calculator on.

For clarity, Mr A has not yet retired and as far as I'm aware 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 A 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 A redress as a cash lump sum payment,
- explain to Mr A 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 their DC pension
- offer to calculate how much of any redress Mr A receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr A accepts Tavistock's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr A 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 A's end of year tax position.

Redress paid to Mr A 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 A'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 A, I think Tavistock should also pay him £250 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 Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services to pay Mr A 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 trading as Abacus Associates Financial Services pays Mr A the balance.

If Mr A accepts this decision, the money award becomes binding on Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services.

My recommendation would not be binding. Further, it's unlikely that Mr A can accept my decision and go to court to ask for the balance. Mr A 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 A to accept or reject my decision before 14 December 2023.

Joe Scott
Ombudsman