DRN-4121457

The complaint

Mr B complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

True Potential Wealth Management LLP is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "True Potential".

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). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said 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.

In October 2017, members of the BSPS were being 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr B was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to True Potential which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr B was 50 years old, married. He was described as being in good health and at the time.
- Mr and Mrs B lived in a home valued at around £80,000 with a 15-year mortgage outstanding of around £60,000.
- Mr B earned around £38,000. Mrs B also worked. After expenses they had some disposable income left over. They had modest joint savings.
- The cash equivalent transfer value (CETV) of Mr B's BSPS was approximately £179,500. The normal retirement age (NRA) was 65 although he had evidently expressed a desire to retire earlier, if possible, at the age of 60.
- Mr B had joined the new defined contribution (DC) TATA pension scheme as a consequence of BSPS closing to new contributions. He also held a separate and unconnected overseas pension worth around £130,000.

True Potential set out its advice in a suitability report on 11 November 2017. In this it advised Mr B to transfer out of the BSPS and invest the funds in a type of personal pension plan. True Potential said this would allow Mr B to achieve his objectives. Mr B accepted this advice and so transferred out. In 2021 Mr B complained to True Potential about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr B later referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. They also said Mr B ought to be paid £300 for the distress and inconvenience this matter has caused him.

In response, True Potential said it hadn't done anything wrong and was acting on the financial objectives Mr B had at the time. However, True Potential has since said it would like to settle the complaint. It said it would do this in full and using a specific redress calculator which the financial regulator has established for these cases. So, True Potential asked for Mr B to supply details of his transferred pension value so it can begin the process of establishing if there has been a loss. True Potential said if there was a loss, then it will pay what is due under the guidelines issued by the financial regulator.

Having provided these details there is still no apparent loss. True Potential says the personal pension has grown to an extent that Mr B could now buy back broadly the same benefits he would have obtained if he hadn't transferred and that he'd still have a little amount left over. Mr B still disagrees with the methodology used to calculate the redress. He says he knows of friends and colleagues who have received pay-outs and that the redress calculations should reflect this.

So, even though I can see True Potential is apparently willing to settle this complaint using the approach we endorse, it can't evidently be resolved informally. It's therefore come 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 also 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'). 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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, True Potential should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr B's best interests. I have also carefully considered the latest responses whereby True Potential is offering to use the redress methodology and approach that we endorse.

Having done all this, I'm upholding Mr B's complaint about the transfer advice being unsuitable.

Because I understand True Potential has agreed to carry out a loss calculation in line with the approach I've mentioned above, I therefore don't see the need to address the suitability of True Potential's advice to Mr B in the same detail as I would normally. However, to be clear, I fully agree with the Investigator's View that the advice was unsuitable, and I do so largely using the same rationale.

True Potential's transfer advice was unsuitable for the following reasons:

- At the age of 65, which in this case was the NRA, the critical yield, the investment return required to replicate the benefits available to him through the BSPS2, was 7.24%. For a proposed retirement at the age of 60 the critical yield was 9.16%. Conversely, the discount rates for the above scenarios were only 4.2% and 3.7% respectively (for 14 years or 9 years to retirement). So, I think this was already showing that by transferring away from the DB scheme, Mr B was unlikely to be able to grow his pension to a degree which made transferring financially viable.
- True Potential also wasn't specific enough about what Mr B's attitude to risk (ATR) really was. However, it implied he was willing to accept high market risks to help grow his transferred funds. But I think the evidence in his case shows Mr B had only a moderate knowledge of investing and I think the categorisation of him having a higher-end ATR was too high. Actually, there was no evidence he fully understood these higher risks or that he had properly assessed his overall capacity for loss. In any event, and as I explain below, the high ATR applied to Mr B still wouldn't change anything, but it was set far too high. I think this is a good example or True Potential's failings in this case.
- Nevertheless, I've kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. But I've also considered the higher costs associated with a personal pension and that Mr B's knowledge of investing would have probably required on-going support and management from a professional adviser. Everything I've seen shows – that when viewed from the point of advice in 2017 - he would likely receive lower pension benefits in the longer term as a result of transferring away from the DB scheme.
- I've noted too, that True Potential's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, the estimated fund required at what True Potential says was Mr B's preferred retirement age (of 60) was £290,604. Because this is far above Mr B's CETV, it represents, in my view, a revealing window into the real value

of the guaranteed pension Mr B could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

- Elsewhere in its transfer analysis, True Potential also made mention of the PPF, which it described as a compensation scheme providing a "safety net" for pension schemes when the sponsoring employer becomes insolvent. The critical yields to match the benefits available through the PPF were lower. But these yields related to the reduced benefits available with the PPF and True Potential itself says Mr B wouldn't have wanted to transfer to this scheme.

- I think it's also important to focus on Mr B's comparatively young age by pension standards. With over 14 years still left to when he'd be actually contemplating retiring if using his NRA (over 9 years if using 60 years of age), there's simply no way that what he might possibly use the money for, should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement. So whilst I'm sure, like most people, Mr B probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part. In reality, there was no plan to retire early. It was simply far too early to speculate about this.

- I've seen nothing that showed Mr B required changing how his retirement benefits ought to be paid. I don't think this could have been predicted whilst still so far away from retirement age. He already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions. This DC pension was being significantly contributed towards by both Mr B and his employer. There's no reason why by retirement this DC pension couldn't have contained a significant sum. Mr B also seemed to have the capacity to raise his contribution levels. He also had an overseas pension of a reasonable value. So, these other pensions would have afforded Mr B any flexibility he might have needed in the years ahead.

  This means I've seen nothing explaining why Mr B wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr B could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he had two other pensions; he'd have built up a substantial DC scheme, for example, over a long period of time – up to 14 years. So, if Mr B ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

- I've also seen no evidence that Mr B had either the capacity or desire to exercise control over his funds. I think he would have found the complexity, scale and responsibility of managing over £179,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr B would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- Death benefits - the BSPS2 contained certain benefits payable to a spouse and children if Mr B died. Mr B was married so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs B if he predeceased her. I don't think True Potential made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser told Mr B that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr B. But this needed carefully explaining. Whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. Mr B was only 50. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr B had lived a long life there could be nothing left at all in his personal pension plan. It also doesn't appear that True Potential took into account the fact that Mr B could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr B already had options ensuring part of his pension wouldn't 'die with him'.

- It's clear that Mr B, like many employees of his company, was concerned about his pension. However, even if there was a chance the BSPS2 wouldn't go ahead, I think that True Potential should have reassured Mr B that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr B through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his real ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to True Potential's recommendation to Mr B to transfer out of the DB scheme altogether.

Summary

I don't think the advice given to Mr B was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr B was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

So, I don't think it was in Mr B's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. On this basis, I think True Potential should have advised Mr B to opt into the BSPS2.

In light of the above, I think True Potential should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for True Potential's unsuitable advice. I consider Mr B would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. True Potential should use the benefits offered by BSPS2 for comparison purposes.

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.

I appreciate that Mr B says the delay in his complaint reaching the stage of an ombudsman's final decision has contributed to the redress calculation being different to that he expected. However, our aim is to put consumers like him back into a position as if the unsuitable advice had never occurred in the first place. DB pensions have a relationship with bond yields and these have seen substantial changes recently. However, the calculator establish by the regulator takes account of this and assumes Mr B can get back into the position of having a pension with broadly the same benefits. And in his case, he won't be any worse off.

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 our Service upon completion of the calculation.

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's acceptance of my final decision.

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

Our investigator recommended that True Potential should pay Mr B for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr B in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr B. So I agree the recommended payment of £300 for distress and inconvenience. True Potential should pay Mr B this amount in addition to the redress I've set out above.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I am upholding this complaint and I now direct True Potential Wealth Management LLP to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that True Potential Wealth Management LLP pays Mr B the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my final 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 24 October 2023.

Michael Campbell
Ombudsman