DRN-4126557

The complaint

Mr C complains about the advice given by True Potential Wealth Management LLP ('TPWM') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme 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 C's employer announced that it would be examining options to restructure its business, including decoupling the employers' DB scheme – the British Steel Pension Scheme ('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 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 C's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and agreed steps carried out shortly after.

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 the BSPS2 or transfer their BSPS benefits elsewhere.

On 16 October 2017, the BSPS provided Mr C with a summary of the transfer value of his scheme benefits. These benefits had a cash equivalent transfer value ('CETV') of £305,510.

In November 2017, Mr C contacted TPWM for advice about his pension. TPWM has said Mr C was put in touch with it by his financial adviser.

A fact-find has been provided by TPWM, showing information gathered about Mr C's circumstances and objectives. In its subsequent response to the complaint, it has indicated that this information was gathered by the adviser who referred Mr C to TPWM. This recorded that Mr C was 42, in good health, married with two dependent children. He and Mrs C were both employed full time and their income was recorded as comfortably exceeding their outgoings each month. In addition to the benefits held in the BSPS, Mr C was also a member of his employer's new defined contribution ('DC') pension scheme, with the fact find recording he was making contributions equivalent to 10% of his salary, with his employer doing the same. It was also noted that Mr C had very limited investing experience.

TPWM recorded that neither Mr nor Mrs C expected to retire before age 60. And Mr C didn't know when he would retire and might look to do something else if he eventually left his current employer. TPWM noted that Mr C was considering moving his DB scheme benefits because he'd lost trust in his employer so wanted control over his pension. It said he was also interested in being able to leave the whole sum to his family upon his death and the flexibility to access benefits from age 55 without incurring a penalty.

TPWM also carried out an assessment of Mr C's attitude to risk. It said, having done so, Mr C best fitted the profile of a 'Capital Growth Investor'. TPWM explained that this meant a investor who *"may be willing to accept high risk and chance of loss in order to achieve higher returns on his or her investment. Significant losses over an extended period may prompt the Capital Growth Investor to shift to a less risky investment."*

On 28 November 2017, TPWM advised Mr C to transfer his BSPS benefits into a True Potential SIPP and invest the proceeds in its growth portfolio. The suitability report said Mr C was concerned about his benefits transferring to the PPF and the potential impact of this and that he wanted to take control of his pension. TPWM said Mr C had no requirement for an income from his DB scheme or to replicate the benefits it provided. And so, it considered a transfer was suitable as it gave Mr C control of his pension, flexibility to take benefits as and when he chose and would enable the fund to be left as a lump sum to his beneficiaries.

I understand a transfer was completed in line with this recommendation.

Mr C complained to TPWM in 2021. He said, after receiving a letter from the regulator, the Financial Conduct Authority ('FCA') about pension mis-selling, he'd become concerned about the suitability of the transfer advice he'd received.

TPWM didn't uphold Mr C's complaint. It said the advice was suitable based on Mr C's circumstances and it provided him with clear information, so it felt he'd made an informed decision about transferring.

Mr C referred his complaint to our service. An investigator considered the complaint and thought it should be upheld and that TPWM should compensate Mr C for any loss the DB transfer had led to as well as pay £350 for the distress caused. He didn't think the recommendation was based on a detailed enough analysis of Mr C's circumstances. And he didn't think Mr C had a need to transfer or that doing so was in his best interests. So, the Investigator thought he should instead have been advised to join the BSPS2.

TPWM didn't agree. It said it was required to take reasonable steps to ensure the advice was suitable for Mr C, which it thought it had done. It said the Investigator had used a significant degree of hindsight, which it thought was unreasonable and TPWM also said the Investigator had placed too much weight on the critical yields and discount rate and that these were largely irrelevant here. It remained of the view that Mr C did not require the guaranteed benefits of the DB scheme to meet his retirement needs, so based on his circumstances and stated objectives, it still considered the transfer was suitable. It also argued that Mr C had made a fully informed decision to proceed with the transfer, and that he would have still sought to proceed if it had recommended against doing so, such was his strength of feeling. And it said that the BSPS2 was not a confirmed option at the time of the advice. TPWM also raised several other objections to our approach to considering DB transfer complaints in general, which it believed contradicted that of the FCA.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred for a decision by an Ombudsman.

In August 2022 the regulator, the FCA, launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr C to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. Mr C indicated initially he would like redress calculated under the guidance in place at the time. But the Investigator explained that if the complaint hadn't been settled in full and final settlement by the time the new rules came into effect, he expected TPWM to carry out a calculation in line with the updated rules and guidance in any event.

TPWM later said, although it didn't agree with the Investigator's opinion, it would look to make an offer to resolve matters. But it calculated that Mr C had not incurred a loss, based on the FCA's redress guidance in place prior to April 2023. As a result, it offered to pay £350 for the distress caused, as recommended, in full and final settlement of the complaint.

Mr C did not accept this offer and indicated he'd still like an Ombudsman to review matters. He noted former colleagues who'd made similar complaints had received significantly different calculations. So, he questioned whether he'd been disadvantaged by the way the calculation had been carried out.

TPWM has indicated that it has since run a calculation under the new redress rules introduced by the FCA. But that this also showed Mr C had not incurred a loss. Although this was not done using the FCA's BSPS-specific redress calculator which has recently been introduced.

As agreement could not be reached, I'm now providing a final decision on the matter.

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.

TPWM has said that the FCA has undertaken a review of its advice process in relation to members of the BSPS and didn't highlight any concerns. It has therefore questioned how our service can come to a different conclusion – that transfer advice was unsuitable. But our role is different to that of the FCA. It is to look at the individual circumstances of a complaint and decide what we consider is fair and reasonable. That is what I've done here.

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 TPWM'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.

TPWM says that it was only required to take reasonable steps to ensure the advice was suitable for Mr C. I agree that under COBS TPWM was required to take reasonable steps to ensure that its personal recommendation to Mr C was suitable for him (COBS 9.2.1). However, as I've mentioned above, additional regulations apply to advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that the transfer was in Mr C's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

Financial viability

TPWM carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

TPWM has argued in response to the complaint that the BSPS2 was not a confirmed option at the time it provided advice and may not have gone ahead. But I think TPWM is overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the point TPWM instructed the TVAS reports and provided Mr C advice. Mr C's employer had agreed actions with the pension's regulator, and these had been carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations, like the one Mr C received in October 2017. Mr C had also received his "time to choose" pack – with joining the new scheme one of the options. And details of the new scheme had been provided. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident at that point that the BSPS2 would go ahead. And the TVAS TPWM carried out used the revaluation rates and anticipated scheme details of the BSPS2 when providing a comparison. So, it appears, contrary to what TPWM now argues, that it too seems to have considered at the time that the BSPS2 was likely to come about.

TPWM also says the critical yield is of limited relevance because Mr C didn't have a need for a guaranteed income from this pension, so wasn't looking for equivalent benefits. Given though Mr C was 42 and had a number of years until he could take his pension benefits – in which time his circumstances or plans could change – it was entirely possible that when he did retire, he may have wanted greater guarantees for his income. And in any event, the regulator required TPWM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, I do think an analysis of the critical yield is a relevant consideration here.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. TPWM says that referring to the discount rate was not required by the regulator. So, has suggested our Service is wrong to take this into account. But I think discount rates are a reasonable additional consideration here.

I acknowledge that TPWM was not required to refer to the discount rate when giving advice. But it was free to do so. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. And I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

TPWM has also said that the performance of the recommended fund since the advice exceeds the discount rate. But TPWM also commented about using hindsight being unreasonable. Future performance at the time the advice was given was unknown. And past performance is no guarantee for future performance. So, I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

Mr C was 42 at the time of the advice. TPWM has said in response to the complaint that Mr C expected to retire at age 60 and the suitability report referred to this. The critical yield required to match Mr C's benefits at age 60 was 5.74% if he took a full pension and 4.78% if he took the maximum available tax-free cash ('TFC') and a reduced pension. The critical yield to match the benefits available through the PPF at age 60 was quoted as 4.53% per year if Mr C took a full pension and 4.27% per year if he took TFC and a reduced pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.4% per year for 17 full years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's recorded attitude to risk and also the term to retirement. There would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, it doesn't appear likely that Mr C would improve on the guaranteed benefits he was already entitled to at age 60, as a result of investing in line with that attitude to risk and that this would be the case even if the scheme moved to the PPF. And in fact, it seems it was likely he'd have always received benefits of an overall lower value that those the BSPS2 would've provided at that age.

TPWM has said that the critical yields for retiring at age 65 were also calculated as part of the TVAS but these have not been taken into account.

The critical yield to match the benefits the BSPS2 would've provided at age 65 was 4.62% if Mr C took a full pension and 3.84% if he took TFC and a reduced pension. And to match benefits available through the PPF at age 65 were quoted as 3.97% per year if Mr C took a full pension and 3.73% per year if he took TFC and a reduced pension. Meanwhile the discount rate for 22 years to retirement, as would be the case for retiring at age 65, was 4.5% and the regulators standard projections were as previously noted.

These do support that there was a greater chance of improving on the benefits the DB scheme provided at age 65 as a result of a transfer in most scenarios than those that would've been provided at age 60. Although, if Mr C took the full pension the BSPS2 would've provided, it still appears unlikely he'd have been better off. And there was no indication that Mr C expected to have a need to take TFC at retirement, and no purpose for this was recorded as part of the fact find. But this was not certain.

In any event though, TPWM has said that Mr C wanted to retire at age 60. The suitability report refers to this as his desired retirement age. And TPWM has said its advice was on this basis. So, while I accept the fact find noted that Mr C wasn't sure when he would retire – which given how far he was from retirement isn't unreasonable as his plans were likely to be subject to change – given this was the basis of the advice given, I think a comparison of the benefits available at 60 is the most appropriate consideration here.

And taking all of this into account, from a financial viability perspective, I don't think a transfer out of the DB scheme was in Mr C's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite being likely to provide overall lower benefits. I've considered this below.

Flexibility and income needs

TPWM recorded that Mr and Mrs C's expenditure at the time of its advice was approximately £1,965 per month. Of this £600 per month represented mortgage payments, which would cease before they retired. So, if all other expenditure remained the same, they'd likely need £1,365 per month (£16,380 per year) in retirement – although it says Mr C expected the actual figure required to be lower as their children would no longer be financially dependent on them at that time. It said their state pensions and anticipated rental income of £400 per month from a second property they owned, would meet these requirements from age 67. So, they didn't need a guaranteed income from Mr C's DB scheme for the entirety of their retirement. And TPWM says Mr C was interested in flexibility in terms of how he could access his pension. And the fact find noted that he was interested in being able to access the pension from age 55 "without penalty". But as I'll explain, I don't think Mr C *needed* flexibility from this pension.

Again, TPWM recorded that Mr C didn't expect to retire before 60. So, I can't see that the information supported him needing or wanting to be able to access his pension benefits from age 55. There was no indication of an expected expenditure that would require funding from the pension.

As I understand it the BSPS2 and the PPF would've allowed Mr C to draw pension benefits from age 60 – his recorded preferred retirement age – or age 55. TPWM says that these schemes were rigid in terms of how benefits could be drawn. And it is true that once Mr C began taking benefits under either of these, they couldn't be varied – he'd receive an escalating annual pension without the facility to alter this. But again, I've seen nothing to suggest that Mr C needed a flexible income in retirement. It is true that if Mr C drew his benefits at age 60, or 55 for that matter, under either the PPF or the BSPS2 the amount he could take would be subject to actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by retiring early Mr C would've been receiving his pension for several years longer. It was a trade-off, rather than a 'penalty'.

The TVAS report estimated that, at age 60, the BSPS2 could provide either a full starting pension of £15,947 per year or TFC of £76,320 and a reduced starting pension of £11,448 per year. Alternatively, the PPF would provide an estimated starting income of £13,490.66 per year or TFC of £73,416.04 and a reduced pension starting at £11,014.06 per year. All of the annual pension's amounts would continue to escalate while in payment.

These annual amounts fell short of Mr and Mrs C's expected income needs of £16,380 per year. But Mr C was a member of the new defined contribution pension scheme his employer had put in place after the BSPS had closed. And, I haven't seen any suggestion he intended to change employer prior to retirement. Again, it was over 17 years until he was apparently considering retirement. He and his employer's contributions to this new scheme were recording as combining to be equivalent to 20% of his salary. So, before even accounting for increases in salary, investment growth or Mr C increasing his contributions, by age 60 this fund was likely to be worth in excess of £125,000. And this fund could've potentially been used flexibly from age 60. This could've either been used to supplement income from the DB scheme, or to meet Mr C's needs entirely and allow him to defer drawing benefits from the DB scheme, and not incur an actuarial reduction, until the normal scheme retirement age. And this is before accounting for any retirement provisions Mrs C may've had.

So, I'm satisfied that Mr C did not need to transfer to meet his stated income needs from age 60.

TPWM argues that Mr C didn't need a guaranteed income at all and transferring meant he could meet his needs from ages 60 – 67 and rely on his other means after this. And from the point Mr C became eligible for state pension, it appears his income would've exceeded his stated needs. And any rental income, if this had come about – because at the time of the advice this second property was not being rented and there was no guarantee it would've been retained or achieved the estimated rent stated – would've added to that surplus. But I don't see that having a surplus income in retirement, which was guaranteed and not subject to market risk, was a negative or that this means transferring was in Mr C's best interests. Particularly when he seems unlikely to have improved on the guaranteed income by transferring.

And I'm also conscious that, again, Mr C was only 42 at the time of the advice – over 17 years from the earliest point he expected to retire. His circumstances and needs were likely subject to change, and his income requirements could've been higher than initially estimated. Remaining in the DB scheme meant he would've been guaranteed an income that appears to have been sufficient to meet those needs. And would've meant he could meet higher income needs, in combination with other provisions, if they came about. So, I don't think it was in Mr C's best interests to make an irreversible decision to transfer his pension at the point he did just to have flexibility that he didn't *need*.

Death benefits

TPWM says Mr C was drawn to being able to leave the pension to his family in the event of his death. And it said the spouse's pension wasn't particularly generous and Mrs C would not have relied on this.

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 C. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his DB scheme because of this, the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

TPWM says that Mrs C had retirement provisions of her own and would not rely on the spouse's pension Mr C's pension provided. But the details of Mrs C's pension entitlement don't appear to have been known – or at least weren't recorded in the information I've seen. So, I can't rule out she would have needed the existing spouse's pension. And certainly, at the least, it was likely to provide a useful additional income, in the event Mr C predeceased her. And this was guaranteed, and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr C drew in his lifetime. Mr C was recorded as being in good health, so there was nothing to suggest he was less like to live until at least his average life expectancy – a significant period of time over which benefits could be drawn. So, the value of the DB scheme could've been significantly depleted by the time it came to be passed on and may not have provided the legacy that Mr C may have thought it would.

The new defined contribution pension Mr C was contributing to also provided alternative forms of death benefit to his DB scheme. So could've provided a legacy while keeping Mr C's guaranteed retirement income intact. And in any event, TPWM should not have encouraged Mr C to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Furthermore, if Mr C genuinely wanted to leave a further legacy for his family, beyond the new defined contribution pension, which didn't depend on investment returns or how much of his pension fund remained on his death, I think TPWM should've instead explored life insurance. Mr C was recorded as being in good health. So based on this, and his age at the time, it's likely this would've been available at a reasonable cost. And the fact find indicated he has a surplus income at the time, so had money that could've been used to pay the premiums each month. And in retirement, he could've used the apparent excess income the DB scheme and his other provisions would combine to provide, to continue with these premiums.

Overall, I don't think different death benefits available through a transfer to a personal pension meant that a transfer was in Mr C's best interests.

Control and concerns over financial stability of the BSPS

TPWM says Mr C wanted control of his pension because of the distrust he had for his employer given what had gone on to that point and the CETV being generous.

I think Mr C's desire for direct control over his pension benefits was overstated. Mr C was not an experienced investor – with the fact find noting him having very limited experience. So, I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And I don't think that this was a genuine objective for Mr C – it was simply a consequence of transferring away from the BSPS.

I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr C, like many employees of his company, 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. And Mr C had been told, in recent correspondence from the scheme, he was going to need to make a choice about his pension – which I doubt is something he'd done or contemplated before. And he might've felt unequipped to do so. I also don't doubt Mr C had likely heard negative things about what could happen, including entry into the PPF. And it's quite possible he was leaning towards the decision to transfer because of his concerns. But that is why it was even more important for TPWM to give Mr C an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. The "time to choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated some of C's concerns about the scheme moving to the PPF.

While Mr C might've had a significant distrust towards his employer, the BSPS2 and its trustees and Mr C's employer were separate. They weren't one and the same, something which I think could've been discussed in more detail. TPWM has argued that the adviser could not document every conversation, but I'd have expected the suitability report to specifically address Mr C's concerns about this.

I've also seen no indication Mr C was planning to sever all ties with his employer by finding work elsewhere. He was also again part of the new defined contribution pension scheme the employer had set up and was contributing willingly to that plan. So, I think the issue of distrust could've been address with objective advice about the BSPS2. And the BSPS2 would've still enabled Mr C to transfer at a later date.

TPWM has argued that the CETV was likely to be lower if Mr C deferred a decision about transferring and joined the BSPS2. But what CETV the BSPS2 may offer in the future is ultimately unknown. I don't doubt that the CETV figure was appealing. But again, Mr C was an inexperienced investor who came to TPWM for advice. I think the guarantees the DB scheme provided were more appropriate for Mr C based on his circumstances at the time. Which I think TPWM should've explained.

In addition, even if there was a chance the BSPS2 wouldn't go ahead, I think that TPWM should've reassured Mr C that the scheme moving to the PPF wasn't as concerning as he thought. Although the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. He could've drawn this from age 60, as TPWM indicated he intended to. And he wasn't likely to improve on this income from that point by transferring. A transfer also meant he was taking on additional risk and, for the reasons I've already explained, I can't see that doing so was in his interests.

So, I don't think that Mr C's concerns and mistrust of his employer should've led to TPWM recommending he transfer out of the DB scheme altogether.

Suitability of investments

TPWM recommended how Mr C invest in the SIPP. But as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr C, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr C should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr C. But TPWM wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to understand Mr C's circumstances, separate his concerns stemming from the consultation and his unconfirmed plans for retirement from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr C was unlikely, in my view, to improve his retirement benefits and had no other particular reason to transfer which would justify giving up these guarantees. His existing provisions would've met his stated needs and provided additional capacity should those estimates have proven to be conservative. And he could've left a legacy for his family through his defined contribution scheme and insurance had this been a genuine concern. So, I don't think it was in Mr C's best interests for him to transfer his DB scheme to a SIPP. And I think TPWM should've recommended that he not transfer and instead move to the BSPS2.

TPWM says the BSPS2 was not certain to proceed and that it is unreasonable for us to say Mr C should've been advised to join this scheme as it wasn't a genuine option. I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But, as I've already explained, I think it was clear to all parties that it was likely to be going ahead – particularly as it was referred to in the "time to choose" documentation and TPWM carried out its transfer analysis in comparison to the benefits it provided. So, contrary to what TPWM has said, I do think this was an option that it could've recommended at the time.

Mr C had over 17 years before he reached the age at which he'd indicated he might like to retire. But his plans were in any event unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr C would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think TPWM should've advised Mr C to opt into the BSPS2.

Of course, I have to consider whether Mr C would've gone ahead anyway, against TPWM's advice. TPWM argues that this is the case, because of the strength of Mr C's unhappiness and distrust towards his employer.

I don't doubt that Mr C likely had a negative opinion of his employer at that time in respect of the pension arrangements, given what had happened to that point. And he'd likely put a lot of thought to the information he'd been given to that point about his options. But again, Mr C still worked for the employer and hadn't indicated an intention to stop. So, I don't think the relationship and trust was as irretrievably broken down as TPWM has suggested. And his employer and the pension scheme trustees were not one and the same.

And ultimately TPWM advised Mr C, an inexperienced investor, to transfer his benefits, and I think Mr C relied on that advice. If TPWM had provided him with clear advice against transferring, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr C's concerns about the consultation or the PPF, or the potential appeal of alternative death benefits, control or flexibility 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. And if TPWM had explained that Mr C was always unlikely to exceed the guaranteed benefits available to him by transferring, I think that would've carried significant weight. So, I don't think Mr C would have insisted on transferring.

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

I know Mr C has indicated he is unhappy with the calculations TPWM has undertaken so far, noting that he feels he has been disadvantaged as colleagues' calculations have come back differently. But the award here is not intended to fine or punish TPWM. The intention is to put Mr C as far as possible into the position he would now be in. And that might be that he has not suffered a loss. In any event, ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint.

Our Investigator recommended that TPWM also pay Mr C £350 for the distress caused by the unsuitable advice. I don't doubt that Mr C has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr C would have most likely elected to join the BSPS2 if suitable advice had been given.

TPWM 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.

Although TWM has said it has previously estimated that Mr C did not incur a loss, as a final decision was requested by Mr C with those calculations ultimately having been rejected, TPWM should undertake a new calculation, upon receipt of confirmation of Mr C's acceptance of this decision. It 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 C and our Service upon completion of the calculation.

For clarity, Mr C has not yet retired, and has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 C'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, TPWM should:

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

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

In addition, TPWM should pay Mr C £350 for the distress caused by the disruption to his retirement planning.

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 uphold this complaint and require True Potential Wealth Management LLP to pay Mr C 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 C the balance.

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 18 July 2023.

Ben Stoker
Ombudsman