

## **The complaint**

Mr P complains about the advice given by Tuto Money Limited (Tuto) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

Mr P was referred to an appointed representative of Tuto in late 2017 to consider the suitability of transferring deferred benefits held in a DB pension. Tuto are responsible for the activities of its appointed representative, so I will simply refer to Tuto in this decision.

Tuto completed a fact-find to gather information about Mr P's circumstances and objectives. And on 3 January 2018, Tuto sent Mr P a suitability report listing that Mr P:

- was 55 years old living with his 41 year old partner
- was employed earning around £40,000 a year
- had a joint net household monthly income of £4,633 between him and his partner
- had total monthly expenditure of £3,160
- owned his property with an outstanding mortgage of £260,000
- had no financial dependents
- had a workplace pension valued around £10,000

Tuto's suitability report described Mr P's financial objectives as:

- to ensure that his pension fund could be used as a form of inheritance for his partner
- to take a tax free lump sum of £22,000 to clear credit card debt and make home improvements

Tuto carried out an assessment of Mr P's attitude to risk, which it deemed to be 'lowest medium'. Tuto advised Mr P to transfer his DB benefits into a personal pension and invest the proceeds into the pension provider's growth fund. Tuto said this would enable Mr P to achieve his objectives.

Mr P accepted Tuto's recommendation and transferred his DB pension to a personal pension in March 2018.

Mr P complained to Tuto, via a legal representative, in 2021 about the suitability of the transfer advice. The representative said that it didn't think that the advice to transfer was suitable because Mr P gave up a safe pension for one with investment risk that he didn't have the attitude for or capacity to suffer any losses. It estimated that Mr P would be worse off in retirement as a result.

Tuto only considered Mr P's complaint after it had been brought to our service. It didn't uphold Mr P's complaint. It said that Mr P wanted:

- the opportunity to vary his income in retirement if the need arose and that he wasn't concerned about guarantees
- to leave 100% of his pension to his partner and that he was concerned that the scheme would not pay her death benefits as they were not married
- wanted to take tax free cash straight away and not wait until he was 65
- wanted a retirement income of £20,000 a year

And it said that its recommendation enabled Mr P to meet most of his objectives.

Mr P didn't accept Tuto's response so our investigator looked into what happened. He upheld the complaint and required Tuto to pay compensation. He explained that the critical yield (CY) – the average yearly investment return needed to match the benefits given up – was 14.66%, which was unachievable and would leave Mr P with lower benefits in retirement. He didn't agree that Mr P's other objectives justified a recommendation to give up the deferred benefits he held.

Tuto disagreed, saying that it didn't think that our investigator had considered all of the relevant factors set out in its final response letter. It thought that our investigator had overlooked Mr P's objectives in reaching the outcome that he did.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Tuto'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

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, Tuto should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. And having looked at all the evidence available, I'm not satisfied this transfer was.

### *Financial viability*

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

Mr P was 55 at the time of the advice and wanted to retire at 65. The critical yield required to match Mr P's benefits at age 65 was 14.66% if he took a full pension and 13.35% if he took TFC and a reduced pension.

I've kept in mind that the regulator's projection rates for investment returns 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 Mr P's 'lowest medium' attitude to risk and also the term to retirement. There would be little point in Mr P 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, given the lowest critical yield was 13.35%, I think Mr P was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. Everything, in the analysis that Tuto did, pointed to this. And, in fairness, its suitability report reached this conclusion too.

Tuto has provided cashflow models which it says shows Mr P would've been able to meet their needs despite the high critical yields. I've considered these, but Tuto's models don't show Mr P taking the same benefits from his personal pension. They rely on income from his partner to make up his income age 80 after which it shows him starting to draw down on his personal pension. I don't think that they provide a clear or fair comparison between what was given up and what benefits he might be able to take from his personal pension. I think they may have provided a false reassurance to Mr P.

For these reasons a transfer out of the DB scheme wasn't likely to be in Mr P's best interests. He was almost certain to end up with retirement benefits that were significantly lower than if he'd retained his DB pension. Of course financial viability isn't the only consideration when giving transfer advice, as Tuto has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

### *Flexibility and income needs*

I don't think Mr P required flexibility in retirement when this advice was given. This is because based on the evidence I've seen, I don't think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave the residual funds invested until a later date. I say this because Mr P and his partner had a comfortable monthly surplus of income over expenditure. He wanted to clear his credit card debt, but that was only given as being £2,000. Something that was seemingly already possible to achieve without giving up a valuable DB pension. His objective of home improvements was vague. And I note that

no alternative means of funding this were suggested or explored before recommending a pension transfer. And, again, it should have been prior to recommending that this be given up. Especially in light of what the guidance the FCA gave in COBS 19.1.6G.

I also can't see evidence that Mr P had a strong need for variable income throughout his retirement. This is because he gave an estimate of the income he would like in retirement of £20,000 a year. He didn't indicate that it would vary hugely. And the cash flow analysis assumed a fixed annual income requirement. Tuto did point out to Mr P that its recommendation would leave Mr P short of his target income in retirement. Which it likely would unless he could increase the amount he put into his pension prior to age 65. But Mr P would have had less of a shortfall if he'd kept his DB pension.

So, I'm satisfied Mr P was closer to meeting his income needs in retirement through the DB scheme at 65.

### *Death benefits*

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 P. But whilst I appreciate death benefits are important to consumers, and Mr P might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr P about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Tuto explored to what extent Mr P was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr P wasn't married and had no children. But I've seen no evidence that Tuto explored whether his DB scheme would pay out to a common-law partner if nominated as Mr P's beneficiary through the scheme. In any event, Tuto should not have encouraged Mr P to prioritise the potential for higher death benefits through a personal pension over his financial security in retirement.

Furthermore, if Mr P genuinely wanted to leave a legacy for his partner, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Tuto should've instead explored life insurance. I appreciate that the suitability report briefly mentioned a life insurance policy with a sum assured equal to the cash equivalent transfer value of the DB pension up until Mr P's 65<sup>th</sup> birthday. It indicated a cost of less than £21 a month. But didn't provide any comparison with the benefits or drawbacks of transferring. I don't think that this was a balanced way of presenting this option to Mr P.

Basing the quote on the transfer value of Mr P's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Tuto knew that its recommendation was that Mr P took immediate TFC to the value of £22,000. Immediately reducing the amount available as death benefits to a sum lower than was being quoted for life insurance purposes. Really, Tuto's starting point ought to have been to ask Mr P how much he would ideally like to leave to his partner, and this could've been explored on a whole of life or term assurance basis, which may have been even cheaper to provide.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr P. And I don't think that insurance was properly explored as an alternative.

## *Summary*

I don't doubt that the flexibility and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr P. But Tuto wasn't there to just transact what Mr P might have thought he wanted. The adviser's role was to really understand what Mr P needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr P was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr P shouldn't have been advised to transfer out of the scheme to repay a debt that was affordable or to fund some house improvements that could have waited or been funded another way. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Tuto should've advised Mr P to remain in his DB scheme.

Of course, I have to consider whether Mr P would've gone ahead anyway, against Tuto's advice. I've considered this carefully, but I'm not persuaded that Mr P would've insisted on transferring out of the DB scheme, against Tuto's advice. I say this because Mr P was an inexperienced investor with a 'lowest medium' attitude to risk and this pension accounted for the majority of Mr P's retirement provision. So, if Tuto had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr P's concerns about his death benefits were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he was paying for, didn't think it was suitable for him or in his best interests. If Tuto had explained that Mr P could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr P would have insisted on transferring out of the DB scheme.

In light of the above, I think Tuto should compensate Mr P 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 P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would have most likely remained in the occupational pension scheme if suitable advice had been given.

Tuto 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>.

For clarity, Mr P 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 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 PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr P's acceptance of the decision.

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

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P 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 defined contribution pension
- offer to calculate how much of any redress Mr P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts Tuto's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr P for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr P's end of year tax position.

Redress paid to Mr P as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Tuto may make a notional deduction to allow for income tax that would otherwise be paid. Typically, 25% of the loss could be taken as tax-free cash and 75% would have been taxed according to Mr P's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

I agree with our investigator's recommendation that Tuto, in addition to compensating Mr P for his financial loss, must pay Mr P £200 for the distress and inconvenience it has caused him. He has suffered a considerable period of uncertainty about whether or not he will be worse off in retirement. Tuto failed to respond to his initial complaint. And, in spite of our requesting its business file in March 2022, it only issued its final response to the complaint in February 2023. And only provided us with its business file in March 2023. Thus creating an unnecessary period of uncertainty and distress for Mr P.

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 Tuto Money Limited to pay Mr P 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 Tuto Money Limited pay Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on Tuto Money Limited.

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 July 2023.

Gary Lane  
**Ombudsman**