DRN-4152047

The complaint

Mr P complains about the advice True Potential Wealth Management LLP gave to him 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.

Professional representatives have helped Mr P to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr P's.

Similarly, a law firm replied to our Investigator's assessment of Mr P's complaint on True Potential's behalf. But, for simplicity, I will refer to the law firm's comments as being True Potential's.

What happened

In March 2016, Mr P'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'). 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 said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr P's employer would be set up – the BSPS2.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. Those gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

Mr P's existing financial adviser referred him to True Potential for specialist pension transfer advice. True Potential gathered information about his entitlement under his current DB scheme and obtained a transfer value analysis (TVAS) report. It also completed a fact-find with him and an assessment of his risk appetite. Amongst other things, it recorded that:

- Mr P was 35 years old, married to Mrs P and they had three dependent children.
- He earned £40,000 a year and Mrs P earned £51,000 a year.
- The mortgage on their home was due to be repaid when Mr P was around 54 years old.
- He and his wife had a buy-to-let property which generated an income of £4,800 a year.
- Mr P wanted an income of £15,000 a year in retirement from age 65.
- His BSPS pension had a cash equivalent transfer value ('CETV') of around £220,000.
- The BSPS2 would pay him a pension of around £14,500 a year at the normal scheme retirement age of 65 if he took a full pension. Alternatively he could take a tax free cash ('TFC') lump sum of roughly £67,600 and a reduced income of £10,150 a year.
- The growth rates required (the critical yield) to match the benefits from the BSPS2 in an alternative pension arrangement were 4.57% for a full pension and 3.98% if he took TFC and a reduced pension.
- The PPF would pay Mr P a full pension of around £13,250. If he wanted to take tax free cash he could take a lump sum of £70,700 together with a reduced pension of around £10,600 a year.
- The critical yields to match the PPF benefits were 4.11% and 3.91% respectively.

On 31 October 2017 True Potential sent Mr P a suitability report setting out its analysis and recommendations. It said Mr P had told it that:

- He had no trust in the new scheme on offer following the issues with his employer.
- He would like flexibility in the future, rather than being limited to a fixed pension.
- He wanted to ensure he could pass on his pension to his wife and children in the event of his death.

True Potential recommended that Mr P should transfer his DB funds to a named SIPP. While explaining some of the risks associated with such a transfer True Potential said that doing so would address the following objectives:

- To provide varying levels of income at different stages of retirement.
- To provide suitable death benefits to Mrs P.
- To enable Mr P to retain the value of his accrued fund to leave as a legacy on his death.

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

In 2021 Mr P complained to True Potential that its advice to transfer wasn’t suitable for him. In a lengthy response True Potential set out why it didn’t believe that was the case. In essence it said its recommendation enabled Mr P to achieve his financial objectives.

Mr P referred his complaint to our service. One of our investigators upheld the complaint and required True Potential to calculate compensation, including £300 to address Mr P’s distress and inconvenience. In short our Investigator didn’t believe True Potential’s advice was suitable for Mr P.

In a detailed response True Potential disagreed with our Investigator’s complaint assessment. Amongst other things it said it wasn’t required to guarantee or ensure, particularly with the benefit of hindsight, that the transfer would prove to be suitable for Mr P. Instead it was required to exercise due skill and care to allow Mr P to make an informed decision, and to take reasonable steps to satisfy itself its advice was suitable. It said it believed it had done so.

True Potential also said it couldn’t have advised Mr P to opt into the BSPS2 as at that time it was only a consultation subject and he had no entitlement to join it. It said if Mr P had opted in to the BSPS2, and it didn’t go ahead, his BSPS pension funds would have moved into the PPF.

True Potential said that our Investigator had placed too much weight on critical yields. But, in any event the discount rate was higher than the critical yields and as such the advice was suitable. It said it had provided the appropriate suitability assessment comparisons and risk warnings. And, as a result, Mr P was in a position to make a fully informed decision. It added that the regulator, the Financial Conduct Authority (FCA), had reviewed some of its advice files and hadn't found any issues with those

The investigator wasn’t persuaded to change his opinion, so the complaint was referred for an ombudsman’s determination.

While the case was awaiting an ombudsman’s attention, in August 2022 the FCA launched a consultation on changes to its DB transfer redress method guidance. In October 2022, our Investigator wrote to Mr P and True Potential. He said the regulator was consulting on the method for calculating redress in DB transfer cases, which would come into effect from 2023. He said he was giving Mr P the option of choosing which method of redress calculation he preferred, either:

- using the existing guidance; or
- to wait for the new guidance to come into effect.

The Investigator added that if Mr P’s complaint still hadn't been settled by the time the new method came into effect he would expect True Potential to use the updated calculation method. Mr P relied that he would like to wait for the new rules to come into effect.

In January 2023 True Potential said that, while it didn’t agree it had done anything wrong, in an effort to settle the complaint it was prepared to make a redress calculation using Mr P’s preferred calculation method. Mr P said he would like to use the existing calculation method but asked True Potential to agree to apply adviser charges of 0.5% and product charges of 0.75%. True Potential agreed to those terms and requested information from Mr P’s current pension provider. True Potential said it only received the information it needed in April 2023, after the new method of calculation had come into effect. It then calculated that Mr P had suffered a loss – after allowing a notional deduction for tax – of £4,615. It offered to pay that sum to Mr P together with £300 compensation for his distress and inconvenience.

Mr P didn’t think that was fair. He believed that it would only be fair for True Potential to use the regulator’s calculation method which was in effect at the time he accepted True Potential’s offer to make the loss calculation in January 2023.

As the parties didn’t agree the matter was resolved it's been passed to me to make a final determination.

What I’ve decided – and why

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

In bringing this complaint and in replying to it Mr P and True Potential have made a number of detailed points. I've considered everything on file. But in this decision I don’t intend to address each and every issue raised. Instead I will focus on what I see as being the key points at the heart of Mr P’s complaint and the reasons for my decision.

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

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of True Potential's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

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.

True Potential's said that COBS 9 required it to use reasonable skill and care to ensure that Mr P had enough information to make an informed decision. Also to take reasonable steps to ensure the advice was suitable for Mr P without ensuring that it would prove suitable. But, while I agree True Potential was required to take reasonable steps to ensure that its personal recommendation to Mr P was suitable for him (COBS 9.2.1), additional regulations also apply to advising on transferring out of DB schemes. In particular advising firms are required to start with an assumption that a transfer from a DB scheme is unsuitable (COBS 19.1.6). So, True Potential should have only considered a transfer if it could clearly demonstrate it was in Mr P's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Uncertainty around the future of the BSPS or the BSPS2

The BSPS closed in March 2017 and at the time Mr P approached True Potential the situation had been evolving for some months. There was some widespread concern about what moving pensions to the PPF meant for BSPS members. It's also well-known that this was a period of uncertainty for people in Mr P's situation. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice. So in order to recommend that Mr P should transfer out of his DB scheme True Potential needed to be able to clearly demonstrate that doing so was in his best interests.

I don't dispute that when Mr P approached True Potential there was still the possibility that his pension could move to the PPF. And in response to our Investigator's assessment of the complaint True Potential has argued that the BSPS2 may not have gone ahead. But I think True Potential has changed its position on that point. It's notable that its TVAS and suitability report make appropriate comparisons between Mr P's likely pension entitlement from the BSPS2 and his likely income from an alternative arrangement. So I think True Potential, at the time of its advice, most likely felt the BSPS2 would be going ahead.

Further, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr P's employer would set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017. And the confirmation that Mr P's employer had made the required payment for it to go ahead was announced on 11 September 2017. And by the time that True Potential made its final recommendation, in October 2017, the BSPS trustees had provided details of the BSPS2 to scheme members in its "time to choose" information. So it seems that, at that time, True Potential believed it was more likely than not that BSPS2 would go ahead.

So, while entry into the PPF was still a possibility, I think this was unlikely to be Mr P's only option. Further, even if Mr P remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think True Potential could have addressed that concern.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. And, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And I think it’s likely, as I explain below, that Mr P could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn’t gone ahead and he’d had to move his pension to the PPF.

It follows that I'm not persuaded the uncertainty Mr P experienced when he entered into the advice process was sufficient reason for True Potential to recommend he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That’s because to do so would expose those funds to the volatilities and risks of the investment markets. So, I don’t think those concerns should have been a significant driver in True Potential recommending Mr P transfer out of the DB scheme altogether.

Financial viability

True Potential 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 the BSPS2 and the PPF (the critical yield).

True Potential provided Mr P advice 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 this Service published similar rates on our website. I acknowledge that True Potential was under no obligation to refer to discount rates when giving advice. But it was free to do so. And 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. I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. so those 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.

I’ll add that True Potential said that paragraph 3.6.4R of our rules (known as the DISP rules) doesn't permit us to use discount rates. But True Potential is mistaken. DISP 3.6.4R says:

“*In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*

(1) relevant:

(a) law and regulations;
(b) regulators' rules, guidance and standards;
(c) codes of practice; and

(2) *(where appropriate) what he considers to have been good industry practice at the relevant time*.”

So DISP 3.6.4R simply sets out that we must take into account what is relevant. It’s certainly not prescriptive about anything we should omit.

True Potential also said the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. True Potential says Mr P didn’t want an annuity, it said he wanted to take his benefits flexibly. But the regulator required True Potential to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don’t think Mr P could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 29 full years. So, it's entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Mr P was 35 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 from the BSPS2 was 4.57% if he took a full pension and 3.98% if he took TFC and a reduced pension. The critical yields to match the benefits available through the PPF at age 65 was quoted as 4.11% a year if Mr P took a full pension and 3.91% 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 this Service for the period before 1 October 2017, and was 4.7% per year for 29 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 P's medium attitude to risk and also the term to retirement. In this instance the relevant discount rate is slightly above the critical yield if Mr P took a full pension. I've noted that he made no comment about a need to access TFC at retirement. So I think the critical yield relating to the full pension is more relevant to his circumstances. And, as the discount rate is higher than the critical yield it would indicate a potential for Mr P to be marginally better off by transferring.

But there would be little point in Mr P giving up the guarantees available to him through his DB scheme only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the DB scheme benefits, he would need to put those funds at risk. However here, given the discount rate was broadly equivalent to the critical yield, then the scope for gains was small. And, if there was an extended period of poor performance or his investments suffered losses that could result in him being worse off in retirement.

Further, by transferring from the DB scheme Mr P would have to pay the fees and charges that are required in order to invest in a SIPP. And those would reduce any gains the funds made. Those are not charges he would have had to pay if he opted into the BSPS2.

True Potential said its calculations show that if Mr P were to take equivalent funds from his SIPP as his entitlement from the DB scheme, then the SIPP funds would last him well beyond his life expectancy. But it's not clear if those are adjusted to allow for product and adviser charges. And, True Potential has assumed that the SIPP would provide investment returns of at least 5% a year, every year. But, given the volatilities of the markets, a consistent return at that level might be difficult to achieve. Also, as I've said above, a sustained period of poor performance could result in Mr P's fund growing at a lower rate than the 5% True Potential has predicted. In those circumstances Mr P's funds could be depleted earlier than True Potential projected.

There was scope for Mr P's investments to make him slightly better off in retirement. But that was anything but guaranteed and doing so meant putting his funds at risk. So I don't think it was in his best interests to transfer.

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 providing overall lower benefits. I've considered this below.

Flexibility and income needs

True Potential's said that by transferring Mr P gained the opportunity to access his funds flexibly in retirement. But I don't think Mr P required flexibility in retirement. Mr P had said he was planning on working until the scheme's normal retirement age of 65. And, as I've said above, he hasn't expressed a need for TFC prior to then. So it seems he was in a position to leave his pension funds within the DB environment, until he needed to access them.

I also can't see evidence that Mr P had a strong need for variable income throughout his retirement. Mr P told True Potential that he believed he'd need an income of around £15,000 a year once retired. The BSPS2 would have paid Mr P an income of around £14,500 a year. Similarly the PPF would have paid him £13,250 a year. While those sums are less than Mr P estimated he'd need, he had other sources of income.

Mr P had recently started paying into his employer's group pension plan. I haven't seen exactly how much he and his employer were contributing to that plan but he already had around £6,500 in it. At that time, he could have anticipated continuing to contribute to that policy (or a similar one if he was to change jobs in the future) for the remainder of his working life. So I think it's reasonable to assume that, by the time he reached 65, his personal pension should have amassed a sizeable pot. Mr P could have used those funds to increase his income to meet the £15,000 level if he needed to. And that's without considering the income Mr P and his wife received from their buy-to-let property, or their state pensions once those became payable.

Further, if Mr P had felt the need to access funds flexibly, then, assuming he continued to contribute to the group pension plan he could have gained that flexibility from the money invested in it. That would have allowed him to leave his safeguarded DB funds untouched. So he didn't need to transfer out of the DB scheme in order to have some flexible access to funds.

It follows that I'm satisfied Mr P could have met his income needs in retirement through the BSPS2 or the PPF at age 65. So, I don't think it was in his best interests to transfer his pension just to have flexibility he didn't need.

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 SIPP was likely an attractive feature to Mr P. That's because whatever was left within it at the date of his death would be passed on to his family. If that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the BSPS2 or PPF would pay Mrs P half of Mr P's yearly pension after he died. But that pension would die with her. So Mrs P couldn't leave it as a legacy for their children once she died.

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 funds to a SIPP because of this, the priority here was for True Potential to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr P was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr P's withdrawals from it in the meantime.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr P was married and had children. Both the BSPS2 and the PPF would have paid Mrs P 50% of

Mr P's yearly pension on his death. Although the BSPS2 was more generous as it didn't make a spouse's benefit deduction for any TFC taken. Also, if Mr P was unfortunate enough to die while his children were still in full-time education, then the two schemes would also pay a dependents' pension. These were guaranteed and escalated they were not dependent on investment performance, whereas the sum remaining on death in a SIPP was. And there may not have been a large sum left in the SIPP if Mr P lived a long life. In any event, True Potential should not have encouraged Mr P to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

Further, I'm aware Mr P had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for his family, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, I think True Potential should have instead explored life insurance. I appreciate that life insurance can be expensive. So, the starting point ought to have been for True Potential to ask Mr P how much he would ideally like to leave to his family, and this could have been explored on a whole of life or term assurance basis. But there's little evidence it did so.

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

The FCA's review,

True Potential told us the FCA had reviewed a number of its files where it had given advice in similar circumstances to Mr P's. It said the FCA didn't find it had done anything wrong. I wasn't party to what the FCA reviewed or what it found, nor do I need to be. Our function isn't a regulatory one. And while I'm required to consider the regulator's rules, guidance and standards, my role is to decide whether True Potential has acted fairly and reasonably in all the specific circumstances of this complaint not simply to look at what the FCA did. So the FCA's file review of other cases isn't relevant to that consideration.

Summary

I don't doubt that the flexibility and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr P. But True Potential 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.

True Potential was in a good position to have analysed, tested, challenged and advised Mr P about what was in his best interests for retirement planning. It knows valuable pension pots like Mr P's DB scheme were paid into with the intention of providing for retirement. So, I don't think it was in Mr P's best interests for him to transfer his DB scheme funds into a SIPP and put those funds at risk.

I appreciate the BSPS2 hadn't been established when True Potential gave its advice. But I think it was clear to all parties that it was likely to be going ahead. I think it would have been in Mr P's best interests to have opted into BSPS2 as that had more generous benefits than the PPF. By opting into the BSPS2, Mr P would have kept the option to transfer out of the scheme nearer to his retirement age if that was what he decided to do at that point. So, I think True Potential should have advised Mr P to opt into the BSPS2. Ultimately, I don't think the advice True Potential gave to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a SIPP Mr P was unnecessarily putting his pension funds at risk. 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 P's best interests for him to transfer his DB scheme to a SIPP when he had the opportunity of opting into the BSPS2.

Of course, I have to consider whether Mr P would have gone ahead with the transfer anyway if it wasn't for True Potential's advice. After thinking about this carefully, I'm not persuaded he would have done so. That's because, Mr P's BSPS pension accounted for a significant portion of his retirement provision at the time. So, if True Potential had given clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded Mr P's concerns about the future of the DB scheme was so great that he would have gone against True Potential's advice. That's because True Potential had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. And the future of the pension scheme was in the process of being taken out of the employer's hands. So True Potential could have allayed Mr P's concerns about the uncertainty of the scheme. It follows that I don't think those would have been sufficient reasons for Mr P to insist on a transfer.

I don't think True Potential's advice to Mr P to transfer out of his DB scheme was suitable for him. I think it should have advised him to opt into the BSPS2 instead. So, I think True Potential should compensate Mr P for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice. And, as this matter has been a source of distress and inconvenience for Mr P, I think True Potential should pay him £300 to address that.

Putting things right

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'm aware Mr P doesn't believe it is fair for True Potential to use this updated redress method. That's because True Potential originally made the offer to make a loss calculation in January 2023. At that time the regulator's earlier redress method was still appropriate. So he thinks True Potential should use the redress method that was applicable at that time. I don't think that would be fair. Our Investigator was clear when he wrote to Mr P in October 2022 that, if the matter wasn't concluded by the time the new method came into effect, then Potential should calculate any loss using the new method. That is the case here.

I understand that True Potential didn't receive all the information it required in order to make the calculation until 4 April 2023 and by that time the new rules were already in effect. Mr P's argued that – as True Potential had made an "offer" prior to that date – the new method doesn't apply. But I think he's mistaken.

The appropriate rules (DISP App 4.2.2) says the new rules apply to any redress calculation and offer made after 1 April 2023, but not where an offer has been made previously. Mr P believes that, as True Potential had proposed making a loss calculation before the new rules came into effect, that "offer" means that the new rules don't apply in his circumstances. It is the case that True Potential had previously said it would make a loss calculation prior to April 2023 (when the new rules apply from). But it hadn't actually made an offer of *redress* (which is an offer made after a calculation established that Mr P had actually suffered a loss). And True Potential wasn't In a position to complete that calculation and make a redress offer until after 1 April 2023. In those circumstances I think it is reasonable for

True Potential to use the most up to date method of calculation. That's particularly the case as the regulator believes it is a fair way to make a redress calculation. I agree that's reasonable.

When making the calculation True Potential (or providers acting for 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 P's representatives and our Service upon completion of the calculation.

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, 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 P'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 P redress as a cash lump sum payment,
- explain to Mr P 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 SIPP or personal 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 True Potential's offer to calculate how much of his 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 his 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 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 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.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require True Potential Wealth Management LLP to pay Mr P the compensation amount as set out in the steps above.
If Mr P accepts this decision, the money award becomes binding on True Potential Wealth Management LLP.

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

Joe Scott
Ombudsman