DRN-4335605

The complaint

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

The Tavistock Partnership Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Tavistock".

What happened

In March 2016, Mr M's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

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

- As of November 2017 Mr M had accrued over 35 years' worth of service. The cash equivalent transfer value (CETV) of his BSPS was approximately £515,130. The normal retirement age (NRA) was 65.

- Mr M was 52 years and 11 months old and was married with two children. He'd had a health scare from which he was recovering and was currently on extended sick leave. Although the prognosis for this medical condition looked good, Mr M said the episode had made him re-evaluate his plans. He wanted to stop working and retire at the age of 55, rather than 65. In the interim period, Mr M didn't intend going back to work and intended to resign in due course, when his sick pay ended.

- Mr M's income had been around £36,000 per year but if his plans worked out as above, this would cease in around six months' time (May 2018). Mrs M didn't currently work but they owned two overseas rental properties outright which generated an annual income of around €10,000. He and Mrs M also had £175,000 in cash savings, an internet business generating £1,000 per month and a mortgage free home which they lived in.

- Mr M had been recently contributing to a new defined contribution (DC) pension as a consequence of the BSPS closing to new contributions. Although there was only then £3,487 in this fund, it was receiving substantial employee and employer contributions each month. This pension is not the subject of any complaint.

Tavistock set out its advice in a suitability report dated 10 November 2017. In this it advised Mr M to transfer out of the BSPS and invest the funds in a type of personal pension plan. Tavistock said this would allow Mr M to achieve his objectives. Mr M accepted this advice and so transferred out. In 2023 Mr M complained to Tavistock about its advice, saying he shouldn't have been advised to transfer out to a personal pension. Tavistock didn't agree it had done anything wrong.

Mr M then referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld. In response, Tavistock repeated that it hadn't done anything wrong and was acting on the financial objectives Mr M had at the time.

As the complaint can't be resolved informally, it's come to me for a final decision.

What I've decided – and why

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

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

The applicable rules, regulations and requirements

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

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

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

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

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

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

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr M's best interests. In particular, I have also carefully considered the final response letter from Tavistock. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr M's complaint.

Introductory issues

I think it's reasonable to describe the BSPS landscape at the time as uncertain and as I'll explain more about later, it's understandable that British Steel workers like Mr M were unsure about what to do. Indeed, there is considerable evidence in this particular case that Mr M really didn't know what was for the best. We know this because he initially agreed with Tavistock's adviser who had recommended that he should transfer away from his DB scheme, but he then changed his mind citing that he couldn't face going into retirement without a known and steady income. However, he changed his mind once more, again going with the original recommendation to transfer away.

Nevertheless, I think this was a very difficult decision for Mr M to make. He wasn't experienced in these matters and had absolutely no investment history to call upon. I think it's also fair to point out that he'd suffered a significant medical episode which for him and Mrs M must have been a worry, particularly as he was still relatively young and they still had a family which were dependent on them.

In this context, I think it was very important that the adviser took account of these vulnerabilities. A part of Tavistock's defence of this complaint is that Mr M was given information and that it was he who ultimately wanted to go ahead; Tavistock implies he had enough information on which to make an informed decision. I understand the point being made.

However, it was Tavistock that was the regulated party here, *not* Mr M. He was clearly an inexperienced amateur in this area and Tavistock was charging a substantial fee for the information and advice Mr M was seeking. So, the adviser's job here wasn't to simply transact what Mr M might have thought sounded like a good idea. The adviser's job was to use their experience, skills and regulatory training to really get to grips with Mr M's circumstances. Their job was to interpret his situation and recommend what was in his best interests.

As I'll set out, I don't think the adviser did this.

Financial viability

Our investigator referred in his 'view' letter to critical yield rates. These were also referred to in Tavistock's transfer analysis and suitability report. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. Our investigator pointed out that the critical yield required to match the benefits of the BSPS2 at the NRA of 65 was 6.03% if taking a full pension. If taking a tax-free lump sum and a reduced pension at the age of 65, the critical yield was 4.32%.

However, Mr M told the adviser that he wanted to retire early. Given all the circumstances, I think the adviser was entitled to believe this and consider it the most likely option. This would have involved Mr M remaining on sick leave for around another six months and then using his own resources to live on until he'd be able to access his pension at the age of 55. I should point out that the BSPS did contain certain provisions about retiring even earlier, due to ill health. But these related to cases of total disablement or where future work was out of the question. I don't think this would have applied to Mr M. All the evidence pointed to a complete recovery from his health scare and an ability to work thereafter if he ever wanted to. But Mr M told the adviser he wanted to stop work and 'retire'.

This means the critical yield calculation should have focussed on retiring at 55, rather than 65. And the figures for this showed the respective yields were 23.02% (a full pension only) and 12.89% (a reduced pension and a tax-free lump sum).

These yields would normally tend to strongly demonstrate that transferring away from the DB scheme was unlikely to be financially viable. This is because reaching this level of annual growth outside the scheme year-on-year would be very difficult to achieve. In my view, it would be highly unlikely.

I can say this because Mr M had only just over two years until reaching 55 so his pension would need to grow by over 12% each year for those years. On the other hand, the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. But this hadn't been updated for some time and in 2017 we were in the midst of very low interest rates and low bond yields so I think that realistically growth projections could have been even lower. I've also seen, for example, that the fund provider which was being considered by Tavistock here issued low / mid / high growth assumptions that were 2.01%, 4.94% and 7.87% respectively.

Tavistock had assessed Mr M's attitude to risk (ATR) as 4/10. But as I've said, he had no investment experience whatsoever to call upon. I've also noted that despite having £175,000 in savings, this was mainly held in 'cash' type accounts. In my view, Mr M also showed no interest in investing and whilst I'm sure he understood the basics, I think the evidence showed he didn't like financial risk and had no desire to take too many chances that might involve even short-term losses. So I think even this modest ATR categorisation was higher than it realistically should have been.

In any event, I think there was very little chance of Mr M's transferred funds growing enough to make the transfer worthwhile. 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. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

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 it was only 2.7% per year for around 2 years to retirement (age 55), which is well below the critical yield figures I've referred to above. Even if assuming Mr M did work on a little longer, which would give him more time to 'smooth' out his investment returns, the discount rate for a retirement at 65 was still only 4%. This therefore implies that by transferring, Mr M would be losing financial benefits.

As our investigator pointed out, I think the more suitable advice would have been for Mr M to stay in the BSPS and migrate with it to the PPF. The critical yield for the PPF (taking a lump sum and reduced ‘pension’) was 13.88%. This wasn’t much different to the high critical yields I’ve mentioned above. And I’d still need to also factor in that there would be costs and charges associated with a personal pension which were not present in the DB scheme Mr M had (or one which he was able to move into in due course such as the BSPS2 or PPF). There would be little point in transferring - from a financial comparison point of view – unless there were clear indications that growth would comfortably exceed the critical yield rate and also cope with any additional fees. That situation certainly wasn’t present here.

I’ve also noted that using the anticipated retirement age of 55, Tavistock’s own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the scheme the estimated fund required was £631,345. I don’t have a corresponding figure for the PPF, but because this figure is well above Mr M’s CETV, it represents, in my view, a revealing window into the value of the guaranteed pension he could be giving up by transferring away to a personal plan.

So, I think it’s fair to say that from a financial comparison perspective, Tavistock’s own figures showed that transferring to a personal pension plan would mean Mr M would likely receive lower pension benefits in the longer term, when compared against the available DB scheme.

I’ve also considered some projections Tavistock used to help show that if he transferred out to a personal plan, the funds could last Mr M well into retirement. I think most of these were based on growth projections which were based on past performance and they also ran out at certain ages, whereas Mr M’s DB scheme was guaranteed for life. It’s also fair to say these were not comparing like-with-like. What Tavistock was showing Mr M were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to Tavistock, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, Tavistock said Mr M also had other reasons to transfer away. I’ve therefore thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I’ve considered these below.

Other reasons for transferring

Tavistock recommended a transfer to a personal pension arrangement *“based on the assessment of your existing scheme benefits and your recorded needs”.* And in its response to our investigator’s view, Tavistock said, *“the reason for transferring the scheme is based on the requirement to retire at age 55, the flexibility of withdrawals and the death benefits associated with a DC scheme”.* The following areas were also set out in the suitability report effectively justifying the recommendation to transfer (which I’ve summarised):

- Mr M wanted retirement fairly soon which meant accessing his benefits at the age of 55. He was on sick leave and not planning to return to work. This sick pay would last until May 2018 whereupon he would just resign from his job in the steel industry. He would then use his savings as income until aged 55, when his pension would kick in.

- He wanted to take tax efficient income using tax-free cash in order to monthly supplement a required annual pension income of around £17,000.

- He wanted to enjoy more flexible pension benefits and did not want to take a set income from the BS scheme as this couldn’t be tailored to his needs.

- He wanted to have more control of his pension.
- The death benefits in a personal pension were more suitable for Mr M.

I have therefore considered all these issues in turn.

- *Retiring early and 'flexibility'*

The adviser made the assumption that Mr M wasn't going to return to paid employment. I accept this was based on what Mr M had said, but I think there were other factors that should have called for a more cautious approach to irreversibly transferring away at what was still a relatively young age by pension standards.

I say this because it was clearly obvious that Mr M had gone through a difficult health scare and I think there was a real risk that he was making decisions founded, understandably, on short-term considerations. He may not have been contemplating returning to work at all at that stage, but the records show Mr M was evidently making a good recovery and so there was every indication that his views might change or at least, that paid employment might be something he could return to in the future.

More importantly, I think there was solid evidence that Mr M wanted the opposite of 'flexibility'. In fact, in my view, flexibility was both poorly defined by the adviser and I think it was no more than a 'stock' objective used to justify transferring away. I say this because I can see Mr M at first accepted the transfer recommendation. But on 29 November 2017 he emailed the adviser to ask that the transfer be stopped because he had reconsidered and, *"we cannot go into retirement without a secure income"*. The adviser even appeared to agree with this view which to me suggests they were not leading events but rather, just encouraging Mr M to decide on his own what to do. Looking at the content of Mr M's email, his rationale appeared flawed based as it was on what others were doing with their pension. The adviser didn't grip the situation and they should have explained that what was relevant here were Mr and Mrs M's needs, not those of others (whose situations would clearly be different).

Tavistock's analysis set out what he might get by opting for either the BSPS2 or PPF and accessing the benefits at the age of 55. There were some minor differences in the annual pension figures and the tax-free lump sums depending on whether you read the analysis (sometimes called a "TVAS") or the suitability report.

However, these minor variances don't fundamentally change anything. What the analysis in the TVAS was broadly saying was that if Mr M chose to move to the BSPS2, then he'd be able to start drawing an annual pension of around almost £12,000 and also receive a tax-free lump sum of around £80,000. For the PPF, the figures were slightly higher. Tavistock calculated that as a member of the PPF scheme, Mr M's annual pension would be around £13,300 and his tax-free lump sum around £88,000. So, I think it's fair to say that if given the choice and had it properly explained to him, Mr M would have probably wanted to move into the PPF as he was slightly better off by doing so.

Mr M had told the adviser that he was seeking an annual income of around £17,000 in order to live reasonably in retirement. This demonstrated two things. The first is that Mr M really preferred a fixed income when he retired and *not* a flexible one. There are quite a few examples of this in the documents I've seen, the most predominant one being his email communication where he was quite obviously not wanting to go into retirement without a known annual pension. The second example is the fact that he came up with a figure at all. What I think Mr M was saying was that he and Mrs M needed £17,000 per year in income to cover their outgoings and retire comfortably. And I've considered this to be an additional income on top of their other income sources and savings.

The reality here was that Mr and Mrs M already had considerable income and wealth flexibility. They had rental income and an on-line micro business. The also each had the maximum allowed premium bonds totalling £100,000. This generated occasional prizes and was also a liquid asset as bonds can be cashed on-line in a matter of days. They also had what most people would consider to have reasonably large cash assets held on deposit, so I think all these things provided substantial liquidity and flexibility. Also, if opting for the PPF, it's likely Mr M might have also chosen another tax-free lump sum. I can't say this for sure, but it's my experience that most people will opt to take a reduced pension and a tax-free lump sum. And as Mr M himself mentioned he wanted to be tax efficient, I think this is what he would have done. This would have added around £88,000 to their cash deposits meaning that at the point of retirement, they would likely have access to well over £200,000 even allowing for the 18 months or so where he'd need to partly live off his cash reserves.

This all means that I've seen nothing explaining why Mr M wouldn't want to continue membership of a DB scheme – in this case I'm saying this was the PPF - and to use that scheme in exactly the way it was originally intended. If all he needed in retirement income was around £17,000 per year, I think the adviser should have pointed out that this seemed easily achievable given the potential PPF income I have set out above.

So, I don't think there's anything showing Mr and Mrs M's total annual income from both the PPF and all these other sources, wouldn't have fairly easily met their anticipated future income requirements, without any need for him to transfer away from a DB scheme.

I think Tavistock also promoted to Mr M that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly and in a personal pension the lump-sum would be much higher. But again, this needed a careful explanation. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But Tavistock should have been telling Mr M at the time that extra tax-free lump sums being removed from a personal pension, clearly from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would decrease. I also can't see there was a need for substantially more tax-free cash in their lives. 2017 was a period where a low interest rate environment had persisted for many years so the interest on cash was poor and there were no specific large-scale purchases on the horizon for Mr and Mrs M; they seem to me very much like people who had a modest and sensible approach to money.

Overall, I think 'flexibility' would have sounded positive to Mr M. However, I can't see that he and Mrs M required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by Tavistock. I've seen nothing that showed Mr M required changing how his retirement benefits ought to be paid at the point he was seeking the advice.

- *Control of the funds*

In essence, this is an extension of the above points I've made. However, I've also seen no evidence that Mr M had either the capacity or desire to exercise control over his funds. Mr M was being offered the opportunity to transfer to the new BSPS2 or the PPF. It's true there were some differences in these schemes when compared to the original BSPS, but they remained DB schemes nonetheless and were run for him by trustees.

I accept that Mr M may have had a basic understanding of pensions but there's no evidence he was an experienced investor. This was a very large amount of money so I think he would have found the complexity, scale and responsibility of managing over £515,000 of his own transferred funds from his DB scheme to be onerous in the years ahead. What I've seen tends to show Mr M would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him. He simply didn't have the experience to personally manage the funds.

- *Death benefits*

Death benefits are an emotive subject. When asked, I think most people would like their loved ones to be taken care of when they die. The BSPS2 and PPF both contained certain benefits payable to a spouse if Mr M died.

Mr M was married so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the PPF, for example, would have been useful to Mrs M if Mr M predeceased her. I think his wife would have found this benefit a source of comfort and security particularly as Mrs M didn't have a meaningful pension of her own. I therefore don't think Tavistock made the real value of this benefit area clear enough. The death benefits were substantial in both the BSPS2 and the PPF; they were guaranteed and they escalated – they were not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser probably discussed with Mr M that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension were probably made to look like attractive features to him. But whilst I appreciate death benefits are important to consumers, and Mr M might have thought it was a good idea to transfer to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Tavistock explored to what extent Mr M was prepared to accept a different retirement income in exchange for different death benefits.

An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr M had lived a long life there could be much less left in his personal pension plan. I accept Mr M had a health condition which was no doubt a worry for him and Mrs M. But the health prognosis looked good. The adviser should have therefore additionally known that a male only in is fifties even with a previous health condition – such as the one Mr M had at the time – might still have had many years ahead in which he would be drawing down his pension funds thus leaving less to pass on to someone.

If moving to the PPF rather than transferring to a personal pension arrangement, I still think Mrs M would have been financially well protected if something unexpected had happened to Mr M. I say this because she'd have an income of around half his annual pension for the rest of her life and in due course she'd possibly have her own state pension. Mr M also had his DC (TATA) pension. I accept this was small in pension terms and probably insignificant. But nevertheless, I think it's fair to say that this fund could have grown from its current £3,487 to around £10,000 - £12,000 with a few more months' contributions and modest growth. So Mr M could have nominated a beneficiary for this small amount in the event of his passing.

There was no evidence Mr M's life expectancy was so short as to make these assumptions unreasonable. If moving to the PPF and taking a lump sum, I think it's fair to point out that Mr and Mrs M would initially have a substantial six-figure sum in savings – so I think it's credible to say that even if Mr M's health did become very concerning, or he died well ahead of his life expectancy, then Mrs M would still likely have had access to a significant cash sum as well as an ongoing spouse's pension.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr M's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr M, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Tavistock said he lacked trust in the company. He may well have heard negative things about the PPF and Tavistock said he could have more control over his pension fund.

So, it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Tavistock's obligation to give Mr M an objective picture and recommend what was in his best interests.

I also think that Tavistock should have reassured Mr M that the scheme moving to the PPF wasn't as concerning as he might have originally thought. As I have shown, the benefits available to Mr M through the PPF were actually more than the BSPS2 in his case and so would have provided a significant portion of the income he would have needed at retirement. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Tavistock's recommendation to Mr M to transfer out of the DB scheme altogether.

<u>Suitability of investments</u>

Tavistock recommended that Mr M invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in a DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

<u>Summary</u>

I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 or the PPF.

Tavistock said the reasons for transferring the scheme were based on the requirement to retire at age 55, the flexibility of withdrawals, and the death benefits associated with a DC scheme. But Mr M already had the option of retiring at 55 and his financial position easily supported this. He also didn't need income flexibility in the way Tavistock implied as his retirement objectives appeared entirely sustainable without transferring away from a DB scheme; by doing so he'd be incorporating a market risk which I don't think he was comfortable with and it simply wasn't necessary. Mr M also had more than enough cash for his and Mrs M's apparent needs. And I don't think there were any other particular reasons which would justify the transfer and outweigh this.

I therefore think Tavistock ought to have advised him against transferring out of his DB scheme for these reasons and his circumstances here were much more aligned to him moving to the PPF. In my view, in his case the PPF was the slightly better choice from a financial perspective. He was also sure he wanted to access his pension quite soon after the advice and there was a possibility that he wouldn't be working again.

I have considered, given the circumstances of the time, whether Mr M would have transferred to a personal pension in any event. I accept that Tavistock disclosed some of the risks of transferring to Mr M and provided him with a certain amount of information. But ultimately it advised Mr M to transfer out, and I think Mr M heavily relied on that advice. I'm not persuaded that Mr M would have insisted on transferring out of the DB scheme, against Tavistock's advice. I say this because Mr M was an inexperienced investor and this was a large pension which accounted for almost all of his retirement provision at the time. So, if Tavistock 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 have accepted that advice.

I'm also not persuaded that Mr M's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, was advising him on this course of action.

In light of the above, I think Tavistock should compensate Mr M for the unsuitable advice if it's determined there has been a loss, 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 M, as far as possible, into the position he would now be in but for Tavistock's unsuitable advice.

Mr M told the adviser he was adamant on retiring at the age of 55. I know he went on to do this and so has actually retired. In that contest therefore, I consider Mr M would have most likely opted to join the PPF, rather than transfer to the personal pension, if he'd been given suitable advice. Compensation should be based on an early retirement age of 55. I have explained in the decision why this is.

To be clear, Tavistock should use the benefits offered by PPF for comparison purposes.

Tavistock must undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Tavistock should use the FCA's BSPS-specific redress calculator to calculate the redress as if he'd joined the PPF. A copy of the BSPS calculator output should be sent to Mr M and our Service upon completion of the calculation together with supporting evidence of what Tavistock based the inputs into the calculator on.

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 M'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, Tavistock should:

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

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Tavistock may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and I now direct The Tavistock Partnership Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

<u>Recommendation:</u> If the compensation amount exceeds £170,000, I also recommend that The Tavistock Partnership Limited pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M accepts my final decision, the money award becomes binding on The Tavistock Partnership Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 17 December 2023.

Michael Campbell
Ombudsman