

The complaint

Mr S complains about the advice True Potential Wealth Management LLP ('True Potential') 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.

What happened

In March 2016, Mr 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')¹, 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 S's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In September 2017 the BSPS provided Mr S with a summary of the transfer value of his scheme benefits to take account of the RAA. His benefits had a cash equivalent transfer value ('CETV') of £349,967.

Mr S approached True Potential for advice. It conducted a fact-find with him and assessed his attitude to risk. Amongst other things it noted that Mr S was 50 years old and married to Mrs S. They had two children aged 18 and 21 who they anticipated being dependent on them until they were both aged 25. They owned their own home subject to a mortgage that was due to be repaid in 2024. Mr S had a cautious attitude to risk.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

The same month, October 2017, True Potential carried out a transfer value analysis ('TVAS') report which set out the growth rates required from an alternative personal arrangement (the critical yields) to match the DB scheme benefits. It then gave Mr S its suitability report setting out its analysis and recommendations. In brief it recommended he should transfer his DB scheme benefits to a named SIPP.

Mr S accepted True Potential's advice and transferred his DB benefits to the SIPP.

¹ The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

In 2022 Mr S complained to True Potential that its advice may not have been suitable for him. True Potential replied in April 2022. It didn't uphold his complaint.

Mr S asked the Financial Ombudsman Service to consider his complaint. One of our Investigators looked into it. He didn't think True Potential's advice was suitable for Mr S. So he recommended it establish if Mr S had suffered a financial loss as a result of its advice. He also said True Potential should pay Mr S £300 to address the worry he suffered from learning that he might have put his pension at unnecessary risk.

Mr S accepted our Investigator's complaint assessment. True Potential didn't. It provided a comprehensive reply setting out why it thought its advice was suitable for Mr S. As agreement couldn't be reached the complaint was referred for an Ombudsman's review.

While the complaint was awaiting an Ombudsman's attention, in January 2023, True Potential said that, in an attempt to put an end to the matter it would instruct actuaries to calculate if Mr S had suffered a loss. Its actuaries applied the regulator's – the Financial Conduct Authority ('FCA') – calculation methodology applicable at the time. The actuaries calculated that Mr S hadn't suffered a financial loss. However, True Potential said it would pay Mr S the £300 our Investigator had recommended to address Mr S' distress and inconvenience. It also noted that the FCA would be introducing an amended loss calculation methodology in the coming months.

Mr S wasn't happy with True Potential's offer to settle the complaint. So the case was again referred for an Ombudsman's review. While the complaint's been awaiting an Ombudsman's attention the FCA introduced a BSPS specific calculator to establish if former BSPS members had suffered a financial loss as a result of unsuitable advice.

Earlier this month (November 2023) True Potential used that calculator to establish if Mr S had suffered a loss because of its advice. The calculation showed Mr S had not suffered a loss.

Mr S still wasn't happy that his complaint had been resolved, so it's been referred 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.

I understand True Potential is still disputing that it gave Mr S unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out loss calculations. So I don't see the need to address the suitability of its advice to Mr S in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable. And they should only recommend one where they can clearly show it was in the consumer's best interests. I don't think that was the case for Mr S.

That's because, amongst other things, the growth rates required to match the DB scheme benefits were high. True Potential itself acknowledged they were unlikely to be met. I note True Potential said Mr S could meet his income needs in retirement from drawing down his pension. However, once he'd transferred his funds, he was putting those at risk of the volatilities of the investment markets. And if Mr S' investments suffered poor performance, or market crashes leading to losses, he could potentially find himself worse off in retirement. Whereas remaining in the DB scheme would have provided a guaranteed and escalating income for the rest of his life. He lost those guarantees by transferring.

Overall, I can't see persuasive reasons why it was in Mr S' best interest to give up his DB scheme guarantees.

Putting things right

The sticking point now in terms of concluding the matter is not the suitability of the advice but True Potential's offer for redress. Mr S still doesn't consider the matter resolved.

When considering what is appropriate redress the aim is to put Mr S back in the financial position he would have been in at retirement had he remained in the DB scheme. True Potential carried out a calculation using a specific BPS calculator provided by the FCA, which is what I would expect it to do at this time.

The calculator was designed to establish how much a consumer needs in their pension arrangement to secure equivalent retirement benefits that they would have been entitled to under either BPS2 or the PPF, had they not transferred out. It uses economic and demographic assumptions as set out by the FCA in order to do so.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due.

The BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also makes automatic allowances for ongoing advice fees of 0.5% a year and product charges of 0.75% a year which are set percentages by the FCA.

I have checked the inputs that True Potential entered which are specific to Mr S. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4: <https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr S' case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr S has not suffered a financial loss by transferring his pension.

True Potential has agreed to pay Mr S the £300 our Investigator recommended to address the distress and inconvenience this matter has caused him. I don't doubt Mr S has likely been caused some distress and concern by finding out the advice may not have been suitable. And I'm conscious this upset wouldn't have happened but for True Potential's advice. So, in the circumstances, I think the award the Investigator recommended is fair and reasonable.

My final decision

I uphold this complaint and require True Potential Wealth Management LLP to pay Mr S a sum of £300 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2023.

Joe Scott
Ombudsman