

The complaint

Mr B 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 might not have been suitable for him and may have caused a financial loss.

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

What happened

In March 2016, Mr B'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 B'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 trustees gave Mr B details of his DB pension's cash equivalent transfer value, which was around £503,000.

Mr B approached a financial adviser for advice. The adviser conducted a fact-find with him. Amongst other things he noted that Mr B was 47 years old and married to Mrs B. They were both working. They had two children, only one of whom remained financially dependent on them. They owned their own home subject to a mortgage which was expected to be repaid before Mr B retired. Mr B planned to semi-retire at age 57. He anticipated moving to part-time work for three years before fully retiring at 60. He had relatively recently joined his employer's newly set up defined contribution pension plan.

The financial adviser who did the fact-find didn't have the relevant regulatory permissions to advice on pension transfers so he referred Mr B to True Potential.

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.

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 December 2017, True Potential produced a suitability report setting out its analysis and recommendations. It recommended Mr B should transfer the benefits from his DB scheme to a named SIPP. Mr B accepted True Potential's advice.

In 2022 Mr B complained to True Potential that its advice might not have been suitable for him. True Potential didn't uphold his complaint. It said that a transfer met Mr B's goals in retirement and he had financially benefitted from it.

Mr B brought his complaint to the Financial Ombudsman Service. One of our Investigators said he didn't think True Potential's advice was suitable for Mr B and it should take appropriate steps to put things right. The Investigator noted that the regulator, the Financial Conduct Authority ('FCA'), was consulting on amending its guidance to firms about the methodology for calculating redress for unsuitable DB pension transfers. The Investigator said that Mr B had the choice of using the existing methodology or to await the introduction of the new methodology which was anticipated to come into effect in 2023. The Investigator also recommended that True Potential should pay Mr B £300 to address Mr B's distress and inconvenience arising from the unsuitable advice.

True Potential didn't accept the Investigator's complaint assessment. As the matter wasn't resolved informally it was referred for an Ombudsman's review.

While the complaint was awaiting an Ombudsman's attention, in February 2023, True Potential said that, while it didn't agree that its advice was unsuitable, it would instruct actuaries to carry out the redress calculation using the FCA's existing methodology. The actuaries' calculation showed Mr B had not suffered a financial loss as a result of the transfer. However True Potential offered £300 to address Mr B's distress arising from the matter.

Mr B didn't accept True Potential's offer and the matter was again referred for an Ombudsman's review.

In November 2023 we wrote to the parties. We said the FCA had developed a BPS specific calculator for establishing redress for BPS cases. We advised True Potential that if an Ombudsman were to later uphold the complaint they would most likely instruct it to carry out another redress calculation using the FCA's BPS calculator. In an attempt to resolve the complaint we invited True Potential to take the necessary steps to carry out an up-to-date redress calculation.

True Potential performed the redress calculation. This again showed Mr B hadn't suffered a financial loss as a result of the transfer. Instead he had a surplus of over £117,000 in his SIPP. True Potential again offered £300 redress for Mr B's distress arising from the matter.

Mr B rejected True Potential's offer and so the complaint has been passed to me to issue 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.

As far as I'm aware True Potential hasn't accepted that it gave Mr B 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 B 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 on contemporary evidence it was in the consumer's best interests. I don't think that was the case for Mr B.

In particular I don't think Mr B needed to make a decision to transfer when he did. That's because, if he'd opted to join the BSPS2 then he would have kept the potential option of transferring out of the DB scheme nearer to his retirement age. Mr B was only 47 years old at the time of the advice. He was still around 10 years away from when he planned to take semi-retirement and almost 18 years away from the DB scheme's normal retirement age of 65. A lot could happen in that time. And if he'd remained in the DB scheme, he would have kept the secured benefits the scheme offered and wouldn't have to put his pension funds at investment risk. So, I don't think a recommendation that he transfer his DB funds when he was that far from retirement was in his best interests.

Putting things right

What remains in contention now is whether or not True Potential's offer to resolve Mr B's complaint is fair and reasonable.

I can understand that consumers like Mr B might have an expectation that, because they received unsuitable advice, they must be entitled to a form of redress to put that right. And that redress would be as well as any payment to compensate for distress.

However, the purpose of a redress calculation is not to put Mr B into a better position than he would have been had he not transferred. Instead, as one of our Investigators has already explained to Mr B, the aim is to put him back in the financial position he would have been in at retirement had he remained in the DB scheme.

True Potential carried out its recent calculations using the specific BSPS calculator provided by the FCA, which is what I would expect it to do in the circumstances.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And as those assumptions are susceptible to market forces, the FCA updates them on a regular basis. I understand that the aim of the FCA's redress methodology is to produce results comparable to how a court would award damages in similar circumstances.

The calculator was designed to establish how much a consumer needs in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BSPS2 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 BSPS 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. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF. As I've said above, the FCA updates the

relevant economic and demographic assumptions the calculator uses regularly. This information can't be changed by firms.

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

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

I've noted that True Potential's calculation assumes Mr B is married when he has confirmed that, while he was married at the time of the advice, he is now divorced. However, that anomaly will not affect whether or not Mr B is entitled to redress. That's because the relevance of marital status is to allow for the possible increase in costs for the price of matching the DB benefits where a spouse's pension may be payable following the death of the scheme member. Spouse's pensions are usually only guaranteed where the scheme member was married. That's not the case for Mr B.

So, as True Potential's calculation assumes Mr B's DB pension would also need to fund a spouse's pension, that would only serve to make the overall cost to replace the DB pension more expensive. That, in turn, would reduce the gap between the cost to replace the pension and Mr B's current SIPP value. In other words, if True Potential had recorded that Mr B was divorced or single, then the surplus value of his current pension compared to the cost of matching his DB benefits would most likely have been greater than True Potential's calculation shows.

Also Mr B said that his current pension was affected by a pension sharing order, as part of his divorce settlement, that required a payment from his SIPP to his ex-wife. So Mr B suggested that the BPS calculator might not have been suitable for his circumstances. But I've seen confirmation from the SIPP administrators that at the time True Potential did the redress calculation no money had been paid from his SIPP for the sharing order. So I don't think the pension sharing order affected True Potential's calculation.

Overall, based on what I've seen, True Potential has generally carried out the calculation appropriately. I'm satisfied it's done so 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 B's case shows that there is no shortfall to his pension and he has more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied Mr B has not suffered a financial loss by transferring his pension.

True Potential has offered to pay £300 to address the distress and inconvenience this matter has caused Mr B. It's recent calculations have shown that Mr B hasn't lost out financially as a result of the advice. But I accept that the uncertainty he's experienced as a result of True Potential's advice has caused some distress and concern by finding out it may not have been suitable. And I'm conscious this upset wouldn't have happened but for True Potential's advice. In the circumstances, I think its offer of a £300 payment to address that distress is fair and reasonable.

My final decision

I uphold this complaint and require True Potential Wealth Management LLP to pay Mr B 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 B to accept or reject my decision before 27 February 2024.

Joe Scott
Ombudsman