DRN-4581975

The complaint

Mr C complains about the advice Tideway Investment Partners LLP trading as Tideway Wealth ('Tideway') 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.

What happened

Mr C was a deferred member of his former employer's DB scheme. He'd contributed to that scheme for over 15 years before ceasing to work for the employer in 2012.

In March 2016, Mr C's former 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 C'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.

Around the same time, August 2017, Mr C approached a financial adviser for advice about his pension. That adviser didn't have the required regulatory permissions to advise on pension transfers and introduced Mr C to Tideway.

Tideway conducted a fact-find with Mr C. Amongst other things it noted that he was 47 years old, married to Mrs C who was 11 years his senior. Their children were adults and non-dependent. They owned their own home subject to a mortgage, which they were repaying at a cost of £1,000 a month. They had around £120,000 in savings. Mr C anticipated paying off his mortgage in approximately two years time. Mr and Mrs C were both working. Mr C worked abroad for long periods and earned a salary that allowed him to contribute £5,000 a month to his savings after Mr and Mrs C had met their outgoings. Mr C was planning to reduce his work abroad from age 55 and retire from age 60.

In September 2017, the BSPS trustees gave Mr C details of his DB pension's enhanced cash equivalent transfer value ('CETV'), which was £458,443.

Later that month, September 2017, Tideway sent Mr C its Defined Benefit Pension Transfer Report ('suitability report') in which it set out its analysis. It recommended Mr C should transfer his DB scheme funds to a named SIPP and use Tideway's discretionary fund management services. Amongst other things it said by doing so Mr C could drawdown an income from his SIPP to support his reduced working arrangements from age 55 and his early retirement from 60.

Mr C accepted Tideway's recommendation and the transfer concluded in February 2018.

In 2022 Mr C complained to Tideway that its advice may not have been suitable for him. Tideway replied in September 2022. It didn't uphold his complaint. In brief it said a transfer was suitable as it enabled him to achieve his financial objectives. It added that, while it believed its advice was suitable, as part of its standard practice it had performed a loss assessment to find out if Mr C was worse off as a result of transferring. It said its calculations showed that Mr C had not suffered a loss. That was because he had more funds in his SIPP than it would cost him to replicate his DB scheme benefits.

Mr C asked the Financial Ombudsman Service to consider his complaint. One of our Investigator's looked into it. She didn't think Tideway's advice to transfer was suitable for Mr C. Amongst other things she didn't think Mr C needed to transfer in order to follow his retirement plans. And, overall, she didn't think a transfer was in his best interests.

The Investigator recommended that Tideway should carry out a redress calculation to see if Mr C had lost out as a result of the transfer. She also recommended that Tideway should pay Mr C £300 to address Mr C's distress and inconvenience arising from the unsuitable advice.

Tideway's said that, while it didn't accept that its advice was unsuitable it was prepared to carry out the required redress calculation. Having done so it again said that the calculation showed that Mr C hadn't suffered a loss as a result of the transfer. At the prompting of our Investigator Tideway said it would offer £300 to address Mr C's distress arising from the matter. And on that basis our Investigator said she would close our file. However, in 2023 Mr C told us that Tideway hadn't paid him the £300 recommended.

The complaint was referred for an Ombudsman's review.

While the complaint was awaiting an Ombudsman's attention, in November 2023, we wrote to Tideway. We said that the regulator, the Financial Conduct Authority ('FCA') had developed a BSPS specific calculator for establishing redress for BSPS cases. We invited Tideway to carry out an up-to-date redress calculation using the FCA's BSPS calculator.

Tideway agreed to do so. In December 2023 it performed the redress calculation using the FCA's BSPS calculator. The calculation showed Mr C had not suffered a loss. Tideway confirmed that the offer of £300 redress for Mr C remained on the table.

Mr C still wasn't happy that his complaint had been resolved. So it's been referred to me to make a final decision.

What I've decided – and why

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

As far as I'm aware Tideway hasn't accepted that it gave Mr C 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 C in detail.

That said, I will briefly comment that I agree with the Investigator's view that the advice was unsuitable for broadly 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 C.

In this instance, amongst other things, Tideway said that transferring would allow Mr C to reduce his time working abroad at age 55 and retire fully at age 60. It said he could withdraw pension funds from his SIPP to support that. But I don't think Tideway did enough to establish if Mr C could achieve those things without losing the guarantees his DB scheme offered him.

For example, Mr C told Tideway he believed that, after paying off his mortgage of around £1,000 a month, he would need an income of £1,500 a month in retirement. At that time, Mr C said he was comfortably adding around £5,000 a month to his savings after meeting regular outgoings. And Mr C told Tideway he anticipated reducing his work abroad by around a third when he turned 55. So, even if his earnings reduced by significantly more than a third, say to 50%, he would still have had around £2,500 in disposable income each month after meeting household expenses. And that is without factoring in that those expenses would have reduced by £1,000 a month after Mr C had paid off his mortgage. In other words he didn't need to take any funds from his pension at age 55 in order to support his needs. He could have met those from his other income.

Also Mr C had said he anticipated retiring at age 60. But Tideway's suitability report didn't provide figures for what Mr C might have been entitled to from age 60 from his DB scheme. Had it done so, given that Mrs C would by that time be receiving her state pension, it seems likely Tideway could have established that Mr C and his wife could have met their household expenditure needs without requiring Mr C to transfer from his DB scheme. And it's likely he would have continued to contribute to his savings in the meantime, and could have accessed those funds flexibly if he needed to. So I don't think he needed to transfer from the scheme to achieve the majority of his financial objectives.

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

However, what remains at issue now isn't the suitability of Tideway's advice but whether or not its offer of redress is reasonable in the circumstances.

I can understand that consumers like Mr C might have an expectation that, because they received unsuitable advice, they must have suffered a financial loss as a result. But that's not always the case. And the purpose of the redress calculation, as set out by the FCA, is not to put consumers like Mr C into a better position than they would have been had they not transferred. Also compensation isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back in the financial position they would have been in at retirement had they remained in the DB scheme.

Mr C's said that some of his former colleagues, who'd had loss calculations done some years ago were awarded significant redress sums. But, despite his circumstances being similar to those former colleagues Tideway's redress calculations have shown no loss. So he thinks if the redress had been calculated earlier, perhaps at the point he complained, he would have received redress.

First, I'll say that while Mr C's circumstances are likely to have been similar to some of his former colleagues they are unlikely to have been close to being identical. And the redress calculations are affected by many factors including: the members age; their marital status; how long they were scheme members for; the periods the DB scheme benefits were accrued over; when they left the scheme; their entitlement at the date of leaving; the performance of their pension investments since leaving; and when they received their CETV, as those who transferred out before the announcement of the RAA would not have benefitted from enhanced CETVs. So it's not the case that all former scheme members were in like-for-like positions.

That said, as I expand on below, it is also the case that the date at which the calculation is performed will also affect the final outputs. And that can mean that a calculation done on one date might produce a different result to one performed at a different time. And I recognise that some former scheme members might find that difficult to understand.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. And for consumers like Mr C, the FCA has developed a BSPS specific calculator which applies those assumptions fairly.

In essence the calculations look to establish whether or not a consumer like Mr C has sufficient funds 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. The calculator uses economic and demographic assumptions as set out by the FCA in order to do so. These can't be changed by firms.

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.

In order to be fair at the time a calculation is completed the financial assumptions are those most recently given by the FCA. The calculations are then valid for three months. However, once that three month window has closed, the calculation may no longer be reflective of the anticipated market conditions. So, if for any reason the calculation needs to be redone or is delayed, it would have to be performed with new financial assumptions to reflect the anticipated market forces as updated by the FCA at the date of the new calculation.

In this case Mr C has implied that Tideway should apply market assumptions applicable at the point he made his complaint. But he initially complained in 2022. That is well before the three month window allowable to make a calculation valid. So, if I were to instruct Tideway to calculate redress based on the market assumptions at that time, not only would that be outside the FCA’s rules for making a calculation, but the figures used wouldn't reflect the FCA’s updated assumptions and would produce an unfair result.

Further, I think it's worth pointing out that in response to Mr C’s initial concerns Tideway performed a redress calculation at that point, in 2022. That calculation established Mr C hadn't suffered a loss at that time. So the evidence on file is that Mr C wasn’t entitled to compensation around the time he complained, and that has remained the case until Tideway’s most recent calculation.

As I've said above, Tideway has, on more than one occasion, carried out redress calculations. The most recent of those used the BSPS calculator with the appropriate assumptions as programmed by the FCA at the time of the calculation. That is what I would have expected it to do.

The calculator 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 Tideway entered which are specific to Mr C. These include his personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and taken his DB benefits at age 65. I'm aware that Mr C won't be entitled to his state pension until he is 67, but the calculation is based on the scheme's normal retirement age of 65. So his state pension entitlement date isn't relevant to the BSPS redress calculation.

Overall, based on what I've seen, Tideway has 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 C's case shows that there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied he has not suffered a financial loss by transferring his pension.

Mr C's said Tideway should refund the fees he's paid for transferring and for also moving his pension to another provider. But I don't think that would be reasonable. The redress calculation compares the current value of Mr C's personal pension against the cost of purchasing the DB benefits on the open market. As the various fees Mr C has previously paid would have reduced the value of Mr C's personal pension from the date he paid them, they also reduced its current value. So those fees have already been factored into the calculation. And if he had suffered a loss then Tideway would have compensated him appropriately. That's not the case here as the most recent calculation shows that Mr C has over £152,000 more in his personal pension than he required to replicate his DB benefits.

However, while the recent calculation shows Mr C hasn't lost out financially, I accept that the uncertainty he's experienced as a result of Tideway'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 Tideway's advice. So, in the circumstances, I think our Investigator's recommendation of a £300 payment for that distress is fair and reasonable.

My final decision

I uphold this complaint and – unless it has already done so – require Tideway Investment Partners LLP to pay Mr C a sum of £300 to address the worry this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 February 2024.

Joe Scott
Ombudsman