DRN-4598787

## The complaint

Mr D complains about the advice Tideway Investment Partners LLP ('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

In March 2016, Mr D'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 D'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 D details of his DB pension's cash equivalent transfer value, which was £671,223.

Mr D 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 D to Tideway.

Tideway conducted a fact-find with Mr D. Amongst other things it noted that he was 50 years old and married. He and his wife were both working. They had three children, two of whom were financially dependent upon them. They owned their own home subject to a mortgage that would be repaid within five years. They had no other debts and around £103,000 in cash and ISA savings. Mr D had relatively recently joined his employers newly set up defined contribution pension scheme. He had a low to medium 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 following month, November 2017, Tideway produced a suitability report setting out its analysis and recommendations. It recommended Mr D should transfer the benefits from his DB scheme to a named SIPP. Its report set out a number of warnings that Mr D would lose

[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.

the guarantees his DB scheme offered by doing so. It also said that he would be putting his funds at investment risk. But it said that transferring would give Mr D greater flexibility to potentially retire early, let him control his pension investments and allow him to leave any remaining pension funds as a legacy of his family.

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

In 2022 Mr D complained to Tideway that its advice may not have been suitable for him. Tideway 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 D was worse off as a result of transferring. It said its calculations showed that Mr D 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 D 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 D. Amongst other things she said that while transferring might allow Mr D to replicate the benefits his DB scheme offered, it wasn't worthwhile putting his funds at risk in order to do so.

The Investigator recommended that Tideway should carry out a redress calculation to see if Mr D had lost out as a result of the transfer. She said 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. She added that Mr D 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. Mr D told us he wanted to wait for the new methodology to come into effect.

Tideway said that whilst it didn't accept that its advice was unsuitable, it was prepared to carry out the required redress calculation. It initially did so using the FCA's existing calculation method, which showed that Mr D hadn't suffered a loss as a result of the transfer. It later said it would wait for the new methodology to come into effect. After that happened, in April 2023, Tideway again performed the redress calculation which showed Mr D had not suffered a loss.

In September 2023, one of our Investigators wrote to Tideway. He noted that the FCA had raised concerns with the software Tideway had used to do the redress calculations and the lack of actuarial oversight into those calculations. The Investigator added that the FCA had developed a BSPS-specific calculator for establishing redress for BSPS cases. He recommended that Tideway should carry out another redress calculation using the FCA's BSPS calculator. He also said that Tideway should pay Mr D £300 compensation for the distress and inconvenience the matter had caused him.

Tideway performed the calculation using the FCA's BSPS calculator. The calculation showed that Mr D had not suffered a financial loss. Tideway said it would pay Mr D £300 as compensation for distress caused as recommended by our Investigator .

Mr D 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 D unsuitable advice. But, nonetheless in order to conclude the matter it's already carried out redress calculations. So I don't see the need to address the suitability of its advice to Mr D 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 D.

For example Tideway's suitability report said that, in order to replicate the DB scheme's secure benefits at age 65, Mr D's investment would need to grow at a rate of 5%, net of fees. The adviser and product fees associated with Tideway's recommended SIPP were 2.1%. So, in order to replicate the DB scheme funds at age 65, Mr D's fund would need to grow at a year-on-year average rate of 7.1%. To put this into context at the time, the FCA's upper projection rate was 8%, the middle projection rate 5%, and the lower projection rate 2%. And, in line with his attitude to risk, Tideway recommended Mr D invest in a low to medium risk investment fund. But in order to match his DB scheme benefits, at that time, his investment would need to regularly perform above the FCA's medium rate which would usually require higher risk investments to be made in order to achieve that level of growth. So, at that time, it seemed unlikely his investments would match the required growth rate.

However, even if I accept that matching the required growth rate was possible, there would be little point in Mr D giving up the guarantees available to him through his DB scheme only to achieve a level of benefit 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 on his DB scheme benefits, he would need to put those funds at investment risk. That as something he could have avoided by remaining in the scheme.

Further, by transferring from the DB scheme Mr D would have to pay the fees and charges that are required in order to invest in a SIPP. And those have the effect of reducing any gains the funds make. Those are not charges he would have had to pay if his funds had remained in the DB scheme. And, if his fund experienced an extended period of poor performance or suffered losses, he could find himself worse off in retirement.

Overall, I don't think a transfer was in Mr D's best interests.

However, given that Tideway has already performed redress calculations, the issue now isn't the suitability of its advice but whether or not it's done enough to put things right. Mr D is of the opinion it hasn't.

I appreciate that many consumers like Mr D feel anger and frustration that the advising firms they went to for the benefit of their expertise made recommendations to their – often financially inexperienced – clients to take actions that could have made them poorer and which weren't in their best interests. So I can understand that consumers like Mr D might have an expectation that, because they received unsuitable advice, they are in future danger of suffering a financial loss as a result, and should be compensated in line with the potential for an unquantified loss. But, while the advice might not have been in their best interests, it's not necessarily the case that they have – or will have – lost out. And the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr D into a better position than they would have been had they not transferred. It also isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back, as near as possible, into the financial position they would have been in at retirement had they remained in the DB scheme.

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 D, 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 D 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. Firms can't change these.

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 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 D. 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.

There is one small anomaly with Tideway's recent calculation, in that one of its inputs for Mr D's benefit entitlement from his DB scheme was out by 46 pence. However, the calculation showed that Mr D has a surplus of over £100,000 in his SIPP. So I'm satisfied the 46 pence variance would not have made a significant difference to the calculation. Overall, that anomaly aside, 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 D'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. And as Tideway has performed the necessary calculation, I don't think it needs to do anything further in respect of any potential financial loss.

I appreciate that Mr D does now have the concern that, like the majority of defined contribution pension policy holders who invest in personal pensions or SIPPs, his pension remains at investment risk. But its simply not possible to return him to his DB scheme. And Tideway's recent calculation has shown that he's actually currently in a better position than he would have been by remaining in the scheme, which I hope provides him with some reassurance.

That said, while the recent calculation shows Mr D 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. 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 D to accept or reject my decision before 1 March 2024.

Joe Scott
**Ombudsman**