DRN-5655819

Financial Ombudsman Service

The complaint

X is represented (by 'R').

X says Tavistock Partners (UK) Limited ('Tavistock') gave unsuitable advice in 2021, leading to the transfer of a Defined Benefits Pension ('DBP') into a Self-Invested Personal Pension ('SIPP'). Tavistock disagrees. It says its advice was suitable for X's objective to prioritise early pension access, a higher retirement income and flexibility in the SIPP over retention of the DBP and its guaranteed benefits.

What happened

X had a plan to retire early, in 2021. A health condition and a desire to enjoy retirement whilst relatively fit to do so were cited as reasons for this. X was around mid-fifties, single and without dependents.

The Attitude to Pension Transfer questionnaire that was completed and signed (on 4 February) confirmed the above.

It also confirmed that – the DBP represented X's only source of retirement income until the state pension began; X's preference for early retirement income was £27,000, inclusive of £10,000 for essentials and £17,000 for leisure and holidays, plus a budget of £10,000 for a new car/upgrade every five years; X was less concerned about guaranteed retirement income, lower future retirement income (in comparison with what could be expected from the DBP) or running out of retirement income in the future (due to withdrawals or investment performance) and more concerned about enjoying the earlier part of retirement; X had 'very little' investment experience.

X also had a comparatively small Group Personal Pension ('GPP'), worth around £64,000 at the time of advice, associated with ongoing employment.

R highlights that X did not retire early after all, has continued to work since the advice and to date, and has not drawn any funds from the SIPP. It considers that fundamentally unsuitable aspects of Tavistock's transfer recommendation are –

- Failure to look into the seemingly excessive nature of the £27,000 desired annual retirement income, when compared with X's lifestyle prior to the transfer.
- Failure to look into the possibility that X's health condition could improve, and to look into an alternative way(s) to address the early retirement objective.
- Failure to properly explain the drawbacks of losing the DBP's guaranteed benefits and the risks associated with the transfer.
- Failure to properly consider and advise X on the increased costs associated with the transfer, and of the need for investment performance in the SIPP to match the DBP's benefits and to cover those increased costs.

In response, Tavistock mainly says –

- X instructed the £27,000 desired annual retirement income and the budget for an

additional £10,000 every five years (up to age 75) for car upgrades. The circumstances related to the health condition were also clearly stated. Those circumstances justified the early retirement objective, and it is unclear how X/R expects that improvement in the condition could have been considered at the time.
- X was fully aware of the drawbacks of losing the DBP, but felt the transfer was worthwhile because it matched the early retirement objective. The early access option within the DBP would not have provided the desired level of income, and if money from savings had been used to cover the deficit, the cash flow analysis from the time of advice shows that those savings would have been depleted in around 12 years (out of X's investment timeframe of 15 years). Whereas the transfer potentially gave income cover for X up to age 100. In any case, and in terms of the lost benefits, X had the state pension and full home equity as safety nets.
- X's risk and investor profiles were properly assessed and agreed, they've also been kept under regular review since the transfer.
- The transfer fulfilled X's objectives.
- "*It is accepted that* [X] *gave up guaranteed index-linked income for life and a secure environment by transferring out of the* [DBP]*, however* [X] *was fully aware of this at the time and accepted this to achieve* [the] *retirement objectives. The adviser showed that a transfer was unlikely to put the sustainability of* [X's} *retirement at risk, and it should be noted that* [X] *retains the option of securing a guaranteed index-linked income for life via an annuity*."
- "[X] *did not lose out on fund growth … did not have a fund within the* [DBP] … [X] *also did not lose out on ill health retirement as the scheme confirmed that no beneficial terms were offered for retiring early due to ill health … did not lose out on a beneficiary's pension as … did not have any qualifying beneficiaries*."
- "*The product, fund and advice charges are fully documented within fee agreements and illustrations on file, and are also clearly presented within the Suitability Report*. [X] *also confirmed … understanding of the charges during … phone call with a member of the Compliance team*. *The product, fund, and advice charges were also factored into the cash flow forecast that showed an affordable retirement following transfer*."

One of our investigators looked into the complaint and concluded it should be upheld.

She explained the overarching role that Tavistock was supposed to play in its engagement with X at the time of advice – that being the provision of suitable advice on a client's objectives in the client's best interests, as opposed to merely facilitating and fulfilling whatever course of action a client wished to take. She also cited regulatory guidance that there should be an assumption a DBP transfer is unsuitable, unless it could be clearly demonstrated to be in the client's best interests.

In the above context, the investigator mainly said –

- The critical yield of 11.82% was confirmed in the suitability report, this stood against the regulator's upper projection rate of 8%, and coupled with X's low medium risk profile this meant it was likely X would receive materially lower value retirement benefits in the SIPP than the DBP would have given. The Transfer Value Comparator ('TVC') used for the recommendation showed that it would cost X around £1.4 million to obtain a level of retirement income comparable what the DBP (with a Cash Equivalent Transfer Value/CETV of around £728,000) would have given.
- Tavistock's cash flow analysis showed that in the event of a couple of years' poor investment performance, or if returns were only in line with inflation, the benefits from the SIPP would be lower in value in the long term, compared to what the DBP would have provided.

- The DBP was X's main provision for retirement income, at the plan's retirement age, and the transfer was unlikely to match or improve on what it was guaranteed to offer.
- In terms of early retirement/early access to the pension, Tavistock ought reasonably to have first considered whether (or not) this was feasible for and in the best interests of X. It was probably more of a desire for X, than a need. Tavistock could have explored using the GPP alongside early access to the DBP (instead of a transfer) for X's objective, or using the flexible benefits in the GPP on its own for additional income to fund leisure activities, but neither was not looked into.

The investigator also considered, with reasons, that the area of death benefits had not been properly addressed by Tavistock.

Tavistock disagreed with this outcome and asked for an Ombudsman's decision. It noted that "… *the key driver for the transfer was* [X's] *health concerns and desire to retire early … This would not have been possible by taking scheme benefits which fell significantly short of* [X's] *desired income* …".

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.

Having done so, I have reached the same conclusion expressed by the investigator. I find that the recommended DBP transfer was unsuitable for X, and I share, endorse and incorporate into this decision the investigator's main findings (as summarised above).

The transfer was recommended by Tavistock, so it was the step that it concluded would be in X's interest, and that it advised X to take. This was an advisory, not execution only, affair.

I appreciate that X approached Tavistock with the enquiry about using the DBP for early retirement, but the fact remains that Tavistock's professional advice, as a regulated firm, was sought, given and paid for. Above all else that is relevant to the complaint (including X's desires at the time of advice) it had the duty to give 'suitable' advice. As the investigator said, its role was not limited to facilitating and fulfilling X's desires, it had to address the question about what, in the context of the objectives, was suitable for X.

The rules and guidance I refer to next reinforce this finding. I will also mention regulatory guidance about how firms were/are approach a client's objectives in the circumstances of a pension transfer.

The regulator's *Handbook* includes Principles for Businesses. Principles 2 and 6 require, in broad terms, firms to conduct their services with due skill, care and diligence and to uphold their customers' interests and treat them fairly. There is case law – Ouseley J, in R (British Bankers Association) v Financial Services Authority [2011] EWHC 999 (Admin) – which also confirms that The Principles are ever present requirements that firms must comply with.

Furthermore, the Conduct of Business Sourcebook ('COBS') section of the Handbook contains, at COBS 2.1.1R, the *client's best interests rule*. As the title suggests, it requires firms to uphold their clients' best interests. This essentially reinforces the requirement in Principle 6 for firms to uphold their customers' interests and treat them fairly.

Relevant to upholding X's best interests in the DBP transfer consideration, the regulator's 2016 website guidance on 'assessing suitability' said to firms –

"*When undertaking replacement business, then you need to ensure you:*

- *consider <u>objectively</u> your clients' needs and objectives* …" [my emphasis]

This is particularly notable in terms of how Tavistock addressed the desires in X's objectives, and how it was supposed to address those desires – which the investigator made findings on, and on which I do the same further below.

In 2017, the regulator issued an alert that included – "*Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that firms advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed*."

In this respect, I agree with R's argument that Tavistock did not properly ensure that X fully understood the impact (especially in the longer term) of the disadvantages of losing the DBP and its benefits. As I address further below, it stopped short of advising, meaningfully, on that impact. Instead, it treated the disadvantages mainly as warnings that had been given to X, despite also giving X the transfer recommendation.

There are rules and guidance for the specific matter of conducting pension transfer advice in COBS 19.1. As they were in 2021, the rules [R] and guidance [G] included the following –

"*COBS 19.1.-1A[R] 01/10/2020*

Except where a firm is providing abridged advice (see COBS 19.1A), this section applies to a firm which:

(1) gives advice on pension transfers, pension conversions and pension opt-outs to a retail client; or
(2) arranges pension transfers, pension conversions or pension opt-outs,
in relation to:
(3) a pension transfer …"

"***COBS 19.1.1C[R] 01/10/2020***

(1) A firm must make a personal recommendation when it provides advice on conversion or transfer of pension benefits.
(2) Before making the personal recommendation the firm must:
(a) determine the proposed arrangement with flexible benefits to which the retail client would move; and
(b) carry out the appropriate pension transfer analysis and produce the transfer value comparator.
(3) The requirement in (2)(b) does not apply if the only safeguarded benefit involved is a guaranteed annuity rate.
(4) The firm must take reasonable steps to ensure that the retail client understands how the key outcomes from the appropriate pension transfer analysis and the transfer value comparator contribute towards the personal recommendation.
(5) Prior to making a personal recommendation to effect a pension transfer or pension conversion, a firm must obtain evidence that the client can demonstrate that they understand the risks to them of proceeding with the pension transfer or pension conversion."

"***COBS 19.1.6[G] 01/10/2020***

(1) The guidance in this section relates to the obligations to assess suitability in COBS 9.2.1R to 9.2.3R.

(2) When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.
(3) A firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the retail client's best interests.
(4) To demonstrate (3), the factors a firm should take into account include:
(a) the retail client's intentions for accessing pension benefits;
(b) the retail client's attitude to, and understanding of the risk of giving up safeguarded benefits (or potential safeguarded benefits) for flexible benefits, taking into account the following factors:
(i) the risks and benefits of staying in the ceding arrangement;

(ii) the risks and benefits of transferring into an arrangement with flexible benefits;

(iii) the retail client's attitude to certainty of income in retirement;

(iv) whether the retail client would be likely to access funds in an arrangement with flexible benefits in an unplanned way;

(v) the likely impact of (iv) on the sustainability of the funds over time;

(vi) the retail client's attitude to and experience of managing investments or paying for advice on investments so long as the funds last; and

(vii) the retail client's attitude to any restrictions on their ability to access funds in the ceding arrangement;

(c) the retail client's attitude to, and understanding of investment risk;
(d) the retail client's realistic retirement income needs including:
(i) how they can be achieved;
(ii) the role played by safeguarded benefits (or potential safeguarded benefits) in achieving them; and
(iii) the consequent impact on those needs of a transfer, conversion or opt-out, including any trade-offs; and
(e) alternative ways to achieve the retail client's objectives instead of the transfer, conversion or opt-out."

The obligations, regulatory requirements and guidance set out above are relevant to considering the suitability (or otherwise) of Tavistock's DBP transfer recommendation.

It facilitated and fulfilled X's desire at the time of advice to use the DBP to access annual early retirement income of £27,000, beginning in 2021. However, determination of the complaint cannot fairly rest on this finding. Tavistock's responsibility in advising X went beyond this. As set out above, it was obliged to approach X's desires (or goal) objectively, in the context of assessing suitability, and, with regards to the DBP, it was expected to begin with the assumption that a transfer was unsuitable – unless it could clearly demonstrate that a transfer was in X's best interests.

On balance, I do not consider that Tavistock approached X's goal objectively. In its 2021 advice and in its responses to the complaint and to the investigator's view its stance on the goal, specifically, has mainly been that it recommended to X what X wanted. This does not quite show that the desires X presented at the time were considered objectively.

The advice was substantial (46 pages plus appendices) and it included contents – like the TVC, information about the critical yield and warnings about the loss of guaranteed benefits in the DBP – which noted the unfavourable aspects of a transfer. However, the fact remains that, despite those contents, the resulting recommendation was still to proceed with the

transfer. I consider, from reading the suitability report, that this was done mainly with the aim of *enabling* X's desires, as opposed to *advising* on them objectively.

Tavistock might argue that enabling a client's goal is implicit in an advisory service. I can understand the argument, but the obligation to advise on suitability remains. There were evident reasons why, on balance, a transfer was unsuitable for X. The investigator addressed these, I do the same below and, judging by parts of the suitability report, Tavistock seems to have been mindful of them too at the time of advice. The concluding advice to X should have reflected this. It should have advised against a transfer. If, despite advice against a transfer (and advice on a suitable alternative solution), X insisted on proceeding with the transfer, Tavistock could have considered and/or applied an *insistent client* approach in response.

Available evidence shows that whilst early retirement was X's desire at the time it was not exactly a firm, unyielding or committed plan. Hence the reason why advice was sought, as opposed to X simply issuing Tavistock (or any firm) with execution only instructions to transfer the DBP. In other words, X did not just want help in implementing a transfer, primarily there was a need to know if the entire proposition was advisable, so advice on the objective was required too.

Overall and on balance, I consider it unlikely that X would have dismissed advice against a transfer. X's goal related to a desired lifestyle for the early phase of retirement that was considered to run from 2021 onwards – to enjoy that phase of retirement whilst X was healthy enough to do so. This is quite a specific and arguably time defined goal. X did not plan to transfer out of the DBP at all costs. A transfer was essentially a lay person's idea, on X's part, of how the lifestyle could possibly be achieved. If, with advice, an alternative path to the desired lifestyle was explored and/or recommended, it would probably have directed the conversation and considerations away from a DBP transfer. X would probably have found the goal potentially met, with any idea of a transfer redundant.

Tavistock's suitability report recommended the DBP transfer, but it also said (in bold) the following about the DBP –

"***This arrangement carries a guarantee of benefits based upon years of service in the scheme, salary at date of leaving and various revaluation factors. Transferring away from this scheme will mean the loss of these guarantees (including the PPF protection) and placing your pension funds into an arrangement where the benefits you receive will rely solely on the performance achieved by the underlying funds and gilt rates/annuity rates which means that your benefits could be significantly lower than those you have given up***."

Then it said –

"*… provided you are comfortable with the risks associated and the loss of the guarantees, I am recommending that you should transfer the CETV … to an Aviva Pension Portfolio in order to achieve your personal aims and objectives.*

Warnings specific to my recommendation to transfer your defined benefit pension scheme to a new personal pension plan*: You are fully aware that by transferring you will be sacrificing the guarantees and security afforded to you by your defined benefits scheme.*

You have confirmed that you are ***absolutely certain*** *that you are willing to lose:*

- *Guaranteed income on a significant source of retirement income*
- *Inflationary increases in payment*

- *Potential Survivor Benefits*
- *Pension Protection Fund (PPF) Protection*

You will also be accepting:

- ***That a transfer is irreversible***
- *That your funds will be subject to investment risk*
- *That the critical yield (the annual growth required from the investments in the new plan to achieve the same level of benefits given up) is likely to be unachievable and that the CETV is therefore not good value*
- *That whilst the death benefits are important to you, this can be replicated by putting in place a life insurance plan now for the amount of the CETV, nominating your beneficiaries, instead of losing the guarantees of the Scheme.*
- *That your funds will be subject to longevity risk – the risk that you will outlive them*"

Tavistock meant for these contents to serve as important warnings to X, but these were all very important reasons for which the DBP transfer was unsuitable. It was the expert in the relationship. X was the lay person. X had the early retirement and lifestyle desires, but reliance was reasonably placed on Tavistock to advise on the pitfalls that made the transfer unsuitable. In this context, Tavistock was required to do more than provide a list of warnings. It was obliged to advise on the unsuitability of X unnecessarily [as I explain below] undertaking the drawbacks and risks featured in the warnings, and the resulting unsuitability of the transfer, but it did neither.

The DBP was X's main pension provision. It dwarfed the GPP in terms of cash equivalent value (in 2021 and at full retirement) and benefits. X's state of health was part of the considerations at the time of advice, but there is no evidence of X having prospects of a limited lifespan for this reason. Indeed, Tavistock acknowledged an investment timeframe of 15 years and its cash flow analysis went beyond that by many more years, so X's longer term future was, or should reasonably have been, part of the same considerations.

The safeguarded benefits in the DBP stood to cater for such a future without investment risks and without reliance on investment performance. The recommendation led to X facing such risks and to such reliance, from the outset of the SIPP and thereafter.

As I said above, the specific type of early phase of early retirement lifestyle (with an increase in leisure activities) that X sought to enjoy was arguably time defined. With allowance for the health condition element, X's personal circumstances had potential to change over time, so the possibility or probability of a lifestyle adjustment(s) at a point(s) during or after the early phase could have been anticipated.

This phase would probably have lasted for only a certain length of time, after which retirement income would still be needed, but probably at a lower level. This would be the period after X no longer wished or, for health reasons, was no longer in a position to engage in the same type of leisure activities. The reduction in such activities would correlate with a drop in leisure expenditure.

Tavistock appears to have misdirected itself in this respect. It based the cash flow analysis on the same £27,000 desired annual income throughout. Whereas, in addition to the point made above, my reading of X's goal at the time is that this level of income was mainly desired for the earlier part of retirement. Akin to how the desired budget for car upgrades did not go beyond the specific age of 72 in the cash flow analysis. It seems likely, judging from all the information I have read, that the early phase of retirement that X sought to enjoy in a

particular way (with additional expenditure on leisure) was planned to last up to around this age.

By Tavistock's calculation, early access to the DBP plus drawings from savings would have sustained the £27,000 annual income only for 12 years. I have not found evidence that X required the same level of income for all the years thereafter. For this reason, and those above, the analysis should not have used the same figure throughout.

X's annual retirement expenditure on essentials was forecast at £10,000. Early access to the DBP could have covered that, with around £8,000 left over.

In this context, more should have been done to agree the number of years over which the early phase of retirement was likely to last. As I have said, my reading is that this is likely to have been the period up to around age 72, but the subject should have been explicitly dealt with, and a specific outcome should have been agreed. This would have informed a more realistic and reliable cash flow analysis, where the differing needs for income (from one phase to the other) would be reflected. More should have also been done to explore the extent to which the surplus £8,000 annual income (from early access to the DBP) could have gone towards the desired lifestyle and how much, if any, support was needed or wanted from X's savings. This could have given X a chance to apply some realistic and longer term thinking to the desired lifestyle, which would have informed a more realistic and reliable cash flow analysis. More should then have been done to calculate the scope of the DBP's coverage (without and with support from savings) for the early phase and for the phase thereafter, including the likely reduction in required income after the early phase.

I consider it more likely (than not) that, based on the above, the cash flow analysis would have looked different. It would probably have shown more affordability for the early phase of retirement from within X's existing arrangements – mainly the DBP, without or with support from savings – and more realistic foresight into the period thereafter. Even more support, if needed, was available from the GPP, and the same would have applied to the state pension (from when it began). This enhances the point that with capability to meet X's objective from within the existing arrangements, in addition to the evident reasons why a DBP transfer was unsuitable (as set out by Tavistock in the quote I used above), X did not need to undertake the disadvantages and risks of an unsuitable transfer. Suitable advice should have been against the transfer and in favour of an alternative (suitable) solution from within the existing arrangements.

This should have been the outcome of Tavistock's advice, and as I said above, I consider that X would probably have followed such advice.

This approach would probably have given X *food for thought* before any implementation steps were instructed or taken. There was no immediate need for, or intention to draw, early retirement income. X's engagement with Tavistock appears to have begun around February, the suitability report was issued in July, and the report says early retirement was considered to happen around September but there was no intention to draw income until possibly around November (after discussion with Tavistock later in the year).

In such circumstances, it appears probable that if early access to the DBP was recommended X would not have instructed implementation straight away. Instead, such a step would probably have coincided with X concluding employment and deciding, firmly, to begin early retirement – there would have been no need for retirement income from the DBP prior to this point. In the meantime, the DBP would have remained in place until the decision was made to use it for early retirement income.

To complete this scenario, I consider it appropriate to borrow from the facts as they have been since the advice. X has not retired. Therefore, and based on my findings on how X would probably have approached the advice, it follows that implementation of advice to access the DBP early would probably not have happened, to date.

In all the above circumstances, I do not consider that Tavistock has established that it could "*clearly demonstrate, on contemporary evidence*" that the transfer it recommended was in X's "*best interests*". To the contrary, contemporary evidence shows that the transfer was unsuitable and that, with the proper approach, a solution to X's early retirement desires could probably have been found in the existing arrangements. On balance and for the reasons give above, I find that Tavistock's DBP transfer recommendation was unsuitable for X. It follows from this conclusion that, but for its unsuitable advice, X would not have the SIPP and its underlying investments, so I do not need to address suitability of those investments.

Putting things right

fair compensation

A fair and reasonable outcome would be for Tavistock to put X, as far as possible, into the position X would now be in but for its unsuitable advice. I consider X would have likely retained the occupational scheme.

Tavistock should therefore 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.

X has not retired and has no current plans to do so. Therefore, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of X's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Tavistock should:

- calculate and offer X redress as a cash lump sum payment,
- explain to X before starting the redress calculation that:
    - 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 the current defined contribution pension
- offer to calculate how much of any redress X receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if X accepts Tavistock's offer to calculate how much of the redress could be augmented, request the necessary information and not charge X for the calculation, even if X 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 X's end of year tax position.

Redress paid directly to X as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Tavistock may make a notional deduction to allow for income tax that would otherwise have been paid. X's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £200,000, £350,000, £355,000, £375,000, £415,000, £430,000 or £445,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In X's case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2024 but before 1 April 2025, so the applicable compensation limit would be £430,000. However, given R's involvement in the case, X should consider getting independent advice on this.

My final decision

I uphold X's complaint. I order Tavistock Partners (UK) Limited to calculate and pay X redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 10 November 2025.

Roy Kuku
Ombudsman