DRN-3602731

The complaint

Mr H complains about the advice given by Tuto Money Limited ('TML') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr H'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'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying 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. Alternatively, members of the BSPS 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 included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H'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.

On 18 September 2017, the BSPS provided Mr H with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £472,751.43.

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.

Concerned about what the recent announcements by his employer meant for the security of his pension, Mr H sought advice from TML.

TML recorded some information about Mr H's circumstances. It noted that he was 49, he lived with his partner and he had one dependent child. Mr H was employed earning approximately £36,000 and his partner also worked and she earned around £22,000. They had a mortgage on their home, later established to have an outstanding balance of around £130,000 although no remaining term was recorded. Mr H had an outstanding loan of around £11,000 with five years remaining and he had cash savings of around £6,000. His and his partner's combined income exceeded their outgoings, giving them a monthly disposable income of around £1400. TML also carried out an assessment of Mr H's attitude to risk, which after discussion was deemed to be 'lowest medium'.

TML issued a letter summarising its recommendation (a suitability report.) on 1 December 2017. This said Mr H wanted to take control of his pension because of his growing distrust of the DB scheme. It said he didn't foresee working beyond age 60, and while the DB scheme allowed early retirement, a penalty would be imposed for doing so. It said Mr H wanted to take a higher initial income until his state pension commenced. It also said he wanted to take a cash lump sum to repay his mortgage at 55 to drastically reduce his monthly expenditure. It also said enhanced death benefits was important to Mr H.

TML recommended that Mr H transfer his pension as this would meet his stated objectives. And it recommended a pension provider and fund that it said was in line with his attitude to risk.

Mr H complained to TML in 2022 about the suitability of the transfer advice. In essence he didn't think the advice to give up a guaranteed pension income was suitable for him.

TML didn't uphold Mr H's complaint. In summary it said that, given the balance of the trade-offs and Mr H's desire that he wanted to retire early in a flexible pension option, the advice to transfer was suitable. And it said, regardless of the outcome of the BSPS he would need to transfer to achieve his retirement goals.

Mr H referred his complaint to the Financial Ombudsman Service. He said he feels he was wrongly advised.

One of our Investigators looked into the complaint. They thought the advice was unsuitable as Mr H wasn't likely to improve on the benefits he was already guaranteed by transferring. And they thought the other reasons for transferring weren't compelling – for example they said Mr H's desire to retire early wasn't a fixed objective given his age; he could've used his workplace DC scheme to help him retire early if that's what he ultimately decided; he didn't need to use his tax-free cash at 55 to repay his mortgage given it was affordable and on a repayment basis so it was naturally reducing anyway; and lump sum death benefits shouldn't have been prioritised over his security in retirement.

TML disagreed with the Investigator's findings. But it said, without admission of liability, it was willing to carry out a loss calculation. And the loss calculation it carried out showed Mr H hadn't suffered a financial loss.

Mr H replied and said he would rather wait until after 1 April 2023 to have his losses assessed in accordance with the changes brought about by the regulator's Policy Statement PS 22/13.

In May 2023, our Investigator wrote to both Mr H and TML to say that the regulator had now developed a BSPS-specific redress calculator, which it was encouraging businesses to use. And in October 2023, in an attempt to resolve the complaint informally, we asked TML to carry out an up-to-date loss assessment using the BSPS calculator which it would then put to Mr H. While TML said it was willing to do this, Mr H said he wanted his complaint decided by an Ombudsman.

So the complaint was referred to me for 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of TML's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, TML should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator. My reasons are set out below.

- The transfer value analysis ('TVAS') report, that TML was required to carry out by the regulator, said that the critical yield - how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 6.45% to match the full pension he'd have been entitled to under the scheme at age 65. Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 5.05%. To match the full pension the PPF would've paid from 65 the critical yield was 5.07% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.63%.

- Despite TML recording that Mr H wanted to retire at 60, it did not produce critical yields based on the benefits available to him under the scheme or the PPF at this age. While it produced critical yields based on a retirement age of 55, which were significantly higher, this wasn't relevant to the advice he was seeking and so wasn't very helpful to Mr H. I think TML should've provided them based on a retirement age of 60 as this was the advice Mr H was seeking.

- In any event, given Mr H's recorded 'lowest medium' attitude to risk, the discount rate of 4.3% for 15 years to retirement (age 65) and the regulator's middle projection rate, I think Mr H was always likely to receive pension benefits, from age 65, of a lower value that those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And given what the TVAS noted about the critical yields for retirement at age 55 – that these were significantly higher – I think based on a retirement age of 60, he was even more likely to receive lower benefits than either the BSPS2 or the PPF offered, if he retired early. And indeed the suitability report noted that it was *"...highly unlikely that this level of growth would be maintained over a period of time."*

- I accept Mr H wasn't married and so the spouse's pension might not have seemed important to him at the time. Nevertheless, carrying out the TVAS including this was still appropriate, in my view, as it showed the true value of the benefits Mr H was considering giving up. But even on a single life basis, the critical yields TML produced still likely meant Mr H would be worse of in retirement, whether through the BSPS2 of the PPF, if he retired early.

- For this reason alone, I don't think it was in Mr H's best interests to transfer to a personal pension arrangement.

- At 49 I think it was likely that Mr H had given his retirement some thought. But while he indicated he wanted to retire early at age 60, I don't think he had anything that could be described as a firm retirement plan or that this was set in stone. Nevertheless he already had this option available to him – he didn't have to transfer to achieve the goal of early retirement. I can see TML recorded that taking early retirement through the scheme would mean Mr H would be penalised for doing so. But I don't think it was fair for it to describe an actuarial reduction for early retirement as a penalty. I think this implied there were no similar consequences for Mr H's retirement income if he transferred to a personal pension, which wasn't the case. In the same way Mr H couldn't reasonably expect the same income from his DB scheme he'd be entitled to at 65 from age 60, drawing a higher income earlier on from his transferred pension fund could mean he'd run out of money sooner than expected.

- TML said Mr H wanted to draw a higher income before his state pension was payable and that a transfer would allow him to alter the level of income he took. But without a retirement plan, I'm not persuaded Mr H reasonably knew what his future retirement needs would be. It strikes me that the reference to this kind of 'flexibility' was simply a feature or a consequence of transferring to a personal pension rather than a firm objective of Mr H's.

- In any event Mr H already had flexibility. He was contributing to his workplace pension scheme – a defined-contribution ('DC') scheme which already provided flexibility in how and when he could access his benefits. Given the 16% of salary contribution being made to this, I think Mr H's DB scheme income and this pension could've given him the flexibility to retire early - *if* that's what he ultimately decided.

- TML recommended the transfer to enable Mr H to take a cash lump sum at age 55 to repay his mortgage and defer taking an income until he retired later on. This was because it recorded that Mr H said this would reduce the income he needed because the mortgage was a large percentage of his total monthly expenditure. But I don't think TML should've encouraged Mr H to access his pension early for this purpose.

  I say this because nothing TML recorded suggested that Mr H was either behind or struggling to meet the repayments. In fact it recorded he had a surplus monthly income of almost £1,450. And I don't think giving up his guaranteed pension benefits to reduce a debt that he could afford, was in his best interests.

- Mr H's mortgage was on a repayment basis, so the balance was reducing. TML didn't record the remaining term. But if Mr H was keen to ensure it was repaid prior to his retirement, it could've recommended he explore the possibility of making regular overpayments with his lender. While reference was made to Mr H wanting to secure a further fixed rate of interest, I don't think this meant overpayments weren't possible. In any event, given Mr H's intention to continue working for another 10 years or so, I think it's likely the tax-free cash sum available to him through his DB scheme at retirement would've been sufficient to repay any outstanding balance at this stage.

- Overall, as Mr H had no plans to stop working prior to age 60 and he didn't have a pressing need to clear any of his outstanding debt as this appears to be affordable, I don't think transferring to obtain flexibility was in his best interests.

- Mr H indicated he wanted a retirement income of £14,400 a year or £1,200 net a month. But TML doesn't appear to have carried out a detailed income and expenditure in retirement analysis to arrive at this figure or to have interrogated it to determine whether it was realistic – it just accepted what he said. In any event, I don't think Mr H had thought through his retirement plans to fully understand what his true income need in retirement was.

- I think in the circumstances Mr H stood a better chance of meeting his needs by remaining in his DB scheme. At 65 it was estimated to be around £25,686 a year - a guaranteed and escalating income for life, which wasn't going to be bettered by transferring. Mr H had his DC scheme he could supplement his income with. And because his partner was several years younger than him, it's likely she'd continue to work, so her salary would also contribute to their household expenditure. Once she retired, Mr H would likely be in receipt of his state pension and it was recorded she had her own private pension provision. I think in the circumstances this was a more appropriate way for Mr H to meet his future retirement income needs rather than risking his guaranteed benefits to attempt to do so.

- TML said Mr H was interested in the enhanced death benefits a transfer offered to his family. But the priority here was to advise Mr H about what was best for his retirement. While I appreciate Mr H was wasn't married at the time, it's possible that he would do so. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.

- In any event, while the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr H drew in his lifetime. And so it may not have provided the legacy that Mr H may have thought it would.

- If Mr H had wanted to leave a legacy for his family, TML could've explored life insurance as an alternative. I can see reference was made to a life policy quote of around £45 a month based a sum assured equivalent to the CETV with a term to age 60. This appears to have been discounted. But TML recorded that Mr H had significant disposable income through which he could've met the associated premiums.

  And this could've been considered on a whole of life or term assurance basis and based on a sum assured representing how much Mr H wanted to leave to his family.

- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr H. I don't think that insurance was properly explored as an alternative. And ultimately TML should not have encouraged

Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- TML recorded that the transfer would *"allow you to take full control of the investment."* But I think Mr H's desire for control was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr H – it was again simply a consequence of transferring away from his DB scheme.

- Mr H may have legitimately held concerns about how his employer had handled his pension and the prospect of entering either the new scheme or the PPF. But it was TML's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr H with guaranteed income, the possibility of taking early retirement and the option of accessing tax-free cash. Mr H was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interests.

Overall, I can't see persuasive reasons why it was clearly in Mr H's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen anything to persuade me that he would've insisted on transferring, against advice to remain in the DB scheme. In my view he had little investment knowledge or experience and nothing suggests to me that he otherwise had the requisite confidence or skill to do so.

So, I'm upholding the complaint as I think the advice Mr H received from TML was unsuitable for him.

I can see the Investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr H. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish TML – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr H. Taking everything into account, including what Mr H has said, and that I consider he's now at the age when his retirement provision is of greater importance to him, I think the unsuitable advice has caused him distress. So, I think an award of £300 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would most likely have remained in the occupational pension scheme opted to join the BSPS2 if suitable advice had been given.

TML must 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: https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

TML should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr H and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what TML based the inputs into the calculator on.

For clarity, Mr H has not yet retired, and I understand he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, 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 DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H acceptance of my final decision.

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

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts TML's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, B may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

I uphold this complaint and require Tuto Money Limited to pay Mr H the compensation amount as set out in the steps above.

If Mr H accepts this decision, the money award becomes binding on Tuto Money Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 January 2024.
Paul Featherstone

Ombudsman