DRN-3827143

The complaint

Mr D complains about the advice given by Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services ('Tavistock') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He thinks the advice may have been unsuitable for him and says it caused him 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 employer's DB scheme (the 'BSPS') 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 (the 'BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr D wasn't sure what was best for him, so he got in touch with a representative of Tavistock. In November 2017, Tavistock gathered information about Mr D's circumstances and objectives. It recorded that Mr D was almost 43, married with two children (one dependent). That Mr and Mrs D owned their own home, which was subject to a mortgage of £53,000 ending in 2029. And between them they had credit card and loan debt of around £14,000. It recorded that Mr and Mrs D's monthly income covered their expenditure and Mr D had personal savings of around £2,000. Tavistock noted Mr D had joined his employer's new defined-contribution ('DC') pension scheme; Mr D and his employer were contributing a total of around £7,000 per year. Mrs D was recorded as having her own DB pension, projected to provide around £10,400 per year at her normal retirement age of 67.

Tavistock noted Mr and Mrs D hoped to retire early but that they realised they may need to continue working until their state pension ages if retiring earlier wasn't affordable. Tavistock recorded that Mr D wanted flexibility in how he took his pension and was interested in the lump-sum death benefits a transfer offered. It noted he didn't want his DB scheme pension to cease on Mrs D's death and preferred it to pass on to his children. Tavistock completed an attitude to risk assessment with Mr D and noted he had a 'medium' attitude to risk.

Tavistock told Mr D that he should join the BSPS2 to protect his position as it wasn't likely to be able to finalise its advice before the time to choose deadline expired. So, Mr D did this.

In January 2018 Tavistock produced a suitability report setting out its analysis and recommendations. It advised Mr D to transfer his BSPS benefits to a SIPP and invest his funds via a Discretionary Fund Manager ('DFM'), who would actively manage the invested funds on Mr D's behalf. Mr D accepted this advice and £332,356.20 was transferred from the BSPS to a SIPP.

In 2022 Mr D complained to Tavistock about the advice he received, believing it may have been unsuitable for him. Tavistock maintained the advice was suitable as transferring would give Mr D flexibility of income and would provide death benefits that would be available to his family. And the adviser recalled Mr D had lost faith in his employer and its ability to manage the BSPS so he wanted to transfer out of it. He said Mr D was also keen to secure the enhanced cash equivalent transfer value ('CETV'). Tavistock said it had a responsibility to take the emotion out of the situation and ultimately made a recommendation that was in Mr D's best interests. It also made sure Mr D was aware of the risks of transferring.

Unhappy with Tavistock's response, Mr D referred his complaint to the Financial Ombudsman Service. He said the advice had resulted in a loss of guaranteed benefits for himself and his spouse and he'd lost the financial security the scheme provided. Mr D said the matter was causing him a great deal of stress, particularly as his pension fund had lost around £70,000 since he transferred and continued to drop.

One of our Investigators looked into the complaint and said it should be upheld. He said the advice to transfer was not clearly in Mr D's best interests given Mr D was so far away from his expected retirement and he wasn't likely to know what his needs would be. But on balance, he thought Mr D could likely meet his objectives by joining the BSPS2, noting he would have a degree of flexibility by virtue of him having joined his employer's DC scheme and he'd potentially build up further retirement provisions over the next 25 years. The Investigator didn't think taking advantage of an enhanced CETV, or the potential for higher lump sum death benefits was a good enough reason to transfer. He also didn't think Tavistock had done enough to allay Mr D's concerns over his employer's influence on the pension. The Investigator recommended Mr D should be compensated based on him having opted to join the BSPS2 and that Tavistock should pay him £300 for the distress and inconvenience caused by the unsuitable advice.

Tavistock didn't agree – it said the regulator had warned against basing advice on the growth rates required to match the DB scheme benefits (the critical yield), and the Investigator had placed too much emphasis on this. It had carried out cash flow analysis showing Mr D would have a sustainable fund in retirement, whilst also meeting his objectives of flexibility and improved death benefits. Tavistock said it also thought Mr D would've transferred his pension regardless. It questioned whether Mr D had taken any steps to fix his income, for example by taking an annuity and if not, this suggested he was happy with his existing arrangements, including the flexibility it gave him.

As no agreement could be reached, 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 Tavistock'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave. I've summarised my findings below.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable and that a transfer should only be considered suitable if the advising firm can clearly demonstrate it is in the consumer's best interests. I'm also mindful that under COBS 9.2.1R Tavistock needed to take reasonable steps to ensure that its recommendation to Mr D was suitable for him. And having looked at all the evidence available, I'm not satisfied Tavistock took reasonable steps to ensure the advice to transfer was suitable for Mr D or that it was in his best interests.

Financial viability

I think it was more likely that Mr D would receive pension benefits of a lower overall value in retirement if he transferred out of the DB scheme to a SIPP. I say this because:

- Tavistock carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). The TVAS showed that the critical yield at age 65 was 6.18% if Mr D took a full pension; if he took tax-free cash ('TFC') and a reduced annual pension it was 5.43%. At age 60, the critical yields were 6.95% and 6.03% respectively. The PPF critical yields were slightly lower but all still above 5%.

- The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

- The discount rate was 4.5% for 22 years to retirement at age 65. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. There would be little point in Mr D giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But as all of the critical yields were higher than the discount rate and the growth Mr D could likely achieve given his medium attitude to risk, I think Mr D was likely to receive benefits of a lower overall value at retirement.

- Tavistock says it carried out cash flow modelling showing that Mr D's funds would last him if he transferred them to a SIPP, even if it assumed modest growth of 3.5% and he retired at age 60. But significantly Tavistock also recognised that Mr D could meet his income needs, and ensure a higher level of guaranteed income for the rest of his life, if he remained in the BSPS2 whether he retired at age 60 or 67.

- I recognise Tavistock based its advice on Mr D and his employer making pension contributions to his DC scheme over the next 20+ years. But it's clear that those funds would be subject to investment risk. So, I think this was a strong reason for recommending that Mr D remained in his DB scheme. At the time of the advice, Mr D's BSPS benefits were his only guaranteed retirement provisions, and I don't think he really needed to take a risk with these pension funds when his DC scheme would already be subject to investment risk.

Overall, I don't think it was in Mr D's best interests to transfer out of the BSPS as he was likely to receive lower overall benefits at retirement. I also don't think Mr D needed to risk his guaranteed pension in this way, given any other pension provisions he would go on to build up would be subject to investment risk. So for this reason alone, I don't think Tavistock has shown that it was clearly in Mr D's best interests to transfer out of the BSPS.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable overall, as Tavistock argues here, so I've carefully considered these.

Flexibility and income needs

I don't think Mr D needed to transfer out of the BSPS in order to have flexibility in retirement. And I think he could've most likely met his income needs in retirement if he joined the BSPS2. This is because:

- Mr D was interested in retiring early but recognised it wasn't likely to be affordable, though he would keep an eye on things as he got older. So, at the time of the advice, the aim was to retire comfortably at age 67. Tavistock says Mr D needed £2,500 per month in retirement, but in reality it was too early to say with any certainty what Mr D would need.

- At age 65 Mr D could take around £96,000 in TFC and a reduced pension of around £14,300. So, if Mr D stopped working from age 67, he'd have guaranteed income of at least £22,300, factoring in his state pension, and a significant amount of TFC to draw down. When Mrs D turned 67 the following year, she'd be entitled to a state pension of around £8,000 per year and an income of around £10,400 from her own DB scheme. So, together from Mrs D's age 67, they'd have guaranteed income of at least £40,000 per year, well in excess of their income needs. Mr D would've also been able to use the TFC to supplement whatever additional income they needed. And any funds Mr D had built up through his DC scheme could be left untouched so as to pass on to his beneficiaries, or it could be used for ad hoc capital or income requirements. So, I think being able to draw on the TFC and/or the DC scheme as and when needed gave them sufficient flexibility of income from age 67.

- It’s evident Mr D liked the idea of retiring early (at age 60), as most people do. But I don’t think this was a concrete plan at the time of the advice; it was at least 17 years away. So, although having extra flexibility to retire early was likely appealing, it wasn’t necessary at the time of the advice. And in any event, I don’t think that was a decision Mr D needed to make at this time – by joining the BSPS2, he retained the option to transfer out of the scheme closer to his retirement age if his circumstances required it. That a future CETV could’ve been lower should not have had an impact on what was suitable for his circumstances at the time of the advice.

- That said, I’m also mindful that Tavistock’s own cash flow analysis showed Mr and Mrs D could likely retire at age 60 even if Mr D remained in the BSPS2. The suitability report says the cash flow model demonstrates that Mr D could bridge the income gap between age 60 and 67 by using the TFC from the BSPS2 and taking whatever else was needed from his DC scheme. So, it seems to me that Mr D could’ve achieved his objective of retiring early even if he remained in the BSPS2.

- Tavistock says if Mr D hasn’t yet purchased an annuity, it suggests he’s happy with his SIPP and the flexibility it provides. But ultimately Mr D has a SIPP because of the advice Tavistock gave him; how he manages this going forwards is not relevant to the suitability of the advice Tavistock gave him in 2018.

Overall, I think that Mr D could’ve met his income needs in retirement through a combination of taking his benefits through the BSPS2 and using whatever funds he’d built up in his DC scheme flexibly. And this provided him with a higher amount of guaranteed income for life, thereby decreasing his overall risk in retirement. So, I don’t think it was suitable or in Mr D’s best interests for Tavistock to advise him to transfer his DB pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn’t really need.

Death benefits

I don’t think Mr D should’ve been encouraged to give up his guaranteed pension in order to provide extra death benefits that could’ve been achieved in other ways without risking his own security in retirement. I say this because:

- Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I’m sure that the idea of leaving a large sum to his family in the event of his death sounded attractive to Mr D, as it would to most people. But whilst I appreciate death benefits are important to consumers, Tavistock’s role was to advise Mr D on what was best for his retirement. And the existing scheme already offered death benefits, by way of a spouse’s pension, that could’ve been valuable to his wife in the event of his death. Under the BSPS2, this would be based on the pension available to Mr D before he took TFC, it was guaranteed and it escalated each year.

- The CETV figure would no doubt have appeared attractive as a potential lump sum, but 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 D drew in his lifetime. So, it might not have provided the legacy that Mr D thought it would. In any event, if Mr D remained in the BSPS2 and retired closer to age 67, he could have a significant sum built up in his DC scheme that he wouldn’t need to draw on and could’ve passed on to any beneficiaries of his choice. So, he already had a way of ensuring part of his pension could be passed on to his children.

- It’s evident that Tavistock explored life assurance with Mr D on a term and whole of life basis. The whole of life assurance quotes were based on a sum assured of £330,000; Tavistock noted this was affordable now, but could become unaffordable in the future. But I don’t think that this was a balanced way of presenting this option to Mr D. Ultimately, Mr D wanted to leave whatever remained of his pension to his family, which would be less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr D how much he would ideally like to leave to his family, and this could’ve been explored on a whole of life or term assurance basis, which was likely to be cheaper to provide.

- I can see Tavistock did look into term assurance with a sum assured of £100,000 to Mr D’s age 67, which was clearly affordable over the duration of the term. But it doesn’t appear this solution was recommended. And I think Tavistock ought to have formally recommended this as a solution if Mr D genuinely wanted additional protection for his family beyond the spouse’s pension the BSPS2 would provide.

Overall, I don’t think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr D. And ultimately Tavistock should not have encouraged Mr D to prioritise the potential for alternative death benefits through a personal pension over his own security in retirement.

Control and concerns over the financial stability of the DB scheme

Tavistock ought to have addressed Mr D’s concerns about his employer’s influence over the DB scheme. Had it done so, I think Mr D would’ve most likely been assured by this.

- Mr D may have legitimately held concerns about how his employer had handled his pension in the past and was inclined to transfer for this reason. But it was Tavistock’s role to objectively address those concerns. As Tavistock said in its final response letter, it had to take the emotion out of the situation. But it seems to me that it did the opposite; as it said in the suitability report, it considered a transfer met Mr D’s ‘emotional requirements’ at the time.

- I think Tavistock ought to have emphasised that the BSPS2 was well-funded. And if there were future issues, it would still be covered by the PPF and Mr D still wasn’t likely to be able to improve on those benefits. So, even if Mr D might have perceived there to be risk attached to the BSPS2, I think Tavistock ought to have emphasised that he would be taking on greater risk by exposing his pension funds to the volatilities of the investment markets. Furthermore, it ought to have reassured Mr D that the BSPS2 trustees were in place to act in the best interests of all members, and as such, his employer couldn’t simply make changes to it without consultation.

- I also think Mr D’s desire for control over his pension 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. And the recommendation was given on the basis he’d receive, and pay for, support with his pension by way of ongoing advice and using the service of a DFM. So, I don’t think that this was a genuine objective for Mr D, it was simply a consequence of transferring away from his DB scheme.

I don’t think that Mr D’s concerns about his former employer should’ve led to Tavistock recommending Mr D transfer out of the DB scheme altogether. And I’m mindful he’d already chosen to join the BSPS2 in the interim, so I think that demonstrates he was prepared to stay in the DB scheme if Tavistock considered that to be suitable for him.

Overall, I can't see persuasive reasons why it was clearly in Mr D's best interest to give up his DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mr D would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr D received from Tavistock was unsuitable for him. As such, Tavistock should calculate redress owed to him on the basis that he'd joined the BSPS2.

Mr D says that his pension has lost considerable value since he transferred, and that this has caused him a lot of stress and worry. It's evident that the redress calculation I'm asking Tavistock to undertake will compensate Mr D for any financial loss he's experienced as a result of transferring his pension. But I also think that Tavistock should pay Mr D £300 for the distress and inconvenience the matter has caused him. I think Mr D's concern over the loss to his pension fund, and how this could affect his future retirement, is completely understandable. And ultimately if he hadn't been advised by Tavistock to transfer his pension, he wouldn't have been impacted by the world events that caused his pension fund to drop. So, I think that it is fair for Tavistock to pay Mr D £300 to recognise the personal impact of its unsuitable advice.

Putting things right

A fair and reasonable outcome would be for Tavistock to put Mr D**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr D would most likely have joined the BSPS2 if suitable advice had been given.

Tavistock 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.

Tavistock 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 D and our Service upon completion of the calculation, together with supporting evidence of what Tavistock based the inputs into the calculator on.

For clarity, Mr D has not yet retired, and he has no plans to do so at present. So, 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 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 D's 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, Tavistock should:

- calculate and offer Mr D redress as a cash lump sum payment,
- explain to Mr D before starting the redress calculation that:
  - the 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 his personal pension
- offer to calculate how much of any redress Mr D receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr D accepts Tavistock's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr D for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr D's end of year tax position.

Redress paid to Mr D 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, Tavistock may make a notional deduction to cash lump sum payments to take account of tax that Mr D would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr D'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.

Pay Mr D £300 for the distress and inconvenience the unsuitable advice caused him.

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

Determination and money award: I uphold this complaint and require Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services pays Mr D the balance.

If Mr D accepts my final decision, the money award becomes binding on Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services.

My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept my final decision.

Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services should provide details of its calculations to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 November 2023.

Hannah Wise
Ombudsman