DRN-3818977

The complaint

Mr D complains that he was given unsuitable advice by True Potential Wealth Management LLP ('True Potential') to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a personal pension.

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'), 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 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 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.

In the same month, Mr D sought advice from True Potential. And in November 2017 it recommended that he transfer his pension to meet his key objectives of wanting sufficient income in retirement, flexibility and the ability to pass on what remained of his pension upon his death to his family. True Potential recommended a pension provider and investment that it said was in line with his attitude to risk.

Mr D complained to True Potential in 2021 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.

True Potential didn't uphold Mr D's complaint. In summary it said the recommendation put Mr D in a position to allow him to meet his retirement goals.

It said he's financially benefitted from the transfer and his family will also benefit significantly in the future compared to remaining in the DB scheme. It said there was no evidence to suggest he'd suffered a loss as a result of the advice it provided.

Mr D referred his complaint to the Financial Ombudsman Service. And one of our Investigators upheld it. They thought the advice was unsuitable as Mr D wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think there were other compelling reasons to justify a transfer and outweigh this. They said Mr D didn't have any firm retirement plans given his age; his income need wasn't explored in depth and in any event it would be difficult to determine given his retirement was 19 years away; he didn't know he'd need flexibility in retirement, but he had this anyway because he was contributing to his workplace pension scheme; and different death benefits wasn't a suitable reason to transfer. They said Mr D should've been advised to opt into the BSPS2.

While True Potential disagreed with the Investigator's conclusion that the advice was unsuitable, it nevertheless said it was willing to make an offer of settlement to Mr D in the interests of settling the complaint. Mr D declined the offer.

True Potential later carried out a further loss calculation and this showed there was no loss. But it agreed to pay Mr D £200 for the distress and inconvenience the matter had caused as recommended by the Investigator. The Investigator said they thought the calculation had been carried out appropriately and that, in this case the calculation shows no shortfall in Mr D' pension – he has sufficient funds to be able to replicate his DB benefits in retirement.

Because Mr D asked for the matter to be decided by an Ombudsman, the complaint comes 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.

I understand True Potential still disputes that unsuitable has been given. Nevertheless, they have carried out a loss calculation and have agreed to pay Mr D £200 for the distress and inconvenience caused as recommended by our Investigator. So I don't see the need to address the suitability of the advice Mr D received in detail.

But I'd like to note that I agree with the Investigator's view that the advice was unsuitable for largely the same reasons. And in summary those reasons are as follows:

- The transfer value analysis ('TVAS') report, that True Potential was required to carry out by the regulator, said that the critical yield - 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 – was 6.19% 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 5.37%.
  To match the full pension the PPF would've paid from 65 the critical yield was 5.13% and to match the tax-free cash and reduced pension the PPF would've offered, it was 4.69%.

- Given Mr D's recorded 'balanced' attitude to risk, the discount rate of 4.4% for 18 years to retirement and the regulator's middle projection rate, I think Mr D 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. And at best, the opportunity to improve on the benefits available through the PPF by transferring and investing in line with that attitude to risk was limited. For this reason alone, a transfer out of the DB scheme was not in Mr D's best interests.

- True Potential recommended the transfer to achieve flexibility for Mr D in retirement. But at 46 and with 19 years to go until his retirement, I'm not persuaded he'd likely given any serious thought to his retirement plan or reasonably understood what his needs would be so far in the future. I think the reference to flexibility was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr D's.

- In any event Mr D already had flexibility because he had his workplace defined contribution ('DC') scheme, which True Potential estimated could likely be worth over £100,000 at age 65. I think this could've provided Mr D with flexibility – the ability to take income and/or lump sums as required – if that's what he ultimately needed. So I don't think transferring to obtain flexibility was in his best interests.

- Mr D's income need was recorded as being £14,400 a year or £1,200 a month. But again, I don't think he could reasonably know at this time what he'd need when he retired. And True Potential doesn't appear to have carried out a detailed income and expenditure in retirement analysis with him to interrogate this figure or challenge how realistic a figure it was.

- Without a realistic understanding of Mr D's true needs in retirement, I don't think it was in his best interests to transfer at this time. Mr D's DB pension was estimated to be around £21,800 a year at 65 (or around £15,000 and a circa £100,000 lump sum) – a guaranteed and escalating income for life, which wasn't likely to be bettered by transferring. I think it would've provided a solid income foundation upon which Mr D's other means, including his DC scheme pension, could supplement to likely meet his income needs and objectives in retirement. I think this was a more appropriate way for Mr D to meet his future retirement needs rather than risking his guaranteed benefits in an attempt to do so.

- In terms of a transfer providing better death benefits - the priority here was to advise Mr D about what was best for his retirement. 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.

- 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 D drew in his lifetime. And so it may not have provided the legacy that Mr D may have thought it would.

- If Mr D did genuinely want to leave a legacy for his family, True Potential could've explored life insurance instead. And this could've been considered on a whole of life or term assurance basis – which was likely to be cheaper. Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr D. I don't think that insurance was properly explored as an alternative. And ultimately True Potential should not have encouraged Mr D to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Overall, I can't see persuasive reasons why it was in Mr D's best interests to give up his DB scheme benefits. 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.

Putting things right

I'll focus in this decision on how to put things right for Mr D as no agreement could be reached.

The aim is to put Mr D back in the financial position he would have been in at retirement had he remained in the DB scheme. True Potential carried out a calculation using a specific BSPS calculator provided by the FCA, which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

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.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also 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 have checked the inputs that were entered by True Potential, which are personal to Mr D. These include Mr D's 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 had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and 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.

I note the valuation date of Mr D's pension fund has been taken as at 3 October 2023 rather than 1 October 2023 – the start of the relevant quarter.

But, because 1 October 2023 fell at a weekend, I don't think it has any material impact on things, or it is unfair to use the valuation from 3 October 2023.

The calculation in Mr D's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr D has not suffered a financial loss by transferring his pension.

True Potential has still offered to pay £200 as recommended by our Investigator for the distress and inconvenience this matter has caused him.

I think the calculation carried out by True Potential is appropriate in the circumstances and no redress for financial losses is due to Mr D. And taking everything into account, including what Mr D has said about the emotional impact the unsuitable advice has had, I think their offer to pay him £200 for the distress and worry he experienced is fair in the circumstances.

My final decision

I uphold this complaint and require True Potential Wealth Management LLP to pay Mr D a sum of £200 for the worry he says this matter has caused him. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 January 2024.
Paul Featherstone
Ombudsman