

## **The complaint**

Mr P complains that he was given unsuitable advice by True Potential Wealth Management LLP ('TPWM') to transfer the benefits from his defined benefit (DB) scheme with British Steel (BSPS) to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

## **What happened**

In March 2016, Mr P'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'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr P's employer would be set up – the BSPS2.

In September 2017, the DB scheme administrators sent Mr P information about his entitlement under his current DB scheme including a cash equivalent transfer value ('CETV') illustration. The CETV stated that Mr P had 19 years and 11 months of pensionable service in the DB scheme and that the total transfer value of his benefits was £245,723.33.

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 P wasn't sure what to do about his pension so he contacted a financial adviser that referred him on to TPWM. A fact-find was completed to gather information about Mr P's circumstances and objectives. It noted Mr P was aged 45, his wife was aged 46 and they had two dependent children aged 18 and 20. It also noted that Mr P earned £34,000 per year (or £2,100 net per month) and his wife earned £37,000 (or £2,400 net per month). Their home was documented as being valued at £135,000 with an outstanding mortgage of £79,000. In addition Mr P had a loan of around £4,000 and savings of £2,000. It was further noted Mr P and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme.

TPWM noted Mr P was hoping to retire at age 57 and that he had a balanced attitude to risk. Mr P's objectives for transferring documented on the fact find were that he had lost faith with his employer and its pension schemes, that he had concerns about joining the PPF and that he wanted control over his pension, its death benefits and his pension commencement lump sum ('PCLS'). TPWM further noted that Mr P believed transferring his pension would ensure the value of his accrued pension would not be lost on his death and that he planned to utilise

all his assets to generate a total retirement income of £24,000 per year until his latter retirement years where he expected his income needs to fall.

On 15 November 2017, TPWM sent Mr P a transfer value analysis report ('TVAS') and its suitability report in which it recommended that Mr P transfer his BPS DB pension benefits to one of its own e-SIPPs. TPWM said this was so Mr P could benefit from the enhanced transfer value his employer was currently offering as well as meet his stated objectives. TPWM said the transfer would also give Mr P the option of a larger PCLS whether he took early retirement at age 57 or waited until age 65, along with the flexibility to control how his death benefits were paid, which, it said, would also be paid tax-free if he passed away before the age of 75. Mr P accepted this advice and £245,723.33 was transferred from his BPS DB scheme to his new pension.

In 2021 Mr P complained to the Financial Ombudsman Service about the advice he received, believing it may have been unsuitable for him. Mr P said he felt he may have been advised to move his pension pot incorrectly.

The complaint was passed to TPWM to investigate but it was unable to agree that it had done anything wrong. TPWM also said that it had provided Mr P with clear, detailed advice and had explained to him why it believed the transfer was the best solution for him to achieve his objectives of having flexibility in retirement, control over his pension and better death benefits.

Unhappy with TPWM's response, Mr P asked the Financial Ombudsman Service to investigate. One of our Investigators looked into the complaint and thought it should be upheld. He issued his findings in October 2022 which, in short, said he didn't think that TPWM had dealt with Mr P fairly or that its advice was suitable or in Mr P's best interests. Our Investigator thought that TPWM should have advised Mr P to opt into the BPS2 so he recommended that TPWM should calculate whether Mr P had suffered a loss as a result of its advice to transfer. The Investigator also recommended that TPWM should pay Mr P £250 to address the distress and inconvenience caused by the receipt of its unsuitable advice.

TPWM didn't agree with our Investigator's assessment of the complaint. In January 2023, TPWM contacted our Investigator to advise that it was considering making a settlement offer to Mr P. In March 2023, TPWM wrote to Mr P to say that although it maintained the advice was suitable, and made no admission of liability, it had carried out a loss calculation as of 1 January 2023. It said its actuaries had calculated that it owed Mr P redress of £2,739.83 (net of any notional tax deduction) to which it would add a £250 payment for distress and inconvenience caused.

Mr P didn't accept TPWM's offer so, as the complaint was unresolved, it was referred for a final decision.

In June 2023 TPWM told us that it would undertake a new calculation, using the regulator's BPS-specific calculator, to establish if Mr P had suffered a financial loss as a result of its advice. In August 2023 TPWM said it had completed the calculation and this showed Mr P hadn't suffered a loss. TPWM said it would still pay Mr P compensation of £250 as recommended by our Investigator.

As the complaint remained unresolved, it was passed to me for a final decision. Having considered the evidence, I asked TPWM if it would re-run the redress calculation as I was of the view that certain inputs had been omitted when the calculation was first carried out. TPWM agreed to re-run the calculation, inputting the information I had asked it to. On 1 December 2023 TPWM said it had completed the calculation again and it showed that

Mr P had not suffered a loss. TPWM again said it would still pay Mr P compensation of £250 as recommended by the Financial Ombudsman Service.

### **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 understand TPWM is still disputing that it gave Mr P unsuitable advice. But nonetheless, in order to conclude the matter it's already carried out loss calculations and has agreed to pay Mr P £250 for the distress and inconvenience as recommended by our Investigator. So I don't see the need to address the suitability of its advice to Mr P in detail.

That said, I will comment that I agree with the Investigator's view that the advice was unsuitable for broadly similar reasons. In particular I've been mindful that the FCA's guidance for advising firms is that they should assume that a transfer from a DB scheme is unsuitable and they should only recommend one where they can clearly show that it was in the consumer's best interests. I don't think that was the case for Mr P. That's because, amongst other things:

- The growth rates required to match the benefits from the DB scheme, particularly if Mr P were to take early retirement, were not likely achievable. So I don't think Mr P was likely to be able to exceed his BSPS2 benefits at retirement by investing in line with his balanced attitude to risk. It clearly wasn't in Mr P's best interests to give up the guarantees associated with his DB pension simply to achieve, at best, equivalent benefits at retirement.
- Mr P had little capacity for loss – this was his main pension –so I don't think he could really tolerate the risk of transferring his DB pension.
- The difference in death benefits from a personal pension weren't worth giving up the safeguarded benefits offered by the DB scheme for nor was it in Mr P's best interests to do so. That's especially the case as the both the BSPS2 and PPF's own death benefits were guaranteed and didn't rely on investment growth or how much was left in his pension pot at the date of his death.
- One of Mr P's objectives was to take early retirement. He was aged 46 at the time of the advice, and while he thought he would retire early at age 57, this was around 11 years away and so his plans could've changed. It was too soon for Mr P to make an irreversible decision to transfer out of his DB scheme when he had the option of joining the BSPS2; by joining it he would retain the option to transfer out at a later date if his circumstances required it.
- Mr P had no defined objective for how he wished to spend his PCLS. So I can't agree it was in his best interests to transfer his safeguarded benefits to obtain a higher lump sum for a yet undefined purpose.
- Mr P's desire for control over his pension was overstated, he was an inexperienced investor and would be reliant on professional advice going forwards.
- Mr P may have legitimately held concerns about his employer and the PPF, but it was TPWM'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 P with guaranteed income and a PCLS, and if he retired early, the benefits available to him may have exceeded those under the BSPS2. Mr P could still have achieved his retirement objectives even if his DB scheme moved to the PPF.

Overall, I can't see persuasive reasons why it was in Mr P's best interests to give up his DB scheme guarantees. And I also haven't seen anything to persuade me that Mr P 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 P received from TPWM was unsuitable for him.

I also agree with our Investigator that learning that he might have put his security in retirement at risk unnecessarily would have been a source of distress and inconvenience for Mr P. To address that I think it's fair that TPWM pays him £250 compensation.

### **Putting things right**

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

The aim is to put Mr P back in the financial position he would have been in at retirement had he remained in the DB scheme. TPWM carried out a calculation using a specific BPS 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 BPS retirement benefits that they would have been entitled to under either BPS2 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 BPS 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 BPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BPS, BPS2 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 TPWM which are personal to Mr P. These include Mr P's personal details, his individual benefits from the BPS 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 BPS, he would have moved to the BPS2 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>.

The calculation in Mr P'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 P has not suffered a financial loss by transferring his pension.

TPWM has still offered to pay £250 as recommended by our investigator for the distress and inconvenience this matter has caused him.

Overall, I think the calculation carried out by TPWM is appropriate in the circumstances and no redress for financial losses is due to Mr P. I think TPWM's offer to pay Mr P £250 for the distress and worry he experienced as a result of realising he was unsuitably advised to move his DB scheme and that he could have suffered a financial loss as a consequence, is fair

and reasonable in the circumstances. I've also thought about compensation awards that I've made in complaints with similar circumstances and I'm satisfied that this award is in line with those and with the Financial Ombudsman Service's approach to compensation in general.

### **My final decision**

I uphold this complaint and require True Potential Wealth Management LLP to pay Mr P compensation of £250 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 January 2024.

Claire Woollerson  
**Ombudsman**