DRN-3878649

The complaint

Mr R 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 R'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 R'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 R 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 £375,684.66.

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.

Mr R wasn't sure what to do about his pension so he contacted True Potential for advice.

After True Potential recorded some information about Mr R's circumstances and objectives, on 30 November 2017 it recommended he transfer his DB scheme benefits to a personal pension plan. It also recommended a pension provider and an investment strategy that it deemed matched Mr R's 'balanced' attitude to risk. True Potential said the recommendation would meet Mr R's objectives by providing sufficient levels of income in retirement and the ability to provide varying levels of income at different stages of retirement.
In 2022, Mr R, through his representative, complained to True Potential about the advice he received, believing it may have been unsuitable for him and that he had suffered a financial loss as a result. True Potential looked into Mr R's complaint but didn't think it had done anything wrong. In summary it said, the recommendation resulted in Mr R being put in a position whereby his retirement goals would be met, he's financially benefitted from the transfer because of the enhanced CETV 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 Mr R had suffered a loss.

Unhappy with the outcome of his complaint, Mr R complained to the Financial Ombudsman Service. Our Investigator looked into Mr R's complaint and they thought the advice was unsuitable because Mr R wasn't likely to improve on the benefits he was already guaranteed by transferring. And they didn't think there were any other compelling reasons to demonstrate the transfer was in Mr R's best interests – for example there was nothing to show that he needed control or flexibility and his concerns about the scheme and moving to the PPF weren't sufficient reasons to make the transfer suitable.

True Potential disagreed. In summary it said it met all of its regulatory obligations and the advice was suitable and in Mr R's best interests having regard for his personal and financial needs and circumstances.

In August 2023, whilst the complaint was waiting to be referred for an Ombudsman's decision, True Potential said that, without admission of liability it was prepared to carry out a loss assessment in the interests of settling the matter. It then informed our Investigator that the resulting redress calculation showed Mr R had suffered no financial loss. But it said it was willing to pay Mr R £200 in recognition of the distress and inconvenience he had been caused in line with the Investigator's recommendation.

Our Investigator wrote to Mr R in December 2023 to explain that they'd checked the inputs True Potential had used to produce the loss calculation using the FCA's BSPS-specific redress calculator. They said that based on what they'd seen, and factoring in two minor incorrect inputs which hadn't made a material difference to things, the calculation had been carried out appropriately. They said the calculation showed that Mr R had suffered no financial loss and that his personal pension had sufficient funds to be able to replicate his DB scheme benefits at retirement. They explained that no redress was due to Mr R, but that True Potential had agreed to pay the recommended award of £200 for the distress and inconvenience suffered.

Mr R, through his representative said he still wanted an Ombudsman to look at the complaint. He said he didn't think the adviser charges had been correctly considered.

The complaint therefore 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 understand True Potential is still disputing that it gave Mr R unsuitable advice. Nevertheless, in order to conclude the matter, it's already carried out a loss calculation. So I don't see the need to address the suitability of its advice to Mr R in detail.

That said, I agree with the Investigator's view that the advice was unsuitable and not in Mr R's best interests for broadly similar reasons. And my reasons can be summarised as follows:

- The growth rates required to match the benefits from the DB scheme, particularly if Mr R were to take early retirement, seem too high to ensure he would be financially better off by transferring out of the DB scheme.

- Mr R didn't need to give up the guaranteed benefits of his DB scheme in order to achieve early retirement, if that's what he ultimately decided, or have flexible access to his pension funds. That’s because Mr R was a member of his employer’s DC scheme which already provided him with the flexibility he claimed he needed – he wasn’t committed to take its benefits in a set way. Mr R was aged only 44 at the time of the advice, so he likely had more than 20 years to his target retirement age during which he would’ve built up a significant fund in his employer’s DC scheme. And he could access this at whatever age he chose to retire. I can’t see that True Potential explained to Mr R that there was no requirement for him to give up the safeguarded benefits from the DB scheme in order to achieve flexibility in retirement.

- Mr R could have taken lump sums from his DC scheme as and when required and adjusted the income he took from it according to his needs. So, I think if Mr R retained his DB pension, this combined with his new workplace pension, would’ve likely given him the flexibility to retire early - *if* that’s what he ultimately decided, which was in no way certain as recorded in the advice paperwork at the time.

- Mr R’s income need was recorded as being £15,000. But 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 any detailed assessment to interrogate this figure. Without a realistic understanding of Mr R’s true needs in retirement, I don’t think it was in his best interests to transfer at this time.

- Mr R’s DB pension was estimated to be around £24,795 a year at 65 according to his ‘time to choose’ information – a guaranteed and escalating income for life, which wasn’t likely to be bettered by transferring. I think this together with his DC scheme could’ve likely met his future income needs and objectives in retirement. I think this was a more appropriate way for Mr R to meet his retirement needs rather than risking his guaranteed benefits in an attempt to do so.

- The different death benefits provided by a personal pension wasn’t worth giving up the guarantees offered by the DB scheme. Both the BSPS2 and PPF’s death benefits were guaranteed and they didn’t rely on investment growth or how much was left in Mr R’s pension pot at the date of his death.

- I understand that Mr R may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was True Potential’s role to objectively address those concerns. All signs pointed toward the BSPS2 being established at the time. But even if not, the PPF still provided Mr R with guaranteed income and the option of accessing tax-free cash, which wasn’t going to be bettered by transferring. So, I don’t think any concerns he held about this meant that transferring was in his best interest.

- Overall, I can’t see persuasive reasons why it was in Mr R’s best interests to give up his DB scheme benefits. And I also haven’t seen anything to persuade me that Mr R 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 R as no agreement could be reached. The aim is to put Mr R 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 the 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. And this information can't be changed by firms.

In answer to Mr R's concerns about the fees and charges not being considered properly, 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 R. These include Mr R'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.

Like the Investigator, I can see True Potential used an incorrect valuation figure for Mr R's pension fund – it should be £437,756.03 rather than £436,062.01 - and it appears it used an incorrect date of birth for Mr R's wife; albeit in the output evidence the correct date is shown. But I'm satisfied that neither of these things make a material difference here.

The calculation in Mr R'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 R 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 R. I think their offer to pay him £200 for the distress and worry he experienced is fair in the circumstances – I think this appropriately compensates him and recognises the emotional and practical impact the unsuitable advice had on him.

My final decision

I uphold this complaint and require True Potential Wealth Management LLP to pay Mr R a sum of £200 for the worry he says this matter has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 January 2024.
Paul Featherstone
Ombudsman