DRN-4420027

The complaint

Mr J complained that he was given unsuitable advice to transfer his deferred defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017. He says the advice was unsuitable for him and believes this has caused a financial loss.

True Potential Wealth Management LLP is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "True Potential".

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling 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 (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (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 J's employer would be set up – the BSPS2.

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

Mr J was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to True Potential which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr J was 50 years old and no longer married (although had a partner at the time). The 'fact-find' produced by True Potential recorded his health as "good".

- The cash equivalent transfer value (CETV) of Mr J's BSPS was approximately £393,043. The normal retirement age (NRA) was 65 although Mr J wanted to retire sooner, at the age of 55.

True Potential then set out its advice in a suitability report. In this it advised Mr J to transfer out of the BSPS and invest the funds in a type of personal pension plan. True Potential said this would allow Mr J to achieve his objectives. Mr J accepted this advice and so transferred out several weeks later. In late 2022 Mr J complained to True Potential about its advice, saying he shouldn't have been advised to transfer out to a personal pension. However, True Potential didn't uphold his complaint.

Mr J later referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it should be upheld.

I've noted that whilst True Potential originally said it didn't accept it had acted unsuitably by advising Mr J to transfer his pension, it then accepted the investigator's 'view' and agreed to carry out a redress calculation to establish whether Mr J had incurred any losses by transferring away. The Financial Conduct Authority (FCA) issued a direction to firms involved in these types of complaints that they should calculate redress using a BSPS-specific calculator which it had produced. True Potential agreed to use this calculator and has carried out a redress calculation which it says shows there is no financial loss. However, Mr J says the calculation hasn't been carried out correctly.

The complaint has been passed to me and I'm issuing 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.

As I've said above, True Potential didn't initially agree it had done anything wrong. However, in the interest of bringing complaints like this to a close, True Potential then said it would be willing to accept the investigator's view and run a calculation to see if the pension transfer had incurred any loss for Mr J.

True Potential has used the BSPS-specific calculator established by the regulator for this purpose. I've noted it took Mr J's transferred pension's current value and inputted this into the calculator together with all his personal details. And True Potential says the calculation shows there has been no financial loss incurred as a result of Mr J transferring away.

For the avoidance of any doubt here, I've still looked at Mr J's case and his points of complaint in great detail. Having done this, I agree with the points made by our investigator who comprehensively set out why he thought the complaint ought to be upheld. However, because True Potential has already informed us that it is willing to carry out a calculation as required by the regulator, I'm not going to go into the level of detail I normally would about why the complaint should be upheld.

So, in summary, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 or PPF. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So I think True Potential ought to have advised him against transferring away from the BSPS.

As I don't think I need to consider this in any further detail, I'll focus in this decision on the redress methodology.

<u>*Is True Potential's calculation correct?*</u>

Whilst it's possible there may ultimately be no financial loss when following the FCA's redress guidance, I don't think the correct inputs have been used by True Potential to start the calculation. For example, I've seen that Mr J's marital status on the calculator has been recorded as single. But we know now that Mr J married, in June 2023, and so this input to the calculator needs to reflect this.

I have also noted that the age of 65 was used as a retirement age and that an assumption has been made that, if he hadn't been given unsuitable advice to transfer, then Mr J would have moved to the BSPS2. But Mr J actually retired at the age of 55 and a previous agreement was reached between all the parties to this complaint that Mr J would have been more likely to retire early and move to the PPF, rather than the BSPS2. In certain cases, particularly where early retirement was imminent, the PPF was the better financial option for the member – I agree this was the case in Mr J's situation.

What does all this mean?

I'm grateful to True Potential for carrying out the redress exercise by using the FCA approved method. I agree it is trying to bring this complaint to a close. But whilst the BSPS calculator was indeed used in Mr J's case, the above changes to the calculator inputs need to be incorporated. His marital status, age of retirement and likely move to the PPF all need to be inputted accurately. I accept these changes might still not make a fundamental difference overall, but they need to be accurate.

True Potential must carry out another calculation.

Putting things right

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for True Potential's unsuitable advice. I consider Mr J would have most likely opted to join the PPF rather than transfer to the personal pension, if he'd been given suitable advice and compensation should be based on an early retirement age of 55. True Potential should use the benefits offered by PPF for comparison purposes.

True Potential 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.

True Potential should re-use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr J and our Service upon completion of the calculation.

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 J'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, True Potential should:

- calculate and offer Mr J redress as a cash lump sum payment,
- explain to Mr J 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 the DC pension
- offer to calculate how much of any redress Mr J receives could be augmented rather than receiving it all as a cash lump sum,

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

Redress paid to Mr J as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, True Potential 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 J'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. *I should clearly state here that these are maximum limits and they are highly unlikely to be relevant to the redress Mr J might or might not be due.*

My final decision

I am upholding this complaint and I now direct True Potential Wealth Management LLP to pay Mr J the compensation amount as set out in the steps above if a loss is identified.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 25 February 2024.

Michael Campbell
Ombudsman