

The complaint

Mr V complains about the suitability of the advice provided by Flying Colours Finance Ltd ("Flying Colours") in October 2017 to transfer the capital value of his preserved benefits in the British Steel Pension Scheme ("BSPS") to a Self-Invested Personal Pension ("SIPP").

Mr V is represented in this complaint by a third party ("representative").

What happened

In March 2016, Tata Steel UK Ltd ("Tata Steel") 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, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation for members of defined benefit pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. Then in May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed. Under the announced plans, Tata Steel agreed to set up and sponsor a new defined benefit pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

These changes were communicated to BSPS members including Mr V under the '*Time to Choose*' exercise. BSPS members had three options regarding their preserved benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan.

Members had to decide which option they wanted by December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

Mr V met an adviser from Flying Colours for advice on his options. Flying Colours recorded details of Mr V and his wife's personal and financial circumstances as follows:

- He was 45, in good health and employed by British Steel with a gross annual salary of £31,000 – he had been with the same employer for over 21 years and planned to partially retire at 60 and then fully retire at 68 when his state pension started;
- His wife was 38, in good health and employed in financial services with a gross annual salary of £44,000 – she had been with the same employer for over 10 years and planned to fully retire at 68 when her state pension started;
- Their joint net annual income covered outgoings with minimal disposable income remaining;
- They had three children aged 5, 14 and 16, the eldest of which was Mr V's stepson who was disabled and would be a financial dependant for life;

- Their assets totalled £264,000 which comprised the marital home valued at £260,000 and £4,000 in cash savings;
- Their liabilities were an outstanding repayment mortgage of about £147,000 on the marital home and two car loans;
- He was an active member of the British Steel defined contribution pension scheme and had been since April 2017 after the BSPS had closed; and
- His wife was an active member of her employer's defined contribution pension scheme and had been since 2007.

Mr V's preserved benefits in the BSPS were as follows:

- He had 21 years and 10 months' qualifying service between July 1994 and May 2016;
- The scheme pension payable was a safeguarded benefit defined by reference to his final salary and pensionable service – as at the date of leaving the scheme in May 2016, his annual scheme pension was £10,336;
- The scheme pension built up since July 1994 comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount depending on Mr V's qualifying service;
- The revaluation and escalation rates were guaranteed;
- While the scheme normal retirement age was 65, benefits could be taken earlier from 55 subject to a reduction for early payment;
- At retirement he could exchange some of his scheme pension for tax free cash;
- On death before retirement, a refund of contributions plus interest and a 50% spouse's pension would be payable – after retirement, a potential lump sum equivalent to his remaining annual pension between the date of death and five years' after the date of retirement and a 50% spouse's pension thereafter calculated as if no tax-free cash was taken by Mr V at retirement; plus
- A dependant's allowance for qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants.

Regarding Mr V's preserved benefits in the BSPS, Flying Colours recorded his objectives as follows:

- *"You cannot foresee being able to continue to perform your current role for British Steel past the age of 60 as the work is physically demanding. You would like the opportunity between the age of 55 and 68 to take on a less physically demanding role, possibly on a part-time basis either with British Steel or another employer and utilise the flexibility and benefits of your pension fund in order to supplement your income where or if needed.*
- *Your eldest son [stepson]...and as such will be largely dependent upon both of you for the rest of his life....as you are not [stepson]'s biological father, you are mindful that it cannot be certain that the Trustees of the British Steel Pension Scheme would consider him a dependant of yours. You want to ensure that in the event of your death, [Mr V's wife] and all of your children could benefit from your pension benefits, especially [stepson] as he will not be able to lead a fully independent life.*

- *To consider your options and receive financial advice with regard to your deferred benefits within the defined benefit British Steel Pension Scheme, in light of recent announcements made by the scheme Trustees and changes in the transfer value calculation procedures. In addition, you are very aware of the possible changes to benefits built up within the scheme and the likelihood of the scheme falling into the Pension Protection Fund (PPF) which is a primary reason for seeking financial advice.”*

Flying Colours’ recommendation

In October 2017, Flying Colours issued a suitability report to Mr V setting out its recommendation that he transfer the capital value of his preserved benefits in the BSPS, valued at £268,691, to a SIPP (Option 3). The transfer value of £268,691 had been reduced by 5% (or £14,141) due to the BSPS being in deficit (a previous transfer value had been reduced by 8% but transfer values increased following a cash injection into the BSPS by Tata Steel).

The Transfer Value Analysis System (“TVAS”) report showed the following critical yield figures:

Scheme	At age 60 based on full pension	At age 65 based on full pension	At age 60 based on reduced pension and maximum tax-free cash	At age 65 based on reduced pension and maximum tax-free cash
BSPS	8.04%	7.1%	Not calculated	Not calculated
PPF	6.95%	5.71%	6.44%	5.27%

The critical yield figures for the BSPS2 wasn’t calculated. But it was known at the time Flying Colours advised Mr V that the BSPS2 could potentially pay a higher level of benefits compared to the PPF but lower than the BSPS, so the critical yield figures for the BSPS2 at 60 and 65 likely fell somewhere in between the figures above.

Flying Colours explained in the suitability report the reasons for its recommendation, as follows:

“My advice has therefore taken account of your objective and priorities. As such I recommend that you transfer your existing Defined Benefit pension with British Steel, to a new Self Invested Personal Pension (SIPP) with Flying Colours as this is the most suitable solution for you, taking into consideration your stated objectives and requirements, the current state of the British Steel scheme, the potential reduction in future benefits and the enhanced transfer value currently on offer [enhanced compared to the previous transfer value as noted above].

The proposed transfer will minimise the charges applicable in view of the low charges applied by Flying Colours and provide your pension fund with a large amount of investment diversification, thus helping to reduce investment risk and volatility.

Should your requirements change in the near future or as you approach your retirement, you will have the utmost flexibility to begin taking an income by the way of regular withdrawals or on an ad hoc lump sum basis. These payments will be assessed for tax at that time.

It is vitally important not only to consider the benefits obtained from the proposed transfer of your defined benefit pension scheme, but also those being lost as part of

the transfer. A defined benefit pension scheme has guaranteed and safeguarded benefits, meaning that your personal benefits from the scheme are defined and guaranteed in most circumstances.

This would be defined benefits, guaranteed pensions including Guaranteed Minimum Pensions (GMPs) and Guaranteed Annuity Rates (GARS). At the date you left the British Steel Pension Scheme you had accrued a GMP of £308.08 per year, which was accrued when the scheme was contracted out of Second State Pension prior to 1997. At the date of leaving, you had accrued £10,335.90 in annual income. Based on the revaluation factors of the scheme, I have estimated that the benefits payable to you from when you are 65 would be approximately £17,099. At age 60, the figures would look different and pay a reduced amount of income, which I have estimated to be around £12,358. This is detailed within the TVAS report that can be provided upon request. Please note that the projected figures provided within this report and the TVAS document could be subject to change, depending on the pending changes to the scheme.”

Mr V accepted the recommendation. The transfer value was invested in a new SIPP in the Flying Colours Core Balanced Portfolio which was managed on a discretionary basis. That particular portfolio was recommended by Flying Colours because it had assessed Mr V as having a medium risk profile which was defined as: *“People in this category have a medium risk tolerance and would probably prefer investments to fluctuate less and make more modest returns than risk losing money for higher returns. However, you are probably prepared to accept some fluctuation in order to make higher returns than exclusively low risk investments”*.

Flying Colours’ initial adviser fee was approximately £5,374 based on 2% of the transfer value. In addition, the ongoing annual charge was 1.46% of the SIPP fund value (1% adviser charge, 0.34% platform charge and 0.12% fund management charge).

Flying Colours also recommended Mr V and his wife start a joint life decreasing term assurance and critical illness plan for a starting sum assured of £147,166 over a term of 19 years. This was designed for mortgage protection purposes in the event either Mr V or his wife died or suffered a critical illness during the remaining mortgage term. This recommendation involved replacing existing life cover that Flying Colours had deemed inadequate. Mr V and his wife initially accepted the recommendation for the joint life plan but ultimately declined it due to unaffordable premiums after the underwriting process had been completed.

In late 2018, Mr V terminated his relationship with Flying Colours due to his dissatisfaction about the investment performance of his SIPP and the cost of the ongoing adviser charge. At that time, his SIPP was valued at £252,098.

This complaint

In October 2019, Mr V’s representative complained on his behalf to Flying Colours about the suitability of its pension transfer advice in October 2017. The representative provided, in summary, the following key points of complaint:

- Before Mr V had met Flying Colours, his only objective was to ensure the security of his preserved benefits and doing what was best for him and his family;

- In the event of his death, Mr V wanted to provide for his family, particularly his stepson who was likely to be a financial dependant for life;
- Flying Colours misled Mr V to believe that if he didn't transfer out of the BSPS, the value of his preserved benefits would be lost in the event of his death – but if he transferred to a SIPP he could leave the transfer value to his nominated beneficiaries;
- Flying Colours misled Mr V to believe that it was very unlikely his stepson would be entitled to benefits from either the BSPS (or subsequently the PPF) or BSPS2 because he wasn't his biological father and the only guaranteed way to provide for him was by transferring to a SIPP – Mr V's representative said this wasn't true and that his stepson would've met the definition of 'child' for the purposes of a dependant's allowance in the BSPS scheme rules, which were carried over to the BSPS2. The representative stated that biology isn't a determining factor and, due to his condition and high levels of dependency, Mr V's stepson would've been entitled to receive a dependant's allowance for life in the event of Mr V's death;
- Flying Colours didn't consider alternative options such as life cover to meet Mr V's objective of providing death benefits for his beneficiaries;
- There was inadequate analysis and explanation of the other options available, including the PPF and BSPS2, meaning Mr V was unable to make an informed decision – rather, his recollection was that discussions focused only on transferring to a SIPP;
- Mr V didn't understand how valuable safeguarded benefits were until after he had transferred to a SIPP – he now knows that if had he opted for the BSPS2, none of the risks would've fallen on him and so he wouldn't have to worry about movements in the investment markets, inflation or charges. Rather, he'd have peace of mind and a guaranteed scheme pension for life;
- Flying Colours had breached various requirements in the Financial Conduct Authority ("FCA") Handbook including COBS 4.2.1(1)R, COBS 9.2.1(1)R, COBS 9.2.1(2)R, COBS 9.2.2R and COBS 19.1; and
- To put things right, Flying Colours should place Mr V into the position he'd now be in had he not transferred to a SIPP and instead opted for the BSPS2.

Flying Colours' response to this complaint

Flying Colours didn't uphold the complaint. In its response to Mr V's representative it said, in summary, the following:

- The recommendation to transfer was reviewed by its Advice Committee and Pension Transfer Specialist where it was noted that some of Mr V's objectives could be achieved without having to transfer – however, two of his primary objectives couldn't, these being provision of care for his stepson and concerns about his employer, British Steel, ultimately not being able to provide benefits;
- Based on these two objectives not being able to be achieved under the BSPS, it was recommended that Mr V transfer to a product that could better meet these; and
- Mr V failed to continue to remain invested in the recommended investment solution

as he had unexpectedly decided in late 2018 to switch into different funds – at no point before this complaint did Mr V raise any concerns about Flying Colours' advice to transfer out of the BPS or that it didn't meet his objectives.

Dissatisfied with the response, Mr V's representative referred the matter to this service.

Our investigator's assessment

Our investigator thought that this complaint should be upheld. Overall, she thought that Flying Colours' advice wasn't in Mr V's best interests and therefore couldn't be regarded as suitable. She concluded, in summary, the following:

- Mr V's preserved benefits in the BPS represented the significant proportion of his retirement provision and would've essentially still been available had he opted for the BPS2 because it too provided a scheme pension, albeit on less generous terms than the BPS;
- The BPS2 would've provided to Mr V a no cost, no risk, guaranteed, index-linked scheme pension for life and for his wife and children in the event of his death;
- While she recognised it was important for Mr V to provide death benefits for his family, the primary objective, given his wider circumstances, ought to have been the provision of a guaranteed, scheme pension in retirement;
- The required average annual growth rate on the recommended SIPP to match the relinquished benefits meant Mr V would've had to expose the transfer value to more risk than he was likely willing and able to tolerate – our investigator's view was that the transfer presented a high risk the eventual pension benefits would fall short of the scheme pension expected from the BPS2;
- There was insufficient evidence to indicate that Mr V had a genuine need to access his pension benefits flexibly – on the contrary, his desire to partially retire early and supplement this with part-time earned income could've been achieved by opting for the BPS2 and likely at a higher level than could reasonably be achieved sustainably by the SIPP;
- There was inadequate evidence that Flying Colours had considered and discounted alternative options to meet Mr V's objectives;
- Mr V's objectives about protecting the value of his scheme pension and providing benefits for his family in the event of his death could've been met by opting for the BPS2 rather than the SIPP; and
- Mr V's concern about the BPS and the BPS2 falling to the PPF wasn't a justifiable reason for transferring to the SIPP which led to the loss of a guaranteed, scheme pension.

Our investigator recommended that Flying Colours assess whether compensation is due on the basis that Mr V would've opted for the BPS2, but for its advice.

Flying Colours' response to our investigator's findings

Flying Colours didn't accept our investigator's findings. It said, in summary, the following:

- Mr V clearly demonstrated that he had already made his mind up to transfer out of the BPS before their initial meeting took place. It said Mr V had told it that he couldn't achieve all his key objectives by staying in the BPS (and subsequently the PPF) or opting for the BPS2;
- It recognised its obligations under the FCA's COBS rules and the need to evidence suitability – it stated that, as a firm of financial planners, it's held to account by the FCA to provide individual, bespoke and holistic financial advice that meets clearly identified and substantive objectives, which is exactly what it did in Mr V's case;
- Mr V had clear objectives to retire early due to the physical nature of his job. He also had a strong desire to secure the best possible death benefits for his family. It was satisfied its advice fully aligned with Mr V's objectives and it had evidenced compliance with the FCA COBS rule that the transfer to the SIPP was *"in the client's best interests"*;
- In its view, Mr V wasn't seeking an uplift on his scheme pension but instead to meet unique and specific objectives including the protection of a highly dependent child which couldn't be met by the other options available;
- In 2017 Mr V declined the recommendation for mortgage protection cover at the end of the advice process due to unaffordable premiums after the underwriting process had been completed. So it was unlikely, due to lack of affordability, that he would've accepted a recommendation that entailed opting for the BPS2 and starting new life cover to meet his death benefit objective; and
- The evidence shows Mr V had carefully considered and strongly argued that the protection of his partner and children (including the lifelong protection of his stepson) was of greater importance to him than the level of pension income itself. This is supported by the fact that in its fact find document Mr V neither identified when he was most likely to take benefits or what level of retirement income he might need.

Our investigator responded to Flying Colours' comments. She agreed that there were certain objectives Mr V wanted to achieve in connection with his preserved BPS benefits concerning providing for his family and the ability to partially retire at 60. But she disagreed about the degree to which these could be considered as highly motivating reasons such that it was suitable for Mr V to give up the safeguarded benefits option that would've been available to him had he opted for the BPS2.

Since agreement couldn't be reached, this complaint has been referred to me to make 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.

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations, regulator's rules, guidance and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is most likely to have happened based on the available evidence and the wider surrounding circumstances.

The FCA's suitability rules and guidance

What follows isn't a comprehensive list of the rules and regulations which applied at the time Flying Colours advised Mr V but provides useful context for my assessment of its actions here.

The FCA sets the rules and guidance that regulated businesses must follow when advising clients on pension transfers. As a regulated business, Flying Colours was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"*.

The suitability rules and guidance that applied were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Flying Colours, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile. In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Flying Colours needed to gather the necessary information for it to be confident its advice met Mr V's objectives and that it was suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits – these were contained in COBS 19.

COBS 19.1.2R required the following:

"A firm must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading "Suitability", COBS 19.1.6G set out the following:

"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

COBS 19.1.7G also stated:

“When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client’s attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.”

And COBS 19.1.8G stated that:

“When a firm prepares a suitability report it should include:

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information.”

The FCA requires businesses to adhere to these requirements because it considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, Flying Colours had to start by assuming the existing scheme to be suitable for Mr V and only to recommend a transfer to the SIPP, which would convert safeguarded benefits into flexible benefits, if it could clearly demonstrate it was in his best interests.

The situation for Mr V wasn’t normal because the existing scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his preserved benefits to a new scheme. He had three options:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a SIPP.

Options 1 and 2 would’ve enabled Mr V to retain safeguarded benefits, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr V, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn’t apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse’s pension and the option to transfer to an alternative pension plan to convert to flexible benefits at a later date, if deemed suitable – the PPF didn’t offer these additional features.

So while the situation wasn’t normal, Mr V still had the option to retain safeguarded benefits in either the PPF or BSPS2. Due to his age and circumstances, it’s my view Mr V would’ve been better off choosing the BSPS2 instead of the PPF in 2017. Given the FCA’s view on safeguarded benefits, it’s my fair and reasonable opinion that Flying Colours should’ve started its advice process by assuming the BSPS2 was suitable for Mr V and to only recommend a transfer to the SIPP if it could clearly demonstrate it was in his best interests. I’ve considered this in the sections below.

Flying Colours’ rationale for recommending the transfer to a SIPP

In its response to this complaint, Flying Colours said Mr V had already decided he wanted to

transfer the value of his preserved BPS benefits to a SIPP when they met and that he had only sought professional advice simply to facilitate the transfer. Mr V may have had strong views about British Steel and the security of his preserved benefits. But it's my opinion this stemmed from an uninformed position because Mr V wasn't qualified to form an expert view on the merits or otherwise of transferring to a SIPP. He had appointed and was relying on Flying Colours to provide expert, independent advice and to act in his best interests. Flying Colours was the professional party in the transaction and was required to provide a recommendation that was clearly suitable for Mr V.

Flying Colours says Mr V had three broad objectives which could only be achieved by transferring to the SIPP in 2017. These objectives concern early retirement, death benefits and security of pension benefits. I'll deal with each objective in turn.

Early retirement objective

Mr V was 45 at the time of Flying Colours' recommendation. The evidence shows he wanted to partially retire at 60 because his work was physically demanding. And that he wanted to achieve this objective by taking some of his pension from 60 and supplementing this with part-time employment either with British Steel or another employer. In the suitability report, Flying Colours stated:

"By retaining your benefits within the British Steel Pension Scheme, you are restricted as to how and when you take your benefits. One of your primary objectives is to have the ability to flexibly access your pension benefits between the age of 55 and 68, depending on your employment circumstances at the time, as you do not see that it is possible to work in your current role past 60. The British Steel Pension Scheme will facilitate early retirement, however they apply 'Early Retirement Factors' which reduce your benefits. For example if you elected to take benefits from age 60, the scheme administrators would reduce the overall benefits to you by 18%."

I acknowledge that early payment of the scheme pension before 65 would've led to this being actuarially reduced. The SIPP option was portrayed as simply allowing for early retirement without the "penalties" which would be applied to the scheme pension. The reality was of course that the SIPP would've had less time to grow if accessed before 65 and any resulting income would need to last longer. I cannot see that this was explained to Mr V so that he could understand accessing both the scheme pension or SIPP early would likely lead to reduced retirement income during his lifetime compared to taking benefits at 65.

Flying Colours says that Mr V required flexible income from 60 and that the only way to achieve this was by transferring to a SIPP in 2017. In my view, it's clear the value of Mr V's preserved BPS benefits represented the backbone of his retirement provision. And that he would inevitably require this money to meet his core income needs in retirement. Despite this, I cannot see any analysis was conducted by Flying Colours to determine Mr V's retirement income needs from 60 onwards. The section on the fact find document designed to record retirement income needs is blank. In reference to Mr V and his wife, Flying Colours simply recorded on the document: *"They do not have any specific plans or thoughts about how much income they would each like in retirement"*.

Since early retirement was one of Mr V's objectives and this would inevitably require income to be drawn from the SIPP for the reason explained, I consider it was vital that Flying Colours established Mr V's retirement income needs because this is a core element of the advice process for an individual with an income objective – but Flying Colours didn't do this. So I find that there's no credible evidence Mr V had a genuine need to access his pension benefits flexibly.

Flying Colours attempted cashflow modelling based on the *total* loss of Mr V's income at 60 to establish the shortfall in income to meet household costs, despite it being recorded he planned to continue with a part-time role from 60 and so would be in receipt of some income. The cashflow model didn't account for Mr V's retirement income and lump sum needs, so was essentially worthless in terms of establishing a sustainable withdrawal rate from the SIPP.

Since Mr V was 45 at the time of Flying Colours' advice, he couldn't draw benefits from the SIPP until at least 55 based on the normal minimum pension age rules that then applied. By transferring to a SIPP in 2017, it limited Mr V's options later on. Had Mr V opted for the BPS2 he would've maintained safeguarded benefits and retained the option to transfer to a SIPP at a later date when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with greater accuracy than at 45. He no longer has the transfer option because of Flying Colours' advice.

I cannot see how suitability can be clearly demonstrated regarding Mr V's early retirement objective if his retirement income and lump sum needs weren't established. Nor do I consider that he needed to take any action in that specific regard at 45, with many years still left to his prospective retirement.

Was there an alternative option to achieve Mr V's early retirement objective?

It's my view Mr V could've achieved his early retirement objective by opting for the BPS2 and drawing the scheme pension at 65 without penalty. I'll explain why. I note that Mr V had been an active member of the British Steel defined contribution pension scheme since April 2017 after the BPS had closed to further benefit accrual. He and his employer were, in total, contributing 12% of his gross annual salary of £31,000 into the new scheme every year. His intention was to continue working full-time with British Steel for another 15 years to 60. Over that period, Flying Colours could've reasonably expected that, based on Mr V's salary and the contribution rate, more than £55,000 would be invested in the British Steel defined contribution pension scheme. Considering likely investment growth and increases in contributions linked to Mr V's salary, the pot of money available at 60 would likely be significantly greater than £55,000.

So any income and lump sum needs from age 60 could've been met in the first instance by using money built up in the British Steel defined contribution pension scheme – this money could be used to secure a lifetime annuity or provide flexible benefits depending on Mr V's circumstances and needs at that time. This course of action may have enabled Mr V to achieve his income and lump sum needs for the five-year period until he could take unreduced benefits from the BPS2 at 65. This would then be followed by the full state pension at 68. So, from 65 onwards, most of his core retirement income needs could've been met by guaranteed and escalating pensions. And if it turned out that the British Steel defined contribution pension scheme didn't provide adequate income for the *full* five-year period between 60 and 65, Mr V could've taken his benefits from BPS2 at some point in between, meaning the early retirement factor wouldn't be as great as at 60. Alternatively, he could've considered a transfer to a SIPP at that time when his retirement income and lump sum needs could be determined with greater accuracy than at 45.

I haven't seen evidence Flying Colours adequately considered and discounted this alternative course of action in meeting Mr V's early retirement objective.

Therefore, based on the above considerations, I disagree with Flying Colours' view that the only way to achieve Mr V's early retirement objective was by transferring to the SIPP in

2017. I consider his objective could've been achieved by retaining safeguarded benefits in the BPS2 for the reasons explained.

Death benefits objective

The evidence shows Mr V wanted, in the event of his death, to protect and maximise the benefits available to his family, particularly his stepson. This isn't an unusual objective since most people with financial dependants want to ensure they're protected.

The SIPP offered flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, death lump sum or income drawdown or any combination of these. Based on the applicable tax rules, if death occurs under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the SIPP and for the period until Mr V could draw any income or lump sums, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value.

But Mr V was recorded as being in good health. So he could expect normal life expectancy into his late 70s or early 80s. As noted above, it's clear the value of Mr V's preserved BPS benefits represented the backbone of his retirement provision. And that he would inevitably require this money to meet his core income needs in retirement. Therefore, withdrawing income and lump sums from the SIPP from 60, as planned, would mean that the size of the fund remaining in later years – when death is most likely – could be much smaller than expected.

Since Flying Colours failed to establish Mr V's retirement income and lump sum needs, it's impossible to say with any degree of certainty what fund might reasonably be available to Mr V's beneficiaries based on his expected rate of withdrawal and life expectancy – and therefore how the SIPP might provide financial support for his wife and children, particularly his stepson. For these reasons, I don't agree with Flying Colours' opinion that transferring to the SIPP provided Mr V the best possible death benefits for his family.

The BPS2, on the other hand, would pay the following benefits in the event of Mr V's death:

- On death before retirement, a refund of contributions plus interest and a 50% spouse's pension would be payable – after retirement, a potential lump sum equivalent to his remaining annual pension between the date of death and five years' after the date of retirement and a 50% spouse's pension thereafter calculated as if no tax-free cash was taken by Mr V at retirement; plus
- A dependant's allowance for qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants.

If Mr V was still employed by British Steel at the time of death, a death in service lump sum equivalent to three times his annual salary would be payable – I note he planned to stay employed by British Steel for the next 15 years before partially retiring at 60, so I would've expected Flying Colours to include this prospective death benefit in the analysis. This benefit would've been paid under both the SIPP and BPS2 options, so it was a neutral position.

It was recorded that Mr V was concerned his stepson wouldn't be treated as a financial dependant by the scheme trustees and therefore not entitled to a dependant's allowance. Flying Colours stated in its suitability report:

“Retention of your deferred benefits would also mean that in the event of your death, the benefits payable would be as per the scheme rules previously stated. [Mr V’s wife] would stand to receive a ‘Spouses Pension’ of 50% should you predecease her, however you are concerned about [stepson] being fully dependent on you both for the duration of his lifetime and whether or not he would qualify as a dependent due to him not being your biological son. Ultimately, the payment of benefits to a dependent is entirely down to the Trustees discretion.

Whilst it is possible that they would deem [stepson] to be a dependent, equally they could view him not dependent on you as you are not his biological father.”

It was due to Flying Colours’ apparent uncertainty regarding the trustees’ discretion and whether they would pay a dependant’s allowance to Mr V’s stepson that it recommended the transfer to the SIPP since, in its opinion, this was the only course of action to guarantee the provision of death benefits for Mr V’s stepson. Flying Colours’ internal file notes from the time of the advice also endorse this view. But these opinions appear to be based on conjecture and assumptions rather than based on any proper research or analysis on what decision the trustees might make.

I say this because I haven’t seen any contemporaneous evidence that Flying Colours adequately investigated the position with the scheme administrator or trustees before advising Mr V to transfer to the SIPP. I would’ve expected a business acting in its client’s best interests to investigate and document this specific point since the answer would clearly influence the decision to transfer to the SIPP or otherwise. In response to this complaint, Flying Colours hasn’t provided any evidence that shows the trustees wouldn’t pay a dependant’s allowance to Mr V’s stepson.

So it’s necessary for me to decide, on the balance of probabilities, what decision the trustees might make in deciding whether Mr V’s stepson would qualify for a dependant’s allowance. According to the TVAS report, the definition of a financial dependant under the BSPS was as follows:

“A child under the age of 16;

A child aged between 16 and 23 (25 where the member or former member died before 6 April 2006 or where the former member’s pension came into payment before 6 April 2006 and the child is born before 6 April 2007) who is in receipt of a full time educational instruction at an educational establishment and who was wholly or substantially dependent upon such person for the provision of ordinary necessities of life;

A child who suffers from such a disability and who was so dependent on such person as aforesaid as the Trustee shall determine to include as a dependent child to such extent and for such period as the Trustee shall also determine.”

My understanding is that the definition of a financial dependant under the BSPS2 is broadly the same. The definition of dependant doesn’t refer to there being a requirement for a biological connection between the scheme member and child for the payment of a dependant’s allowance. And I’d be surprised to see such an exclusion. I say this because pension scheme trustees have certain legal and fiduciary duties. These include acting:

- in line with the trust deed and rules;
- in the best interests of the scheme beneficiaries;
- impartially; and

- prudently, responsibly and honestly.

Mr V's preserved benefits included the potential provision of a spouse's pension and dependant's allowance. So the scheme trustees would, following his death, automatically assess whether there were any dependants – for example, a spouse, children or other relatives who financially depended on him.

At the time of Flying Colours' advice, Mr V had been married to his wife for seven years. They had three children aged 5, 14 and 16, the eldest of which was Mr V's stepson. Mr V and his wife's joint income paid for and provided a home for them and their three children. Therefore, my view is that it's more likely than not that all three children financially depended on Mr V for the provision of ordinary necessities of life. This also seems to have been the conclusion of Flying Colours, given its advice was based on uncertainty as to whether Mr V's stepson would be catered for within the scheme in the event of his death. And in the case of Mr V's stepson, it was clear he would be a financial dependant for life due to his high level of dependency. In my view, if required to assess the matter, I consider it more likely than not that the scheme trustees, exercising their legal and fiduciary duties, would reach the same conclusion – I consider it highly unlikely that they would reach any other decision.

Therefore, based on the above considerations and in the absence of adequate research carried out by Flying Colours at the time of the advice, it's my conclusion that in the event of Mr V's death, the trustees of the BSPS2 would more likely than not treat Mr V's stepson as a financial dependent and pay a dependant's allowance for the rest of his life due to the nature of his disability.

Had this been properly researched and explained to Mr V, I consider it likely would've altered his decision to transfer to the SIPP, bearing in mind his early retirement objective could've also been met by opting for the BSPS2 for the reasons explained above.

Was there an alternative option to provide death benefits?

In demonstrating that the transfer to the SIPP was clearly suitable and in the client's best interests, Flying Colours was required, under the FCA's rules, to consider alternative options to meet Mr V's objectives. Life cover can achieve the same objective of providing a lump sum to beneficiaries. I cannot see evidence that Flying Colours adequately investigated this alternative option.

I note that in response to our investigator's findings, Flying Colours said Mr V declined its recommendation for mortgage protection cover at the end of the advice process due to unaffordable premiums after the underwriting process had been completed. So it said was unlikely, due to lack of affordability, that he would've accepted a recommendation that entailed opting for the BSPS2 and starting new life cover to meet his death benefit objective. I don't think it's as clear cut as this – the mortgage protection cover included critical illness cover which requires more detailed underwriting and is more expensive than pure life cover because of the greater probability of a claim during the policy term. Pure life cover is generally cheaper and may have been affordable for Mr V had it been adequately investigated.

Mr V was accruing benefits in the British Steel defined contribution scheme, the value of which could've been earmarked to provide death benefits to the family. In addition, Mr V's wife, then aged 38, had been an active member of her employer's defined contribution pension scheme and had been since 2007. She'd been with the same employer for over 10 years and planned to fully retire at 68 when her state pension started. So I think it's fair to say that she too had and would continue to accrue significant pension savings in her own right which could've also been earmarked to provide death benefits to the family.

I haven't seen evidence Flying Colours adequately considered these factors as part of a holistic analysis on the level of death benefits required for the children. In any event, it's my view that there's no real evidence that a death lump sum was required for the children.

Therefore, based on the above considerations, I disagree with Flying Colours' view that the only way to achieve Mr V's death benefits objective was by transferring to the SIPP at that point in time. Given Mr V's circumstances, I consider that the BPS2 and even the PPF, if required, would likely offer better death benefits to his beneficiaries compared to the SIPP.

Security of pension benefits

The evidence shows that due to the circumstances surrounding British Steel, Mr V was concerned about the security of his preserved benefits and the likelihood of these being transferred to the PPF. I acknowledge that there were serious concerns relating to the BPS2 at the time. It's undeniable that this was a period of great uncertainty for individuals such as Mr V, combined with short timeframes to make potentially life changing decisions. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice where a regulated advisory business was appointed.

I've thought carefully about whether the advice provided to Mr V was a balanced appraisal of the options available to him. Mr V may have been concerned by developments relating to British Steel and the BPS2, but he was seeking an impartial, expert view from Flying Colours on his options. Any concerns Mr V had about the security of his benefits should've been managed by the professional party in the transaction, Flying Colours.

As I've noted above, it's my view that Mr V's early retirement and death benefit objectives were likely achievable by opting to retain safeguarded benefits in BPS2.

Critical yield analysis

In response to this complaint, Flying Colours made the point that the requirement for a TVAS has been replaced by the more meaningful Appropriate Pension Transfer Analysis ("APTA") rules – my interpretation of this is that Flying Colours is seeking to downplay the importance of the critical yield figures applicable to Mr V's case.

But the APTA rules didn't become effective until 1 October 2018, which was after Flying Colours had advised Mr V to transfer to the SIPP. Whilst undeniably useful in demonstrating the amount needed to replicate scheme benefits, since the APTA rules didn't apply at the time of the advice complained about, they're of little relevance in deciding this complaint.

The TVAS rules applied at the time Flying Colours advised Mr V. This required it to conduct a transfer value analysis and to calculate the critical yield applicable for the proposed transfer. The critical yield is the annual rate of investment return required, after charges, to match the capitalised value of the benefits offered by the defined benefit scheme at the scheme normal retirement age (and at a different age if selected) on the assumption a lifetime annuity is secured at retirement. The critical yield is one of the many factors businesses should consider – in an overall assessment of suitability – in helping them to decide if a pension transfer is suitable for their client.

In Mr V's case, the critical yield figures in the TVAS report were as follows:

Scheme	At age 60	At age 65	At age 60 based on	At age 65 based on
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	based on full pension	based on full pension	reduced pension and maximum tax-free cash	reduced pension and maximum tax-free cash
BSPS	8.04%	7.1%	Not calculated	Not calculated
PPF	6.95%	5.71%	6.44%	5.27%

The critical yield figures for the BSPS2 wasn't calculated. But it was known the BSPS2 could potentially pay a higher level of benefits compared to the PPF but lower than the BSPS so, as I've said above, the critical yields for the BSPS2 at 60 and 65 likely fell somewhere between these figures.

In its suitability report, Flying Colours focused on the critical yields that applied at 65. It stated:

“the critical yield calculation does not hold a great deal of relevance as you have confirmed that you would like the ability to flexibly access an income from the pension fund in the future to supplement your retirement, whilst also wanting to create the ability to pass on the residual fund in the event of your death to ensure your family....as such the purchase of an annuity with this fund is unlikely to ever meet these stated requirements and therefore a critical yield calculation does not provide a like-for-like comparison of your expected requirements”.

Flying Colours essentially dismissed the importance of critical yield figures because it was working on the basis that it wasn't relevant as Mr V was seeking to flexibly access his benefits. While I agree that the TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives, the critical yield figures generated do give an indication of the value offered by the defined benefit scheme and the ability to secure comparable benefits on the open market. As a predecessor to the APTA, they are nevertheless useful in that regard. TVAS has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income during retirement such as a lifetime annuity.

As I've noted above, I'm not convinced, based on the evidence provided, Mr V had a genuine need to access his pension benefits flexibly with varying levels of income and lump sums during retirement. Mr V's preserved BSPS benefits were the backbone of his retirement provision, amounting to nearly 22 years' membership of a defined benefit scheme. He'd recently joined the British Steel defined contribution scheme but this didn't have the same guarantees attached to his preserved BSPS benefits – and it wasn't protected by the PPF.

Given the value of his preserved BSPS benefits relative to his overall financial situation, it's my view Mr V would likely use these to provide a steady, secure income during retirement to meet his core income needs. So, it's my view that the critical yield figures played more of a significant role than considered by Flying Colours.

Flying Colours should've been aware of the FCA's prescribed growth projection rates used at the time it advised Mr V – the lower, mid and upper rates were 2%, 5% and 8% respectively. Mr V had limited investment experience and was determined by Flying Colours as having a medium risk profile. The critical yield figures calculated in his case were at the upper end of the FCA's rates for a medium risk investor, implying that Mr V would've had to adopt a higher degree of risk with his SIPP investment than his medium risk profile suggests just to *match* the benefits he had given up, let alone exceed them. This is contrary to the requirements under COBS 19.1.7G.

I acknowledge Mr V was 45 and had 23 years left to his state pension age, in which to accrue additional pension benefits, but the evidence simply doesn't support the position that he was able to expose his preserved benefits to the type of investment risk required to even just match the relinquished benefits.

Costs

Regarding costs, Flying Colours stated in the suitability report:

"The proposed transfer will minimise the charges applicable in view of the low charges applied by Flying Colours and provide your pension fund with a large amount of investment diversification, thus helping to reduce investment risk and volatility."

The suitability report didn't mention that Mr V wouldn't incur an ongoing adviser or fund charges had he opted for BPS2. So, it was an unbalanced portrayal of the position to say that a transfer to the SIPP would *"minimise the charges"*.

I note that in late 2018, Mr V terminated his relationship with Flying Colours partly due to his dissatisfaction about the ongoing adviser charge. Flying Colours has made the point that when terminating his relationship, Mr V didn't raise his concerns about its advice to transfer out of the BPS or that it didn't meet his objectives at that time. I think Flying Colours' comments on this point are irrelevant because Mr V may not have been aware in late 2018 that he had cause to complain. In any event, this complaint was made in October 2019, well within six years of the event complained of meaning this service can consider it under our rules.

What should Flying Colours have done – and would it have made a difference to Mr V's decision?

I don't think the perceived advantage of flexibility of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr V's objectives could've been met by a combination of the BPS defined contribution scheme and BPS2, as explained above.

My further view is that, if properly discussed, Mr V's concerns about his preserved benefits and British Steel could've been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which, in my view, he simply didn't need, and a future pension which would be dependent upon investment returns.

Tax free cash, if needed, was available from his scheme benefits and growth over the short term would be achieved by way of regular revaluations. Death benefits were also payable from the BPS2, albeit in a different format than those available from the SIPP.

The critical yields applicable to this case are a very telling indicator of the value of the benefits being relinquished. They were at the upper end of the FCA's rates for a medium risk investor which I think was unlikely to be achievable to even simply match the benefits available under the BPS2. I don't think any potential lack of awareness of the detail of the BPS2 and its features changes the outcome here. Even if there was the prospect of Mr V's funds entering the PPF, my view is that, taking account of his circumstances, including his attitude to risk, his objectives and the guarantees which would've persisted, Flying Colours should've advised against the transfer. I think that had this happened Mr V would've, on balance, opted for the BPS2.

Conclusion

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that Flying Colours' recommendation to transfer to the SIPP wasn't clearly suitable for Mr V or in his best interests. The key contributing factors here relate to inadequate fact-finding, inadequate consideration of alternative options, the unbalanced and misrepresentative portrayal of the value of Mr V's preserved benefits compared to the recommended SIPP and exposing Mr V's significant retirement provision to more risk than we was likely willing and able to tolerate – all of which are a failure to adhere to COBS 2.1.1R, 9.2.2R, 19.1.2R, 19.1.6G, 19.1.7G and 19.1.8G.

What does Flying Colours need to do?

My aim to is put Mr V, as closely as possible, into the position he'd be but for Flying Colours' unsuitable advice. For the reasons explained, and in line with our investigator's recommendation, I've decided that Mr V would've opted for the BSPS2 if he'd been given suitable advice. Reinstatement of Mr V's preserved benefits isn't possible.

A fair and reasonable outcome would be for Flying Colours Finance Ltd to put Mr V, as far as possible, into the position he would now be in but for its unsuitable advice. Flying Colours Finance Ltd must therefore undertake a redress calculation on the basis Mr V would've opted for the BSPS2 and in line with the regulator's pension review guidance as updated by the FCA in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers*.

This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions at the date of the decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr V's acceptance of the decision.

Flying Colours Finance Ltd may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr V's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr V's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid to Mr V's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr V as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must, where possible, be paid to Mr V within 90 days of the date Flying Colours Finance Ltd receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Flying Colours Finance Ltd to pay Mr V.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

Determination and money award: I require Flying Colours Finance Ltd to pay Mr V the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Flying Colours Finance Ltd to pay Mr V any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Flying Colours Finance Ltd to pay Mr V any interest as set out above on the sum of £160,000

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Flying Colours Finance Ltd pays Mr V the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr V.

If Mr V accepts my decision, the money award is binding on Flying Colours Finance Ltd. My recommendation is not binding on Flying Colours Finance Ltd. Further, it's unlikely that Mr V can accept my decision and go to court to ask for the balance. Mr V may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

I uphold Mr V's complaint about Flying Colours Finance Ltd and I require it to undertake the above calculation and, if it demonstrates a loss, compensate Mr V accordingly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my final decision before 19 May 2021.

Clint Penfold

Ombudsman