DRN-3034700

Financial Ombudsman Service

The complaint

Mrs D complains about the suitability of the advice provided by Better Retirement Group Ltd ("BRG"), trading as Fiducia Prosperity, in January 2018 to invest the value of her self-personal pension plan ("SIPP") in the '*SVS Securities Growth portfolio'* managed by SVS Securities Plc following a pension transfer from the British Steel Pension Scheme ("BSPS").

Mrs D is represented in this complaint by a third party ("Representative").

What happened

Mrs D was advised by BRG, trading as Fiducia Prosperity. To make this decision easier to follow, I'll refer to BRG throughout since it's the legal entity that remains responsible for the advice about which Mrs D has complained. I issued my provisional decision on this complaint on 13 May 2022. I set out the background and my provisional findings. I've repeated what I said here:

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

In October 2017, these changes were communicated to BSPS members, including Mrs D, under the 'Time to Choose' exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

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

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

The details of Mrs D's safeguarded benefits were as follows:

- *She had accrued 6 years and 5 months' qualifying service between 4 October 2010 and 31 March 2017;*

- *The scheme pension provided was a safeguarded benefit defined by reference to her final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme on 31 March 2017, her annual scheme pension was £2,447.43;*

- *The scheme pension 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;*

- *The revaluation and escalation rates were guaranteed in line with the BSPS rules;*

- *Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at 55 and a 18% reduction at 60;*

- *The estimated revalued annual scheme pension payable by the BSPS at 65 was £3,527.00 on the basis Mrs D took pension income only. The estimated figures at 65 based on Mrs D taking a reduced pension plus tax-free cash weren't calculated by BRG. In addition, the estimated figures based on Mrs D taking benefits early at 55, in line with her lump sum objective (covered below), weren't calculated by BRG;*

- *The estimated revalued annual income payable by the PPF at 65 was £2,940.30 or a reduced pension of £2,354.23 plus tax-free cash of £15,694.91. The estimated figures based on Mrs D taking benefits at 55, in line with her objective, weren't calculated by BRG;*

- *On death before retirement, a refund of contributions of £10,574.50 plus interest at 3% per year compound and a 50% spouse's pension would be provided – after retirement, a potential lump sum equivalent to her 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 Mrs D at retirement;*

- *The provision of a dependant's allowance for any qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants; and*

- *The cash equivalent transfer value ("CETV") of her safeguarded benefits was £50,910.96 which had been reduced by 5% (from £53,590.42) due to the BSPS being in deficit.*

Following the announcement by Tata Steel, Mrs D was introduced to BRG to obtain advice on the value of her safeguarded benefits in the BSPS. The introducer created a note in December 2017 which was passed to BRG. The note recorded some details about Mrs D and her husband's circumstances and objectives.

It was noted that Mrs D and her husband rented their property from a local housing association and they wanted to buy it on a shared ownership basis in about five years' time when she would be 55. They thought the property was valued at £120,000 and would be able to purchase 70% at a cost of about £84,000. In meeting that cost of £84,000, it was noted that Mrs D was interested in transferring the value of her safeguarded benefits in the BSPS to a private pension arrangement with a view to withdrawing a lump sum of about £12,000 to £16,000 at 55 and to start a repayment mortgage for the balance payable over a 10-year term to 65.

In January 2018, BRG issued its suitability report to Mrs D recommending that she transfer the value of her safeguarded benefits in the BSPS to a SIPP. At that time, her personal and financial circumstances were as follows:

- *She was 50, in good health and employed by Tata Steel on a gross annual salary of about £32,000;*

- *Her husband was 54, in good health and a self-employed carpenter with a gross annual salary of about £25,000;*

- *They had adult children who were financially independent;*

- *They lived in rented accommodation;*

- *Their non-pension assets totalled £1,500 in cash savings which was held in joint names;*

- *They didn't have any debts or liabilities;*

- *They had joint surplus monthly income of about £1,755 after paying all their regular bills and outgoings;*

- *She was building up retirement benefits in the Tata Steel defined contribution pension scheme and had been since April 2017 – she and Tata Steel were, in total, contributing about £600 per month into that plan;*

- *She also had safeguarded benefits in another defined benefits pension scheme. This represented about seven years' worth of pensionable service. The scheme normal retirement age was 60;*

- *Her husband had a Scottish Widows personal pension plan into which he had paid contributions for a few years;*

- *They both planned to retire at 67 and expected to receive the full State pension; and*

- *From 67 they required, in 2018 terms, joint gross annual pension income of about £18,000 (£12,000 for Mrs D and £6,000 for her husband);*

- *On a scale of 10 risk profiles, with 1 the lowest risk and 10 the highest risk, BRG established that she had a score of 8 which was a 'High' risk profile. This was defined as "Your priority is likely to be making higher returns on your investments but you are still probably concerned about losing money due to rises and falls. Your preferred investment portfolio is likely to contain mainly higher risk investments such as shares, with a few lower risk investments such as bonds."*

Mrs D's objectives

In its suitability report, BRG recorded that Mrs D had the following objectives:

- *"To transfer your deferred pension(s) to your selected receiving scheme. This will provide you with the income you require and flexibility to take your required level of income during ongoing years in retirement.*

- *You have advised that you will have sufficient retirement income from your intended retirement age which will be derived from state pension(s), your current company pension scheme(s), income from your future savings and investments and income from other pensions you have.*

- *Your partner will also receive a state pension.*

- *You have also advised us that you would like, as far as possible, to leave any remaining funds to your partner and or family in the form of a lump sum benefit or beneficiaries' drawdown in the event of your death.*

- *You have confirmed that you may wish to release the maximum amount of tax free cash available from your pension, along with improving the capital death benefits available.*

- *When discussing your retirement options and completing our questionnaire you confirmed that you would use the maximum tax-free cash to:*

    - *to give much better overall financial security now and in the immediate future*
    - *use the funds as deposit to part purchase your current home*

- *You plan to retire at age your intended retirement age [67] and will use this pension to provide you with an income in retirement. You have informed us that you do not feel the need to draw an income from these funds yet and that you have adequate income for the time being from other sources but you may need the tax-free cash lump sum.*

- *You would like to leave any remaining funds to your family in the event of your death in both the short term and long term.*

- *You are planning to part purchase this home in 5 years at 55 and wish to use your lump sum [of about £12,000 to £16,000] as the deposit for this."*

In meeting the lump sum objective at 55, BRG stated in its suitability report that Mrs D had considered alternative sources of finance. It stated:

> *"We confirm that you have looked at other means of raising the money you require for the objectives mentioned above including selling tangible assets (property, possessions, jewellery etc.), renting out property, taking out a loan, selling other assets such as life assurance policies, credit cards and mortgage arrangements. These additional ways of raising capital have been dismissed either based on you not wishing to sell or rent any assets you have or because you do not wish to incur any further debt. Taking future debt to finance your current capital needs has been fully explored and you have stated categorically you do not wish to go into or add to any debt whatsoever.*
>
> *You have therefore demonstrated a need for a capital sum which is not readily available from any other sources."*

Critical yield

BRG arranged for a Transfer Value Analysis System ("TVAS") report to be produced to calculate the following critical yield figures based on a transfer value of £50,910.96. This report showed the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 55 based on a full pension	***At age 55 based on a reduced***	***At age 65 based on a full pension***	***At age 65 based on a reduced***

		pension and maximum tax-free cash		***pension and maximum tax-free cash***
BSPS	*Not calculated*	*Not calculated*	*10.89%*	*Not calculated*
PPF	*Not calculated*	*Not calculated*	*8.21%*	*7.82%*

In its suitability report, BRG only quoted the critical yield figure of 10.89%.

<u>BRG's recommendation to Mrs D</u>

BRG recommended that Mrs D transfer the value of her safeguarded benefits in the BSPS to a SIPP for the following reasons:

> *"Our core recommendations are as follows:*
>
> *You should draw your state pension on your retirement as this may provide you with a minimum of £159.55 per week or £8,296.60 per annum of guaranteed income. This is based on the current maximum state pension. Actual amount at state pension age will depend upon several factors. You are recommended to seek a more accurate estimate of your state pension direct from HMRC. There is now a brand new online service which you can use: https://www.gov.uk/check-state-pension*
>
> *You transfer the benefits from your ceding scheme(s). This recommendation is to transfer out your defined benefit pension scheme [BSPS] to the receiving scheme above fully managed by you and or your independent financial adviser. We will **not** be providing any future advice.*
>
> *Although we investigated providing a guaranteed income equal to the estimated deferred pensions at scheme normal retirement dates shown above, we recommend that in the early years of your retirement you use your flexi access drawdown to provide additional income and to ensure your pension fund will be available to your beneficiaries in the event of your death.*
>
> *Specific investment advice on where to invest your CETV funds post transfer will be dealt with by BRG."*

The suitability report set out the generic advantages and disadvantages of a pension transfer.

<u>Investment strategy</u>

BRG recommended that once the transfer to the SIPP was completed the transfer value of £50,910.96, after the deduction of initial charges, be invested in the 'SVS Securities Growth portfolio' managed by SVS Securities Plc on a discretionary management basis. BRG stated in its suitability report:

> *"We confirm that this investment strategy is commensurate with the risk profile and capacity for loss assessments that have been assessed for you. We would also confirm that this investment strategy is appropriate for the required level of returns to ratify the decisions we have made within this report. Should you choose to move away from this investment strategy this would most certainly adversely affect our recommendations detailed within this report."*

The costs and charges associated with the recommendation were set out in the suitability report, summarised as follows:

Initial charges

- *£1,350 – transfer advice fee deducted from the transfer value and payable to BRG*
- *£1,272 – initial investment advice fee deducted from the transfer value and payable to BRG*

Ongoing charges

- *1.00% of SIPP fund value – investment fund portfolio annual management charge*
- *1.00% of SIPP fund value – ongoing adviser charge payable to BRG*
- *£250 (plus VAT) per year – SIPP and platform charge*

This complaint

The Representative complained to BRG about the suitability of the advice it gave to Mrs D in January 2018. The thrust of the complaint concerned the advice to invest the value of her SIPP in the 'SVS Securities Growth portfolio' managed by SVS Securities Plc. The Representative's position can be summarised as follows:

- *The 'SVS Securities Growth portfolio' was a complex and high-risk unregulated collective investment scheme ("UCIS") which meant the investment was exposed to the material risk of total capital loss. In 2014, which was before BRG advised Mrs D, the Financial Conduct Authority ("FCA") had laid down rules that specified UCIS could only be promoted to sophisticated or high net worth investors. But Mrs D wasn't a sophisticated or high net worth investor. Therefore, the 'SVS Securities Growth portfolio' shouldn't have been promoted to her;*

- *The 'SVS Securities Growth portfolio' was promoted to Mrs D as providing guaranteed returns and as a suitable investment for her SIPP. But this wasn't the case since there were no guaranteed returns. So she was misled about the true level of risks and returns associated with the investment;*

- *BRG failed to carry out adequate due diligence and determine the suitability of the pension transfer from the BSPS and the subsequent investment in the 'SVS Securities Growth portfolio' considering Mrs D's objectives, financial circumstances, and knowledge and experience;*

- *The recommendation for the 'SVS Securities Growth portfolio' led to Mrs D paying significant upfront fees and exposed the money in her SIPP to more risk than she realised and would've been willing to accept had the risks associated with the investment been clearly and correctly disclosed to her;*

- *Mrs D's safeguarded benefits in the BSPS were secure and carried a very low level of risk which was suitable for Mrs D in her circumstances. The recommendation for the 'SVS Securities Growth portfolio' was unsuitable based on her objectives, financial circumstances, and knowledge and experience. As a result of the advice and the loss of the money in her SIPP, she faces a poorer retirement;*

- *Overall, it thought that BRG had failed to adhere to several regulatory requirements including COBS 4.2.1(1) R, COBS 4.2.4 A, COBS 4.2.5 A, and COBS 9.2.2 R.*

To put things right, the Representative stated that BRG should compensate Mrs D on the basis that she had remained in the ceding scheme, which in this case was the BSPS. In addition, it said that it should reimburse her legal costs in bringing this complaint.

BRG's response to Mrs D's complaint

BRG didn't uphold Mrs D's complaint. Its position can be summarised as follows:

- *As part of its advice process, it reviewed Mrs D's and her husband's personal circumstances, assessed her capability of dealing with the requirements of managing her pension income along with ongoing support from professional advisers. This included reviews of her attitude to risk, capacity for loss, attitude to any potential loss and a cash flow review of her retirement income needs. It also undertook a pension transfer analysis. Its review and analysis process revealed that a pension transfer could be recommended to Mrs D;*

- *It recommended investment in the 'SVS Securities Growth portfolio' because it was appropriate to Mrs D's recorded 'High' attitude to risk; and*

- *Before recommending investment in the 'SVS Securities Growth portfolio' it had undertaken extensive due diligence and obtained reduced fund charges. It also asked questions of SVS Securities Plc and its relationship with the FCA which didn't reveal any concerns at the time it advised Mrs D. However, following its recommendation, investors' money was mis-managed by SVS Securities Plc. This led to it being placed in special administration by its directors in August 2019 following action by the FCA after it identified serious concerns about the way the business was operating. The issues concerning SVS Securities Plc were outside of BRG's control and therefore it wasn't responsible for any financial loss suffered as a result of Mr D's investment being mis-managed.*

Our investigator's assessment

The Representative didn't accept BRG's response to this complaint. It referred the matter to this service for an independent assessment. Our investigator thought that this complaint should be upheld. His findings can be summarised as follows:

- ***Scope of assessment:** The investigator acknowledged that the complaint made by the Representative primarily concerned the investment recommendation for the 'SVS Securities Growth portfolio'. But he thought it was necessary to consider BRG's advice as a whole starting with its advice that Mrs D transfer out of the BSPS since it was part and parcel of the investment advice that followed;*

- ***Importance of BSPS benefits:** The investigator noted that Mrs D's safeguarded benefits in the BSPS amounted to 6 years and 5 months' pensionable service and represented a reasonable proportion of her retirement provision built up by that point in time. So she'd likely be reliant on these benefits to help meet her retirement income need. While Mrs D was building up additional retirement provision in her Tata Steel defined contribution pension plan and had safeguarded benefits in another defined benefits pension scheme, it was the case that she had limited other investments and savings upon which she could rely to support her desired standard of living in retirement. This meant she had limited capacity for loss to absorb financial loss in connection with the value of her safeguarded benefits in the BSPS;*

- ***Critical yield:** The critical yield of 10.89% (on the basis that Mrs D took pension* *income only at 65) was likely unachievable. The required rate of investment growth of 10.89% to match the relinquished benefits was higher than the relevant discount rate of 4.2% per year for the 14-year investment time horizon to 65 published by this service and higher than the FCA's projection rates for pensions. As a result, he concluded that the CETV offered by the BSPS represented poor value for money and that Mrs D would likely receive lower overall retirement benefits under the SIPP;*

- ***Mrs D's concerns about the BSPS:*** *He thought that BRG ought to have done more to allay Mrs D's misapprehensions about the security of her safeguarded benefits in the BSPS and explained that, in the worst case scenario, she'd still receive 90% of her pension benefits if it (or the BSPS2) was transferred to the PPF;*

- ***Mrs D's lump sum objective:*** *Mrs D lived in rented accommodation and, according to BRG's records, required a cash lump sum of around £12,000 to £16,000 at 55 to but the property she and her husband lived in. The investigator noted that, in its suitability report, BRG stated alternative sources of funding to meet this objective had been considered but these were dismissed as unviable. He didn't agree. He noted that Mrs D was building up benefits in the Tata Steel defined contribution pension scheme and had been since April 2017. He hadn't seen evidence that BRG had adequately considered the alternative options of using money built up in defined contribution plan or taking early retirement (from the BSPS2 or PPF) at 55 to meet the lump sum objective at 55. Therefore, he concluded that there wasn't any reasonable justification for a pension transfer at that time;*

- ***Mrs D's risk profile:*** *The investigator noted that Mrs D was in good health, had limited investment knowledge and experience, and likely required a secure income stream in retirement. So he wasn't convinced that it was appropriate for her to relinquish her safeguarded benefits in the BSPS to invest in a high-risk investment portfolio when the evidence showed that she would likely be worse off by transferring to a SIPP;*

- ***Suitable advice:*** *He concluded that suitable advice at that time would've been for Mrs D to maintain her safeguarded benefits in the BSPS. He thought it more likely than not that, had BRG recommended this, Mrs D would've accepted it.*

To put things right, our investigator recommended that BRG carry out a redress calculation in line with the FCA's 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' on the basis that Mrs D remained a member of the BSPS and would be a 20% income tax payer in retirement.

<u>BRG's response to our investigator's assessment</u>

The Representative confirmed that Mrs D accepted our investigator's assessment. It requested that compensation be made to it on behalf of Mrs D, rather than into her SIPP.

BRG didn't accept our investigator's assessment and provided substantial comments in response. Some of these comments essentially repeated points made in its initial response to this complaint. Its additional comments can be summarised, as follows:

- ***Other pension arrangements:*** *Mrs D had safeguarded benefits in another defined benefits pension scheme which would provide over 10% of her final salary. It advised her to maintain those benefits. In addition, she was building up benefits in the Tata Steel defined contribution plan, her husband had a Scottish Widows personal pension plan and they expected full State pensions. These other pension* *arrangements would meet her retirement income needs which meant she could afford to accept the risks associated with transferring her safeguarded benefits in the BSPS to the SIPP;*

- ***Mrs D's objectives:*** *Mrs D's desire to transfer the value of her safeguarded benefits in the BSPS was clearly motivated by her objective to buy at 55 the property she shared with her husband and her concerns about the BSPS being transferred to the PPF. It didn't agree with our investigator's view that the timing of the house purchase could be delayed nor capable of being met by other means. In reaching its conclusion that a pension transfer at that time was the only viable option, it said it considered the following factors:*

    - *The BSPS would be transferred to the PPF and, once that happened, no transfer would be available and the income benefit reduced by 10% along with other minor devalued benefits;*

    - *Mrs D was saving a significant amount into her Tata Steel defined contribution plan. This fund, if left to grow, would be capable of providing additional pension benefits on a flexible basis;*

    - *Her core retirement income need would be covered by guaranteed pensions from other sources;*

    - *Having incurred substantial costs relating to her adult children in the 12 month period prior to its advice, Mrs D intended in 2018 to start saving her surplus income to provide additional money to add to her tax-free cash from the SIPP for the deposit to buy the property; and*

    - *Mrs D had agreed to buy her house on a shared ownership basis from the local housing association where she had previously worked and had accrued her other safeguarded benefits. The agreed value and discount were not available indefinitely. The mortgage required to complete the purchase would have needed to reflect the mortgages available and capable of being repaid prior to her retirement.*

- ***Critical yield:*** *It fully understood the concept of the critical yield because it helped the former financial services regulator develop the TVAS between 1996 and 1998 following the introduction of income drawdown in 1995. But in Mrs D's case, the critical yield of 10.89% was irrelevant because she wasn't seeking a higher level of income and had no intention of using the value of the SIPP to secure a lifetime annuity when she retired. Therefore, it thought that the investigator should disregard its importance in assessing the suitability of the advice it gave to Mrs D. Rather, it thought the investigator should instead focus on Mrs D's plan to access her pension benefits flexibly and to recognise the sustainability of income from the SIPP, as evidenced by its cashflow analysis. It felt that the investigator's decision to compare Mrs D's objectives and outcomes with the critical yield of 10.89% was unfair and wrong;*

- ***Mrs D's risk profile:*** *It said that Mrs D confirmed to it that the total loss of her BSPS benefits would've had some impact on her retirement lifestyle but not affect her income needs. She confirmed, "I do have some other pension provision and my spouse does have significant pension provision". It determined that Mrs D had a 'High' attitude to risk based on her answers to its risk profile questionnaire. The questions were designed to potentially yield contradictory answers, and, where they did, the adviser would seek to filter down to the true position. In Mrs D's case her* *answers were all consistent with a high-risk investor and so its recommendation for the 'SVS Securities Growth portfolio' was appropriate considering her attitude to risk and capacity for investment loss; and*

- ***Basis of complaint:*** *In its opinion, the real issue Mrs D is complaining about is the investment in the 'SVS Securities Growth portfolio'. BRG undertook a significant amount of due diligence both prior to and during its relationship with SVS Securities Plc, which was a fully regulated stockbroker, AIM-stocks market maker and investment manager, who had been in existence for 25 years. However, following its advice to Mrs D, SVS Securities Plc misled and misinformed BRG and the FCA which was outside of its control. As a result, it doesn't believe it's responsible for the financial loss claimed by the Representative on behalf of Mrs D.*

The investigator considered BRG's additional comments but wasn't persuaded to change his assessment of Mrs D's complaint. Since agreement couldn't be reached, this complaint has been referred to me for review.

What I've provisionally 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, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. Having considered the evidence, I agree with the conclusion reached by our investigator and for much the same reasons. I've set out below my reasons why.

<u>*Scope of this decision*</u>

In its comments to this service, BRG stated that its pension transfer advice to leave the BSPS was suitable and that Mrs D only made this complaint because of the investment loss she suffered as a result of the mis-management of her investment by SVS Securities Plc. It says this was outside of its control. Therefore, it doesn't believe that Mrs D's complaint about its advice should be upheld.

The thrust of the complaint put forward by the Representative, on behalf of Mrs D, concerned the advice to invest the value of her SIPP in the 'SVS Securities Growth portfolio' managed by SVS Securities Plc. The Representative provided little comment on the suitability of the pension transfer advice to relinquish benefits in the BSPS or the consideration of alternative options to achieve Mrs D's objectives. But, to remediate the matter, the Representative stated that BRG should compensate Mrs D on the basis that she had remained in the ceding scheme, which in this case was the BSPS. So, while it hasn't explicitly stated so, it does seem that the Representative has questioned the suitability of the pension transfer advice to leave the BSPS, along with that of the subsequent reinvestment.

<u>*The FCA's suitability rules and guidance*</u>

I'm going to set out below my impartial view on the suitability of BRG's advice to transfer out of the BSPS. I'd like to make clear that the purpose of this decision isn't to address every point raised by the parties. So, if I haven't commented on any specific point, it's because I don't believe that it affects what I think is the right outcome.

What follows isn't a comprehensive list of the rules and regulations which applied at the time BRG advised Mrs D, but provides useful context for my assessment of its actions here.

The FCA sets the rules and guidance that businesses must follow when advising clients on pension transfers. Businesses are 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 are set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses 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 objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is 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 SIPP 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." [my emphasis added]*

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."*

Businesses are required to adhere to these rules and guidance because the FCA considers safeguarded benefits to be valuable. The overarching requirement, as set out in the FCA's rules, is that a business must take the necessary steps to establish suitability and make a recommendation in the client's best interests. Further, based on the above regulatory guidance, businesses advising on pension transfers must start by assuming that the existing defined benefits scheme is suitable and only to recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests. The FCA requires businesses to consider alternative options to achieve the client's objectives to enable them to maintain their safeguarded benefits.

The important point to make here is that the FCA refers to "clearly" in the above guidance. In my view, borderline cases – those which appear evenly balanced as to whether to transfer or not – don't meet the "clearly" requirement, as set out by the FCA. Therefore, if I conclude that alternative options could've met Mrs D's objectives and enabled her to maintain her safeguarded benefits, then it's likely I'll find the advice to transfer unsuitable given the FCA's default position within its guidance on this.

I'd also like to highlight that the FCA refers to "contemporaneous evidence" in its guidance. This means that any further analysis carried out by BRG after its advice in response to this complaint is essentially irrelevant to my consideration of its actions in 2018. In line with the FCA's rules and guidance, to determine suitability when the advice was given, I must base my decision on the evidence from the period leading up to and including January 2018 to decide whether BRG's pension transfer recommendation was suitable and clearly in Mrs D's best interests.

<u>Mrs D's situation</u>

Mrs D's situation at the time BRG advised her was unusual for the reasons set out in the background above. To briefly recap, after the BSPS closed in March 2017, Mrs D was given in October 2017 three options regarding her safeguarded benefits in that scheme:

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

Members had to decide which option they wanted by a deadline in December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. I recognise that BRG advised Mrs D in January 2018 which was after the deadline. But I understand that there was still time up until March 2018 for Mrs D to inform the BSPS of her final decision.

Based on the above considerations and for the purposes of my decision, I'll work on the basis that Mrs D still had the three options listed above at the time BRG advised her in January 2018. I'd like to acknowledge that the FCA's default position that advisers must start by assuming the existing defined benefits scheme is suitable didn't quite apply here. This is because maintaining safeguarded benefits in the BSPS wasn't an option for Mrs D. But she *could transfer to the BSPS2 and maintain safeguarded benefits in that scheme or opt for the guaranteed benefits offered by the PPF.*

In line with the FCA's default position within its guidance, it's my view that BRG should've only considered a pension transfer to a SIPP if it could demonstrate, on the contemporaneous evidence, that it was clearly in Mrs D's best interests rather than the alternative options to either maintain safeguarded benefits in the BSPS2 or the guaranteed benefits offered by the PPF.

I'll now go on to consider the suitability of the advice BRG gave to Mrs D.

<u>Critical yield, discount rate and risk profile</u>

BRG said it was unfair and wrong for the investigator to consider the critical yield relevant when assessing Mrs D's complaint. However, the TVAS rules applied at the time BRG advised Mrs D and so it was relevant from a regulatory perspective. The rules required BRG to carry out 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 on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the defined benefits scheme (and at a different age, if selected) on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the safeguarded benefits under defined benefits scheme, which in this case was the BSPS.

The TVAS report isn't a precise tool or personalised to reflect individual circumstances and objectives. But a TVAS report has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. So a TVAS report was likely useful for a client, like Mrs D, that had a retirement income objective – in her case, it was recorded that from 67 she required, in 2018 terms, joint gross annual pension income of about £18,000 (£12,000 for Mrs D and £6,000 for her husband).

The critical yield also gives an indication of the value offered by the transfer value and the ability to secure comparable benefits on the open market. So, it's useful in that regard.

BRG's recommendation was given to Mrs D after the FCA gave instructions in its 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 was 4.2% per year based on Mrs D taking benefits at the BSPS normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

In contrast, using the TVAS rules, BRG calculated the critical yield figures in the table below based on a transfer value of £50,910.96. This showed that the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 55 based on a full pension	***At age 55 based on a reduced***	***At age 65 based on a full pension***	***At age 65 based on a reduced***

		pension and maximum tax-free cash		*pension and maximum tax-free cash*
BSPS	*Not calculated*	*Not calculated*	*10.89%*	*Not calculated*
PPF	*Not calculated*	*Not calculated*	*8.21%*	*7.82%*

In its suitability report, BRG only quoted the critical yield figure of 10.89%. The critical yield figures for the PPF were stated in the TVAS report given to Mrs D but, in my view, that was a technical document which was unlikely to be understood by an unsophisticated investor.

I have a few concerns about the transfer analysis carried out by BRG.

Firstly, in its suitability report, BRG stated the following about the critical yield of 10.89%:

> *"Based upon the figures provided by the regulator in assessing your scheme benefits and the CETV offered by your ceding scheme(s), it should be noted that it is not possible this level of growth could be maintained over a period based upon the investment choices available to you within the parameters of your attitude to risk. We believe the critical yield is achievable, given your attitude to risk. That said, the fact you have no intention, at present, of buying an annuity at your retirement age achievement of the critical yield is not a significant factor in determining advice."*

I find this statement confusing. It initially suggested that the critical yield was unachievable. But then, in the following sentence, it stated it was achievable. I don't think these contradictory statements would've helped Mrs D make an informed decision or understand the level of investment risk she was accepting.

Secondly, the TVAS report, and therefore the critical yield figures, were based on Mrs D taking benefits at 65. But the basis of the recommendation was that Mrs D would crystallise benefits at 55 to draw tax-free cash of about £12,000 to £16,000 to use as a deposit to buy her property. So I would've expected the critical yield figures at 55 to have been calculated since that was relevant to Mrs D's objective. But BRG didn't do this. Accessing benefits earlier than 65 would've led to a higher critical yield because the invested transfer value would've had less time to grow, further undermining the case for a pension transfer. Since the critical yield figures at 55 weren't provided to Mrs D, it's my view that she made the decision to transfer from an uninformed position regarding the required growth of investment return to 55.

Finally, I cannot see that the TVAS report that generated the critical yield figure of 10.89% included the annual SIPP and platform charge of £250 (plus VAT), implying less investment growth was required to match the relinquished safeguarded benefits than was the case. Had the SIPP and platform charge been included in the TVAS report, the critical yield would've been even higher than disclosed to Mrs D.

In my view, these issues undermine BRG's recommendation for the transfer because it led to Mrs D making the decision to transfer from an uninformed position. In any event, the critical yield figure of 10.89% was significantly higher than the discount rates of 4.2% and the upper-growth rate of 8% stipulated by the FCA, implying that Mrs D would need to accept a very high degree of investment risk in the SIPP just to match the relinquished safeguarded benefits, let alone exceed them.

BRG assessed Mrs D as having a 'high' risk profile, suggesting that she was willing to accept a high degree of investment risk with the value of her safeguarded benefits in the BSPS. But her circumstances simply weren't consistent with this. At the time she had limited investment knowledge and experience. She and her husband held £1,500 in cash savings *for emergencies. They didn't hold any investments or own their home, although I acknowledge that they did have other pension arrangements. Overall, I'm not convinced Mrs D could reasonably be described as having the attributes which would be consistent with a high-risk investor categorisation and who was willing and able to tolerate – and moreover fully understand – the risks associated with the pension transfer; put simply, the categorisation of her being a high risk investor seems completely at odds with her personal and financial circumstances at that time.*

Based on the above considerations, I think it was highly likely that Mrs D would receive benefits from the SIPP of a lower financial overall value than compared to maintaining her safeguarded benefits in the BSPS (which would be ultimately transferred to the PPF) or the alternative option of transferring to the BSPS2. So, based on this alone, it's my view that a pension transfer wasn't in Mrs D's best financial interests.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

<u>BRG's rationale for transferring</u>

In accordance with COBS 9.2.2R, BRG undertook its fact finding for Mrs D and then set out its assessment of her circumstances and objectives which may be summarised as follows:

- ***Lump sum objective:** At 55 she required a lump sum of about £12,000 to £16,000 to use as a deposit to buy her property on a shared ownership basis;*

- ***Income objective:** At 67 to retire and receive, in 2018 terms, joint gross annual pension income of about £18,000 (£12,000 for Mrs D and £6,000 for her husband); and*

- ***Death benefit objective:** To provide, as far as possible, a death lump sum benefit to her nominated beneficiaries on her earlier death.*

I've considered Mrs D's objectives as stated in the three bullet points above. For ease of reference, I've set my findings out under separate headings below.

<u>Changes to the BSPS</u>

As explained above, Mrs D couldn't maintain benefits in the BSPS. The changes to the BSPS were communicated to members under the 'Time to Choose' exercise in October 2017 which was before BRG advised Mrs D. This communication explained that BSPS members could transfer to the BSPS2 and maintain safeguarded benefits in that scheme or opt for the guaranteed benefits offered by the PPF.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available, even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. In basic terms, at 65 the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS.

In my view, depending on how and when a client intended to draw their benefits, a regulated business acting in its client's best interests would've considered a move into the BSPS2 or the PPF as the starting point for advice in Mrs D's circumstances. But the suitability report didn't make any reference to the changes happening to the BSPS or the option for members to transfer to the BSPS2 or PPF. I find this very odd given the timing of BRG's advice. Therefore, it's unclear to me how Mrs D was able to make an informed decision regarding the options available to her, as set out above, to meet her lump sum, retirement income and death benefit objectives.

<u>*Lump sum objective*</u>

In its correspondence to this service, BRG stated that Mrs D:

> *"…didn't intend to retire and **start using the fund until 67**, she wanted to take greater investment risks for a potential greater reward and finally she was very clear about her rationale for taking the transfer which was the ability to own her own home and as she saw it, change her financial status for her and eventually her children." [my emphasis added]*

BRG's statement that Mrs D didn't plan on accessing the money in her SIPP until 67 contradicts its advice in 2018. The basis of BRG's advice was that Mrs D would at 55 withdraw a lump sum of about £12,000 to £16,000 from her SIPP to use as a deposit to buy her property. So the basis of the recommendation was that she'd access her SIPP in five years' time at 55 rather than 67.

In its suitability report, BRG stated that alternative sources of finance to meet the lump sum objective at 55 had been considered by Mrs D. It stated:

> *"We confirm that you have looked at other means of raising the money you require for the objectives mentioned above including selling tangible assets (property, possessions, jewellery etc.), renting out property, taking out a loan, selling other assets such as life assurance policies, credit cards and mortgage arrangements. These additional ways of raising capital have been dismissed either based on you not wishing to sell or rent any assets you have or because you do not wish to incur any further debt. Taking future debt to finance your current capital needs has been fully explored and you have stated categorically you do not wish to go into or add to any debt whatsoever.*
>
> *You have therefore demonstrated a need for a capital sum which is not readily available from any other sources."*

And when it responded to this complaint, BRG maintained this position – it stated that a pension transfer was the only viable option at that time to meet Mrs D's lump sum objective and no alternative options were available.

I note that the suitability report stated that Mrs D had "looked" at alternative options. But there's no further detail of what precisely she looked at. But, in any event, it was for BRG, as the professional and regulated party in the transaction, to investigate all the viable options and to provide expert advice. After all, that is what Mrs D paid it to do. I don't think it was reasonable for BRG to rely on Mrs D's own assessment of alternative options and proceed on the basis that a pension transfer was the only viable option available by the time it advised her.

As noted above, given the default position within its guidance that a pension transfer is not suitable, the FCA expects businesses to adequately consider alternative options to achieve *the client's objectives to enable them to maintain safeguarded benefits. This needs to be documented so that it can be shown what alternative options were considered and discounted. If a business fails to do this then it will be difficult to demonstrate that it acted honestly, fairly and professionally in the best interests of its client and that it met the "clearly" suitable threshold in the FCA's guidance.*

In my view, the BSPS2 was likely the better option for Mrs D rather than the PPF given that I think she could delay drawing benefits until the scheme normal retirement age of 65, as I've set out in the section below. I think Mrs D could've maintained safeguarded benefits in the BSPS2 and still met her lump sum objective by utilising a range of alternative options. I've set out my view below on these:

- ***Surplus monthly income:*** *BRG recorded that Mrs D and her husband had joint surplus monthly income of about £1,755 after paying all their regular bills and outgoings. The reason they had minimal cash savings at the time of the advice was because they had a large capital outlay relating to their adult children. But it was noted in the fact find document they planned to start saving that surplus income going forward. I think BRG could've reasonably expected that, over the five-year period to 55, Mrs D and her husband could use some of their joint surplus monthly income of about £1,755 to build up a lump sum of up to £16,000. And once the deposit was paid, Mrs D and her husband could re-direct the surplus monthly income to pay for a repayment mortgage for the 10-year period to 65.*

- ***Mrs D's defined contribution plan:*** *Mrs D had been an active member of the Tata Steel defined contribution pension scheme since April 2017 after the BSPS had closed to further benefit accrual. It was recorded that she and Tata Steel were, in total, contributing about £600 per month into that plan. It appears that Mrs D intended to continue working full-time for Tata Steel for the foreseeable future. I think BRG could've reasonably expected that, based on that contribution rate, and 5-year time horizon, Mrs D would've had access to about £40,000, of which 25% could be taken tax-free without impacting her Annual Allowance, by the time she reached 55. This ignores likely increases in contributions linked to rises in Mrs D's pensionable salary and investment growth over that timeframe. If there was a shortfall, Mrs D could've used cash savings built up using surplus monthly income, as noted above.*

- ***Mr D's defined contribution plan:*** *BRG recorded that Mrs D's husband had a Scottish Widows personal pension plan that he had "paid in for a few years". BRG didn't obtain the fund value or the estimated pension and tax-free cash payable at his selected retirement age. The basis of BRG's recommendation took into account both Mrs D's and her husband's estimated State pensions and the lump sum objective was linked to purchasing the home they shared. So I think it's fair to say that BRG viewed Mrs D's and her husband's finances on a joint basis when it advised her. Therefore, I think it ought to have obtained more information about Mr D's personal pension plan and given due consideration to this as a potential means of helping to achieve the target lump sum of about £12,000 to £16,000 so that she could maintain safeguarded benefits in the BSPS2. If there was a shortfall, Mrs D could've used cash savings built up using surplus monthly income, as noted above.*

I think that these were viable, alternative options to achieve the lump sum objective. Further, these alternative options wouldn't entail Mrs D taking on debt, which was apparently a key requirement.

It's my view that BRG should've considered and presented these alternative options in a fair and balanced way to Mrs D so that she could make an informed decision on the options and whether it was suitable to relinquish her safeguarded benefits at that time for the purposes of *accessing a lump sum in five years' time. But I cannot see evidence that these options were adequately considered by BRG or discussed with Mrs D. So I think she made the decision to transfer from an uninformed position.*

In its suitability report, BRG stated:

> *"You have therefore demonstrated a need for a capital sum which is not readily available from any other sources."*

I don't agree with this statement – it's my conclusion that the lump sum objective could've been met by other means while enabling Mrs D to maintain safeguarded benefits in the BSPS2, as set out above.

Notwithstanding the above, I think it's important to note the following. In responding to this complaint, BRG said the property value and discount were agreed and that there wasn't any flexibility in terms of timing of the purchase. BRG's comments suggest that the property purchase at a fixed price and discount was a certainty. But I haven't seen any evidence that confirms this, such as a written agreement between Mrs D, her husband and the housing association. The introducer's handwritten note from December 2017, which led to the introduction to BRG and ultimately the pension transfer, stated, "Clients ***think*** *they can buy current property from housing association £120k x 70%" [my emphasis added]. This note isn't worded in a way that suggests certainty to me. Whilst I accept that it's entirely appropriate to consider aspirations and objectives in giving advice, to more robustly support its recommendation to transfer, I would've expected BRG to obtain evidence that showed an agreement was in place for Mrs D and her husband to buy the property. But I haven't seen any such evidence. The wider point, however, as set out above, is that Mrs D could've met this objective, if the opportunity did materialise, through alternative means.*

Overall, I'm not satisfied that BRG demonstrated, on the contemporaneous evidence, that it adequately considered alternative options or why it was clearly in Mrs D's best interests to relinquish her safeguarded benefits at that time to achieve the lump sum objective.

<u>Income objective</u>

While Mrs D wanted a lump sum at 55, as noted above, BRG recorded that she planned to retire at 67, at which point she and her husband required, in 2018 terms, joint gross annual pension income of about £18,000 (£12,000 for Mrs D and £6,000 for her husband).

Mrs D's husband is four years older than her. So by the time she reaches her State pension age, he would already be in receipt of his State pension.

BRG stated that Mrs D and her husband were expected to receive full State pensions. The full State pension in 2017/18 was £8,296.60. It increases each year in line with changes to the CPI. So, in 2018 terms, Mrs D and her husband's State pensions would provide total, combined gross annual income of about £16,500 – which was about £1,500 less than the stated joint gross annual pension income of about £18,000. I think this shortfall of £1,500 could've been met by the BSPS2. I'll explain why.

BRG calculated the estimated revalued annual scheme pension payable by the BSPS and PPF was as follows:

Scheme	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*£3,527.00*	*Not calculated*
PPF	*£2,940.30*	*£2,354.23 plus tax-free cash of £15,694.91*

At 65 the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS. So the income provided by the BSPS2 at 65 likely fell somewhere between the figures of £2,940.30 and £3,527.00, which is greater than the shortfall of £1,500. So it seems to me that a combination of the BSPS2 and State pensions could've met the joint income need. The guaranteed income provided by the BSPS2 and State pensions would escalate in payment, providing protection against inflation. This course of action was the safest option for Mrs D and didn't involve any of the risks associated with investment in a SIPP or advice costs.

My analysis above ignores the pension income that would be provided by Mrs D's safeguarded benefits in another defined benefits pension scheme amounting to about seven years' worth of pensionable service payable from 60 (BRG didn't obtain the estimated pension), her Tata Steel defined contribution plan and her husband's Scottish Widows personal pension plan. So it seems that Mrs D and her husband would be in receipt of excess income by the time she retired at 67. But it's my view that the priority here was to secure the income need at 67 and that any excess income could be reinvested for future use.

Mrs D was building up additional retirement provision in her Tata Steel defined contribution plan and the expectation was that this would, over time, grow to a significant pot of money upon which she could rely to help meet her retirement income need from 67. But by transferring to a SIPP it meant that she would concentrate more of her retirement provision on a defined contribution basis where the benefits received aren't guaranteed but instead based on investment performance. Had she maintained safeguarded rights in the BSPS2, she'd have received guaranteed income from that source and benefitted from a more diversified approach, reducing the overall risk in achieving her retirement income need. The pension transfer was unnecessary and led to Mrs D exposing a proportion of her retirement provision to investment, inflation and mortality risk when she didn't need to – risks that would've been borne by the BSPS2 had she maintained her safeguarded rights in that scheme.

Given that Mrs D was 50 and couldn't access pension benefits until she was at least 55, it's my view that there wasn't any need to transfer at that time. Doing so meant that all the risks transferred from the BSPS to Mrs D during the intervening period until she could access benefits. Had she opted for the BSPS2 she would've maintained safeguarded benefits and retained the option to transfer to a SIPP at a later date if then deemed suitable and, crucially, more accurately determine her lump sum and retirement income needs than she could at 50. I haven't seen evidence that BRG made her aware of this.

In conclusion, I haven't seen any evidence that BRG considered the option of Mrs D maintaining safeguarded benefits in the BSPS2 to achieve her retirement income need. As a result, I'm not satisfied that BRG demonstrated, on the contemporaneous evidence, that it adequately considered the alternative option of the BSPS2 or why it was clearly in Mrs D's best interests to relinquish her safeguarded benefits at that time.

<u>Death benefit objective</u>

BRG recorded that Mrs D wanted, as far as possible, to leave any remaining funds to her husband and/or family in the form of a lump sum benefit or beneficiaries' drawdown in the event of earlier death.

The recommended 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 occurred *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 Mrs D could draw any benefits from 55 onwards, the death benefits available would be significant (subject to investment performance) due to the simple fact she couldn't access and deplete the fund value for at least five years.*

But Mrs D was recorded as being in good health. So she could expect normal life expectancy into her late 70s or early 80s. The value of her safeguarded benefits in the BSPS represented about half of the retirement provision she had built up by that time. And as I've concluded above, I think Mrs D would be reliant on these benefits to meet her core income needs in retirement. Withdrawing money from the SIPP at 55 to obtain a lump sum of around £12,000 to £16,000 for the purposes of buying her house, and possibly drawing flexible income or ad-hoc lump sums throughout retirement, would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

In demonstrating that the pension transfer was clearly suitable and in Mrs D's best interests, BRG was required, under the FCA's rules, to consider alternative options to meet her death lump sum objective. As I've noted above, Mrs D had the alternative option to maintain safeguarded benefits in the BSPS2 which offered a 50% spouse's pension which may have been a valuable feature in the event of her earlier death. BRG was required to consider this and any other viable options. It said that Mrs D wanted to leave her husband and family a lump sum from her SIPP. But, as I've noted above, it's questionable as to what level of death lump sum benefit might be available from the SIPP based on her life expectancy and expected withdrawals from 55 onwards.

If it was a genuine objective for Mrs D to provide a lump sum on her death, as asserted by BRG, then life cover could've achieved the same objective of providing a lump sum while enabling her to maintain safeguarded benefits in the BSPS2. I note that Mrs D had substantial disposable income available every month after paying bills which could've been used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mrs D given she was 50 and recorded as being in good health. However, I cannot see evidence that BRG adequately investigated the life cover option. For example, I haven't seen evidence that it quantified Mrs D's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to her to enable her to make an informed decision.

It's my view that Mrs D had no health issues at the time BRG advised her which might reasonably have prompted her to relinquish the guarantees attached to her own retirement income for the sake of an enhanced safety net for her husband and family. So I'm not convinced there was any real merit in Mrs D transferring to a SIPP at that time to provide a lump sum death benefit. There's simply no real evidence that a death lump sum was required for Mrs D's husband and family.

But, in any case, I understand that through her employment with Tata Steel, Mrs D was entitled to a death in service lump sum benefit, meaning a lump sum would be paid in the event she died while still employed by Tata Steel – this was payable regardless of whether her safeguarded benefits were transferred to BSPS2, PPF or a SIPP. In addition, the value of her Tata Steel defined contribution plan would be paid as a lump sum to her nominated beneficiary(ies). So, it seems to me that in the immediate future, certainly while Mrs D remained employed by Tata Steel, that a lump sum would be paid on her death. In addition, Mrs D and her husband didn't have any debts or liabilities that needed to be repaid on death.

So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits bearing in mind the cover already in place while Mrs D remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled BRG and Mrs D enough time to properly investigate obtaining additional life cover to meet her death benefit objective so that she could maintain safeguarded benefits in the BSPS2.

Therefore, based on the above considerations, I disagree with BRG's view that the only way to achieve Mrs D's death benefit objective was by transferring to a SIPP at that time.

<u>Recommendation for the SVS Securities Growth portfolio</u>

The Representative has complained about BRG's advice to invest the value of Mrs D's SIPP in the 'SVS Securities Growth portfolio' managed by SVS Securities Plc. The Representative says the investment was a complex and high-risk UCIS. And that, contrary to the FCA's rules, it was incorrectly promoted to Mrs D because she wasn't a sophisticated or high net worth investor.

I haven't seen evidence that confirms the 'SVS Securities Growth portfolio' was a UCIS. But I don't think this is relevant in deciding this complaint. This is because, for the reasons explained above, I think the pension transfer advice itself was unsuitable. And as I've set out below, my suggested remedy will take into account the value of the SIPP as at the point in time when a loss assessment is carried out, should my final decision remain along these lines – which will take into account the value of the SIPP including any loss suffered on investment in the 'SVS Securities Growth portfolio'.

<u>What should BRG have done – and would it have made a difference to Mrs D's decision?</u>

During 2017, the situation was rapidly evolving and there were serious concerns relating to Tata Steel and the BSPS at the time BRG advised Mrs D – and I fully acknowledge this. It's undeniable that it was a period of great uncertainty for individuals such as Mrs D. 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. Any concerns Mrs D had about the security of her benefits should've been addressed and appropriately managed by the professional party in the transaction, BRG.

I recognise that there wasn't a perfect solution for Mrs D. And that the value of her safeguarded benefits was ultimately her money to do with as she saw fit. However, she was relying on BRG to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that she could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but, as the professional party, BRG was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

BRG believes that a pension transfer was necessary at that time and that it fulfilled Mrs D's wishes after she had discounted alternative options. Financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it's incumbent upon them to explain this – and why.

I acknowledge that this may misrepresent BRG's position, and it was referring to Mrs D's expressed objectives, in that it wouldn't be up to an adviser or indeed this service to tell Mrs D that she shouldn't have the aim of, for example, utilising her safeguarded benefits in the BSPS to provide a lump sum at 55. That aside, however, it was nevertheless the responsibility of BRG to explain to Mrs D why she didn't need to make any irreversible *decision on relinquishing valuable safeguarded benefits at that time and that consideration of a pension transfer was a decision that could be delayed until her plans and expected expenditure in retirement could be determined with greater clarity than at 50. There seemed little point in transferring at 50 when Mrs D couldn't access the benefits until 55 at the earliest.*

As I've said above, there was no imminent prospect of the BSPS2 entering the PPF, which would've ruled out a later transfer. On the contrary, the indication was that the BSPS2 would be successfully implemented meaning that she would retain the option to transfer out of that scheme at a later date, if then deemed suitable. I've also thought very carefully about whether the service provided to Mrs D was a balanced appraisal of the options available to her, coupled with a robust and candid discussion about her own concerns relating to the BSPS.

Mrs D, amongst many others in a similar position, may have been concerned by developments relating to her employment and the BSPS, but she was nevertheless entitled to an impartial review of her options. And looking at those options, one of the key recorded objectives – obtaining a lump sum of between £12,000 and £16,000 at 55 – was, in my view, likely achievable by maintaining safeguarded benefits in the BSPS2 and utilising alternative options. For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2, and I'm satisfied that Mrs D's income need likely could've been met by a blended and well-planned access to her different types of accrued benefits by the time she came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would've been sufficiently compelling reasons for Mrs D to relinquish valuable benefit guarantees – especially at 50.

My further view is that, if properly discussed, Mrs D's concerns about the BSPS could've been successfully allayed, such that she appreciated the important guaranteed benefits under the BSPS2 and even under the PPF, if required, which she would be relinquishing mainly for the sake of obtaining a lump sum at 55 which she could in any case access in other ways, such as through saving surplus monthly income or utilising her Tata Steel defined contribution plan.

Death benefits were also payable from the BSPS2, albeit in a different format from those available from the SIPP. But for the reasons set out above, I don't think these should've been a more important consideration than Mrs D's own retirement guarantees which she'd be relinquishing through the transfer.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. Notwithstanding my comments about the critical yield figures in Mrs D's case likely being understated due to the SIPP and platform charge not being included, the critical yield was in any event higher than the discount rate and upper growth rate set out by the FCA. So I think it was unlikely to be achievable, year on year, to even simply match the relinquished safeguarded benefits. Whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what BRG considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

Mrs D was relying on BRG to provide expert advice and advise her what to do. I think the advantages of Mrs D maintaining her safeguarded benefits in the BSPS2 coupled with any misapprehensions about that option and the PPF being suitably assuaged, would've persuaded her to do just that.

I accept that Mrs D was given risk warnings. But it's important to note that disclosure isn't the same as suitability. If the recommendation to transfer was fundamentally unsuitable then the provision of risk warnings doesn't transform it into a suitable one. I don't disagree that properly informed, correctly advised individuals would be able to take that kind of responsibility and decide for themselves if they wanted to transfer their safeguarded benefits. The problem here is that this was a complex matter involving many factors with which Mrs D, as a layperson, wouldn't have been familiar – hence her reliance on a professional party to take those factors into account and provide suitable, balanced advice.

For the reasons given above, my view is that Mrs D simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility. Her decision to proceed may well have been borne of wider concerns relating to the financial viability of the BSPS and the successor scheme, the BSPS2, but as I've said above, this was due to the absence of a detailed and balanced assessment of the scheme's attributes and prospects in the advice process. Taking account of Mrs D's circumstances, risk profile, objectives and the guarantees provided by the BSPS2 and even the PPF, if required, my view is that BRG should've advised against the pension transfer. And I think that, had this happened, Mrs D would've followed that advice and likely transferred to the BSPS2.

Conclusion

In its response to this complaint, BRG said that the pension transfer at that time was the only option available to meet Mrs D's objectives. I disagree. For the reasons explained above, I'm not satisfied BRG demonstrated, on the contemporaneous evidence, that it adequately considered alternative options to meet Mrs D's lump sum and retirement income objectives or why it was clearly in her best interests to relinquish her safeguarded benefits in the BSPS to achieve these. I'm also concerned that it appears to have misrepresented the true critical yield figure to match the relinquished benefits which meant Mrs D made the decision to transfer from an uninformed position, further undermining the case for a pension transfer.

The key contributing factors here relate to inadequate consideration of alternative options to achieve Mrs D's stated objectives, likely understatement of the true critical yield required to match the relinquished benefits, the unbalanced and misrepresentative portrayal of the value of Mrs D's safeguarded benefits compared to the recommended pension transfer, exposing her retirement provision to more risk than she was likely willing and able to tolerate – all of which are a failure to adhere to COBS 2.1.1R, COBS 4.2.1, 9.2.2R, 19.1.2R, 19.1.6G, 19.1.7G and 19.1.8G."

In summary, my provisional decision was that it was fair and reasonable to uphold this complaint based on the available evidence. I went on to set out what I considered was fair compensation based on the position Mrs D would've been in had she instead opted for the BSPS2 and takes benefits when she reaches 65. I asked both parties to this complaint to provide any further comments or evidence that they wanted me to consider before I made my final decision. I gave the parties until 13 June 2022 to respond.

The Representative's response to my provisional decision

Mrs D's Representative acknowledged receipt of my provisional decision. It confirmed that she accepted it.

BRG's response to my provisional decision

Following issuance of my provisional decision on 13 May 2022, our investigator contacted BRG on 30 May and 14 June to check whether it intended to provide any further comments or evidence for me to consider before I made my final decision. As at the date of this final decision, BRG hasn't responded.

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.

The findings I made in my provisional decision and set out above form part of this final decision. I need to be fair to both parties to this complaint. The Representative, on behalf of Mrs D, acknowledged receipt of my provisional decision and confirmed that she accepted it before the stated deadline of 13 June 2022. As at the date of this final decision, BRG has had about five weeks to provide any further comments or evidence for me consider. I don't think it's appropriate to have an open-ended situation waiting for BRG's response. I consider that I've treated BRG fairly by giving it adequate time to respond.

Since this service hasn't heard from BRG in response to my provisional decision on this complaint, I've assumed that it doesn't intend to provide any further comments or evidence for me to consider. Since I haven't received further evidence to consider, I see no reason to depart from my provisional decision of 13 May 2022 to uphold Mrs D's complaint.

Putting things right

My aim is to put Mrs D, as closely as possible, into the position she'd be in but for BRG's unsuitable advice. Reinstatement of her safeguarded benefits in the BSPS isn't possible. Therefore, BRG should undertake a redress calculation in line with the 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.*

My view is that had Mrs D been properly advised, she would've opted to transfer to the BSPS2 rather than the PPF. I'll explain why.

There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS2 wouldn't reduce the starting entitlement for deferred members. The reduction for early retirement under the PPF was lower and the commutation factors for tax-free cash entitlement were also more favourable than the BSPS2. And so, on the basis of prospective early retirement, both the starting income and the tax-free cash would likely have been higher with the PPF. But for the reasons set out above, I think it's likely that, properly advised, Mrs D would've envisaged utilising her cash savings built up by 55 and, if inadequate, possibly accessing her Tata Steel defined contribution plan to make up any lump sum shortfall before starting to take her safeguarded benefits at 65. In terms of death benefits, if it later became relevant for Mrs D, under the BPSP2 the spouse's pension would be set at 50% of her pension at the date of death, and this would be calculated as if no tax-free cash was taken at retirement. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation and on the basis that Mrs D takes benefits at the scheme normal retirement age of 65. BRG may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs D'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 BSPS on Mrs D's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mrs D's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the SIPP isn't possible or has protection or allowance implications, it should be paid directly to Mrs D as a lump sum after making a notional deduction to allow for future 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 Mrs D's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

The compensation amount should where possible be paid to Mrs D within 90 days of the date BRG receives notification of her acceptance of this final decision.

Further interest should be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of that 90 day period, that it takes BRG to pay Mrs D.

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.

I acknowledge the Representative's request that compensation be made to it on behalf of Mrs D rather than into her SIPP. However, my aim is to put Mrs D, as closely as possible, into the position she'd be in but for BRG's unsuitable advice. And, given that reinstatement of her safeguarded benefits isn't possible, paying compensation into her SIPP most closely fits that requirement. But as noted above, if that isn't possible then the compensation should be paid to Mrs D.

Determination and money award: I require BRG to pay Mrs D 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 would additionally require BRG to pay Mrs D any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require BRG to pay Mrs D any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I would also recommend that BRG pays Mrs D the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs D.

In addition, I think that this matter will have caused Mrs D trouble and upset due to the prospect of having a poorer retirement due to BRG's unsuitable advice. So I think BRG should pay £300 to Mrs D in respect of this.

If Mrs D were to accept this final decision on the above basis, the determination and money award would be binding on BRG. My recommendation wouldn't be binding on BRG. Further, it's unlikely that Mrs D could accept this final decision and go to court to ask for the balance. Mrs D may want to consider getting independent legal advice before deciding whether to accept this final decision.

The loss assessment calculation should be provided to Mrs D’s Representative in an easy to understand format.

My final decision

I uphold this complaint. Better Retirement Group Ltd must redress Mrs D as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 20 July 2022.
Clint Penfold
Ombudsman