DRN-3244778

## The complaint

Mr E complains that County Capital Wealth Management Limited (County Capital) gave him unsuitable advice to transfer out of the British Steelworkers Pension Scheme (BSPS) into a Self-Invested Personal Pension (SIPP).

## What happened

Mr E is represented by a professional representative but from this point forward any reference to Mr E includes the representative.

In March 2016 it was announced that Mr E's employer would be looking at ways to restructure the business and its pension arrangements. There was the chance that the BSPS scheme would go to the Pension Protection Fund (PPF) – which would mean a loss of benefits of 10%. There was also the potential for a move over to a new BSPS scheme, BSPS2.

In May 2017, the Pension Protection Fund (PPF) had made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr E's employer would be set up – the BSPS2. This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, remain in BSPS and subsequently move to the Pension Protection Fund (PPF) or into a private arrangement, such as a Personal Pension or SIPP. A deadline was set for members to notify the scheme administrators as to their choice by 22 December 2017.

On 22 September 2017, Mr E received a transfer value for his BSPS of £333,884.71. This transfer value was initially valid until 22 December 2017, but the deadline was later extended to 26 January 2018.

In October 2017 Mr E received his *'Your Time to Choose'* booklet from the BSPS trustees. Mr E essentially had three options at this point:

(i) become a member of the new BSPS 2, which was another final salary scheme but which retained most of the benefits of the existing BSPS.
(ii) remain a member of the existing BSPS, which would eventually move into the PPF in March 2018; or
(iii) take advice about transferring the value of his benefits out of the BSPS to a personal pension or SIPP.

The booklet set-out Mr E's estimated future benefit entitlement under BSPS2. At normal retirement age of 65, it was estimated he could receive £22,063.67 p.a or £102,000 tax free case and a reduced annuity of £15,297.65. At early retirement of age 55, £13,492.87 p.a – or £66,751.53 tax-free cash and a reduced annuity of £10,012.73.

At some point before the 22 December 2017 deadline, Mr E returned his form and selected to join the new BSPS2 scheme.

Mr E met with another firm prior to County Capital becoming involved, West Wales, in November 2017. He's told us he was very concerned about the negative feeling going around about the BSPS and the PPF. And as many of colleagues were seeking advice, he felt he needed to as well.

Mr E says he was told transferring out was a no-brainer and the adviser recommended transferring to a personal pension. He's told us that the benefits of the PPF or the BSPS2 weren't discussed as the adviser was convinced transferring was the best option. Mr E said the adviser left it for him to complete the Confidential Personal Review and risk questionnaire.

Mr E confirmed to West Wales that he wished to go ahead with the transfer to the personal pension, the fees were 1.3% in total. Mr E also said that he'd be interested in, as the fees were low, putting his investments in something more aggressive as he had years on his side. Mr E says he said this as he'd heard young people could take more risk. And he'd felt he wasn't being treated as an individual as the advice had been rushed, he'd been told the adviser was seeing another 12 people that day.

Mr E then received a letter from West Wales in December 2017 saying they'd lost their permissions to do the transfer. It was at this point that County Capital became involved. It's said it acted as a bureau service and the evidence shows that Mr E continued to correspond with the same adviser from West Wales but the transfer paperwork and suitability report was completed by a County Capital representative.

County Capital sent Mr E a welcome email on 4 January 2018 with a pension transfer questionnaire.

After completing this, the West Wales adviser got in contact with Mr E and said his answers had come out as a "*2 on a risk scale of 10 which is a cautious investor and the recommendation for a risk 2 would be to remain in the scheme as your tolerance for loss is very low. To transfer it would need to be a minimum of a risk 4. Please ring me when you can and we can discuss this further."*

Mr E replied to say that he'd rushed the form and he would re-do it more realistically. He was given a new risk analysis to do – using a different method and he filled it in – this brought him to a level 5 and high enough for a transfer to proceed.
County Capital sent Mr E a fact-find following a questionnaire he had completed and his discussions with the West Wales adviser. This set out its assessment of his circumstances and objectives:

- He was 41 years old, living with his partner and had two dependent children;
- He had a mortgage with £60,000 outstanding on £150,000
- He was the main earner earning £27,000 p.a (although at date of leaving service his salary is listed by BSPS trustees as £37,000), his partner worked part-time earning
  £8.500 p.a he didn't have any savings, but had death in service cover through his employment, which would pay four times his salary. He also had life insurance to cover his mortgage;
- He had no investment experience;
- He wanted to consider partially retiring at age 57 and no later than 60 and

working part-time;

- He had the following pensions:

    - BSPS, Mr E had 23 years of service in the scheme. Death benefits would also be available to Mr E's children. By the time the advice was given by County Capital he'd already committed to join the BSPS2 (in completing his'time to choose' form' which retained most of the benefits within BSPS. By the time the transfer occurred Mr E had joined the BSPS2 scheme.
    - Following the end of BSPS Mr E's employer set up a new defined contribution scheme and between Mr E and his employer 16% of his salary is contributed.

Objectives:

- Mr E wanted to receive an annual income in retirement of around £18,000;
- He wanted to retire at 57 and flexibly access his pension;
- He wanted to secure his family's future;
- He wanted his pension invested in a competitively charged product
- He wanted flexibility, but didn't wish to manage the funds himself; and he wanted regular reviews and access to up-to-date fund values and performance

County Capital recommended Mr E transfer out of the BSPS and invest in a SIPP. The SIPP was to be invested in a Model portfolio fund managed by a discretionary fund manager (DFM). A TVAS report was completed, which indicated the amount of investment growth required for the recommended plan to match the benefits of the BSPS if it fell into the PPF.

*BSPS critical yield*

The TVAS indicated that the SIPP would need to grow by 4.65% per annum to match the BSPS benefits, or 4.39% if tax-free cash taken. This calculation was based on a retirement age of 65. The TVAS indicated a critical yield of 5.7% for retiring at age 57, or 5.45% if tax- free cash was taken.

*PPF critical yield*

The TVAS indicated the SIPP would need to grow by 4.22% per annum to match the BSPS benefits if falling into the PPF (i.e. where 90% of the BSPS benefits would be paid), or 3.97% if tax-free cash was taken. This calculation was based on a retirement age of 65.

The TVAS indicated a critical yield of 5.06% for retiring at age 57, or 4.78% if tax-free cash is taken.

It's worth noting here that the suitability report contained errors, as it stated the critical yield figures for retiring at 57 in the TVAS, as being the figures at age of 60. The suitability report also indicated that the figures provided were on the basis of the BSPS moving to the PPF yet the TVAS provided separate PPF figures. (**I've disregarded the figures given above for the PPF as we know the early retirement critical yield for the PPF should be higher than that needed for BSPS – so they can't be accurate).**

County Capital explained the following fees applied to the transfer:

*Adviser fees*

County Capital's adviser fees were not set out in the suitability report, but noted in a separate fee arrangement document.

County Capital's initial adviser charge for arranging the transfer was 2.25% of the transfer, at £7,512.40. It charged an ongoing adviser fee of 0.75% fund value p.a, however agency for the SIPP was transferred back to West Wales in August 2018.

*Product fees*

The SIPP incurred the following charges:

- DFM charge: 0.68% (this fee was not disclosed in County Capital's suitability report); and
- platform charge: 0.3% fund value per annum

Mr E accepted County Capital's recommendation to transfer and the transfer took place in April 2018.

Mr E now complains about the advice he received as he doesn't believe transferring was in his best interests for the following reasons:

- He never met with anyone from County Capital;
- He feels the SIPP was not explained to him;
- He feels the true extent of the adviser and product fees were excessive and weren't clearly explained. Mr E discovered he was paying significantly higher fees than colleagues in similar circumstances who also transferred their BSPS pensions;
- He was left to complete complex forms about his attitude to risk (ATR) without assistance. Mr E had no investment experience, so found this difficult. He doesn't believe County Capital properly established his ATR;
- His ATR questionnaire was amended following a discussion with his previous adviser. According to his original answers to the risk questionnaire, he was a cautious investor. Mr E states he wouldn't have wanted to take any significant risk with his pension, or any at all if he could've avoidedit;
- He felt under pressure and the process was rushed due to the short transfer deadline;
- He says the BSPS2 and PPF entitlement wasn't explained to him;
- He says he was convinced by his conversations with the West Wales adviser that he would be better off by transferring;
- His suggestion of requiring £18,000 per annum in retirement was just a guess. He didn't truly know how much he would require during retirement;
- He didn't have a particular need for greater flexibility;
- A SIPP with its higher fees wasn't suitable for him given his limited investment experience. He had no desire to invest in anything that needed to be held in a SIPP wrapper;
- County Capital suitability report was dated the day before the transfer deadline. Mr E doesn't recall this letter being sent to him or explained;
- The suitability report failed to set out the level of income the PPF or BSPS2 would provide. He therefore feels the report was misleading.

The BSPS scheme administrators have confirmed that Mr E completed his "Time to Choose" option form and opted to move his pension into the new scheme. He joined the BSPS2 on 29 March 2018 before transferring to the SIPP the following month as a result of County Capital's advice.

Our investigator looked into matters and concluded that the advice Mr E was given was unsuitable and upheld the complaint in full.

County Capital responded to say:

- It didn't agree the advice was unsuitable
- We hadn't recognised West Wales' responsibility and involvement. County Capital had only provided a bureau service. West Wales holds at least equal responsibility if not more
- The investigator had said it wasn't reasonable for County Capital to rely on the information from West Wales. County Capital disagrees – COBS says it will generally be reasonable for a firm to rely on information provided to it by an unconnected authorised person or a professional person. Mr E also signed all the documentation agreeing it was correct. County Capital strongly disagrees that it should have challenged Mr E about his personal circumstances and objectives.
- County Capital disagrees they should have questioned Mr E's objectives – those are the ones that he gave. It disagrees with the suggestion that those objectives could have been satisfied by joining BSPS2. Those objectives could be best achieved by a transfer out to a private arrangement.
- Whilst the investigator refers to the Critical Yield that would have been required at age 57, she has disregarded the fact that taking a regular income of £25,000 p.a. (net) would have represented a withdrawal rate of circa 4.5% p.a. which County Capital assessed to be a sustainable withdrawal rate; and that Mr E would have been able to reduce his withdrawals from age 67.
- County Capital undertook significant cashflow modelling to stress-test the transfer to determine its viability; and each of the models run by County Capital demonstrated that by transferring his benefits Mr E would be in a much stronger position on retirement, whilst also giving him maximum flexibility over how and when he chose to take his pension benefits.
- Further, the projected amount of tax-free cash available from a private arrangement was significantly higher than the tax-free cash that would've been available from the PPF, and therefore higher than the tax-free cash that would have been available from BSPS2.
- Mr E had expressed a very strong preference to retire early (which, he explained, was because of his partner's family history) and to achieve flexibility with his pension benefits, which would enable him to do so.
- If the Ombudsman decides that Mr E should be put back in the position that he would have been but for the unsuitable advice, then as a starting point the trustees of the BSPS2 scheme should be asked whether it is possible for his pension to be reinstated into that scheme. That would put Mr E back in exactly the same position he would have been in had County Capital recommended that he remained in BSPS2.

I issued a provisional decision setting out my findings. In summary it said:

- I didn't think the presumption of unsuitability had ever been considered by County Capital.
- County Capital had compared Mr E's benefits to the PPF but Mr E had already committed to join the BSPS2 scheme at the time of transfer.
- I had my concerns about the figures used to represent the BSPS throughout the suitability report and TVAS. Mr E had already chosen to join the BSPS2 and it had set out in its 'time to choose' booklet the figures he could receive. These figures were much higher than what County Capital used in their suitability report and TVAS

- County Capital couldn't just rely on the advice being suitable because the West Wales adviser had reached that conclusion.
- West Wales had lost its permissions before the transfer occurred, so it couldn't carry out the transfer but County Capital could. County Capital agreed to take on the advice process and used its permissions to carry out the transfer. Therefore, regardless of West Wales' involvement, I said it is ultimately responsible for the transfer.
- Regardless of the doubts I had about County Capital's figures and yields, the critical yields represented a level of risk that meant the transfer wasn't in Mr E's best interests.
- The SIPP selected was also unsuitable for Mr E's needs, it was expensive and a DFM had been recommended. I didn't think this was required with the extra costs that came with it.
- I didn't think the perceived advantage of flexibility, control of income and a lump sum on death outweighed the guaranteed benefits in the scheme. Mr E's income needs could have been met by well-planned access to his different types of accrued benefits by the time he came to retire.
- I acknowledged West Wales' significant involvement in the transfer. But had County Capital communicated directly with Mr E, as I think it should've done so rather than relying on West Wales, I thought Mr E would've followed its recommendation. So, it was fair to hold it wholly responsible for the unsuitable advice.

County Capital in response made numerous points which I've read and thought about carefully. But it's not necessary to include them all here (to do so will make for a very unwieldy decision to read), so I have selected those that I consider most relevant:

- The ombudsman has not considered the fact that if Mr E were to move in to the BSPS2 and wanted to transfer out in the future, the transfer value would potentially be significantly lower.
- Mr E had already received information from the BSPS trustees, so the advice County Capital gave wasn't in isolation.
- It also meant that Mr E had many months to consider his decision.
- It disagrees Mr E wasn't given sufficient information. Its Pension Transfer Report set out a clear analysis and comparison of the benefits offered.
- Mr E was also provided with a personalised illustration by the trustees of the benefits provided by BSPS2 and the PPF, and an explanation of how to decide which choice might be best for him.
- The ombudsman had raised concerns about how the figures had been reached in County Capital's TVAS. It used the CETV value and reduced the figures by 10% as it was based on Mr E going into the PPF. It says this was the only way to project the benefits. It thinks the figures within the 'Time to Choose' exercise could well have been wrong.
- It is wrong to say the business relied on growth every year – its retirement modelling built in fluctuations in the market.
- It didn't agree it failed to consider the presumption of unsuitability. As on receipt of the pension transfer and risk questionnaires it determined Mr E was better off remaining in the scheme.
- It did consider Mr E's other pension benefits. Its cash flow models presented to Mr E showed the funds from Mr E's new DC scheme.
- Its cash flow models showed a significant improvement on transfer than Mr E's benefits remaining within the PPF.
- The SIPP was low cost only 0.3% and this was clearly set out.

**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.

Having done so I see no reason to depart from the outcome reached in my provisional decision.

County Capital made numerous points in relation to my provisional decision. Part of my role is to decide what is relevant to the outcome of the case, so I've not included them all in this decision. Some of its points aren't relevant to the crux of the complaint as to whether the advice was suitable. This is understandable as the provisional decision was a lengthy document with a lot of discussion about the advice process – and my understanding of what County Capital had and hadn't done.

Ultimately, I have to decide whether the advice given to Mr E by County Capital was suitable.

*<u>The applicable rules, regulations and requirements</u>*

Within the FCA's handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client".
The FCA's suitability rules and guidance that applied at the time County Capital advised Mr E were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like County Capital, 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, County Capital needed to gather the necessary information for it to be confident that its advice met Mr E's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.

COBS 19.1.2 (08/06/2015) 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 19.1.6 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 19.1.7 also said:

> *"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 19.1.8 set out 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*
>
> *(2) a summary of any other material information."*

This isn't a comprehensive list of the rules and regulations which applied but provides useful context for my assessment of the business' actions here.

County Capital argues that it did start with the presumption of unsuitability. It has relied on the fact when Mr E was asked to fill in the risk questionnaire and transfer forms, the West Wales adviser said based on what he had completed a transfer wouldn't be viable. But it appears to me this was just seen as a hurdle to overcome. After being told he needed to be a 4-10 on the risk scale for the transfer to be deemed viable, Mr E did the risk analysis again. This time coming out with a higher risk tolerance.

I think acting properly, an adviser ought to have explored Mr E's attitude to risk more thoroughly. If an adviser approached this situation with the presumption of unsuitability, I don't think simply getting Mr E to fill in the risk analysis unaided again would've been the course of action taken.

The suitability report appears to justify moving straight into discussions about transferring as Mr E had already indicated this is what he wanted to do. But Mr E was paying for expert advice not someone to arrange a transfer for him.

In County Capital's responses to the provisional decision, it has made a number of points about what Mr E knew and it being Mr E's decision to transfer. But it was meant to be the expert, giving Mr E advice about what his best course of action was. It is not a defence to say that Mr E wanted to transfer, and he had the information available to decide from the BSPS trustees. If County Capital wished to rely on that it would've needed to go down the insistent client route. However, I think it's clear that Mr E wasn't an insistent client. And it seems to me that Mr E was wholly reliant on the advice given to him by West Wales and County Capital.

County Capital compared Mr E's benefits with the PPF but at the time of advice Mr E had already selected to join the BSPS2, County Capital were seemingly unaware of this. Which in my view is linked to the failings in the advice process. County Capital didn't have any direct contact with Mr E at the time of advice bar a very short phone call. It relied on the information from the West Wales adviser and its calculations of Mr E's estimated benefits drawn from the CETV.

I have many concerns about the accuracy of the figures presented to Mr E. County Capital has also heavily relied on the TVAS report, but the suitability report should've set out clearly what Mr E's entitlement was, it didn't. And the TVAS report also contained erroneous and unclear information. For example, the suitability report said the BSPS yields were calculated on the BSPS going into the PPF, yet the TVAS report had separate critical yields for the PPF as well. This simply doesn't make sense. And the purported BSPS figures at early retirement were higher than the PPF figures (although framed as the BSPS going into the PPF in the suitability report). Yet the PPF had more favourable early retirement factors.

The difference between the figures County Capital has relied upon for the BSPS (and PPF via a 10% reduction) when compared to his entitlement set out by the BSPS trustees for BSPS2 in his *'time to choose'* booklet is stark. This doesn't make sense, which is another reason I have my concerns about the figures.

Within BSPS2 at normal retirement age of 65, it was estimated he could receive £22,063.67 p.a or £102,000 tax free cash and a reduced annuity of £15,297.65. At early retirement of age 55, £13,492.87 p.a – or £66,751.53 tax-free cash and a reduced annuity of £10,012.73. Compare this to the figures set out in the TVAS report. At age 65 Mr E could likely receive £17,700 or a reduced income of £14,060 and tax-free cash of £93,750. At 57 (recorded as Mr E's desired retirement date so no figures were calculated at 55) an annual pension of £12,750 or £71,500 as tax free cash and a reduced pension of £10,735.

County Capital have said the figures given for the BSPS2 entitlement could well be wrong but gave no evidence or reason to substantiate this. It also said it couldn't use these figures in the TVAS as these were estimated benefits. I'm not aware of the figures given to members in the *'time to choose'* booklets being unreliable. Mr E has said he wasn't sure what his entitlement under the BSPS schemes were and it is up for debate whether County Capital did either. But regardless of the figures used in the TVAS – in any event I've considered the advice using the figures and yields County Capital presented and I still think it was unsuitable.

Had the trustee's figures included with Mr E's '*your time to choose'* booklet been used, the critical yield would've been quite a bit higher. Nevertheless, the critical yield was calculated to be at age 65 if Mr E joined the PPF, 4.65% for benefits taken as a pension and 4.39% for a pension and tax free cash. And at 57 a critical yield of 5.7% or 5.45% if tax-free cash taken. The adviser said that was achievable.

At the time of advice, Mr E was around 16 years away from the intended retirement age of 57. And County Capital's advice was given after the regulator gave instructions in Final Guidance FG17/9 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 by the Financial Ombudsman Service on our website. Whilst County Capital weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. For Mr E retiring at age 57 the closest discount rate from September 2017 was 4.3%, so the adviser's statement that the critical yields at age 57 were achievable is questionable to say the least.

The adviser's recommendation is based on returns of 5% per annum from the recommended SIPP, which is the approved FCA mid-range growth rate. This projects a fund value of £538,000 at age 57. The adviser recommended strategy was that Mr E go into a flexible drawdown at 57 and take a regular net income of £25,000 p.a. which would represent a withdrawal rate of circa 4% p.a. He said he believed this to be a sustainable withdrawal rate.

Mr E could then reduce his withdrawals from age 67 as his income would then be supported by his state pension. The adviser said he'd modelled a number of cash flow scenarios which indicated that Mr E would be in a better position financially than remaining in the PPF.

However, this relied on growth every year to retirement and beyond (when in drawdown) above the discount rate which is a good marker for what is reasonably achievable. And reducing income withdrawals at 67, whereas in the BSPS income would remain constant for life. So there is a not unsubstantial level of risk involved here. I don't think this risk was adequately explained to Mr E. And had it been explained, I think Mr E would've been concerned about the level of risk involved.

County Capital has said its modelling took into account market fluctuations and so didn't require growth every year. I don't think this is particularly relevant to the point I made. Regardless of whether its modelling included fluctuations, the fact remains that the yields required were on average above what was considered likely and this was required over a number of years. And whilst County Capital are relying on their cash-flow modelling, this was based on a comparison with the wrong scheme, Mr E wasn't going to be joining the PFF. The figures used won't have been accurate. Also, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

The risk involved is highlighted when you look at the illustration provided by the SIPP provider in real terms i.e including inflation and charges, the SIPP providers illustration at its mid-growth rate showed an estimated fund at age 75 of just £412,000.

This means that in real terms if the levels of growth only matched the lower/mid rate, Mr E's buying power at retirement would be significantly eroded over time by not only inflation, but the charges involved in this arrangement. Whereas the guaranteed benefits within BSPS2 had revaluation rates that would've broadly matched inflation and no charges to consider.

Looking at the yields involved and Mr E's attitude to risk, I don't think the advice to transfer can be justified on the basis that the yields were achievable. Even if I were to accept Mr E's categorisation as a balanced investor (*I have my concerns about the way in which the risk analysis was carried out and its result - but regardless I don't think the advice was suitable so it's a moot point*) and the figures used for the BSPS entitlement as correct, the risks Mr E was taking on here was beyond that of what I consider suitable for a balanced investor. Mr E needed growth above the discount rate for potentially 40+ years just to match the guaranteed benefits he'd given up. So I don't agree with County Capital's belief that the yields involved meant that transferring was in Mr E's best interests.
Furthermore, to make the transfer viable, there would need to be a reasonably achievable opportunity of not just matching the yields but beating them in order to improve the benefits, otherwise why take this risk over the guarantees offered by the defined benefit scheme. I don't think its likely this was reasonably achievable given the yields involved.

County Capital says I've not considered that the transfer value offered by BSPS was enhanced. But my view was that even with the enhanced transfer value the advice to transfer wasn't in Mr E's best interests. Just because a transfer value is enhanced and this enhancement will be lost in future, doesn't mean that a transfer will be suitable.

County Capital has also argued West Wales were also responsible for the advice and it was entitled to rely on the information it was given by it. I'd agree generally it's reasonable to rely on information gathered by another party such as the fact-find and details regarding the customer, if there's no valid reason to doubt this. But in taking on the responsibility for a Defined Benefit transfer, it is still ultimately responsible for the suitability of advice. And County Capital's recommended a different product and produced a new suitability report. County Capital shouldn't have just relied on the advice being suitable because the West Wales adviser had reached that conclusion.

COBs says on this matter:

> *"COBS 2.4.6(2): A firm will be taken to be in compliance with any rule in this sourcebook that requires it to obtain information if it can show it was reasonable for it to rely upon information provided to it in writing by another person.*
>
> *COBS 2.4.8: It will generally be reasonable (in accordance with COBS 2.4.6R(2)) for a firm to rely on information provided to it in writing by an unconnected authorised person or a professional person, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information."*

So, COBS says it can rely on information, if it has no reasonable grounds to question the accuracy of that information. West Wales at this point had already relinquished its permissions to carry out Defined Benefit transfers after the FCA investigated their practices. When taking on business from a firm that had lost its permissions due to issues with the exact business being taken on, this ought to flag up that care may be required before continuing to rely on an adviser from that firm for this business. And before relying on this firm for the majority of the contact with your client whilst following the same path it had taken, in recommending a transfer.

County Capital argues we haven't fairly considered West Wales' involvement. But I don't agree that West Wales' initial involvement before, and continued involvement after, losing its permissions, decreases or absolves County Capital of its responsibility. And in this decision I'm required to consider its conduct and not West Wales'. County Capital set out its own advice and recommendations, recommending a different product to that initially recommended by West Wales. West Wales had lost its permissions before the transfer occurred, so it couldn't carry out the transfer, but County Capital could. County Capital agreed to take on the advice process and used its permissions to carry out the transfer. Therefore, regardless of West Wales' involvement here, I think it is ultimately responsible for the transfer.

It appears the entirety of County Capital's direct engagement with Mr E before the transfer occurred was a two minute phone call (the suitability report and TVAS were dated two days before the transfer deadline so by this point it was too late for any further consideration if the transfer was to take place). Mr E had said he'd not seen the suitability report, County Capital said he'd signed it. But the copy we were presented with was unsigned.

Considering the importance of the advice to Mr E's retirement planning, the value involved, the sensitivities around Defined Benefit transfers and that County Capital was being paid to provide expert advice, I don't think it's a particularly strong defence to say it relied upon West Wales.

It appears to me, from the above, that the recommendation to transfer was an inevitability and pre-decided from the moment County Capital became involved. It didn't plan to, nor did it, challenge any of the conclusions reached by West Wales. It appears it relied on the West Wales adviser – despite County Capital being the firm responsible for the transfer. That seems to me to be a poor decision considering the circumstances.

In addition, I also think the fees involved with the SIPP and investment strategy were unsuitable for his needs. One of Mr E's objectives was to invest his pension within a competitively charged product. Shortly after the transfer, once agency for the SIPP was passed back to West Wales, Mr E complained about the fees as they hadn't been explained to him and were costing much more than he expected.

The suitability report failed to clearly set out all the relevant product fees, and the adviser fees were also omitted (although they were set out in a separate schedule). Mr E would've needed to look thoroughly into the TVAS report to find information about the DFM fee. And Mr E said he wasn't provided with this in any event. I also don't think Mr E had any need for Discretionary Fund Management (DFM), this tends to be more suitable for more experienced investors. Due to the higher charges associated with a DFM, Mr E's investments needed to keep outperforming the cheaper alternatives. I appreciate actively managed funds can outperform insurer's managed funds. However, equally there's the risk they don't. And there's nothing to suggest Mr E's portfolio would give improved performance to overcome these higher charges and provide strong returns.

In transferring from the BSPS which incurred no costs, Mr E would now be taking on a transfer charge of 2.25%, a SIPP fee of 0.3%, a DFM fee of 0.68% and an ongoing adviser charge of 0.75%. Mr E and the investigator also believed there was an additional charge of 0.6% as a portfolio fee but looking at the illustrations and the later explanations to Mr E, it appears this fee was the same as the DFM fee. It seems inconsistent use of terminology led to this belief that it was an additional fee. County Capital's argues the SIPP was a cheap product as the fee was 0.3% but this completely ignores the others costs its recommendation brought about.

These fees reduce the likelihood of Mr E improving his benefits in retirement and meeting the critical yields required. I also don't think the adviser fairly drew Mr E's attention to the potential effects of these charges in transferring.

*The requirement for flexibility, early retirement and death benefits*

I've also considered whether the transfer can be justified due to better meeting Mr E's collective objectives in a way that the BSPS2 couldn't, regardless of the achievability of the yields.

County Capital has said Mr E was keen to ensure that he could retire early – at age 57 – and take his income flexibly, to secure an income in retirement of £18,000. And protect his family in the event of his death.

The figure of £18,000 doesn't seem to have any real basis, it came from Mr E (which he said was a guess) rather than any particular modelling of what he would require. However, I do accept that early retirement was an important objective for Mr E, and I think the earlier he could retire comfortably the better as far as he was concerned. He'd also talked about getting a part-time job between early retirement and state pension/other pension benefits kicking in.

Having considered Mr E's objectives, I think they could've been better met by remaining in the BSPS2 and without risking his guaranteed income in retirement.

I acknowledge that there was no ability for Mr E to take tax-free cash from the BSPS 2 early without also starting to take an income. And I accept that, if Mr E did in fact reduce his income at age 57 by retiring and/or working part-time elsewhere, this would have a big impact on the household finances. But by age 57, Mr E would have accrued approximately 17 years' worth of defined contributions in the replacement scheme. And so it's likely that he could have relied on the proceeds of this, from age 57 (if needed he could supplement his income with a part-time job which Mr E said he'd consider) and then taken guaranteed benefits from the BSPS 2 when needed.

It's difficult to say some 16 years before, whether Mr E's DC scheme will produce income of £18,000 from age 57 to 65 – but as I've said he could have supplemented this by working part-time as he'd suggested. But in any event, Mr E didn't need to decide yet. He was only 41, it's clear he didn't have a robust plan in his mind for retirement and retirement plans made some 16 years in advance are subject to change. But instead the adviser recommended a transfer, which meant his main source of retirement provision for him and his family, was put at risk based on estimated returns that may or may not be met. I think this advice was wholly unsuitable considering Mr E's circumstances. And no consideration was made of other ways of meeting his potential requirements at retirement.

Death benefits were also stated as a reason to transfer. But no clarification or reasoning was given in the suitability report as to why transferring would be beneficial in this regard, other than it will give greater death benefits.

After the transfer, a lump sum would be payable to Mr E's beneficiaries, rather than in the form of dependants' pensions from the scheme. But there are two issues here – the first is that, Mr E had no particular health issues which would mean that death benefits for a 41-year-old were of concern at that point. The second is that the benefits provided by the BSPS were valuable, this wasn't recognised by the adviser. A lump sum may have its appeal – and I recognise that in some situations the ability to pass a lump sum to a beneficiary or to the estate could be particularly advantageous when compared to an income stream through the spouse's pension. But a pension for Mr E's wife for life, a dependants' pension for his children until they left full time education, and a lump sum return of his own contributions would also have been of great benefit. Additionally, Mr E had valuable death in service cover through his employer.

Moreover, pension provision is intended to provide for an individual's retirement rather than a desire to leave a lump sum for the family. The financial wellbeing of the children (and his wife upon his death) would inevitably have been a priority for Mr E but the recommendation needed to be given in the context of – primarily - Mr E's best interests in terms of his retirement needs.

In conclusion, I don't think considering Mr E's circumstances at the time, the availability of a lump sum on death justifies giving up the guaranteed benefits within BSPS2.

*What should County Capital have done – and would it have made a difference to Mr E's decision?*

I think it's fair to note that it appears Mr E came to the discussions with West Wales and then County Capital with a leaning to transfer. He's said he was concerned about the BSPS situation, others were transferring and in his communications with the adviser I can see that he was keen to get the transfer through. But this came from a position of unfamiliarity, inexperience and some panic.

There were understandably concerns relating to the BSPS around the time of the advice - and I fully acknowledge this. It's undeniable that this was a period of great uncertainty for individuals such as Mr E. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

But Mr E's concerns around this should have been managed appropriately. I appreciate 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, the adviser is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options. I don't think this happened here.

At the point of transfer advice, the BSPS2 had been announced and Mr E had committed to join. There was always a small chance that it would fall into the PPF but at this point the situation with BSPS had been stabilised and it was expected BSPS2 would begin as planned.

I've also thought very carefully about whether the service provided to Mr E was a balanced appraisal of the options available to him – after all, this had been the purpose of the consultation.

Having done so I don't think it was. Many of the recorded objectives were in any case achievable within the BSPS. Tax free cash was available from his scheme benefits, and growth over the medium to long term would be achieved by way of regular revaluations. And he was able to add to his retirement provision through his membership of his current employer's scheme. Death benefits were also payable from the BSPS, albeit in a different format from those available from a Personal Pension or SIPP.

Furthermore, Mr E's entitlement under the BSPS scheme was never set out in a clear format and it appears the benefits were under-stated. As the figures supplied by the BSPS2 trustees were someway in excess of those quoted in the TVAS report. And the suitability report was based on Mr E going into the PPF.

For the reasons given above, I don't think the perceived advantage of flexibility, control of income and a lump sum of death outweighed the guaranteed benefits in the scheme. And I'm satisfied that Mr E's income needs could have been comfortably met by well-planned access to his different types of accrued benefits by the time he came to retire.

My further view is that, if properly discussed, Mr E's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even if he went into the PPF, which he would be giving up for the sake of income flexibility which could've in any case been accessed in other ways without losing his valuable guarantees. His future pension which would be entirely dependent upon investment returns – rather than being partially dependent through the defined contribution scheme. Mr E simply wasn't placed in a properly informed, or suitably advised, position to make an informed decision on his options.

County Capital says that it wasn't wholly responsible and West Wales' part in the process needs to be recognised. I've therefore considered whether Mr E would've come to a different decision had County Capital gave suitable advice. Or whether Mr E was set on this path regardless of what County Capital did.

When Mr E became a customer of County Capital, he already knew that West Wales had lost its permissions to carry out DB pension transfers and in essence to give advice on this subject. So, I think it's reasonable to say his trust in their capability wouldn't have been high at this point. Whereas County Capital had no such issue.

If County Capital had produced a balanced appraisal of his options (unlike what had come before) and explained the valuable guarantees he had within the BSPS2; and a fair assessment had been made on the risk involved and likelihood of him improving on those guaranteed benefits; Alongside a discussion of his other retirement provision options. I think Mr E would've likely have had more confidence and placed greater weight on County Capital's recommendation than West Wales' prior advice. And he would've likely accepted a recommendation to remain in the BSPS2 after having his options properly considered and explained.

*Summary*

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr E, nor was it in his best interests.

**Putting things right**

My aim to is put Mr E, as closely as possible, into the position he'd be but for County Capital's unsuitable advice. Reinstatement of Mr E's deferred benefits isn't possible. Therefore, County Capital should undertake a redress calculation in line with the pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For the reasons set out above, I think it's likely that, properly advised, Mr E would have envisaged accessing his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age.

In terms of death benefits, under the BPSP 2 his spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement.

As such, the calculation on the basis of Mr E remaining within the BSPS 2 should be carried out using the most recent financial assumptions at the date of the actual calculation. County Capital may wish to contact the Department for Work and Pensions (DWP) to obtain Mr E'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 E'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 Mr E'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 E 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 have been taken as tax free cash and 75% would have been taxed according to Mr E'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 must where possible be paid to Mr E within 90 days of the date County Capital receives notification of his acceptance of any final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 90 day period, that it takes County Capital to pay Mr E.

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 County Capital to pay Mr E 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 County Capital to pay Mr E any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require County Capital to pay Mr E any interest as set out above on the sum of £160,000.

**Recommendation:**

If the compensation amount exceeds £160,000, I recommend that County Capital pays Mr E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E. If Mr E were to accept a final decision on the above basis, the money award would be binding on County Capital. My recommendation would not be binding on County Capital. Further, it's unlikely that Mr E could accept my decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept my final decision.

I also agree with the investigator that County Capital should also pay Mr E £300 to acknowledge the trouble and upset caused by the unsuitable advice.

## My final decision

I uphold Mr E's complaint against County Capital Wealth Management Limited and direct it to put matters right as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 March 2022.

Simon Hollingshead
**Ombudsman**