DRN-3313568

The complaint

Mr A complains about the suitability of the advice provided by Hunter Mills Limited ("Hunter Mills") in November 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both Mr A and Hunter Mills. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr A's former 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 BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. 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 DB 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 DB 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 Mr A, under the *'Time to Choose'* communication 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 PPP.

Options 1 and 2 would've enabled Mr A to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr A's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 26 years and 7 months' qualifying service between August 1984 and March 2011;

- The scheme pension provided was based on his final salary, qualifying service and benefit accrual rate – as at the date of leaving the scheme in March 2011, his annual scheme pension was £15,662. The scheme pension would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would also escalate annually by a prescribed amount;

- Payment of benefits before age 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 age 55 and a 18% reduction at age 60; and

- The cash equivalent transfer value of his safeguarded benefits was £519,136.72.

In response to the announcement by Tata Steel, Mr A contacted Hunter Mills for advice. He met one of its advisers in October 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr A:

- He was aged 50 and his wife aged 49. They were both in good health. They had two financially dependent children aged between 14 and 15;

- He was employed full-time by a global manufacturing company and paid gross annual income of about £25,000;

- Their assets comprised the marital home valued at £280,000 and cash deposits of £5,000. They didn't have any other savings or investments;

- They didn't have any debts or liabilities;

- They had surplus disposable income of £300 to £400 available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the State pension at age 67 and had been a member of his employer's defined contribution ("DC") pension scheme since 2011. The total annual contribution into his DC plan was 16% of his gross annual salary;

- He had limited investment experience and knowledge. His risk profile was determined to be *'Lowest Medium'* and he had a *"small"* capacity for loss.

In the notes section on the fact find document Hunter Mills' adviser recorded the following about Mr A's planning objectives:

Planning Objectives - PENSIONS *continued*

NOTES

· Worried over fin str of BSPS scheme

Doesn't want a fixed mthly income

· To pass value down to wife + two children

↳ help them out later in life

· Phase/stagger ret. over years / wants control over when + how he draws.

Has state + pensions as well so already an indexed secure income

· To extract a larger PCLS in future

· Health good / no LTA issues etc.

Likes idea of no inheritance tax, TV's high at present.

· Prepared to take on cost + resp of looking after an invested fund.

Following the fact find meeting, Hunter Mills issued its suitability report to Mr A in November 2017. The report confirmed Mr A's concerns and objectives, as follows:

> *"You have sought advice over your British Steel pension scheme for a number of reasons but primarily to do with the financial strength, being able to access the proceeds earlier than age 65 and to make sure the death benefits are the most tax efficient for your wife."*

Hunter Mills concluded that neither the PPF nor the BSPS2 would offer Mr A the flexibility and control he wanted in retirement. It recommended that Mr A transfer to a PPP provided by Prudential for the following reasons:

- *"Protects your built up savings from market ups and downs*
- *To enter a financial product that allows you to continue saving for now but allows a whole range of flexible ways to take your benefits at age 55*

- *To access the transfer value in the form of a tax free cash lump sum or income or both earlier than the main scheme retirement age of 65 without having to suffer a reduction or penalty*

- *To use any tax free cash sum from the age of 55 but defer having to take an income which would be taxable*

- *To pass the balance / value at the time of your death to* [Mr A's wife] *and later your two children or anyone else you decide in the future of your choosing potentially free of income tax if before age 75*

- *To gain from the enhanced transfer values currently on offer (due to low gilt yields) which may not continue*

- *To have the flexibility to choose how, when and how much income you require in retirement*

- *To benefit from extensive Inheritance Tax planning without increasing the value of your estate or causing any inheritance tax liabilities*

- *To have control of your investment where you can decide where the pension is invested*

- *The potential for capital growth and produce a higher level of income, tax free cash sum or both*

- *Receive a reduction in plan charges based upon the size of the transfer*

- *To leave the precarious financial state of the scheme"*

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

Initial charge deducted from the PPP fund value

- 1.75% (or £9,085) initial adviser charge

Ongoing annual charges deducted from the PPP fund value

The ongoing charge was 1.45%, broken down as follows:

- 0.50% ongoing advice charge
- 0.65% fund charges
- 0.30% product charge

Mr A accepted the recommendation, following which the transfer to the PPP was completed. Hunter Mills recommended that, after the deduction of its initial adviser charge, the transfer value be invested in Prudential's Pru Growth Fund.

This complaint

During 2021, Mr A complained to Hunter Mills about the suitability of its pension transfer advice. In summary, he said that:

- He should’ve been advised to leave his benefits within the BSPS2 because of the guarantees it provided;

- He hadn’t seen an adviser from Hunter Mills since the pension transfer despite the fact it had continued to receive the 0.50% ongoing advice charge deducted from the value of his PPP;

- He was unhappy about the level of fees charges and the mental stress of seeing the value of his PPP fall during the Covid-19 pandemic; and

- Hunter Mills failed to update its records after he had informed it about changes to his personal circumstances.

Hunter Mills didn’t uphold this complaint. In summary, it stated that it did its best to help him during difficult circumstances involving a pension scheme that had severe financial difficulties and a short window of time to make a major decision. It stated that Mr A’s options were limited and by transferring out he now had many more options open to him when he decides to take benefits which are more tax efficient than a DB pension income. In addition, the by transferring out, he now has superior death benefits available to his children which they wouldn’t have got under the PPF and BSPS2 options. It concluded that it remained satisfied a pension transfer was the only viable option to enable him to achieve his objectives relating to control, early retirement and flexibility, and death benefits. In its view, neither the BPS2 nor PPF would’ve enabled Mr A to achieve his objectives.

One of our investigators considered this complaint and recommended that it be upheld because he concluded that Hunter Mills had provided unsuitable advice to Mr A. He thought suitable advice would’ve been to transfer to the BSPS2. To put things right, our investigator recommended that Hunter Mills carry out a redress calculation in line with the FCA’s guidelines on the basis that Mr A opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, he recommended that Hunter Mills pay Mr A £500 compensation for the trouble and upset caused by its unsuitable recommendation.

Hunter Mills disagreed with our investigator’s assessment and provided additional comments in response. Our investigator considered those additional comments but wasn’t persuaded to change his view and recommendation that this complaint should be upheld. Since agreement couldn’t be reached, this complaint has been referred to me to review and decide. This is the last stage of our process.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ve taken into account relevant law and regulations, regulator’s rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I’d like to clarify that the purpose of this final decision isn’t to repeat or address every single point raised by the parties. I’ve carefully considered the evidence provided by Mr A and Hunter Mills. If I haven’t commented on any specific point, it’s because I don’t believe it’s affected what I think is the right outcome. I’m satisfied that I’ve been provided with sufficient evidence to decide this complaint.

To make my findings easier to follow, I’ve set them out under separate headings below.

The FCA’s applicable rules and guidance

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Hunter Millls’ actions here.

> PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly*
>
> PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*
>
> COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)*

The provisions in COBS 19 which specifically relate to a DB pension transfer were as follows:

COBS 19.1.2R required the following:

> *“A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client’s attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm’s comparison and its advice.”*

And COBS 19.1.3 G stated:

> *“In particular, the comparison should:*
>
> *(1) take into account all of the retail client's relevant circumstances;*
>
> *(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;*
>
> *(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;*
>
> *(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and*

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

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

COBS 19.1.7G:

"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."

COBS 19.1.7B:

"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.

COBS 19.1.8G:

"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 follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

In assessing the suitability of Hunter Mills' recommendation, it's necessary for me to have due regard to the FCA's rules and guidance stated above when it advised Mr A.

<u>*Mr A's situation*</u>

The situation for Mr A wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options, as set out in the *'Time to Choose'* pack issued to him in October 2017:

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

It's undeniable that it was a period of great uncertainty for individuals such as Mr A. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr A had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, Hunter Mills.

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

So while the situation was somewhat unusual, Mr A still had the option to retain guaranteed benefits in either the PPF or BSPS2. Based on his age, circumstances and uncertainty about when he would retire (which I'll come on to later), it's my view that he would've been better off choosing the BSPS2 instead of the PPF because of the higher level of income it would pay at age 65.

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that Hunter Mills should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr A and to only recommend a transfer to the PPP if it could *clearly* demonstrate it was in his best interests, as referenced in COBS 19.1.6G.

<u>*Transfer analysis*</u>

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction.

The transfer value analysis system ("TVAS") rules applied at the time Hunter Mills advised Mr A. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to 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 DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age (or other selected age) – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

Hunter Mills calculated the following estimated benefits and critical yield figures for the BSPS and PPF:

Scheme	At age 65 based on taking a full pension	At age 65 based on taking a reduced pension and maximum tax-free cash	Critical yield
BSPS	£27,444		7.19%
BSPS		£18,188 plus tax-free cash of £121,256	5.24%
PPF	£22,466		3.43%
PPF		£17,515 plus tax-free cash of £116,482	3.10%

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time Hunter Mills advised Mr A that the BSPS2 would, at age 65, pay a higher level of benefits than the PPF but lower than the BSPS, so the benefit and critical yield figures for the BSPS2 likely fell somewhere in between the figures above.

Hunter Mills expressed its view on the critical yield figures in the suitability report as follows:

> *"In our opinion this would not be achievable by using the portfolio we are recommending and especially not year in year out if you choose to receive all benefits as income* [7.19%]*. If you took cash and income* [5.24%] *then it is achievable. It is therefore possible that future income and cash will not match what the BSPS is projected to offer you at age 65 on a pure like for like basis…"*

I disagree with Hunter Mills' assessment of the critical yield figures. I'll explain why. Hunter Mills' recommendation to Mr A was provided to him 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.

In response to our investigator's assessment, Hunter Mills expressed concern about this Service referring to discount rates when deciding complaints about pension transfers because there wasn't any regulatory requirement for it to refer to these when it advised Mr A. In its view, the discount rates don't have any relevance in assessing the suitability of its advice.

I agree with Hunter Mills that businesses weren't required to refer to discount rates when giving pension transfer advice. But I consider that they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The discount rates we refer to are based on a typical investment spread across shares and bonds. Over the last thirty years, the bond component in the discount rates has increased to reflect the more cautious approach typically being taken when members transfer a large number of years' of DB qualifying service. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 4.2% based on Mr A taking benefits at the scheme 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.

I've taken this into account, along with the composition of assets in the discount rate, Mr A's *'Lowest Medium'* attitude to investment risk and the investment timeframe to age 65. Based on these factors, I think the critical yield figures meant that there was limited scope to match the benefits likely payable by the BSPS2, let alone exceed them. There would usually be no point relinquishing safeguarded benefits in order to 'stand still', given the risk that the transfer might underperform. So, from an economic point of view, it's questionable whether there was a reasonable prospect that Mr A would be financially better off by transferring on a like-for-like basis when compared to the scheme pension. I think the figures show that there was a strong possibility Mr A would be worse off at age 65 by transferring.

Notwithstanding the above, the basis of the recommendation was that Mr A was seeking to take benefits earlier than age 65. There's reference in the suitability report that he was looking to access benefits at age 55. If that was the case then I would've expected Hunter Mills to also calculate the critical yield figures at age 55 to enable Mr A to make an informed decision. But it inexplicably only calculated and presented the figures at age 65. I think this is a material oversight because the figures at age 55 would've been higher (compared to at age 65) due to the shorter investment timeframe and impact of initial advice charge on the required growth rate. This means that Mr A wasn't provided accurate information about the level of investment growth required to match the scheme pension if he took benefits earlier than age 65. In my view, this oversight further undermines the case for a pension transfer at that time.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B. 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 in the context of Mr A's recorded objectives.

Mr A's objectives

Based on the fact find document and suitability report, Mr A had several objectives regarding his safeguarded benefits, which can be distilled into three broad areas, summarised as follows:

- **Control:** He was concerned about the longevity of Tata Steel and that the value of his safeguarded benefits could be transferred to the PPF, leading to a reduction in the level of benefits he would receive when he retired. Due to these concerns, he wanted control over his pension benefits by transferring away;

- **Flexibility and early retirement:** He wanted the flexibility to retire earlier than age 65 and, at that point, receive annual retirement income of about £18,000 in 2017 terms;

- **Death benefits:** He wanted to ensure that, in the event of his earlier death, any unused pension benefits be passed on to his family.

I recognise that Mr A's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Hunter Mills to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he 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 DB pension scheme but, as the professional party, Hunter Mills was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, 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 has a choice not to facilitate the transaction.

<u>*Control objective*</u>

It's clear that one of Mr A's main motivations for considering a pension transfer was due to his concerns about the BSPS and the risk that this might fall into the PPF. I accept that such concerns were common among steelworkers at the time, and that it would've been a major motivation behind many of them transferring out. So I can understand why Mr A wanted to have control over his benefits by transferring to a PPP.

In its suitability report Hunter Mills mentioned the situation with the BSPS and PPF, as follows:

> *"The British Steel scheme is a contracted out of SERPS final salary scheme. This is a private sector scheme and promises to provide you with a pension at retirement or a smaller income and a tax free lump sum. The main scheme retirement age is 65 and provides pension / inflationary increases before and after retirement. Please note the phrase 'promises' and not guaranteed. The pension scheme promises to provide you with an income providing the employer doesn't fail or winds up. As you will have seen in the recent media, the disastrous situation with BHS and their final salary pension !"*
>
> *"The only form the BSPS or Pension protection Fund benefits can be paid to you is via a fixed monthly income for the rest of your life or a reduced income and a tax free cash sum. The downside of entering the PPF is that once in no transfers out are allowed even if it no longer suits your requirements and the earliest you can access benefits of any type is age 60. They will still be reduced for taking earlier than age 65 which was the age the BSPS was set up to"*
>
> *"If the employer ceases contributions or fails then the scheme has the back-up of the government run Pension Protection fund. This provides 90% of the expected pension you are due but the earliest you can access is age 60, benefits reduced for taking earlier than age 65 and once entered you are not able to transfer out. Some of the inflation increases are also not as generous as the main schemes as well."*

Hunter Mills also stated that it recommended a transfer away, "*To leave the precarious financial state of the scheme".*

I don't think the situation was as bleak as Hunter Mills suggested. I think it overplayed the situation regarding the PPF which likely fed into Mr A's fears. It's worth noting that Hunter Mills' advice was provided in November 2017, after the *'Time to Choose'* pack had been issued to members. I think that the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. But, in any event, I don't consider a transfer to the PPF was an outcome for Mr A to avoid at all costs. I'll explain why.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr A could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. At the time of Hunter Mills' recommendation, the PPF's financial position remained robust. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

A transfer to the BSPS2 would've removed any immediate concerns Mr A had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to an alternative scheme before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr A or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF.

If Mr A was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Hunter Mills to provide expert advice on this point, but I think it failed to do this.

In my view, the suitability report didn't deal with Mr A's concerns about the PPF. So he likely thought that a transfer to the PPF was an outcome to avoid at all costs and probably reinforced his view that a transfer to a PPP was the best course of action, particularly after Hunter Mills misled him about the earliest age at which he could access benefits under the PPF. It stated that under the PPF he wouldn't be able to access benefits earlier than age 60. This was incorrect. The PPF allows members to take benefits from age 55 (the same as the recommended PPP) or even earlier if a protected pension age is applicable. This misleading information likely reinforced Mr A's concerns about the PPF and convinced him that transferring was necessary so that he didn't lose the option to take benefits earlier than age 60. But he made that decision from an uninformed position.

In summary, I think that Hunter Mills failed to adequately allay Mr A's misapprehensions about the PPF and misled him about the earliest age at which he could access benefits under that scheme.

Flexibility and early retirement objective

It was recorded that Mr A wanted the flexibility to retire earlier than age 65 and, at that point, receive annual retirement income of about £18,000 in 2017 terms. The contemporaneous evidence stated that Mr A's expected annual expenditure in retirement would be £9,000.

I think it's clear that Mr A was attracted to a flexible arrangement. As noted above, there's reference in the suitability report that he was looking to access benefits flexibly at age 55. But 'flexibility' isn't an objective in itself. The suitability report, for example, states that the PPP would give Mr A the flexibility to take a variable income instead of a fixed income but didn't explain why this was so important. And it wasn't explained why he didn't want a fixed or guaranteed retirement income stream. In my view, there's no real evidence that Mr A required irregular lump sums, variable income or staggered income during retirement. I think there's insufficient colour and detail in the suitability report to explain why Mr A required flexible benefits.

Many people want to retire early or have the ability to take flexible benefits. But this can only happen if they have the financial means to support themselves in retirement. Financial planning generally involves managing client expectations and a need for compromises. Mr A may have wanted to retire earlier than 65 but it was for Hunter Mills, as the expert, to establish if this was feasible and to manage his expectations and help him modify his objectives to reflect the reality of his circumstances, if necessary. The further away from retirement an individual is, the harder it is to establish what their likely income need is. And in Mr A's case, being aged 50 at the time of the advice, I think it would've been difficult to predict with any degree of certainty what his expected expenditure during retirement would be – and what level of income he'd need to cover this and whether, in fact, he could retire early.

Hunter Mills stated in the suitability report that if benefits were taken early under the BSPS (or BSPS2) then the income paid to Mr A would be reduced. It characterised this reduction as a penalty. But the reduction wasn't a penalty but applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally.

Hunter Mills portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. It stated in the suitability report, *"To access the transfer value in the form of a tax free cash lump sum or income or both earlier than the main scheme retirement age of 65 without having to suffer a reduction or penalty".* I think this was misleading. The reality was of course that the PPP would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr A so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

While I don't doubt Mr A would've liked the flexibility to retire early, possibly from age 55, plans can change over such a long period of time. Notwithstanding this, Mr A was then aged 50 and couldn't access the money in the PPP until age 55 at the earliest anyway. So I don't think there was any need to transfer at that time, especially given the critical yield figures attached to the transaction.

Had Hunter Mills advised Mr A to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 50. I think this is a key point. This approach would've entailed significantly less risk for Mr A compared to the pension transfer at that time. Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr A for the period until he retired. It also led to Mr A concentrating all his private retirement provision on a DC basis which offered no guarantees but was based entirely on investment performance and charges.

That said, if it was a genuine requirement that Mr A required flexible benefits, I make the following observation. He had been an active member of his workplace DC pension scheme since 2011. He and his employer were, in total, contributing 16% of his gross annual salary of £25,000 into his DC pension plan every year, which was about £4,000 in monetary terms. This would increase in line with increases in his salary. It appears that he intended to continue working in the same role for the foreseeable future. And in the event he left that employment, I think it's likely that he'd find alternative employment and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it.

So by the time he retired, it's likely that Mr A would've built up significant DC pension savings. So if he did have a need for flexible benefits, I think this could've been met in the first instance by using his likely significant DC pension savings built up since 2011. This course of action would've enabled Mr A to maintain his safeguarded benefits in the BSPS2 and defer any decisions regarding it until a later date. The alternative, blended approach I've suggested above may have enabled Mr A to achieve his flexibility objective but with significantly less risk. I haven't seen any evidence that Hunter Mills adequately considered, presented and discounted this alternative blended approach in meeting Mr A's objectives.

The notes in the fact find document stated that Mr A liked the *"idea of no inheritance tax".* And in the suitability report, Hunter Mills stated that it recommended the pension transfer to a PPP to enable Mr A, *"To benefit from extensive Inheritance Tax planning without increasing the value of your estate or causing any inheritance tax liabilities".* I'm not sure how this was relevant to the recommendation or why Mr A required extensive inheritance tax ("IHT") planning. I say this because at the time of the advice, the value of Mr A's taxable assets for IHT purposes was significantly below the threshold of £325,000. So he didn't have any IHT liability at that time. And there wasn't any indication this would change in the foreseeable future.

While it's true that Mr A held significant pension assets, these don't normally form part of an individual's estate for IHT purposes. So whether the value of his safeguarded benefits were held in the PPF, BSPS2 or PPP, they would normally be exempt from IHT. I cannot see that Hunter Mills explained this to Mr A and so it's likely – based on the content of the suitability report – that he incorrectly thought he had an IHT-related issue that would be resolved by transferring to the PPP when this wasn't the case at all.

In summary, the contemporaneous evidence simply doesn't support the position as to why flexibility and early retirement objectives would've been a sufficiently compelling reason for Mr A to relinquish valuable benefit guarantees at that time by transferring to a PPP. He didn't gain any IHT-related advantage by transferring. I haven't seen any evidence that shows the pension transfer to the PPP led to Mr A gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2.

<u>Death benefits objective</u>

It was recorded that Mr A wanted to ensure that, in the event of his earlier death, the value of unused pension benefits be paid to his wife and children. Since he had left the employment of Tata Steel in 2011, there wasn't any death in service benefit available from that employer.

Had Mr A opted for the BSPS2, then, on death before retirement, it would provide a refund of contributions of £39,737 plus interest at 3% per year compound and a 50% spouse's pension would be provided – after retirement it would pay a 50% spouse's pension to Mr A's wife. There was also the potential for a children's pension for any qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants up to age 23. It was noted in the suitability report that Mr A wasn't happy with these death benefits. The report stated:

> *"You find this aspect completely dis-agreeable and has been one of the key focal points for recommending a transfer to an alternative arrangement where* [Mrs A's wife] *can benefit from the capital value, potentially tax free and the value retained in the family. She already has substantial pension savings and an employed income in her own right. If any value is passed to* [Mr A's wife] *she can then nominate anyone to receive any remaining value eg. your two children and so pass the benefits on and retain within the family."*

The recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under age 75 the benefits are paid free of income tax – after age 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 PPP and for the period until Mr A withdrew retirement benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value.

But Mr A was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

Mr A's safeguarded benefits, accounting for 26 years and 7 months' qualifying service, represented the backbone of his retirement provision built up by that time. His other savings and investments included cash deposits of about £5,000 and his benefits built up in his workplace DC pension plan. Taking this into account, I think it's fair to say that when the time came to retire, he would be heavily reliant on the value of his BSPS benefits to support his standard of living in retirement. Withdrawing money from the PPP to meet his income and lump sum needs possibly would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. This doesn't appear to have been considered by Hunter Mills.

If Mr A wanted to provide a lump sum to his family on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr A had surplus disposable income available every month between £300 to £400 which he could've 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 Mr A given he was aged 50 and recorded as being in good health. However, I cannot see evidence that Hunter Mills adequately investigated the life cover option. For example, I haven't seen evidence that Hunter Mills quantified Mr A'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 him to enable him to make an informed decision.

Notwithstanding the above, I note that Mr A didn't have any debts or liabilities that would need to be repaid on his death. In the event of his death then the value of his workplace DC pension plan would be payable to his nominated beneficiary. Hunter Mills didn't record the value of that DC plan but I can see that Mr A had been a member of it since 2011 and that the total annual contribution was 16% of his annual salary of £25,000 – so on his earlier death, this may have provided a reasonable lump sum to his wife. In addition, I note that Mr A was employed full-time by a large global manufacturing company and so I think it's more likely than not he had some form of death in service benefit cover but this wasn't recorded by Hunter Mills.

So it seems to me that in the immediate future, certainly while Mr A remained employed, some level of benefit would be paid to his family on his death. This leads me to conclude that there wasn't any immediate need to transfer at that time to provide death benefits in a different format when it's likely Mr A could've explored the life cover options available to him.

While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr A about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. It's my view that Mr A had no health issues at the time Hunter Mills advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his family. Furthermore, Hunter Mills recorded that Mr A's wife had, *"substantial pension savings and an employed income in her own right",* so it seems she wasn't entirely reliant on the value of Mr A's safeguarded benefits to provide her with retirement income, further undermining the case for a pension transfer.

Overall, I'm not convinced there was any real merit in Mr A transferring to a PPP at that time to provide a lump sum death benefit to his family.

If properly informed, would Mr A have transferred anyway?

I'm not persuaded that a pension transfer was clearly in Mr A's best interests. And as I've noted above, I think Hunter Mills provided misleading information in several sections in its suitability report which prevented him from making an informed decision. As a result, I think it's fair and reasonable to uphold this complaint.

In potential mitigation of Hunter Mills' advice, I've also thought about whether Mr A, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr A, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on Hunter Mills, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice.

Mr A might have chosen to transfer against advice on the basis of his concerns. However, bearing in mind that many other members transferred to the BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience and *"Lowest Medium"* risk profile, I don't think, on balance, that he would've insisted on transferring. Given Mr A's reliance on Hunter Mills, I think it's likely he would've accepted a recommendation for the BSPS2 had it advised him to take that course of action.

Putting things right

A fair and reasonable outcome would be for Hunter Mills to put Mr A, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator.

Our investigator concluded that, if properly advised, Mr A would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by November 2017 the risk of the BSPS falling into the PPF had receded by a large extent. So I think Hunter Mills should've considered the BSPS2 as a viable option. So, in addition to the PPF, I think it's fair to consider the BSPS2 as a potential comparator scheme for redress purposes.

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. Given the timeframe, I'm not convinced that it could be reasonably determined in 2017 that the PPF was the likely better option for Mr A. And so I think, given the lack of clarity surrounding when Mr A would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

Hunter Mills must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement

PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Hunter Mills should use the FCA's BSPS-specific redress calculator to calculate the redress rather than using third party actuarial software. This is because in its 'Dear CEO letter' of 19 May 2023, the FCA expressed its concerns about businesses using such software. A copy of the BSPS calculator output should be sent to Mr A and this Service upon completion of the calculation.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of this final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Hunter Mills should:

- calculate and offer Mr A redress as a cash lump sum payment,
- explain to Mr A before starting the redress calculation that:
    - its redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr A receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr A accepts Hunter Mills' offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr A for the calculation, even if he ultimately decides not to have any of his redress augmented; and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr A's end of year tax position.

Redress paid to Mr A as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Hunter Mills may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr A's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, Hunter Mills should pay Mr A £500 compensation for the trouble and upset caused by its unsuitable recommendation.

My final decision

Determination and money award: I uphold this complaint and require Hunter Mills Limited to pay Mr A the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Hunter Mills Limited to pay Mr A any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Hunter Mills Limited to pay Mr A any interest as set out above on the sum of £160,000.

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

If Mr A accepts this final decision, the money award becomes binding on Hunter Mills Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr A can accept this final decision and go to court to ask for the balance. Mr A may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 September 2023.
Clint Penfold
Ombudsman