DRN-3422561

The complaint

Mr D complains about the suitability of the advice provided by Wealthmasters Financial Management Ltd ("Wealthmasters") in January 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a self-invested personal pension ("SIPP").

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

What happened

I issued my provisional decision on this complaint on 8 February 2022. I set out the background and my provisional findings. I've repeated what I said here:

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

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

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

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

Mr D's safeguarded benefits were as follows:

- *He had accrued 10 years and 11 months' qualifying service between 3 April 2006 and 31 March 2017;*

- *The scheme pension provided was a safeguarded benefit defined by reference to his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme on 31 March 2017, his annual scheme pension was £6,659.47;*

- *The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount;*

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

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

- *The estimated revalued annual scheme pension payable by the BSPS at 65 was £11,986 or a reduced pension of £7,943 plus tax-free cash of £52,958. And at 60 it was £8,687 or a reduced pension of £5,963 plus tax-free cash of £39,759;*

- *The estimated revalued annual income payable by the PPF at 65 was £9,608.70 or a reduced pension of £7,693.47 plus tax-free cash of £51,289.82. And at 60 it was £7,780.39 or a reduced pension of £6,452.33 plus tax-free cash of £43,015.59;*

- *On death before retirement, a refund of contributions of £27,484.12 plus interest at 3% per year compound and a 50% spouse's pension would be provided – after retirement, a potential lump sum equivalent to his remaining annual pension between the date of death and five years' after the date of retirement and a 50% spouse's pension thereafter calculated as if no tax-free cash was taken by Mr D at retirement;*

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

- *The cash equivalent transfer value of his safeguarded benefits was £152,069.01 which had been reduced by 5% (from £160,072.65) due to the BSPS being in deficit.*

Mr D was concerned what the announcement by Tata Steel meant for the security of his safeguarded benefits. He contacted Wealthmasters for advice on his options. It recorded the following information about Mr D and his wife's circumstances in December 2017:

- *He was 41, in good health and employed by Tata Steel on a gross annual salary of about £35,000;*

- *His wife was 38, in good health and employed on a gross annual salary of about £14,000;*

- *They had two financially dependent children aged 11 and 13;*

- *Their non-pension assets totalled £128,000 which included the marital home valued at £125,000 and cash savings of about £3,000;*

- *Their liabilities totalled about £102,851, which included an outstanding interest-only mortgage of £102,251 on the marital home due to be repaid in 19 years' time (when Mr D and his wife would be 60 and 57 respectively) and credit card debt of £600;*

- *Through his employment with Tata Steel, he was entitled to a death in service lump sum benefit of four times' his salary;*

- *Their joint net annual income covered outgoings with minimal disposable income available;*

- *In addition to his safeguarded benefits, he was building up retirement benefits in the Tata Steel defined contribution pension scheme and had been since April 2017 – he and Tata Steel were, in total, contributing 16% of his pensionable salary into that plan;*

- *His wife was a member of a workplace pension scheme through her employment (scheme type, value and estimated income not recorded);*

- *He planned to retire at 60 in 2036. His wife's planned retirement date wasn't recorded. Wealthmasters recommended that they both contact the Department of Work and Pensions to obtain a forecast of their estimated State pensions; and*

- *On a scale of risk profiles described as 'cautious', 'moderately cautious', 'moderate', 'moderately adventurous' and 'adventurous', it was determined that he had a 'moderately adventurous' risk profile.*

Mr D's objectives and priorities

In its suitability report dated 8 January 2018, Wealthmasters recorded that Mr D had the following objectives and priorities regarding the value of his safeguarded benefits:

- *"You are a deferred member of the British Steel Pension Scheme (Final Salary) and you wish to review the benefits options of the scheme and you are also concerned about the stability of the scheme going forward, in light of the proposed sale of the British Steel business by its parent company Tata Steel.*

- *As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 60 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65.*

- *As you cannot accurately predict how much of your income you will need at age 60 (if any), you have stated that a joint income of £20,000 would be target figure you would like to achieve and you would like to have the flexibility to vary your level of income and not have to take all of tax free cash in one go, as you would like to make use of any personal tax allowances to minimise the effect of income tax on your pension income.*

- *The death benefits offered by the British Steel pension are of key importance to you, as you are married and you have two children, and one of your main concerns as your father died at an early age (age 44) and should you die [Mrs D] would receive only 50% of your pension and a fraction of the schemes overall value as lump sum death benefit in retirement from the British Steel Pension Scheme."*

Regarding Mr D's other potential needs, Wealthmasters recorded:

- *"You have an interest only mortgage with a remaining balance of £102,251.89 and a remaining term of 19 years. You currently have no repayment vehicle in place and we have fully discussed changing the mortgage to a repayment mortgage to ensure the mortgage debt is repaid at the end of the term and before your desired retirement age…. you confirmed that you did not wish to deal with the above at this point in time. Should you wish to discuss at a later date please contact me."*

Critical yield

Wealthmasters calculated the following critical yield figures based on a transfer value of £152,069.01 assuming it was invested in a SIPP. This showed the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 60 based on a full pension	***At age 60 based on a reduced pension and maximum tax-free cash***	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*7.86%*	*6.40%*	*6.99%*	*5.80%*
PPF	*6.05%*	*5.78%*	*5.22%*	*4.97%*

Wealthmasters' recommendation to Mr D

Wealthmasters set out in its suitability report its recommendation that Mr D transfer the value of his safeguarded benefits to a SIPP instead of either the BSPS2 or PPF for the following reasons:

- *"The scheme [BSPS] is currently in deficit with insufficient funds to cover its liabilities.*
- *The pension scheme trustees have offered a competitive Cash Equivalent Transfer Value.*
- *The Transfer Value Analysis* report we have conducted using our research tool, Selecta pension has confirmed that pre-retirement death benefits would be greater following a transfer to a money purchase scheme.*
- *The Transfer Value Analysis* report has confirmed that post-retirement death benefits would be greater following a transfer to a money purchase scheme.*
- *The Transfer Value Analysis* report has confirmed that both pre and post retirement death benefits would be paid as a lump sum rather than an ongoing income which suits your personal requirements… *The Transfer Value Analysis report is generated by our defined benefits research tool, Selecta Pension, this very technical document is available on request.*
- *Your personal circumstances would benefit from the flexibility provided by the pension freedom legislation at retirement.*
- *You require total flexibility with your pension arrangements both now and at retirement and a personal pension plan would meet both your current and ongoing requirements.*
- *You want to ensure that your wife…and your two children receive the benefits from your plan in the event of your death by obtaining the best death benefit options available and this is one of your biggest concerns as your pension would be retained by the scheme upon your demise.*
- *A SIPP would not penalise you or apply a reduction in benefits should elect to retire early and take pension benefits from age 60."*

The suitability report set out the generic advantages and disadvantages of a pension transfer compared to the PPF and BSPS2 options. Wealthmasters recommended that Mr D invest £147,000 of his SIPP fund value in a Discretionary Fund Management ("DFM") portfolio targeting investment growth in line with his 'moderately adventurous' risk profile. Mr D accepted Wealthmasters' recommendation.

The costs associated with the recommendation were set out in the suitability report and investment proposal document produced by the DFM provider, summarised as follows:

Initial charges

- *SIPP establishment fee – £372 (including VAT)*
- *SIPP annual administration fee paid in advance – £660 (including VAT)*
- *Non-standard asset SIPP fee – £600 (including VAT)*
- *Adviser charge – 2.00% of the transfer value (or £3,041.38)*

Ongoing annual charges

- *SIPP annual administration fee – £660 (including VAT)*
- *Adviser charge – 0.5% of the SIPP fund value*
- *DFM charge – 1.02% of the SIPP fund value (including VAT) as stated in the DFM investment proposal document*
- *Third Party funds charge – 0.76% of the SIPP fund value as stated in the DFM investment proposal document*

Therefore, the total ongoing annual charges that would be deducted from the value of Mr D's SIPP would be about 2.28% of the fund value plus the SIPP administration fee of £660.

In May 2018, the pension transfer was completed. The transfer value of £152,069.01 was paid to a new SIPP in Mr D's name. After the transfer was completed, Wealthmasters submitted an application form to the DFM provider and indicated that the agreed general risk profile for Mr D was 'Medium Low'.

This complaint

In February 2020, the Representative contacted this service. It later sent a detailed letter setting out the basis of Mr D's complaint claiming that Wealthmasters gave him unsuitable pension transfer advice. Its position can be summarised as follows:

- ***Tata Steel:** After Tata Steel announced that it would be examining options to restructure its business, including decoupling the BSPS from the company, Mr D heard a lot of worrying rumours about the steelworks and the security of his safeguarded benefits. Everything he had heard about the PPF and successor scheme, the BSPS2, was very negative. He was unsure what to do so sought advice from Wealthmasters. It advised him to opt-out of the BSPS and to transfer the value of his safeguarded benefits to a SIPP rather than the BSPS2 or PPF. Wealthmasters didn't do anything to correct his misapprehensions;*

- ***Fact-finding process:** Mr D wasn't asked anything about his retirement plans including his specific income need. He wasn't asked much about his wife's retirement plans or income need or how these might interact with his own. The fact-find document included a "Final Salary Questionnaire" where he was asked to tick points as "not important", "important" or "very important". The questionnaire was completed* *in minutes and the trade-offs of the various options wasn't explored. At the end of the questionnaire, the following question appears: "in the areas marked very important please give your reasons in your own words why". But no notes were written in the comments box;*

- ***BSPS safeguarded benefits:*** *Mr D's safeguarded benefits offered guaranteed income and represented most of his retirement provision, meaning he'd be heavily reliant on it to provide retirement income. He didn't have specific objectives other than to protect the value of his benefits. Wealthmasters raised control and flexibility, and the ability to retire early, as significant benefits of transferring to a SIPP but they weren't important factors in Mr D's thinking and he went along with whatever Wealthmasters suggested. He didn't understand how valuable safeguarded benefits were until long after he transferred out of the BSPS. He now knows that had he transferred to either the BSPS2 or PPF, he wouldn't have to worry about the markets, inflation, or the charges he now faces through the SIPP. Rather, he'd have peace of mind and a guaranteed, escalating income for life without cost;*

- ***BSPS2 and PPF options:*** *Mr D was unaware that the trustees of the BSPS had indicated that the BSPS2 would provide greater benefits than the PPF and only marginally less generous benefits than the BSPS. This information was available to Wealthmasters at the time of its recommendation in January 2018 but it presented both the BSPS2 and PPF as unsuitable options. And so it allowed him to think that a transfer to either the BSPS2 or PPF would be a poor outcome;*

- ***DFM portfolio:*** *Wealthmasters recommended that Mr D invest in a DFM portfolio. His money is now subject to multiple layers of charges and he's exposed to levels of risk he wasn't willing or able to tolerate. He didn't understand the charges he'd have to pay or inflation because this wasn't explained before he transferred out of the BSPS. It believes Wealthmasters' advice was flawed and led to Mr D suffering a significant financial loss. In its view, the high cost of the arrangement recommended by Wealthmasters contrasted sharply with the zero charges Mr D would've incurred had he transferred to the BSPS2 or PPF. It didn't understand why the DFM portfolio was recommended since Mr D didn't have any desire to invest in any non-standard investments or to have his money actively managed. Given his profile, he could've invested in a standard personal pension plan offering low cost funds and achieve much the same outcome at lower cost. The expensive structure recommended by Wealthmasters seems to have benefitted everyone else except Mr D;*

- ***Death benefits:*** *Mr D was, and still is, in good health and so there wasn't any reason to think he wouldn't reach or even exceed his average life expectancy. He had death in service benefits of four times' his salary through his employment with Tata Steel which would've been sufficient to repay his mortgage. There wasn't any discussion about how separate life cover could provide additional death benefits so that he could maintain his safeguarded benefits. The death benefits offered by the BSPS2 were generous but this wasn't highlighted by Wealthmasters. The Representative didn't think securing higher death benefits for Mr D at the expense of relinquishing safeguarded benefits was a good enough reason to transfer;*

- ***Early retirement:*** *Mr D was told that he'd be heavily penalised for taking his pension early from the other options. He was encouraged to believe that he'd be better off by transferring to the SIPP. He wasn't made aware of the level of benefits he'd likely receive or by how much his fund would grow after charges if he transferred out because Wealthmasters didn't explain it to him;*

- ***TVAS and critical yields:*** *The Transfer Value Analysis System ("TVAS") report wasn't shown or explained to Mr D, so he didn't understand the estimated scheme pension he was relinquishing by agreeing to the pension transfer. The critical yield wasn't explained to him. The TVAS report didn't include the cost of the DFM service, meaning the true critical yield figure was greater than the figure of 6.99% (based on Mr D taking the full scheme pension from the BSPS at 65) stated in the suitability report;*

- ***Illustrations:*** *The illustrations in the suitability report indicated that, after all charges and inflation, Mr D's SIPP fund value might only be worth £187,000 at 65 based on a mid-rate growth (2.4%). Therefore, it wasn't likely to increase in value by a significant amount and certainly not up to the £543,961.93 fund needed to match the relinquished BSPS benefits. The effect of charges and inflation over time wasn't explained to Mr D to help him understand how these would impact the benefits he'd ultimately receive from the SIPP;*

- ***Cashflow analysis:*** *The cashflow forecast included in the suitability report suggested that by transferring Mr D would run out of money by his late 70s and become solely reliant on his State pension. This was at odds with Wealthmasters' statement in its suitability report that, "your overall wealth is such that losing some of your pension investment will not affect your standard of living"; and*

- ***Suitability:*** *Wealthmasters was in possession of all the relevant information and must have known Mr D would be worse off in retirement by transferring rather than opting for either the BSPS2 or PPF. It kept that from him and instead led him to believe that he'd better off. Overall, it thought that Wealthmasters failed to adhere to several regulatory requirements including COBS 4.2.1(1) R, COBS 9.2.1(1) R, COBS 9.2.1(2) R), COBS 9.2.2 R and COBS 19.1.*

To put things right, the Representative stated that Wealthmasters should pay redress to Mr D on the basis that he instead transferred to the BSPS2 and not a SIPP.

<u>Wealthmasters' response to Mr D's complaint</u>

Wealthmasters didn't uphold Mr D's complaint because it was content that its advice to transfer to the SIPP was suitable and in line with the FCA's rules and guidance. Its position, as set out in its letter dated 26 May 2020 addressed to this service, can be summarised as follows:

- ***Mr D's Representative:*** *It said that Mr D's Representative's approach to making this complaint was unfair. This was because in its initial contact with Wealthmasters the Representative didn't confirm whether it intended to pursue the matter through the courts or the financial regulatory system or set out precisely the basis of Mr D's complaint until later in the process. The Representative then referred Mr D's complaint to this service for adjudication without allowing Wealthmasters the opportunity to investigate and issue its final response. It noted that the Representative had submitted to this service an unconnected complaint in connection with another of its BSPS clients which it also presented in a similar, unfair manner. It said that Mr D's Representative is an experienced firm of solicitors and must therefore be aware that its handling of Mr D's complaint and other similar cases is contrary to the processes set out by the FCA or its own regulator, the Solicitors Regulation Authority. It believes that this complaint has been sponsored by extensive media coverage of the "BSPS scandal" and solicitors advertising 'no win no fee' services which has led to many former members wrongly making claims for redress;*

- ***Information about the changes to the BSPS:*** *In the months leading up to its recommendation, the BSPS provided Mr D lots of information about the changes to the scheme and options available to him. Therefore, members that had limited knowledge or experience in relation to pension matters had the opportunity to gain a clearer understanding of the situation, familiarise themselves with the pros and cons of the options available before taking financial advice. So it didn't agree with Mr D's assertion that he didn't understand what was happening at the time it advised him;*

- ***Mr D's understanding and acceptance of risk:*** *It gave Mr D all the relevant risk warnings and talked him through the advantages and disadvantages associated with the pension transfer. He gave no indication that he didn't understand the recommendation or that he thought Wealthmasters had misunderstood his requirements. Mr D willingly signed the client declaration to confirm his understanding and acceptance of the information and recommendation outlined in its suitability report. The FCA previously stated that it expects consumers to, "take reasonable responsibility for the decisions they make about the financial products and services they buy". And in the Carey vs Adams High Court case, the judge said, "Consumers should take responsibility for their decisions". Therefore, it considered that since Mr D knew what he was doing and the risks involved he ought to take responsibility for his decision to transfer to the SIPP;*

- ***FCA file reviews:*** *During 2017, the FCA began a focused review on the quality of pension transfer advice given to members of the BSPS. As part of this process, the FCA requested information from dozens of advisory businesses engaged in BSPS pension transfers including Wealthmasters. The FCA contacted Wealthmasters three times and, after reviewing its files, confirmed on each occasion that no further information or remedial action was required. The FCA made no criticisms of Wealthmasters' advice or processes and it retained its permission to advise on pension transfers. In its view, the lack of FCA action demonstrates Wealthmasters' professionalism, integrity and adherence to the FCA Code of Conduct. So it's unacceptable for Mr D, via his Representative, to use 'selective memory' and the benefit of hindsight to now claim its recommendation was unsuitable;*

- ***Basis of Mr D's complaint:*** *The basis of Mr D's complaint, as set out by the Representative, contained several inaccuracies and wasn't a true reflection of the advice, process or service it provided to Mr D. Mr D's version of events contradicts the documentary evidence. For example, its records showed Mr D had a strong desire for flexibility through the SIPP but his Representative says he didn't want this but preferred guarantees. It thinks that Mr D was heavily influenced by his Representative who, having dealt with many cases on behalf of British Steel workers, led him to frame his complaint in a certain way to maximise the opportunity for redress;*

- ***Fact-finding:*** *Contrary to the Representative's claim, it carried out detailed fact-finding and obtained all the relevant information necessary to advise Mr D, as evidenced by the content in its suitability report. The fact find document, questionnaires and reports produced by Wealthmasters were undertaken in accordance with FCA rules and guidance, and were based on the information provided to it by Mr D at the time;*

- ***Advice process:*** *It recognised that the situation surrounding Tata Steel and the BSPS meant it was a worrying time for individuals like Mr D. And so it took care to make sure it provided information in plain English and walked him through every step so that he could make an informed decision. Its advice was tailored to Mr D's personal circumstances, considering his current and future plans, needs and* *objectives. He had a strong preference for the flexibility of income, lump sums and death benefits offered by the SIPP. He was provided with all the relevant facts and risk warnings. It wasn't a rushed process. Rather, meetings and correspondence took place over a several weeks. He had three weeks to consider the suitability report. He had sufficient time to review its recommendation, to raise any areas of doubt or confusion, consider his options and seek alternative advice if desired prior to accepting the recommendation. He could've also made use of the 'cooling off' period. But he expressed no concerns at the time. Wealthmasters advised Mr D to transfer because it was the only option available that met all his objectives. The recommendation to transfer was reviewed by an in-house pension transfer specialist who concluded, "The Know Your Client requirement has been met and the analysis of the client's requirements is clear and complete. The product is suitable and there are no material deficiencies in the suitability report or file in respect of quality of advice or compliance with the FCA principles". It remained satisfied that it treated Mr D fairly and acted in his best interests at all times;*

- ***Mr D's retirement income need:** It advised him that he was unlikely to achieve his target retirement annual income need of £20,000 through either the SIPP or BSPS2 options, particularly if he retired early. Indeed, Wealthmasters actively advised Mr D to consider increasing his retirement provision to cover the projected income shortfall, clear his small credit card debt and switch from an interest-only to a repayment mortgage to further improve his financial health;*

- ***Cashflow modelling:** Its cashflow modelling didn't take into consideration any income to be provided by Mr D's State pension, Tata Steel defined contribution plan or any other investments or inheritances which needs to be taken into account;*

- ***BSPS2 and PPF options:** When Mr D approached Wealthmasters it was evident that he had lost confidence in Tata Steel and was worried about the future prospects of his employer and the security of his safeguarded benefits – those were his main areas of concern. The BSPS2 and PPF options were discussed with Mr D but he rejected them because they didn't enable him to achieve his specific objectives and requirements for retirement and because it meant he didn't get a clean break. Mr D didn't want to suffer the reduction in benefits under the PPF and he had genuine concerns regarding the long term viability of Tata Steel and what impact this might have on the BSPS2, which may ultimately end up being transferred to the PPF. In its view, there was no prospect of Mr D retiring earlier than 65 under the BSPS2 or PPF. Furthermore, he clearly indicated a willingness to accept an increased level of risk for the potential of achieving a higher return on the funds invested. Had it recommended either the BSPS2 or PPF options then the possibility of achieving a higher return wouldn't have been feasible;*

- ***Critical yield:** Contrary to the Representative's claim, it explained in its suitability report what the critical yield was and the implications of this to Mr D. However, in his case the relevance of the critical yield was questionable because he wanted flexible pension benefits rather than purchasing an annuity at retirement; and*

- ***Charges:** The charges associated with the transaction were clearly disclosed in its suitability report.*

<u>*Our investigator's assessment*</u>

Our investigator thought that the pension transfer advice Wealthmasters gave to Mr D was unsuitable and that his complaint should therefore be upheld. His findings can be summarised as follows:

- ***Importance of safeguarded benefits:*** *Mr D's safeguarded benefits amounted to 10 years and 11 months' pensionable service and so represented most of the retirement provision he had built up by that point in time. And so he'd be heavily reliant on these benefits to provide secure retirement income. While Mr D was building up additional retirement provision in his Tata Steel defined contribution pension plan, it was the case that he had limited other investments and savings upon which he could rely to support his desired standard of living in retirement. This meant he had a very low capacity for loss to absorb financial loss in connection with the value of his safeguarded benefits;*

- ***Spouse's pension:*** *Wealthmasters didn't adequately explain or highlight the importance of the spouse's pension available under the alternative options to Mr D;*

- ***Mr D's objectives:*** *He thought Mr D's objectives were generic based on him answering pre-determined questions presented to him by Wealthmasters. He felt that Wealthmasters could've done more to identify what Mr D wanted to achieve in his own words. Furthermore, he wasn't convinced Mr D had a genuine need at that time for flexibility and control of his safeguarded benefits;*

- ***Mr D's risk profile:*** *He thought Wealthmasters' assessment that Mr D had a 'moderately adventurous' risk profile, as stated in the suitability report, and that he was apparently "willing to accept high risk and chance of loss in order to achieve higher returns on his or her investment…" as inconsistent with his previous investment experience and circumstances. Rather, he thought he likely had a cautious risk profile given his low capacity for loss, investment inexperience and financial circumstances;*

- ***Critical yield:*** *The critical yield figure of 6.99% per year on transfer to the SIPP (based on Mr D taking the full scheme pension from the BSPS at 65) was likely unachievable bearing in mind he thought that Mr D had a cautious risk profile and therefore would need to invest to align with this. The required rate of investment growth of 6.99% was higher than the relevant discount rate of 4.6% per year published by this service and at the higher end of the FCA's projection rates for pensions. As a result, he concluded that the pension transfer would likely lead to Mr D receiving lower retirement benefits under the SIPP;*

- ***Time horizon:*** *He noted that Mr D was 41 and wanted to retire early at 60. Due to the substantial time horizon of 19 years, he thought it was likely Mr D's personal and financial circumstances would be very different by the time he actually retired. And so it was difficult to justify why a pension transfer at that time could be regarded as suitable when so much was unknown about Mr D's future plans and retirement income need. He noted that had Mr D instead been advised to transfer to the BSPS2, he could've maintained safeguarded benefits and retained the option of a pension transfer out of that scheme at a later date when his retirement plans and income need could be determined with greater accuracy than at 41;*

- ***Mr D's concerns about Tata Steel and the PPF:*** *He thought that Wealthmasters ought to have done more to allay Mr D's fears about the security of his safeguarded benefits and explained that, in the worst case scenario, he'd still receive 90% of his pension entitlement under the PPF;*

- ***SIPP and DFM service:*** *He considered that Mr D likely had simple investment requirements and so wasn't convinced he required a SIPP or DFM service to actively* *manage his pension savings or the costs entailed with those arrangements, as recommended by Wealthmasters; and*

- ***Suitable advice:*** *He concluded suitable advice would've been for Mr D to transfer to the BSPS2 so that he could maintain safeguarded benefits. He thought it more likely than not that had Wealthmasters recommended the BSPS2 that Mr D would've accepted it.*

To put things right, our investigator recommended that Wealthmasters carry out a redress calculation in line with the FCA's 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' on the basis that Mr D transferred to the BSPS2 and would be a 20% income tax payer in retirement.

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

Wealthmasters didn't accept our investigator's assessment that its recommendation was unsuitable and provided substantial comments in response. Some of these comments essentially repeated points it made in its previous correspondence to this service dated 26 May 2020, as set out above. Its additional comments can be summarised, as follows:

- ***The FCA's starting point:*** *The FCA's starting point in COBS 19.1.6G that a financial adviser must start by assuming that a pension transfer isn't suitable didn't quite fit the issues and circumstances surrounding the BSPS because members couldn't maintain their safeguarded benefits in that scheme. Rather, they were instead presented with a choice of options including a pension transfer. It's difficult to understand why the BSPS trustees muddied the waters by offering members a choice of options rather than automatically transferring them all to the BSPS2;*

- ***FCA rules and guidance:*** *In providing its recommendation, it adhered to the FCA rules and guidance in COBS. The FCA's rules required it to "take reasonable steps" to ensure that its recommendation was suitable. This didn't mean it was required to guarantee or ensure, particularly with the benefit of hindsight, that the pension transfer was suitable;*

- ***Different suitable outcomes:*** *Suitability should be assessed on the basis of whether its recommendation was reasonably competent. It's possible that any number of suitable recommendations could've been provided to Mr D. The fact that different advice might have been given (with the benefit of hindsight or if the claimant's objectives and priorities had been different) is not a basis for upholding this complaint;*

- ***Mr D's risk profile:*** *It didn't accept our investigator's view that Mr D likely had a cautious risk profile rather than 'moderately adventurous' risk profile, as generated by its FCA-approved risk profiling software. It noted that its recommendation was based on the results of the risk assessment and, in fact, following a discussion with Mr D at the time, it was agreed that it would treat him as a 'moderate' investor;*

- ***BSPS2 option:*** *Had it recommended the BSPS2 to Mr D, as suggested by our investigator, then it's possible that option would be regarded as unsuitable in the future. Its aware of clients who transferred to the BSPS2 and subsequently sought new transfer values and were unhappy these had reduced by 20% compared to the transfer value offered by the BSPS. It's common knowledge that the steel industry is again in crisis and that Tata Steel is haemorrhaging money, therefore putting the BSPS2 at risk of entering the PPF. In its view, transferring to the BSPS2 wouldn't* *have enabled Mr D to achieve his objectives. It didn't accept our investigator's suggestion that opting for the BSPS2 to retain the option for a transfer at a later date was sensible. This was because delaying the pension transfer to accommodate unknown future objectives doesn't fit within the arena of regulated financial advice. A financial adviser is usually engaged with a view to providing ongoing advice and to continually review a client's circumstances. The advice given to Mr D at the time was in line with his requirements and objectives over the next 15 to 20 years;*

- ***Security of defined benefits schemes:*** *It didn't agree with our investigator's statement that defined benefits schemes are generally very secure. This is because currently in the UK the number of underfunded defined benefits schemes is extensive. The current financial environment has put even the largest of businesses under pressure and at risk. At the time it advised Mr D, the BSPS appeared far from secure. It's well documented that British Steel had experienced difficulties and a reducing demand for steel in the UK had brought about the company's collapse with the government having to step in to keep things afloat whilst a new buyer was found. Therefore, while it understood the investigator's general statement about defined benefits schemes, it didn't feel it was completely true in Mr D's case given the uncertainty surrounding Tata Steel and the BSPS;*

- ***Use of pre-determined questions:*** *In response to our investigator's comments about Mr D answering pre-determined questions, Wealthmasters said it uses these to extract important information from clients and to bring into focus matters they perhaps wouldn't have previously considered important in their own mind. It's not the case that the client completes its questionnaire and that's the end of the story. Rather, the answers given by the client set the agenda for discussions and to help them focus on what their objectives are. The use of pre-worded questionnaires is a practice accepted by the FCA, so it doesn't see any issue in using them when advising its clients;*

- ***Media attention:*** *Given the media coverage regarding BSPS pension transfers, its concerned that a blanket approach is being taken by the FCA and this service, and that any adviser who has made a recommendation to transfer is automatically assumed to have given unsuitable advice. It doesn't accept this to be the case regarding the advice it provided to Mr D because it remains satisfied that the pension transfer advice it gave him was compliant and suitable;*

- ***Financial loss:*** *It said suitability isn't always simply a question of financial loss – it's also a question of priorities and what best suits an individual's preferences and objectives. In response to our investigator's recommendation that Wealthmasters carry out a redress calculation, it said it's not the case that Mr D has now simply lost all benefits and value in his pension. Rather, he opted to exchange the guaranteed benefits in the BSPS scheme for a cash transfer value as it better suited his needs. His final fund value at the normal retirement age of 65 under the BSPS2 is yet to be determined. Until Mr D reaches 65, neither Wealthmasters, the Financial Ombudsman Service, nor Mr D will know whether the benefits he receives will be more or less than those he would've received under the BSPS2. Furthermore, it seems too simplistic to say it's simply a case of financial benefit or loss compared to the exact pension amount that can just be taken in isolation. For example, Mr D could decide, at age 55, to take tax-free cash and invest it in property, Bitcoin or whatever he chooses and that grows exponentially – until this has been factored into the pot at retirement, an accurate comparison cannot be made. As such, stating that Mr D has incurred a financial loss at this time isn't strictly correct and so it struggles to see how any financial loss can be accurately assessed at this stage; and*

- ***Ombudsman decision:*** *It said that in the event this service maintains its recommendation to Mr D was unsuitable, that we set out in detail how Mr D's objectives could've been met without transferring to the SIPP and that any decision that fails to address this point cannot be considered as either fair or reasonable. It also said that if redress is calculated, as set out using the formula recommended by our investigator, whether Mr D would be obliged to pay money to Wealthmasters in the event of a 'no loss' scenario where the value of his SIPP exceeded the capitalised cost of securing equivalent benefits under the BSPS2 at 65.*

Our investigator considered Wealthmasters' additional comments but wasn't persuaded to change his assessment of Mr D's complaint. With regard to the redress point made by Wealthmasters, he said that Mr D wouldn't be required to pay money to Wealthmasters in the event of a 'no loss' scenario. Since agreement couldn't be reached, this complaint has been referred to me for review.

What I've provisionally decided – and why

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

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The genesis of this complaint

Wealthmasters said that Mr D, through his Representative, only made this complaint in response to the negative media attention relating to BSPS pension transfers. It believes that the media coverage and solicitors advertising 'no win, no fee' services has led to many former BSPS members wrongly making claims for redress.

My view is that there could be any number of reasons why Mr D complained about Wealthmasters' pension transfer advice. I'm aware that in recent years the FCA identified many steelworkers received unsuitable pension transfer advice and may have made poor financial choices, losing significant sums of money as a result. It therefore wrote to individuals, like Mr D, who transferred out of the BSPS to encourage them to revisit the advice that they received and to complain if they had concerns. The fact Mr D made this complaint through his Representative doesn't mean it's without merit, as I think is implied by Wealthmasters, or that he's acted unreasonably. Wealthmasters will, I hope, agree that, regardless of how his concerns materialised, Mr D is entitled to complain about its advice if he's concerned it was unsuitable.

Mr D's Representative

Wealthmasters is unhappy about the way in which Mr D's Representative handled and presented his complaint to this service. It's also concerned that the basis of Mr D's complaint, as set out by his Representative, contained several inaccuracies and wasn't a true reflection of the advice, process or service it provided. It thinks that Mr D was heavily influenced by his Representative who, having dealt with many cases on behalf of British Steel workers, led him to frame his complaint in a certain way, including changing what his objectives were, with the aim of maximising the opportunity for redress.

I'd like to assure all the parties to this complaint that my decision will be based on the contemporaneous documentary evidence. And where the evidence is incomplete, inconclusive or contradictory, I'll 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 hope this eases Wealthmasters' concerns.

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

The parties to this complaint have very different views on the suitability of the advice complained about. Mr D's Representative thinks that Wealthmasters' recommendation was unsuitable because it exposed the value of his safeguarded benefits to more risk than he was willing or able to tolerate. But Wealthmasters thinks its recommendation was suitable because it met Mr D's objectives which wouldn't have been met by either the BSPS2 or PPF options.

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

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

The FCA sets the rules and guidance that businesses must follow when advising clients on pension transfers. Businesses are required under COBS 2.1.1R to "act honestly, fairly and professionally in accordance with the best interests of its client".

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

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

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*

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

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

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

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

COBS 19.1.7G also stated:

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

And COBS 19.1.8G stated that:

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

(1) a summary of the advantages and disadvantages of its personal recommendation;
(2) an analysis of the financial implications (if the recommendation is to opt-out); and
(3) a summary of any other material information."

Businesses are required to adhere to these rules and guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers must start by assuming that the existing defined benefits scheme is suitable and only to recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests. The FCA requires businesses to consider alternative, viable options to achieve the client's objectives to enable them to maintain their safeguarded benefits.

The important point to make here is that the FCA refers to "clearly" in its rules. In my view, borderline cases – those which appear evenly balanced as to whether to transfer or not – don't meet the "clearly" requirement, as required by the FCA. Therefore, if I conclude that alternative options could've met Mr D's objectives and enabled him to maintain his safeguarded benefits, then it's likely I'll find the advice to transfer unsuitable given the FCA's default position. I'd also like to highlight that the FCA refers to "contemporaneous evidence" in its rules. This means that any further analysis carried out by Wealthmasters after its recommendation in response to this complaint is essentially irrelevant to my consideration of the advice given in 2018. In line with the FCA's rule, to determine suitability when the advice was given, I must base my decision on the evidence from the period leading up to and including January 2018 to decide whether its pension transfer recommendation was suitable and clearly in Mr D's best interests.

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

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

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

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

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

I'll now go on to consider the suitability of the pension transfer advice Wealthmasters gave to Mr D.

Critical yield, discount rates and risk profile

The TVAS rules applied at the time Wealthmasters advised Mr D. This required it to carry out a transfer value analysis and to calculate the 'critical yield' applicable for the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the defined benefits scheme (and at a different age, if selected) on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the safeguarded benefits under defined benefits scheme, which in this case was the BSPS.

The TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives. But a TVAS has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. So a TVAS was likely useful for a client, like Mr D, that intended to use their safeguarded benefits towards achieving a minimum retirement income objective – in his case, it was recorded that he and his wife required a joint annual income of £20,000. As I've explained below, it's my opinion that Mr D would likely be heavily reliant on the value of his safeguarded benefits towards achieving this income need.

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

Wealthmasters' recommendation to Mr D 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. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 was 4.6% based on Mr D taking benefits at the BSPS normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.*

In contrast, using the TVAS rules, Wealthmasters calculated the critical yield figures in the table below based on a transfer value of £152,069.01 being invested in a SIPP. This showed the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 60 based on a full pension	***At age 60 based on a reduced pension and maximum tax-free cash***	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*7.86%*	*6.40%*	*6.99%*	*5.80%*
PPF	*6.05%*	*5.78%*	*5.22%*	*4.97%*

The critical yield figures for the BSPS2 wasn't calculated. But it was known at the time Wealthmasters advised Mr D that the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS, so the critical yield figures for the BSPS2 likely fell somewhere in between the figures above assuming the same transfer value was offered by the BSPS2.

It's my view that the critical yield figures for the BSPS, ranging from 5.80% to 7.86% depending on when and how Mr D accessed benefits from the SIPP, demonstrated that the transfer value of £152,069.01 represented poor value for money. This is because the invested transfer value would need to achieve annual investment growth of at least 5.80% to match the relinquished safeguarded benefits. The critical yield figures for the BSPS were higher than the discount rate of 4.6% and mid-growth rate of 5% stipulated by the FCA, implying that Mr D would need to accept a medium to high degree of investment risk in the SIPP just to match the relinquished safeguarded benefits, let alone exceed them.

Based on the above considerations, I think it was highly likely that Mr D would receive benefits from the SIPP of a lower overall value than the alternative option of the BSPS2 and even the PPF, if required, at retirement. And it seems Wealthmasters agrees because in its suitability report it stated, "We have discussed these figures in great detail to ensure you fully understand the implications of yield requirement in of close to 7% per annum and the likelihood your portfolio may not consistently reach this annual performance level (even after taking higher investment risks) and therefore not provide you with a comparable annuity income at retirement". So based on this alone, a transfer wasn't in Mr D's best financial interests.

Notwithstanding the above, I'm concerned about how Mr D's risk profile was determined, the basis upon which the money in his SIPP would be invested and the assumed charges in the TVAS report. These issues impact the critical yield figures disclosed to Mr D and upon which he made the decision to transfer. I'll explain why.

The recommendation, as set out in the suitability report, was based on Mr D investing on a 'moderately adventurous' risk basis. This was defined as an investor "willing to accept high risk and chance of loss in order to achieve higher returns on his or her investment.

Significant losses over an extended period may prompt the Moderately Adventurous Investor to shift to a less risky investment". The suitability report stated that the assumed average annual growth rate for a 'moderately adventurous' investor was 5% and included an illustrative graph to show estimated investment performance over a five-year period. Wealthmasters' cashflow modelling was on the basis of this investment return being achieved during Mr D's lifetime.

So, based on what was stated in the suitability report, Mr D would've reasonably concluded that his money would be invested on a 'moderately adventurous' basis and that the recommended DFM portfolio would be targeting average annual investment growth of 5%.

However, in June 2018 the DFM provider wrote to Wealthmasters to confirm that the money in the portfolio would be invested on the following basis:

> *"Service Level: **Discretionary***
> *Risk Profile: **Medium-Low***
> *Investment Objective: **Growth***
> *Investment Time Horizon: **5-10 Years"***

The DFM provider defined the 'Medium-Low' risk profile as follows:

> ***"Risk Definition***
>
> *Having assessed the answers from our risk questionnaire, and reviewed personal circumstances, we have agreed that the portfolio should have a Medium-Low Risk profile, which implies a still significant investment in non-equity securities but greater exposure to the more volatile asset classes that can deliver higher returns. Overall risk would be deemed moderately low.*
>
> *Based on a risk profile of Medium-Low Risk we will be providing a performance comparison to the MSCI WMA Income Index and the FTSE 100, as detailed in our brochure Our Approach to Investment Risk, which is available online or on request."*

Therefore, the investment approach changed after Mr D accepted the recommendation as set out in the suitability report. I think it's fair to say that the prospect for investment returns would be lower under a 'Medium-Low' portfolio compared to a 'moderately adventurous' portfolio. The definitions of both risk profiles support my view on this. Therefore, the potential for investment growth under the SIPP was likely lower than compared to the higher risk approach suggested in the suitability report targeting average annual returns of 5%. The likelihood of lower investment returns would also impact Wealthmasters' cashflow modelling and the sustainability of income suggested in the suitability report. Broadly speaking, investing on a lower risk basis would reduce the potential for investment growth, meaning income would likely run out sooner than compared to investing on a higher risk basis.

And in terms of Mr D's risk profile, I share our investigator's view that the categorisation of Mr D as a 'moderately adventurous' investor was, in any event, inconsistent with his apparent investment inexperience and capacity for loss with regard to his safeguarded benefits. Rather, it seems a more cautious approach would've been suitable for Mr D given his circumstances and that the value of his safeguarded benefits represented the backbone of his retirement provision at that point in time. Wealthmasters agrees because when responding to our investigator it said that, following a discussion with Mr D regarding the output of its risk profiling software, it was agreed that it would treat him as a 'moderate' risk investor rather than a 'moderately adventurous' investor. But it's unclear how this played out because Wealthmasters stated in its suitability report that Mr D had a 'moderately adventurous' risk profile and the DFM provider stated that it would invest on a 'moderately *low' risk basis. There's no mention of the 'moderate' risk profile apparently agreed with Mr D, or how any of this would therefore interact with the required critical yields as set out above.*

Overall, the assessment of Mr D's risk profile, including how much risk he was willing and able to tolerate, and the basis upon which his SIPP fund value would be invested appears inconsistent and confusing.

Finally, in the TVAS report, it stated that the assumed annual investment charge was 0.5% of the SIPP fund value. However, according to the investment proposal document produced by the DFM provider, the annual investment charge totalled 1.78% of the SIPP fund value, broken down as 1.02% payable to the DFM provider (but stated as 0.9% in the suitability report) and 0.76% for third party fund charges (not stated in the suitability report). So I'm not convinced that the costs associated with the transaction were clearly disclosed to Mr D, as asserted by Wealthmasters in its response to this complaint.

The assumption in the TVAS report of a lower investment charge of 0.5% per year rather than the actual charge of 1.78%, as indicated in the DFM's investment proposal document, meant that the critical yield figures disclosed to Mr D were understated, implying less investment growth was required to match the relinquished safeguarded benefits than was actually the case. I haven't seen evidence that the difference between the assumed and actual investment charges and the impact it would have on the critical yield figures was explained to Mr D before he accepted the recommendation to transfer.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

<u>Wealthmasters' rationale for transferring</u>

In accordance with COBS 9.2.2R, Wealthmasters undertook its fact finding for Mr D and then set out its assessment of his circumstances and objectives regarding his safeguarded benefits. The latter, as set out in the suitability report, may be summarised as follows:

- *To retire early at 60 without reduction or penalty and to receive, with his wife, joint annual income of £20,000 with the ability to vary the level of income so that it could be withdrawn as tax-efficiently as possible;*

- *To provide a death lump sum benefit to his wife rather than the 50% spouse's pension provided by the safeguarded benefits; and*

- *To control his safeguarded benefits due to concerns about his future employment with Tata Steel and to remove the risk that his benefits might be transferred to the PPF.*

In responding to this complaint, Wealthmasters said that the pension transfer enabled Mr D to achieve several objectives including those I've summarised above. It also said that the pension transfer offered Mr D, "The ability to repay his interest only mortgage (by his desired retirement age) by taking a tax free lump sum" and "The potential to achieve a higher level of income in retirement".

I've reviewed the suitability report but it doesn't mention mortgage repayment or the potential for higher income as reasons why Mr D wanted to transfer. In fact, in its suitability report, Wealthmasters recommended that he switch to a repayment mortgage when it stated:

"You have an interest only mortgage with a remaining balance of £102,251.89 and a remaining term of 19 years. You currently have no repayment vehicle in place and we have fully discussed changing the mortgage to a repayment mortgage to ensure the mortgage debt is repaid at the end of the term and before your desired retirement age…. you confirmed that you did not wish to deal with the above at this point in time. Should you wish to discuss at a later date please contact me."

So it's unclear to me where the mortgage repayment objective mentioned by Wealthmasters has come from. And as for the potential for the higher income objective, Wealthmasters acknowledged in its suitability report that the SIPP was unlikely to generate the required investment return to match his relinquished scheme pension under the BSPS, let alone exceed it. So again, it's unclear where the higher income objective has come from.

Wealthmasters may have introduced these two additional objectives as further reasons as to why Mr D wanted to transfer in order to justify its recommendation. But as I've noted above, my view on suitability in January 2018 must be assessed on the contemporaneous evidence from that time. It's entirely possible that Mr D may now be planning to use his tax free lump sum (but notably, something which he could in any case take from his safeguarded benefits) at retirement to repay, or help repay, any outstanding mortgage. But this wasn't recorded as being the case when the advice was given. This means that I cannot consider additional reasons or objectives put forward by Wealthmasters when assessing the suitability of its advice given in 2018.

Therefore, I've only considered Mr D's objectives and concerns as stated in the three bullet points above. To make my findings easier to follow, I've set them out under separate headings.

<u>Early retirement, flexibility and income objectives</u>

Wealthmasters stated the following in its suitability report regarding Mr D's early retirement, flexibility and income objectives:

"As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 60 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65."

"As you cannot accurately predict how much of your income you will need at age 60 (if any), you have stated that a joint income of £20,000 would be target figure you would like to achieve and you would like to have the flexibility to vary your level of income and not have to take all of tax free cash in one go, as you would like to make use of any personal tax allowances to minimise the effect of income tax on your pension income."

Wealthmasters said that the flexibility to draw varying levels of income and tax-free cash at different points in time from 60 onwards without penalty wasn't available through the alternative options of the BSPS2 and PPF. And that the only way to achieve this objective was by transferring to a SIPP. It said that the lack of penalty free and flexible income under the BSPS2 and PPF rendered those options unsuitable.

I'm concerned about the way in which Wealthmasters established Mr D's early retirement objective and joint annual income need of £20,000. I say this because it's unclear to me how the figure was determined or if it was realistic that he could retire at 60. It seems that £20,000 was a notional figure put forward by Mr D rather than being based on a proper analysis carried out by Wealthmasters. This concerns me because if a client's objective is *early retirement, then it's necessary to carry our adequate analysis to establish if this is achievable in order to support a recommendation to transfer.*

Many people might want to retire early. 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 D may have wanted to retire at 60 and be in receipt of joint annual income of £20,000. But it was for Wealthmasters to establish if this was feasible and to manage his expectations and, where applicable, help him modify his objectives to reflect the reality of his circumstances. Mr D was relying on Wealthmasters to provide expert advice in this regard.

In my view, where a client has a retirement income need at a specific age, the starting point is to establish a realistic target income based on the client's likely fixed outgoings, discretionary spending plans and excess income for saving. This information would then reveal the income required to cover the expected expenditure from the target retirement age. But in Mr D's case, Wealthmasters didn't establish how he and his wife intended to spend their time in retirement or what their expected expenditure was likely to be based on an analysis of their outgoings. Rather, the analysis was on the basis that they required a notional joint annual income of £20,000. The further away from retirement an individual is, the harder it is to establish a realistic figure. And in Mr D's case, being 41 at the time of the advice, I think it would've been difficult to predict with a degree of certainty what his expected expenditure during retirement would be – and therefore what income he would need from 60 onwards to cover this. With such a substantial time horizon until pension benefits could be accessed, it makes the case for a pension transfer – for the sake of achieving early retirement – more difficult to justify.

I note that Wealthmasters described the target income figure of £20,000 as a joint one for Mr D and his wife. I'd therefore have expected it to analyse their other pension arrangements, including the estimated income, so that it could understand how these would interplay and combine to meet the overall income target of £20,000 from 60 onwards. But Wealthmasters didn't do this. It didn't establish what Mr D and his wife's estimated State pensions were. And it didn't establish the details of her workplace pension such as scheme type, value or estimated income.

Given that it was a joint income need, Wealthmasters needed to carry out this analysis of Mr D and his wife's estimated income streams from other sources so that it could determine what level of reliance would apply to his safeguarded benefits. If it was the case that the analysis showed that Mr D and his wife would be heavily reliant on these safeguarded benefits to meet their income needs in retirement (because their other pension arrangements were insufficient), then it would seriously weaken the case for a pension transfer. This is because, where there is a need to generate a minimum level of retirement income, it's difficult to justify relinquishing benefits that provide a guaranteed, minimum level of income in exchange for flexible income that doesn't have any guarantees. That is, unless the prospect of an alternatively secured guaranteed income, by way of a transfer and then annuity purchase, was likely to have produced a higher level of guaranteed income. But as illustrated above, and as also acknowledged by Wealthmasters, this wasn't the case here.

Since it's my view that Wealthmasters failed to carry out adequate analysis on the other pension arrangements, including the estimated income, it's unclear how reliant Mr D and his wife would be on the value of his safeguarded benefits to meet their retirement income need. I think this was a significant failing on the part of Wealthmasters and undermined the suitability of its recommendation for the pension transfer.

Could Mr D retire at 60?

Due to the lack of analysis carried out by Wealthmasters regarding Mr D and his wife's plans and expected expenditure in retirement, it's unclear whether they would be able to generate joint annual income of £20,000 from his 60th birthday. It's my view that Mr D's expectations around his target retirement age ought to have been better assessed and managed by Wealthmasters. It agrees because in its suitability report it stated, "it is imperative that make additional provision for your [sic] as and when your budget allows, as your ability to retire at 60 and sustain your required income level may not be achievable and may result in you having to delay your retirement to a later date."

Things would become clearer the closer Mr D got to 60 and his plans could be modified in response to this, but at 41 I think it would've been difficult to predict with confidence that he'd be able to retire at 60. Due to this uncertainty, I don't think it was necessary to consider a pension transfer for the sake of early retirement at that time when the option of maintaining safeguarded benefits under the BSPS2 was available, which I'll come on to shortly.

But if it's accepted that Mr D would retire at 60 and required joint annual income of £20,000 from that point onwards, then I make the following observations, largely on the basis that Wealthmasters said no option other than the pension transfer would've enabled Mr D to retire at 60. But I disagree, as I've explained below.

Mr D had been an active member of the Tata Steel defined contribution pension scheme since April 2017 after the BSPS had closed to further benefit accrual. He and Tata Steel were, in total, contributing 16% of his pensionable salary into that plan. Despite concerns about the security of his employment, it appears Mr D intended to continue working full-time for Tata Steel for the foreseeable future. Wealthmasters recommended that he remain a member of that scheme and suggested in its suitability report that the value of this plan would contribute towards meeting his income need. It included the estimated value of the plan in its cashflow modelling (but not the estimated income it would produce). So I think it's fair to say that the value of Mr D's plan should be included in the analysis and what its estimated value would be on the basis that he remained an active member until his planned retirement at 60.

With this in mind, I think Wealthmasters could've reasonably expected that, based on Mr D's salary, contribution rate and 19-year time horizon, about £106,000 in contributions would've been invested in his plan by the time he reached 60. Considering likely investment growth over that time and increases in contributions linked to rises in Mr D's pensionable salary, the plan value would likely be higher than £106,000 at 60. Wealthmasters' cashflow modelling indicates that the value of the plan would be in excess of £100,000 so I think my assumption is a fair one.

Access to the plan at 60 would likely cover Mr D and his wife's joint income need of £20,000 for the five-year period to his 65th birthday. Then, at 65, Mr D could take an unreduced pension income from either the BSPS2 or PPF.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. In my view, the BSPS2 was likely the better option for Mr D given that he was married and I think he could delay drawing benefits until 65, as explained above. In terms of what income would be payable by the BSPS2 at 65, the following information is relevant.

Wealthmasters established that the estimated revalued annual scheme pension payable at 65 by the:

- *BSPS was £11,986 or a reduced pension of £7,943 plus tax-free cash of £52,958; or*
- *PPF was £9,608.70 or a reduced pension of £7,693.47 plus tax-free cash of £51,289.82*

At 65 the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS. So the income and tax-free cash available under the BSPS2 likely fell somewhere between the figures above. I think Mr D would likely choose to commute some of his scheme pension in exchange for tax-free cash. Based on the figures above, I think it's fair to say that at 65 he could expect to receive from the BSPS2 a reduced pension of about £7,800 and tax-free cash of about £52,000. He could then use a combination of the annual scheme pension of £7,800 and about £25,000 of the tax-free cash over the two-year period from 65 to 67 to meet the annual income need of £20,000 until he could start drawing his State pension. So I think it's reasonable to conclude that Mr D could've maintained safeguarded benefits in the BSPS2 and likely still met his annual income need of £20,000 between 60 and 67.

Given Mr D's employment history by 2018 and expectations for the future, I think it's fair to say that he'd be entitled to the full State pension at 67. The full State pension in 2017/18 was £8,296.60. It increases each year in line with changes to the CPI. So, in 2018 terms, Mr D's combined BSPS2 and State pension would provide total, combined annual income of about £16,000. I appreciate that this is less than the annual income need of £20,000, but that figure was a joint income including his wife's income. My analysis above is conservative and assumes that the defined contribution plan is fully exhausted between 60 and 65, ignores the income that would be produced by his wife's workplace pension and her State pension payable four years after Mr D's starts. It may well have been the case that his wife's workplace pension would make up the income shortfall between £16,000 and the target income of £20,000 for the four-year period until she started drawing her State pension. If receipt of the BSPS2 and State pensions provided excess income over and above Mr D and his wife's income need, this could've been reinvested for future use.

In the event Mr D left the employment of Tata Steel, I think it's likely that he'd find alternative employment, albeit perhaps outside of the steel industry, and, with the legal requirements of auto-enrolment, would build up additional defined contributions elsewhere over the period to 60. So I think it's fair to say that at 60 it's likely he'd have access to significant defined contribution pension savings which could be used to meet his income need for the five-year period between 60 and 65.

This alternative course of action I've set out suggests that Mr D could've maintained safeguarded benefits in the BSPS2 and potentially achieve his early retirement objective. I haven't seen any evidence that Wealthmasters properly considered this alternative option and presented it in a fair and balanced way to Mr D.

The pension transfer was portrayed by Wealthmasters in its suitability report as allowing for early retirement without the "penalties" which would be applied to the BSPS2 or PPF if benefits were taken before 65. It stated, "A SIPP would not penalise you or apply a reduction in benefits should elect to retire early and take pension benefits from age 60". The reality was of course that the SIPP would've had less time to grow if accessed before 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr D so he could understand that accessing the BSPS2, PPF or SIPP early would likely lead to reduced retirement income during his lifetime compared to taking benefits at 65.

In conclusion, it's my view that Mr D made the decision to transfer from an uninformed position regarding achieving his early retirement and income objective. I'm not satisfied that Wealthmasters demonstrated, on the contemporaneous evidence, that it was clearly in

Mr D's best interests to relinquish his safeguarded benefits because it failed to carry out adequate analysis of Mr D and his wife's plans, expected expenditure in retirement and their other pension arrangements. In the absence of this analysis, I think suitable advice would've been to recommend the BSPS2 because, while the income provided was inflexible, it was secure and guaranteed. The pension transfer option offered no guarantees and exposed Mr D's money to inflation, investment and longevity risk with no guarantees about how much income it would provide during his retirement.

<u>Mr D's concerns about the PPF</u>

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of defined benefit 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 D 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 a SIPP where there's no promise of a minimum level of benefits payable. In its 2016/17 annual report, publicly available at the time of Wealthmasters' recommendation, the PPF stated that its overall financial position as at 31 March 2017 remained robust, with an increase in its surplus funds to £6.1bn. There wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Wealthmasters stated the following in its suitability report regarding Mr D's objective to remove the risk that the value of his safeguarded benefits might be transferred to the PPF:

- *"You are a deferred member of the British Steel Pension Scheme (Final Salary) and you wish to review the benefits options of the scheme and you are also concerned about the stability of the scheme going forward, in light of the proposed sale of the British Steel business by its parent company Tata Steel."*

In other sections in the suitability report it stated that Mr D had "grave concerns" about the PPF and that all of his options relating to control and flexibility would "disappear" if the value of his safeguarded benefits were transferred to it.

Had Wealthmasters advised Mr D to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a SIPP 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 greater accuracy than at 41. A transfer to the BSPS2 would've also removed any immediate concerns Mr D had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term defined benefits 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 a private plan before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr D or that there was an urgency to transfer to a SIPP at that time to avoid a transfer to the PPF.

In my view, Mr D was reliant on Wealthmasters to provide a fair and balanced assessment of the PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr D the features, risks and benefits of the PPF and allaying his misapprehensions. But I don't think Wealthmasters did this given the lack of reassuring comments in its suitability report and instead allowed him to continue to believe that the PPF was an outcome to avoid at all costs.

If Mr D was apparently concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I have to also *question why he would accept the risk of transferring to a SIPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. It seems odd to me that Mr D wasn't prepared to accept the 10% reduction of his benefits under the PPF, yet was apparently content to accept the unlimited downside risks associated with the pension transfer. This suggests to me 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 Wealthmasters to provide expert advice on this point but I think it failed to do this.*

It's therefore my view that Wealthmasters failed to adequately allay Mr D's misapprehensions and that he therefore made the decision to transfer from an uninformed position regarding the PPF.

<u>Death benefit objective</u>

Wealthmasters stated the following in its suitability report regarding Mr D's death benefits objective:

> *"The death benefits offered by the British Steel pension are of key importance to you, as you are married and you have two children, and one of your main concerns as your father died at an early age (age 44) and should you die [Mr D's wife] would receive only 50% of your pension and a fraction of the schemes overall value as lump sum death benefit in retirement from the British Steel Pension Scheme.*
>
> *"In the event of your death before or after retirement, a major concern of yours was that in the event of your and [Mr D's wife] death the entire pension fund would be lost as your two children are only eligible to receive a dependents pension until age 18 or 23, if in fulltime education."*

The recommended SIPP offered flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, death lump sum or income drawdown or any combination of these. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the SIPP and for the period until Mr D could draw any benefits from 55 onwards, 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 for at least 14 years.

But Mr D was recorded as being in good health. So he could expect normal life expectancy into his late 70s or early 80s. The value of his safeguarded benefits represented the backbone of his retirement provision. And as I've concluded above, I think Mr D would be heavily reliant on these benefits to meet his core income needs in retirement. Withdrawing money from the SIPP at 60 to help meet his recorded joint annual income need of £20,000 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

The suitability report included a cashflow analysis that indicated the SIPP fund value would be fully depleted during Mr D's lifetime. Wealthmasters stated, "At age 78-79 your pension funds may be depleted and your only source of income will be your state pension, and therefore it is imperative that make additional provision for your retirement as and when your budget allows, as your ability to retire at 60 and sustain your required income level may not be achievable and may result in you having to delay your retirement to a later date". And this cashflow analysis was on the basis that Mr D invested on a 'moderately adventurous' risk basis targeting an assumed average annual growth rate of 5%. As I've noted above, the DFM provider was investing on a different, 'moderately low' risk basis, suggesting a lower *average annual investment return than 5%, and meaning that the SIPP fund value would likely achieve less growth and be fully depleted sooner than Mr D's 78th birthday, around the time of his normal life expectancy. So I'm not convinced that in the event of Mr D's death, a meaningful death lump sum would be available from the SIPP for his wife bearing in mind the level of income he expected to draw from it from 60 onwards.*

In demonstrating that the pension transfer was clearly suitable and in Mr D's best interests, Wealthmasters was required, under the FCA's rules, to consider alternative options to meet his death lump sum objective. As I've noted above, Mr D had the alternative option to maintain safeguarded benefits in the BSPS2 which offered a 50% spouse's pension. Wealthmasters was required to consider this and any other viable options. It said that Mr D wanted his wife to have a lump sum from his SIPP rather than the 50% spouse's pension. But, as I've noted above, it's questionable as to what death lump sum benefit might be available from the SIPP.

Wealthmasters described the spouse's pension under the BSPS2 as inflexible and as not paying the "full" pension. But the BSPS2 would provide the certainty of a spouse's pension set at 50% of Mr D's pension at the date of death. Furthermore, the spouse's pension provided protection against inflation because it would escalate in payment linked to movements in the CPI capped at between 2.5% and 5%. It's worth noting here that the benefits paid by the PPF to a spouse is broadly based on the former scheme rules. So, in the event the BSPS2 was transferred to the PPF, Mr D's wife could expect to receive a 50% spouse's pension under the PPF but it would instead escalate in line with CPI up to a maximum of 2.5%. I don't think the certainty of a 50% spouse's pension, provided by the BSPS2 and the PPF, if necessary, should've been downplayed by Wealthmasters as it was in its suitability report.

If it was a genuine objective for Mr D to provide a lump sum on his death as asserted by Wealthmasters, then life cover could've achieved the same objective of providing a lump sum to his wife while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr D and his wife had minimal disposable income available every month after paying their bills. But they may have been persuaded to reduce their discretionary spending if it meant they could 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 D given he was 41 and recorded as being a non-smoker and in good health. However, I cannot see evidence that Wealthmasters adequately investigated the life cover option. For example, I haven't seen evidence that Wealthmasters quantified Mr D's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

It's my view that Mr D had no health issues at the time Wealthmasters 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 wife. So I'm not convinced there was any real merit in Mr D transferring to a SIPP at that time to provide a lump sum death benefit. There's no real evidence that a death lump sum was required for Mr D's wife rather guaranteed income for life.

But, in any case, I note that while Mr D maintained safeguarded benefits in the BSPS2, a lump sum equivalent to a refund of contributions of £27,484.12 plus interest at 3% per year compound would be paid to Mr D's wife. Furthermore, through his employment, Mr D had life cover based on a multiple of four times' his salary, meaning a further lump sum of about £140,000 would be paid to his wife in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a SIPP. Therefore, it seems to me that in the immediate future, certainly while Mr D remained employed by Tata Steel, that a lump sum of at least £167,484.12 would be paid on *his death. This contrasts with Mr D and his wife's total liabilities of about £102,851. So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits bearing in mind the cover already in place while Mr D remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled Wealthmasters and Mr D enough time to properly investigate obtaining additional life cover so that he could maintain safeguarded benefits in the BSPS2.*

Therefore, based on the above considerations, I disagree with Wealthmasters' view that the only way to achieve Mr D's death benefits objective was by transferring to a SIPP at that time. Given Mr D's circumstances, I consider that the BSPS2 and even the PPF, if required, would likely offer better death benefits to his beneficiaries over the longer term compared to the SIPP taking into account the likely level of income withdrawal from the SIPP and Mr D's life expectancy.

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

During 2017, the situation was rapidly evolving and there were serious concerns relating to Tata Steel and the BSPS at the time Wealthmasters advised Mr D – and I fully acknowledge this. It's undeniable that it was a period of great uncertainty for individuals such as Mr D. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice where a regulated advisory business was appointed. Any concerns Mr D had about the security of his benefits should've been addressed and appropriately managed by the professional party in the transaction, Wealthmasters.

I recognise that there wasn't a perfect solution for Mr D. And that the value of his safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Wealthmasters 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 pension scheme, but, as the professional party, Wealthmasters was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

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

I acknowledge that this may misrepresent Wealthmasters' position, and it was referring to Mr D's expressed objectives, in that it wouldn't be up to an adviser or indeed this service to tell Mr D that he shouldn't have the aim of, for example, retiring early. That aside, however, it was nevertheless the responsibility of Wealthmasters to explain to Mr D why he didn't need to make any irreversible decision on relinquishing valuable safeguarded benefits at that time and that consideration of a pension transfer was a decision that could be delayed until his plans and expected expenditure in retirement could be determined with greater clarity than at 41.

As I've said above, there was no imminent prospect of the BSPS2 entering the PPF, which would've ruled out a later transfer. On the contrary, the indication was that the BSPS2 would be successfully implemented. I've also thought very carefully about whether the service *provided to Mr D was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS.*

Mr D, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options. And looking at those options, one of the key recorded objectives – early retirement – was, in my view, likely achievable within the BSPS2. For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2, and I'm satisfied that Mr D's income need likely could've been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would've been sufficiently compelling reasons for Mr D to relinquish valuable benefit guarantees – especially at 41.

My further view is that, if properly discussed, Mr D's concerns about the BSPS2 could've been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, such as through his defined contribution plan, and a future pension which would be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution plan.

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

The critical yield is usually a telling indicator of the value of the benefits being relinquished. Notwithstanding my comments about the critical yield likely being understated due to an incorrect assumption about the underlying investment charge, the critical yield was in any event higher than the discount rate and the mid band growth rate set out by the FCA, I think it was unlikely to be achievable, year on year, to even simply match the relinquished safeguarded benefits. This position is supported by Wealthmasters' own analysis at the time. The justification for transferring was that it was nevertheless suitable in view of Mr D's stated objectives and the concerns about the BSPS. And whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what Wealthmasters considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

Wealthmasters' view is that Mr D was intent on effecting the transfer. But he was relying on Wealthmasters to provide expert advice and advise him what to do. I think the advantages of Mr D maintaining his safeguarded benefits in the BSPS2 coupled with his misapprehensions about the PPF being suitably assuaged, would've persuaded him to do just that.

Wealthmasters said that it gave Mr D all the necessary risk warnings and that he was required to take responsibility for his decision to transfer. I accept that Mr D was given risk warnings and was more likely than not capable of understanding them. But it's important to note that disclosure isn't the same as suitability. If the recommendation to transfer was fundamentally unsuitable then the provision of risk warnings doesn't transform it into a suitable one. I don't disagree that properly informed, correctly advised individuals would be in a position to take that kind of responsibility and decide for themselves if they wanted to transfer their safeguarded benefits. The problem here is that this was a complex matter involving many factors with which Mr D, as a layman, wouldn't have been familiar – hence his reliance on a professional party to take those factors into account and provide suitable, balanced advice.

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

Conclusion

In its final response letter to this complaint, Wealthmasters said that the pension transfer was the only option available to meet Mr D's objectives. I disagree. For the reasons explained above, I'm not satisfied Wealthmasters demonstrated, on the contemporaneous evidence, that it adequately considered alternative options to meet Mr D's early retirement or death benefits objectives or why it was clearly in his best interests to relinquish his safeguarded benefits to achieve these. I'm also concerned that it appears to have misrepresented the true critical yield to match the relinquished benefits and that his SIPP was invested differently than set out in the suitability report, which meant Mr D made the decision to transfer from an uniformed position, further undermining the case for a pension transfer.

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

In summary, my provisional decision was that it was fair and reasonable to uphold this complaint based on the available evidence. I went on to set out what I considered was fair compensation. I asked both parties to this complaint to provide any further comments or evidence that they wanted me to consider before I made my final decision. I gave the parties until 9 March 2022 to respond. I later extended this to give Wealthmasters more time to respond.

The Representative's response to my provisional decision

Mr D's Representative acknowledged receipt of my provisional decision. It noted that in my provisional decision I concluded Mr D would've accessed his Tata Steel defined contribution plan in the first instance to meet any income shortfall between retiring early and drawing his safeguarded benefits from the BSPS2 at 65. It requested that in my final decision I explicitly state the loss assessment must be calculated on the basis Mr D would've taken benefits from the BSPS2 at the scheme normal retirement age of 65.

Wealthmasters' response to my provisional decision

Wealthmasters didn't accept my provisional decision and provided substantial comments in response on 31 March 2022. Most of its comments repeated points previously made. It said that before making my final decision it wanted me to reassess all the available evidence and take into consideration several additional points. These additional points can be summarised as follows:

- It found it frustrating that I had provisionally concluded its advice was unsuitable when it had adhered to all relevant FCA rules and guidance. Furthermore, it had recently undertaken a review of its pension transfer advice processes with the FCA which didn't reveal any concerns. It requested that I contact the FCA for more information;

- There continues to be concern over the British Steel situation and challenges over the regulatory guidance and processes put in place by the FCA and its proposed consumer redress scheme. It therefore considered it surprising that the Financial Ombudsman Service felt able to make final decisions on such cases at this time. It wanted to know how this complaint would be treated under the FCA's proposed consumer redress scheme;

- The British Steel situation was unique. There were various failings by several organisations including the FCA, the Trustees of the BSPS and the employees' trade union. However, it appears that financial advisers are being blamed unfairly for these failings when their role was simply to provide advice to meet members' requirements;

- The government implemented the pension freedoms to give individuals like Mr D more choice. BSPS members were responsible adults and capable of making their own decisions;

- Mr D had felt let down by his employer and lost all faith in the Steel industry. The decision he made to transfer at the time was his own and right for him based on his circumstances. He chose to seek financial advice. He was more than capable of understanding the documentation that was given to him. He didn't express any concerns with the pension transfer at the time;

- The FCA accepted that members had a deep mistrust of Tata Steel and so recognised transferring to obtain control of pension benefits was a valid reason to transfer. Mr D's objectives and concerns about the future of the Steel industry couldn't be met by transferring to the BSPS2 or PPF. The only viable option was a pension transfer;

- It referred to Caroline Rookes' report titled *'Independent review of communications and support given to British Steel Pension Scheme members'* published in January 2019 and provided several excerpts from this that it considered to be relevant in deciding Mr D's complaint. It said that this report proved members were forced to make a decision but were well informed about what was happening to the BSPS and their options; and

- In the event that this complaint is upheld, it requested that the enhanced transfer value that Mr D received be taken into account in the loss assessment calculation. Notwithstanding this point, it questioned how the Financial Ombudsman Service can direct it to assess Mr D's financial loss now when he hasn't yet retired, and the future value of his SIPP is unknown. In its opinion, the loss assessment should be delayed until such time as Mr D retires. And if this shows he's made a financial gain, as a result of the transfer to the SIPP, that the surplus be shared between it and its professional indemnity insurer in the interests of fairness.

What I've decided – and why

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

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The findings I made in my provisional decision and set out above form part of this final decision. I've carefully considered Wealthmasters' comments in response to my provisional decision. Generally what Wealthmasters has said isn't new information. In deciding this complaint, I don't think it's necessary to respond to every point it's made but I consider it appropriate to make the following points.

In response to my provisional decision, Wealthmasters said that it adhered to all relevant FCA rules and guidance when it advised Mr D. I disagree. As explained in my provisional decision, it's my opinion that Wealthamsters failed to adhere and have regard to several FCA rules and guidance. To briefly recap:

- Wealthmasters' TVAS report didn't include the full range of charges applicable to the recommended pension transfer, meaning the critical yield figures disclosed to Mr D were understated, and therefore implying less investment growth was required to match the relinquished safeguarded benefits than was actually the case. In my view, the provision of an incorrect and understated critical yield figure didn't adhere to the FCA's rules and guidance;

- Wealthmasters continues to assert that a pension transfer was the only viable option for Mr D. But for all the reasons previously given, I disagree – a pension transfer simply wasn't Mr D's only viable option here. It also failed to demonstrate, on the contemporaneous evidence, that it was clearly in Mr D's best interests to transfer rather than the alternative options to either maintain safeguarded benefits in the BSPS2 or the guaranteed benefits offered by the PPF. In my view, the inadequate assessment of alternative options to meet Mr D's objectives didn't adhere to the FCA's rules and guidance;

- There was a mismatch between the risk profile Wealthmasters assigned to Mr D and as was stated in the suitability report (*'moderately adventurous*') and the basis upon which the money in his SIPP was invested (*'medium-low'*). This mismatch wasn't acknowledged or dealt with by Wealthmasters at the time of its advice. In my view, this failing didn't adhere to the FCA's rules and guidance; and

- The categorisation of Mr D as a *'moderately adventurous'* investor was inconsistent with his apparent investment inexperience and capacity for loss regarding his safeguarded benefits. In my view, Wealthmasters' inadequate fact-finding and approach to determining Mr D's risk profile didn't adhere to the FCA's rules and guidance.

In summary, I concluded that Wealthmasters failed to adhere to COBS 2.1.1R, COBS 4.2.1, 9.2.2R, 19.1.2R, and didn't have sufficient regard for 19.1.6G, 19.1.7G and 19.1.8G when it advised Mr D. Nothing Wealthmasters said in its response to my provisional decision changes my opinion on this.

With regard to the situation with Tata Steel and the BSPS, I acknowledged in my provisional decision that it was unique and a period of great uncertainty for individuals such as Mr D, who were essentially forced to make a decision as part of the *'Time to Choose'* exercise. And I also recognised that he felt let down by his employer – which led him to seek advice to transfer out of the BSPS. But, for the reasons explained, I thought Wealthmasters failed to provide a balanced assessment of the options available and ultimately the provision of suitable advice, as it ought to have done. Nothing Wealthmasters said in its response to my provisional decision changes my opinion on this.

As for the FCA's recent review of Wealthmasters' pension transfer advice processes and the proposed consumer redress scheme, these make no difference in the context of deciding this complaint – and doing so now. Firstly, the Financial Ombudsman Service's role is to decide individual complaints based on the contemporaneous evidence. Therefore, any feedback Wealthmasters received from the FCA on other cases or its pension transfer advice processes doesn't impact my view on Mr D's case. So I don't think it's necessary for me to contact the FCA, as Wealthmasters suggested. Secondly, regarding the FCA's proposed consumer redress scheme, information about this was set out in *'CP22-6 Consumer redress scheme for unsuitable advice to transfer out of the British Steel Pension Scheme'* published in March 2022. Section 1.6 of this document confirms that the proposed consumer redress scheme won't cover people, like Mr D, who have already submitted a complaint to the Financial Ombudsman Service about unsuitable advice to transfer out of BSPS during the relevant period. Therefore, since it's likely Mr D's case wouldn't be considered as part of that scheme, I see no reason not to issue a final decision on this complaint at this time.

As for the proposed redress methodology, Wealthmasters requested that the enhanced transfer value Mr D received be taken into account. I can confirm that the transfer value paid to the SIPP should be used in the calculation. Wealthmasters believes that Mr D should be required to pay it and its professional indemnity insurer the surplus money in his SIPP if the loss assessment shows he hasn't suffered a financial loss. As previously explained by our investigator, Mr D wouldn't be required to pay money to Wealthmasters in the event of a 'no loss' scenario; that simply isn't part of the FCA's redress methodology for unsuitable pension transfers. As for the timing of the loss assessment, it isn't appropriate, as suggested by Wealthmasters, to delay this until such time as Mr D draws benefits at 65 to align with the scheme normal retirement age of 65 under the BSPS2. The FCA's redress methodology makes no provision for delaying a calculation until the member's normal retirement date. This is in order to bring finality to such matters, without the member needing to wait until they retire. I also consider that it's fair and reasonable for a loss assessment to be carried out as soon as possible and on the basis that I've set out below.

I acknowledge the Representative's request that in my final decision I explicitly state that the loss assessment be calculated on the basis Mr D takes benefits from the BSPS2 at the scheme normal retirement age of 65. I agree and have made this clear below.

Putting things right

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

My view is aligned with that of our investigator in that, had Mr D been properly advised, he would've opted to transfer to the BSPS2 rather than the PPF. I'll explain why.

There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS2 wouldn't reduce the starting entitlement for deferred members. The reduction for early retirement under the PPF was lower and the commutation factors for tax free cash entitlement were also more favourable than the BSPS2. And so, on the basis of prospective early retirement, both the starting income and the tax-free cash would likely have been higher with the PPF. But for the reasons set out above, I think it's likely that, properly advised, Mr D would've envisaged accessing his Tata Steel defined contribution plan in the first instance to make up any income shortfall in the period between 60 and 65 before starting to take his safeguarded benefits, which could then have been deferred until normal scheme retirement age of 65 (or as close as possible to 65, reducing the impact of an early retirement reduction). In terms of death benefits, under the BPSP2 the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no tax-free cash was taken at retirement. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr D would've taken benefits at the scheme normal retirement age of 65. Wealthmasters may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the BSPS on Mr D's SERPS/S2P entitlement.

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

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

The compensation amount should where possible be paid to Mr D within 90 days of the date Wealthmasters receives notification of his acceptance of any final decision.

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

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

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Determination and money award: I require Wealthmasters to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount does not exceed £160,000, I would additionally require Wealthmasters to pay Mr D any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Wealthmasters to pay

Mr D any interest as set out above on the sum of £160,000.

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

In addition, I think that this matter will have caused Mr D trouble and upset. He would naturally have been very concerned about a potential reduction in his pension benefits as a result of the unsuitable advice given to him. So I think Wealthmasters should pay £300 to Mr D in respect of this.

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

The loss assessment calculation must be provided to Mr D's Representative in an easy to understand format.

My final decision

I uphold this complaint. Wealthmasters Financial Management Ltd must redress Mr D as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 June 2022.
Clint Penfold
Ombudsman