DRN-3467818

The complaint

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

What happened

I issued my provisional decision on this complaint on 28 February 2022. I set out the background and my provisional findings. I've repeated what I said here:

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

In October 2017, these changes were communicated to BSPS members, including Mr E, 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.

The details of Mr E's safeguarded benefits were as follows:

- *He had accrued 15 years and 6 months' qualifying service between 3 September 2001 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 £8,374.81;*

- *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;*

- *On death before retirement, a refund of contributions of £26,948.36 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 E 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 £204,472.45 which had been reduced by 5% (from £215,234.15) due to the BSPS being in deficit.*

- *The estimated revalued annual scheme pension payable by the BSPS and PPF was as follows:*

Scheme	***At age 57 based on a full pension***	***At age 57 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	*£11,275*	*£7,868 plus tax-free cash of £52,458*	*£18,366*	*£12,171 plus tax-free cash of £81,144*
PPF	*£10,148*	*£8,560.92 plus tax-free cash of £57,073*	*£14,088*	*£11,280 plus tax-free cash of £75,202*

Mr E was concerned what the announcement by Tata Steel meant for the security of his safeguarded benefits. He initially contacted another business (which I shall call "Firm J") for advice. However, the pension transfer didn't go ahead at that time. Mr E then contacted Wealthmasters for advice.

In December 2017, Wealthmasters recorded the following information about Mr E's circumstances:

- *He was 33, in good health and employed by Tata Steel on a gross annual salary of about £35,000;*

- *His marital status was single;*

- *He and his long-term partner had a financially dependent daughter;*
- *His non-pension assets totalled £248,000 which included his and his partner's residential home valued at £145,000, a second property valued at £100,000 and cash savings of about £3,000 [in another section of the fact find document this is recorded as £300];*

- *His liabilities totalled about £145,000 which was the combined, outstanding mortgages on his two properties and due to be repaid in 24 years' time when he would be 57;*

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

- *He had surplus monthly income of about £800 after paying all his regular bills and outgoings;*

- *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 his plan;*

- *His preferred retirement age was age 57 in 2041. His target annual retirement income in 2018 terms was a minimum of £12,000 but he desired £20,000. His State pension age was stated as 67 [but it was 68 based on Mr E's date of birth]. Wealthmasters recommended that Mr E contact the Department of Work and Pensions to obtain a forecast of his estimated State pension; 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.*

<u>Mr E's needs and objectives</u>

In its suitability report dated 9 January 2018, Wealthmasters recorded that Mr E had the following needs and objectives:

- *"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 57 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65, as you may retire or reduce your hours of work once you've repaid your mortgage and you would like to draw pension benefits to supplement your income until your reach state retirement age and receive your state pension.*

- *As you cannot accurately predict how much of your income you will need at age 60 (if any), 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 reference to 60 was a typo because Mr E wanted to retire early at 57]*

- *The death benefits offered by the British Steel pension are of key importance to you, as you are not married, but you have a long term partner and you have daughter, and one of your main concerns is that should you die your partner is not eligible to receive any pension benefits and [Mr E's daughter] would only receive a reduced dependents pension from the British Steel Scheme."*

- *You stated that you will require circa £20,000 per annum (in today's terms) when you retire. On that basis based on your current level of provision you are not likely to achieve this amount from just the British Steel Pension Scheme pension rights. However, as you are now accruing benefits in the Aviva Tata Group Scheme, the benefits provided by this scheme will contribute to your required level of income. I would recommend that you consider make additional contributions to this pension as your budget allows, as you current pension provision may be insufficient for your needs and be insufficient to provide the desired level of income for the duration of your retirement. This is particularly relevant and important as you will foregoing the guaranteed benefits provided by the British Steel pension should elect to transfer these pension rights.*

Critical yield

Wealthmasters arranged for a TVAS report to be produced to calculate the following critical yield figures based on a transfer value of £204,472.45. The report showed the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 57 based on a full pension	***At age 57 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	*6.88%*	*5.73%*	*6.00%*	*5.10%*
PPF	*5.36%*	*5.16%*	*4.52%*	*4.33%*

Wealthmasters only quoted the figure of 6.00% in its suitability report. It stated that a copy of the TVAS report was available to Mr E if he requested it.

Wealthmasters' recommendation to Mr E

Wealthmasters set out in its suitability report its recommendation that Mr E 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.*
- *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 SIPP plan would meet both your current and ongoing requirements.*

- *You want to ensure that your partner and daughter 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 57.*

**The Transfer Value Analysis report is generated by our defined benefits research tool, SelectaPension, this very technical document is available on request."*

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 E invest the value of his SIPP in line with his 'moderately adventurous' risk profile, as follows:

Provider	***Investment type***	***Amount***
Brewin Dolphin	*Discretionary Fund Management ("DFM") portfolio*	*£156,000*
Société Générale Valu-Trac UK Defined Return Assets Fund	*Investment Fund*	*£40,000*
SIPP provider	*Cash*	*£5,972*

The costs associated with the recommendation were set out in the suitability report, 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 – £2,500*
- *Suitability report – £999 (to be waived on acceptance and implementation of Wealthmasters' recommendation)*

Ongoing annual charges

- *SIPP annual administration fee – £660 (including VAT)*
- *Adviser charge – 0.5%*
- *Brewin Dolphin DFM charge – 0.96% (including VAT)*
- *Société Générale Valu-Trac UK Defined Return Assets Fund – 0.5%*

Mr E accepted Wealthmasters' recommendation. The transfer value of £204,472.45 was later paid into a new SIPP in Mr E's name, to which immediate deductions were made in connection with the initial adviser charge of £2,500 and initial annual charges.

This complaint

In August 2019, the Representative complained to Wealthmasters about the suitability of the pension transfer advice it gave to Mr E in January 2018. The Representative stated that Wealthmasters was responsible for several failings which resulted in it breaching the FCA's *‘treating customers fairly’ regulatory principles and providing an unsuitable recommendation to Mr E. It stated that Wealthmasters was responsible for several failings, as follows:*

- *Failing to act in Mr E’s best interests under COBS 2.1.1R and to provide a suitable personal recommendation in line with COBS 9;*
- *Failing to manage conflicts of interests appropriately by virtue of the inherent bias arising from a contingent fee charging structure, which resulted in a fee payable to Wealthmasters for the initial pension transfer advice and recurring adviser fee income on an ongoing basis;*
- *Failing to consider the FCA’s default starting point that a pension transfer is not suitable or to consider the option of Mr E maintaining safeguarded benefits in the BSPS or BSPS2;*
- *Failing to ascertain Mr E’s specific circumstances including his future retirement and cashflow needs;*
- *Failing to produce a suitability report for Mr E to enable him to understand the reasons why the pension transfer had been recommended;*
- *Failing to disclose to Mr E the impact of adviser charges on the investment performance of the recommended SIPP;*
- *Failing to consider the option to make future contributions to Mr E’s Tata Steel defined contribution plan as part of his wider pension planning strategy; and*
- *Failing to not only consider the suitability of the pension transfer itself but also the suitability of the underlying investments into which the BSPS transfer money was invested which exposed Mr E’s retirement provision to unnecessary and inappropriate investment risks. It said that the Société Générale Valu-Trac UK Defined Return Assets Fund was high risk and inappropriate for Mr E.*

To put things right, the Representative requested that Wealthmasters pay redress to Mr E.

<u>Wealthmasters’ response to Mr E’s complaint</u>

Wealthmasters didn’t uphold Mr E’s complaint because it was satisfied that its advice to transfer to the SIPP was suitable and in line with the FCA’s rules and guidance. It appointed a third party to provide, on its behalf, a substantial final response letter dated 8 October 2019 setting out its position. This can be summarised as follows:

- ***FCA rules and guidance:** It adhered to the FCA’s rules and guidance in COBS 2.1.1R and COBS 9 when it provided its personal recommendation to Mr E. This included following the guidance contained in the video on the FCA’s website regarding pension transfers published in August 2019 which supported its recommendation provided in January 2018;*
- ***Conflicts of interests:** It disagreed that a conflict of interest existed in its dealings with Mr E. It said that contingent charging had been used in financial services for decades. It charged Mr E a fee of £999 for providing a suitability report regardless of whether it advised him to transfer or not. It was only when Mr E decided to proceed with the pension transfer that the £999 fee was waived and the implementation fee of*

£2,500 was charged instead. The ongoing adviser charge of 0.5% of the SIPP fund value was clearly disclosed to Mr E before he decided to accept the recommendation. The suitability report also informed Mr E of his right to cancel the on-going service agreement at any time without penalty. Had Mr E objected to the charges then it would've have expected him not to accept its recommendation;

- ***BSPS2 and PPF options:*** *It disagreed that maintaining benefits in the BSPS was an option for Mr E because that scheme had closed in March 2017. And as for the BSPS2 and PPF options, it was evident that Mr E 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 E but he rejected them because they didn't enable him to achieve his objectives and because it meant he wouldn't get a clean break**.** And it was widely accepted at the time that a transfer to the PPF wasn't the best option for most members. Mr E 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;*

- ***Advice process:*** *It said that before it advised Mr E that he had been advised by Firm J to transfer to a SIPP – but the pension transfer couldn't be completed because the FCA withdrew Firm J's permissions to advise on pension transfers. So, it believed that by the time Mr E approached Wealthmasters, he would've already been through a fact find, risk profile and suitability assessment process through Firm J before the FCA intervened. The fact that Mr E then approached Wealthmasters suggested that he still wanted to transfer. Notwithstanding this point, it treated Mr E as a new client and started its advice process from scratch. 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 his circumstances and objectives including his retirement income requirements. Mr E made clear that he had no intention of maintaining safeguarded benefits in the BSPS2 because it didn't offer flexible income or death benefits in the format he wanted and because he was concerned about the long term viability of Tata Steel. It had considered the FCA's default position that a pension transfer is not suitable. But Mr E had made it clear that he didn't wish to retain safeguarded benefits. Mr E was told that he'd relinquish the guarantees attached to his safeguarded benefits if he transferred. Overall, it remained satisfied that the SIPP met Mr E's objectives and that these wouldn't have been met by the BSPS2 or PPF;*

- ***Provision of a suitability report:*** *It disagreed with the Representative's statement that Mr E didn't receive a suitability report. This was demonstrated by the fact that Mr E signed a declaration confirming he had read and agreed with the content of its suitability report dated 9 January 2018;*

- ***Charges:*** *Contrary to the Representative's claim, the charges associated with the transaction – and the impact this would have on the SIPP investment performance – were clearly disclosed in its suitability report given to Mr E;*

- ***Tata Steel defined contribution plan:*** *It disagreed with the Representative's claim that it didn't consider Mr E's defined contribution plan as part of its recommendation. This was demonstrated by the fact that it had included the value of that plan in its income cashflow modelling and also made reference to it in its suitability report including a recommendation that Mr E remain a member of the plan and increase contributions to improve his retirement provision;*

- ***Mr E's risk profile and SIPP investments:*** *Mr E's capacity for loss and attitude to* *risk was based on the information he provided which indicated that he was a 'moderately adventurous' investor. It gave Mr E 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. The investment strategy recommended by Wealthmasters was entirely appropriate taking into account Mr E's own priorities and objectives (flexibility and growth), his risk profile, capacity for loss and the fact that the investment time horizon was over 20 years until his desired retirement age of 57. It also said that the SIPP provider reserved the right to approve or reject the recommended investments to be held in Mr E's SIPP. The fact that the SIPP provider didn't reject the proposed investment selection was further proof that its investment recommendation was suitable;*

- ***Information about the changes to the BSPS:*** *In the months leading up to its recommendation, the BSPS had provided Mr E with lots of information about the changes to the scheme and options available. 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;*

- ***Situation surrounding the BSPS:*** *It recognised that the situation surrounding Tata Steel and the BSPS meant it was a worrying time for individuals like Mr E. It was a unique situation with members forced to make swift and potentially life altering decisions. Unfortunately, this led to some unscrupulous advisers taking advantage by seeking out and marketing to inexperienced scheme members with the sole aim of transferring the value of their safeguarded benefits out of the BSPS. In contrast, it never specifically sought BSPS members with a view to advising them. Rather, they approached Wealthmasters;*

- ***Portrayal of Wealthmasters:*** *It rejected the Representative's criticisms of Wealthmasters, portraying it as an unethical business only interested in receiving commissions and with no regard to Mr E's individual needs and requirements;*

- ***Media attention:*** *Given the media coverage concerning BSPS pension transfers, it believed that a blanket approach was being applied by the FCA and this service on such cases and that any adviser who recommended a BSPS transfer is automatically assumed to have given unsuitable advice. But it doesn't think this was fair and that each case should be assessed on its own merits which is exactly what it did when it advised Mr E by providing bespoke advice to achieve his objectives;*

- ***Financial loss:*** *It didn't agree that Mr E had suffered a financial loss as claimed by the Representative because it had failed to produce any evidence or calculations to support this;*

- ***Competence of the Representative:*** *It questioned whether the Representative was suitably qualified to assess the quality of its recommendation. It held this view because if a competent person had read the relevant paperwork, it would be apparent that its recommendation achieved Mr E's objectives and was therefore suitable. It also questioned whether the Representative had treated Mr E fairly because of the way in which it presented his complaint which it believed to be contrary to the Solicitors Regulation Authority's guidelines; and*

- ***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 advisory businesses engaged in BSPS pension* *transfers including Wealthmasters. After reviewing its files, the FCA confirmed 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 demonstrated that Wealthmasters' advice process was robust resulting in suitable recommendations. This was borne out by the fact that as of January 2019, Wealthmasters had been approached by some 65 clients in respect of pension transfer advice and, of those, 26 clients were advised to transfer and 39 cases were advised to maintain their safeguarded benefits. This demonstrated Wealthmasters' professionalism, integrity and adherence to the FCA's rules and that it treated each client individually and advised them in line with their unique circumstances and requirements.*

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

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

- ***Importance of safeguarded benefits:*** *Mr E's safeguarded benefits amounted to 15 years and 6 months' pensionable service and so represented most of his retirement provision he had built up by that point in time. And so he'd likely be heavily reliant on the benefits to provide secure retirement income. While he acknowledged that Mr E was building up additional retirement provision in his Tata Steel defined contribution pension plan and owned a second property which he planned to rent out, it was the case that there were no guarantees attached to those assets and that his safeguarded benefits would likely remain significant in meeting his retirement income need. This meant that he had limited capacity to absorb financial loss in connection with the value of his safeguarded benefits;*

- ***Mr E's concerns about Tata Steel, BSPS2 and PPF:*** *He acknowledged that Mr E clearly wanted to do something about his safeguarded benefits – mainly because he had to. But that didn't mean he had to transfer or it was in his best long-term interests to do so. He appreciated that there was media attention and uncertainty about the future of Tata Steel and the BSPS2. But he thought that Wealthmasters ought to have done more to allay Mr E's misapprehensions about the security of his safeguarded benefits and explained that, in the worst case scenario, he'd still receive 90% of his pension entitlement if the BSPS2 ended up being transferred to the PPF;*

- ***Mr E's circumstances:*** *Mr E was 33 and single but in a long-term relationship. This likely meant that the spouse's pension offered by the BSPS would've been of less importance to him at the time. However, his circumstances, including marital status, may have changed over the substantial term until he retired which may have increased the relevance of the spouse's pension. In addition, he had a very young daughter that was financially dependent on him and who would've been entitled to death benefits up to 18 (or 23 if she remained in full-time education). There wasn't any evidence that Wealthmasters had recorded Mr E's plans including whether he intended to get married or have more children to help support its recommendation that it was suitable to relinquish the spouse's pension and dependents' benefits;*

- ***Critical yield:*** *The critical yield figures of 6.00% (at 65) and 6.88% (at 57) on the basis Mr E took all his benefits as income were likely unachievable. The required rate of investment growth to match the relinquished benefits was higher than the relevant discount rate of 4.7% per year for a 32-year investment time horizon to 65 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 E receiving lower overall retirement benefits under the SIPP;*

- ***TVAS report:*** *It appeared that the TVAS report didn't include all of the charges associated with the pension transfer, specifically the annual DFM charge 0.96% (including VAT) that applied to the £156,000 invested with Brewin Dolphin, which represented nearly 80% of the total SIPP fund value. As a result, he thought that the critical yield figures stated in the TVAS report and suitability report, and upon which Mr E made the decision to transfer, were understated;*

- ***Tata Steel defined contribution plan:*** *Mr E was building up additional retirement provision in a defined contribution plan through his employment with Tata Steel. Despite his concerns about Tata Steel, the indications were that he planned to remain employed for the foreseeable future and therefore remain a member of the defined contribution plan;*

- ***Mr E's risk profile:*** *Wealthmasters assessed Mr E as having a 'moderately adventurous' risk profile. But our investigator questioned whether Mr E had a more cautious risk profile. This was because there were conflicting positions in the fact find document and suitability report regarding the impact which loss of money would have on Mr E's standard of living – the fact find document recorded that it wouldn't have an impact and that he wouldn't have to use additional resources to meet his income needs, but the suitability report recorded that Mr E's income need was unlikely to be met by the value of his safeguarded benefits and recommended that he pay additional contributions to meet this need. It also seemed odd that Mr E was recorded as being concerned about the security of his safeguarded benefits and the prospect that he would lose 10% of his income under the PPF but was apparently content to invest on a 'moderately adventurous' risk basis in the SIPP where his money would be exposed a medium to high level of investment risk despite being an inexperienced investor. He acknowledged that Wealthmasters provided risk warnings to Mr E but commented that the disclosure of this didn't transform an unsuitable recommendation not a suitable one;*

- ***Mr E's early retirement objective:*** *Wealthmasters didn't produce any comparative analysis to support its conclusion that early retirement under the BSPS2 or PPF wouldn't have been in Mr E's best interests or that retiring at 57 was indeed realistic. Our investigator stated that Mr E was only 33 at the time and most people would prefer to retire earlier. But with more than 24 years until his desired retirement age of 57, during which time his marital status might change, transferring at that time for potential earlier access to benefits wasn't a reasonable action to take. If Mr E had transferred to the BSPS2 then he would've retained the right for a transfer out of that scheme at a later date, if then deemed suitable. Furthermore, he noted that Mr E was building up benefits in his Tata Steel defined contribution plan which could've been used in the first instance to meet his retirement income need, thereby giving him time to delay the decision to draw his safeguarded benefits. Our investigator wasn't convinced that Mr E had a genuine need at that time for flexibility and control of his safeguarded benefits;*

- ***Mr E's death benefit objective:*** *He wasn't convinced that Mr E had an overriding desire to secure improved death benefits under a SIPP at the cost of relinquishing his safeguarded benefits. This was because he was 33, recorded as being in good health and could therefore expect a life expectancy beyond 65. If provision of a death lump sum was an objective for Mr E then, through his employment with Tata Steel, he was entitled to a death in service lump sum benefit of four times' his annual* *salary. Furthermore, if he required a higher death lump sum, he could've obtained inexpensive life cover for the period until he could retire and revisit his transfer options at that time. He noted that under the BSPS2, Mr E's daughter would be entitled to death benefits until she reached 18 (or 23 in higher education) and potentially for his long-term partner in the event they got married. So, overall, he thought it likely that he may have wanted to retain the spouse's and dependents' benefits for a future potential need had he understood how valuable they were; and*

- ***Suitable advice:*** *He concluded that suitable advice would've been for Mr E 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 E would've accepted it. And that there was sufficient time available to provide notice to the BSPS of acceptance of the BSPS2 option.*

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 E transferred to the BSPS2 and would be a 20% income tax payer in retirement. In addition, he thought that the matter would've caused Mr E trouble and upset and that Wealthmasters should pay him £300 in respect of this.

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

Mr E accepted our investigator's assessment. But Wealthmasters didn't and, in its letter of 12 February 2021, provided substantial comments in response. Some of these comments essentially repeated points made in its final response letter dated 8 October 2019. Its additional comments can be summarised, as follows:

- ***FCA advice checker:*** *In response to this complaint, it had completed the FCA's pension transfer advice checker that indicated its recommendation to Mr E was suitable. The advice checker included the statement, "If you were always going to transfer, no matter what your adviser said about the disadvantages, it is less likely that you have a complaint". It stated that, before meeting Wealthmasters, Mr E had already been advised by Firm J to transfer and had gone as far as setting up a SIPP. So, in its opinion, he was always going to transfer regardless of what it told him. And to reflect the work that had already been carried out by Firm J, it only charged Mr E a fixed advice charge of £2,500 compared to its usual charge of £6,000;*

- ***Tata Steel defined contribution plan:*** *It thought that our investigator had ignored the importance of Mr E's defined contribution plan in meeting his retirement income need. On the assumption Mr E remained a member of that plan until retirement, the projected fund value was greater than £650,000 based on an annual growth rate of 5.8% over an investment time horizon of 31 years;*

- ***Critical yield figures:*** *It stated that, in his assessment, our investigator had misquoted the critical yield figures applicable to Mr E's case (he quoted the figures on the basis that Mr E took all of his benefits as income). But Wealthmasters stated that the correct figures were lower – it was 5.10% at 65 and 5.73% at 57 on the basis that Mr E took a reduced pension and maximum tax-free cash. This meant that the financial viability of the transfer was likely more achievable than concluded by our investigator;*

- ***Fact finding:*** *It provided excerpts from its fact find document and suitability report that showed Mr E wanted to retire as early as possible and that, since he had already* *taken advice from Firm J, was familiar with the process and made his mind up that he wanted to transfer to achieve his objectives;*

- ***BSPS2 option:*** *It was aware of clients who transferred to the BSPS2 and subsequently sought new transfer values and were unhappy that these had been reduced by 20% compared to the transfer value offered by the BSPS, putting members at a significant disadvantage;*

- ***Disclosure of risks:*** *It provided excerpts from the guides it provided to Mr E that it said gave a balanced explanation of the advantages and disadvantages of transferring compared to maintaining his safeguarded benefits – so it was satisfied that he made the decision to transfer from an informed position; and*

- ***Mr E's risk profile:*** *It reiterated that Mr E's 'moderately adventurous' risk profile was based on information he provided when completing its risk profile questionnaire. He was prepared to accept risk with his money to achieve his objectives. It said that it warned Mr E in its suitability report that it was unlikely his desired annual retirement income need of £20,000 would be met by the value of his safeguarded benefits and that he'd need to supplement this with his Tata Steel defined contribution pension plan, which had a projected fund value in excess of £650,000 based on an annual growth rate of 5.8%. It continued that the combined projected fund value of the recommended SIPP and Tata Steel defined contribution pension plan was projected to be £1,278,000 and would've easily met Mr E's retirement income need.*

Our investigator considered Wealthmasters' additional comments but wasn't persuaded to change his assessment of Mr E's complaint. Since agreement couldn't be reached, this complaint has been referred to me for review.

What I've provisionally decided – and why

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

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

The genesis of this complaint

Wealthmasters has rejected the Representative's criticisms of it.

I'm aware that in recent years the FCA identified that 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 E, 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 that Mr E 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 E is entitled to complain about its advice if he's concerned it was unsuitable.

Mr E's Representative

Wealthmasters is unhappy about the way in which Mr E's Representative handled and presented his complaint. It's also concerned that the Representative isn't qualified to assess the suitability of its recommendation and that the basis of this complaint is therefore unfounded.

I'd like to assure Wealthmasters that my decision will be based on the contemporaneous documentary evidence including the suitability report it provided to Mr E. 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.

The FCA's suitability rules and guidance

As set out in the background above, Mr E initially sought pension transfer advice from Firm J. But Firm J was ultimately unable to complete the transaction because the FCA removed its permissions to advise on pension transfers. Mr E then contacted Wealthmasters for advice.

There's no dispute that the pension transfer advice that Mr E's complained about is that which was provided by Wealthmasters. He made the decision to transfer based on Wealthmasters' recommendation.

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 E but provides useful context for my assessment of its actions here.

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

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

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

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a SIPP scheme, stakeholder pension scheme or other*

pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

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

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

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

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

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

COBS 19.1.7G also stated:

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

And COBS 19.1.8G stated that:

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

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

Businesses are required to adhere to these rules and guidance because the FCA considers safeguarded benefits to be valuable. 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 E'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 Wealthmasters' pension transfer recommendation was suitable and clearly in Mr E's best interests.*

Mr E's situation

Mr E'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 E 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.*

Members had to choose which option they wanted by a deadline in December 2017. I recognise that Wealthmasters advised Mr E in January 2018 which was after the deadline. But I understand that there was still time up until March 2018 for Mr E to inform the BSPS of his decision.

Based on the above considerations and for the purposes of my decision, I'll work on the basis that Mr E 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 E. 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 the contemporaneous evidence, that it was clearly in Mr E'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 E.

Critical yield, discount rate and risk profile

The TVAS rules applied at the time Wealthmasters advised Mr E. 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 report isn't a precise tool or personalised to reflect individual circumstances and objectives. But a TVAS report has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. So a TVAS report was likely useful for a client, like Mr E, that intended to use their safeguarded benefits towards *achieving a minimum retirement income objective – in his case, it was recorded that he desired annual retirement income of £20,000 (in 2018 terms) from 57. As I've explained below, it's my opinion that Mr E would likely be 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 E 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 4.7% based on Mr E taking benefits at the BSPS normal retirement age of 65 and 4.6% based on taking benefits at 57. 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 £204,472.45 being invested in a SIPP. There is conflicting information regarding the figures because our investigator quoted in his assessment figures that Wealthmasters later disputed. So I've reviewed the TVAS report upon which the recommendation and suitability report was based. This showed that the average annual investment return required by the SIPP to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 57 based on a full pension	***At age 57 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	*6.88%*	*5.73%*	*6.00%*	*5.10%*
PPF	*5.36%*	*5.16%*	*4.52%*	*4.33%*

Wealthmasters quoted the figure of 6.00% in its suitability report so I'm satisfied that the TVAS report I've reviewed is the same one upon which its recommendation was based.

As pointed out by our investigator, it appears that the critical yield figures were understated. I'll explain why. The TVAS report included the following charges:

- *SIPP establishment fee of £310 +VAT*
- *SIPP annual fee of £550pa +VAT*
- *Annual investment charge of 0.5%*
- *Initial adviser charge of £2,500*
- *Ongoing annual adviser charge 0.5%*

The TVAS report doesn't appear to include the annual DFM charge of 0.96% (including VAT) that applied to the £156,000 invested with Brewin Dolphin, which represented nearly 80% of the total SIPP fund value. Instead, the TVAS report assumed that an annual investment charge of 0.5% would apply to the entire SIPP fund value. The absence of the DFM charge *in the TVAS report meant that the critical yield figures in the table above were understated, implying less investment growth was required to match the relinquished safeguarded benefits than was 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 E before he accepted the recommendation to transfer.*

Our investigator mentioned this discrepancy in his assessment. But Wealthmasters didn't provide an explanation in response.

Had the additional DFM charge been included in the TVAS report, the critical yield figures for the BSPS would've been even higher than the discount rates of 4.6% and 4.7%, and the mid-growth rate of 5% stipulated by the FCA, implying that Mr E 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. Wealthmasters assessed Mr E as being a 'moderately adventurous' investor, suggesting that he was willing to accept a medium to high degree of investment risk with the value of his safeguarded benefits. But at the time he was 33 and had limited investment knowledge and experience. I acknowledge that he owned an investment property. But I'm not convinced this meant he was willing and able to tolerate the risks associated with the pension transfer.

I'm also conscious of the fact that Mr E was building up additional retirement provision in his Tata Steel defined contribution plan and the expectation was that this would, over time, grow to a significant pot of money upon which he could rely to help meet his retirement income need from 57. But by transferring to a SIPP it meant that he would concentrate his retirement provision on a defined contribution basis where the benefits received aren't guaranteed but instead based on investment performance. Had he maintained safeguarded rights in the BSPS2 or the PPF, if necessary, he'd have received guaranteed income from that source and benefitted from a more diversified approach, reducing the overall risk in achieving his retirement income need. This blended approach – utilising both defined benefits and defined contribution pensions to meet Mr E's retirement income need – doesn't appear to have been considered by Wealthmasters, which I'll come on to later in my findings below.

Based on the above considerations, I think it was highly likely that Mr E 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 excess of 6% per annum and the likelihood your portfolio ***may not*** *consistently reach this annual performance level (even after taking high investment risks) and therefore not provide you with a comparable annuity income at retirement". So, based on this alone, it's my view that a transfer wasn't in Mr E's best financial interests.*

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

Wealthmasters' rationale for transferring

In accordance with COBS 9.2.2R, Wealthmasters undertook its fact finding for Mr E 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 57 without reduction or penalty and to receive a desired annual income of £20,000 (in 2018 terms) 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 nominated beneficiaries rather than the 50% spouse's pension provided by the safeguarded benefits because he was unmarried; 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.*

Therefore, I've considered Mr E'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.

Early retirement, flexibility and income objectives

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

- *As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 57 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65, as you may retire or reduce your hours of work once you've repaid your mortgage and you would like to draw pension benefits to supplement your income until your reach state retirement age and receive your state pension.*

- *As you cannot accurately predict how much of your income you will need at age 60 (if any), 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 reference to 60 was a typo because Mr E wanted to retire early at 57]*

- *You stated that you will require circa £20,000 per annum (in today's terms) when you retire. On that basis based on your current level of provision you are not likely to achieve this amount from just the British Steel Pension Scheme pension rights. However, as you are now accruing benefits in the Aviva Tata Group Scheme, the benefits provided by this scheme will contribute to your required level of income. I would recommend that you consider make additional contributions to this pension as your budget allows, as you current pension provision may be insufficient for your needs and be insufficient to provide the desired level of income for the duration of your retirement. This is particularly relevant and important as you will foregoing the guaranteed benefits provided by the British Steel pension should elect to transfer these pension rights.*

Wealthmasters said that the flexibility to draw varying levels of income and tax-free cash at different points in time from 57 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 E's early retirement objective and annual income need of £20,000. I say this because it's unclear to me how the figure of £20,000 was determined. It seems that £20,000 was a notional figure put forward *by Mr E rather than being based on a proper analysis carried out by Wealthmasters. There's no reference to this income need increasing in payment to counter the effects of inflation. Rather, it appears to be a fixed income requirement. This approach to determining a client's income need concerns me because if a client's objective is early retirement, then, in my view, it's necessary to carry out 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 E may have wanted to retire at 57 and be in receipt of 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 E 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 E's case, Wealthmasters didn't establish how he intended to spend his time in retirement or what his expected expenditure was likely to be based on an analysis of his outgoings. Rather, the analysis was on the basis that he required a notional annual income of £20,000 in 2018 monetary terms.

The further away from retirement an individual is, the harder it is to establish a realistic figure. And in Mr E's case, being 33 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 realistic level of income he would need from 57 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. It may well have been the case that a proper analysis showed that his income need was lower than £20,000 and could've been comfortably met by the estimated income paid by the BSPS2 or PPF options in conjunction with his Tata Steel defined contribution plan and State pension – thereby rendering a pension transfer, and all the risks associated with that option, as unnecessary.

Wealthmasters didn't establish the estimated pension payable by Mr E's Tata Steel defined contribution plan or his estimated State pension. It needed to carry out an analysis of Mr E's estimated income streams from all sources during retirement 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 E would be reliant on his safeguarded benefits to meet his income needs in retirement, 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 as there appears to be in Mr E's case, 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.

<u>Could Mr E retire at 57?</u>

It's my view that Mr E's expectations around his target retirement age and income need ought to have been better assessed and managed by Wealthmasters, for the reasons explained above.

Things would become clearer the closer Mr E got to 57 and his plans could be modified in response to this, but at 33 I think it would've been difficult to predict with any reasonable degree of confidence that he'd be able to retire at 57. 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 E would retire at 57 and required an 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 E to retire at 57. But I disagree, as I've explained below.

Mr E 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 E 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 he make additional contributions to it to help meet his retirement income need from 57. It included the estimated value of the plan in its cashflow modelling. So I think it's fair to say that the value of Mr E'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 57.

I think Wealthmasters could've reasonably expected that, based on Mr E's salary, contribution rate and 24-year time horizon, about £134,000 in contributions would've been invested in his plan by the time he reached 57. Considering likely investment growth over that time and increases in contributions linked to rises in Mr E's pensionable salary, I think it's fair to say that the plan value would likely be higher than £134,000 at 57. Wealthmasters' cashflow modelling at the time indicated that the value of the plan, based on an assumed annual net investment return of 5%, would be more than £200,000 so I think my assumption is a fair one. And I noted that in response to our investigator's assessment, Wealthmasters stated that the projected fund value of the plan was greater than £650,000 based on an annual growth rate of 5.8% over an investment time horizon of 31 years.

Therefore, based on Wealthmasters' own calculations, access to the defined contribution plan at 57 would likely cover Mr E's annual income need of £20,000 (or £160,000) for the eight-year period to his 65th birthday. Then, at 65, Mr E 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 E given that I think he could delay drawing benefits until 65, as I've set out above, and that his marital status may have changed during the period before he retired. In terms of what income would be payable by the BSPS2 at 65, the following information is relevant.

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

Scheme	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***

BSPS	*£18,366*	*£12,171 plus tax-free cash of £81,144*
PPF	*£14,088*	*£11,280 plus tax-free cash of £75,202*

At the time Wealthmasters advised Mr E, it was generally known that 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 E 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 £11,700 (which was broadly between £11,280 and £12,171) and tax-free cash of about £78,000 (which was broadly between £75,202 and £81,144).

In my view, he could then use a combination of the annual scheme pension of £11,700 and either some of the tax-free cash of about £78,000 or any surplus money in his Tata Steel defined contribution plan over the three-year period from 65 to 68 to continue meeting the annual income need of £20,000 until he could start drawing his State pension.

Given Mr E'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 68. 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 E's combined BSPS2 and State pension would provide total, combined annual income of about £20,000 – which was broadly in line with his retirement income need. So, it seems probable, that his core income need could've been met from 68 onwards by two guaranteed, escalating sources of income. The guaranteed escalation would've offered some protection against the effect of inflation. The alternative course of action recommended by Wealthmasters assumed a fixed annual income of £20,000 for the rest of Mr E's life with no account for the effect of inflation or the likelihood that he'd need to increase his withdrawals to maintain his standard of living.

So, by adopting a blended approach of utilising his Tata Steel defined contribution plan, BSPS2 and State pension, I think it's reasonable to conclude that Mr E could've maintained safeguarded benefits in the BSPS2 and likely met his annual income need of £20,000 between 57 and 68 and, based on Wealthmasters calculations, probably still retain surplus money in his defined contribution plan to meet any additional ad-hoc flexible income or lump sum needs. If receipt of the guaranteed and escalating BSPS2 and State pensions provided excess income over and above Mr E's income need, this could've been reinvested for future use. It's my view that in the above scenario Mr E would be heavily reliant on the BSPS2 to meet his core income needs during his retirement from 65 onwards.

In the event Mr E 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 57. So I think it's fair to say that at 57 he'd likely have access to significant defined contribution pension savings which could, in the first instance, be used to meet his income need for the eight-year period between 57 and 65.

This alternative course of action I've set out suggests that Mr E 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 E.

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, "The British Steel Pension Scheme administrators have confirmed that they will apply a 25.2% total reduction in pension benefits if you retire at *age 57… A SIPP would not penalise you or apply a reduction in benefits should elect to retire early and take pension benefits from age 57….It is important that you consider the effects of the early retirement penalties being applied by the British Steel the scheme, which would not be applied to the [provider] SIPP upon transfer."*

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 E 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 E 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 E's best interests to relinquish his safeguarded benefits because it failed to carry out adequate analysis of Mr E plans, expected expenditure in retirement and his other sources of retirement income to meet his income need. 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 guaranteed and escalated in payment. The pension transfer option offered no guarantees and exposed Mr E's money to inflation, investment and longevity risk with no guarantees about how much income it would provide during his retirement.

<u>Death benefit objective</u>

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

- *"The death benefits offered by the British Steel pension are of key importance to you, as you are not married, but you have a long term partner and you have daughter, and one of your main concerns is that should you die your partner is not eligible to receive any pension benefits and [Mr E's daughter] would only receive a reduced dependents pension from the British Steel Scheme."*

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 E 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 22 years.

But Mr E 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 a significant proportion of his retirement provision built up by that time. And as I've concluded above, I think Mr E would be reliant on these benefits to meet his core income needs in retirement. Withdrawing money from the SIPP at 57 to help meet his recorded 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.

In demonstrating that the pension transfer was clearly suitable and in Mr E'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 E had the alternative option to maintain safeguarded benefits in the BSPS2 which offered a 50% spouse's pension which *may have been a valuable feature in the future if he married before retirement. Wealthmasters was required to consider this and any other viable options. It said that Mr E wanted to leave his partner and daughter a lump sum from his SIPP. But, as I've noted above, it's questionable as to what level of death lump sum benefit might be available from the SIPP based on his life expectancy and the uncertainty about what money might remain on his death bearing in mind his income need.*

If it was a genuine objective for Mr E 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 while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr E had disposable income available every month after paying his bills which could've been used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr E given he was 33 and recorded as being 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 E'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 E 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 partner and daughter. So I'm not convinced there was any real merit in Mr E 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 E's partner and daughter.

But, in any case, I note that through his employment, Mr E had life cover based on a multiple of four times' his salary, meaning a lump sum of about £140,000 would be paid 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. In addition, the value of his Tata Steel defined contribution plan would be paid as a lump sum to his nominated beneficiary(ies) – and Wealthmasters estimated the value of that plan to increase significantly over the term until Mr E retired. So, it seems to me that in the immediate future, certainly while Mr E remained employed by Tata Steel, that a lump sum of at least £140,000 would be paid on his death. This contrasted with his liabilities which totalled about £145,000. 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 E remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled Wealthmasters and Mr E 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 E's death benefits objective was by transferring to a SIPP at that time.

<u>Mr E'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 E 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 E's objective to remove the risk that the value of his safeguarded benefits might ultimately 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.*

- *"We fully discussed the new Tata funded pension offering called the British Steel Pension 2, which is a defined benefits option. However, you stated you do not wish to consider this option as this scheme does not offer the flexibility you desire at retirement, death benefits for your family and more importantly you are concerned about the long term future of the scheme given the current outlook for the Tata business and the steel industry in the UK."*

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

Had Wealthmasters advised Mr E 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 33. A transfer to the BSPS2 would've also removed any immediate concerns Mr E 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 E 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 E 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 E 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 E was apparently concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his income, 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 E 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 E's misapprehensions and that he therefore made the decision to transfer from an uninformed position regarding the PPF.

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

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 E – and I fully acknowledge this. It's undeniable that it was a period of great uncertainty for individuals such as Mr E. 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 E 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 E. 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 E'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 E's expressed objectives, in that it wouldn't be up to an adviser or indeed this service to tell Mr E 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 E 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 33.

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 E 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 E, 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 by maintaining safeguarded benefits in 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 E's income need likely could've been met by a blended and 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 E to relinquish valuable benefit guarantees – especially at 33.

My further view is that, if properly discussed, Mr E'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 E'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 figures in Mr E's case likely being understated due to an incorrect assumption about the underlying investment charges, 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 E's stated objectives and the concerns about the BSPS2. 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 E was intent on effecting the transfer, particularly since another business, Firm J, had advised him to transfer before it met him. But he was relying on Wealthmasters to provide expert advice and advise him what to do. I think the advantages of Mr E 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 E all the necessary risk warnings and that he was required to take responsibility for his decision to transfer. I accept that Mr E 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 able to take that kind of responsibility and decide for themselves if they wanted to transfer their safeguarded benefits. The problem here is that this was a complex matter involving many factors with which Mr E, 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 E 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 E'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 E 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 E'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 E'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 figures to match the relinquished benefits which meant Mr E made the decision to transfer from an uninformed position, further undermining the case for a pension transfer.

The key contributing factors here relate to inadequate consideration of alternative options to achieve Mr E'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 E's safeguarded benefits compared to the recommended pension transfer, 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 29 March 2022 to respond.

The Representative's response to my provisional decision

Mr E's Representative acknowledged receipt of my provisional decision. It said that the only query it had was the proposal for compensation to be paid into Mr E's SIPP rather than as a cash payment to him. It asked that I reconsider this and direct Wealthmasters to pay any compensation due as a cash payment to Mr E.

Wealthmasters' response to my provisional decision

Following issuance of my provisional decision, our investigator contacted Wealthmasters on 1 and 29 March 2022. It responded on 1 April 2022 to acknowledge receipt of my provisional decision. It said that it intended to provide a full response but was reliant on its legal advisers to draft the response and for its professional indemnity insurer to then approve it. Taking these factors into account, I agreed an extension to 19 April 2022 for its response. But it didn't respond by that date. Our investigator chased Wealthmasters on 6 May 2022 and told it that I planned to issue my final decision shortly based on the available evidence. It acknowledged receipt of that chaser but failed to give any indication when this service would receive its response or the reason for the continued delay.

Mr E and his Representative were kept up to date regarding Wealthmasters' response to my provisional decision. They expressed their frustration about the delay and concern that Wealthmasters' was unnecessarily delaying matters.

As at the date of this final decision, Wealthmasters' full response to my provisional decision hadn't been received by this service.

What I've decided – and why

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

I need to be fair to both parties to this complaint. Wealthmasters has had since 28 February 2022 to respond to my provisional decision, a period of about 10 weeks. Despite acknowledging receipt of my provisional decision, Wealthmasters didn't give our investigator any indication when this service will receive its response setting out any further comments or evidence that it wanted me to consider before I issued my final decision. I consider that I've treated Wealthmasters fairly by giving it about 10 weeks to respond. I don't think it's appropriate to have an open-ended situation waiting for its response. So, in line with what Wealthmasters was told by our investigator on 6 May 2022, I've decided to make a final decision based on the available evidence.

Since Wealthmasters didn't provide further comments or evidence for me to consider, I see no reason to depart from my provisional decision of 28 February 2022 to uphold Mr E's complaint. The findings I made in my provisional decision and set out above form part of this final decision.

I acknowledge the Representative's request that any compensation due be paid as a cash payment to Mr E rather than into his SIPP. However, my aim is to put Mr E, as closely as possible, into the position he'd be in but for Wealthmasters' unsuitable advice. And, given that reinstatement of his safeguarded benefits isn't possible, paying compensation into his SIPP most closely fits that requirement. But as noted below, if that isn't possible then the compensation should be paid to Mr E as a cash payment.

Putting things right

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 E 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 E would've envisaged accessing his Tata Steel defined contribution plan in the first instance to make up any income shortfall in the period between 57 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, if it later became relevant for Mr E, 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 on the basis Mr E takes benefits at the scheme normal retirement age of 65. Wealthmasters may wish to contact the Department for Work and Pensions (DWP) to obtain Mr E's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the BSPS on Mr E's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr E's 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 E as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr E's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

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

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

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

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

Determination and money award: I require Wealthmasters to pay Mr E the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require Wealthmasters to pay Mr E 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 E any interest as set out above on the sum of £160,000.

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

In addition, I agree with our investigator that this matter will have caused Mr E trouble and upset. So I direct Wealthmasters to pay £300 to Mr E in respect of this.

If Mr E 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 E could accept this final decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept this final decision.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 June 2022.
Clint Penfold
Ombudsman