The complaint

Mr T complains about the suitability of the advice provided by D C Financial Limited ("D C Financial") in July 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension.

Mr T is represented in this complaint by a law firm ("Representative A").

What happened

I issued my provisional decision on this complaint on 1 March 2022, in which I set out the background and my provisional findings. I've repeated what I said here:

"In March 2016, Mr T'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 benefits to members of defined benefits pension schemes when their employer becomes insolvent.

Mr T was concerned what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. In February 2017, he met an adviser from D C Financial. The adviser completed a fact find document and risk profile assessment in respect of Mr T. D C Financial said the purpose of the meeting was to discuss, in generic terms only, the advantages and disadvantages of the BSPS, PPF and pension transfer options. A personal recommendation wasn't provided by D C Financial at that meeting.

On 31 March 2017, Tata Steel closed the BSPS to further benefit accrual.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed. 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 (the RAA was subsequently approved by the Pensions Regulator in August 2017 and the BSPS2 set up in April 2018).

Mr T returned to D C Financial for a personal recommendation on what he should do. It obtained details of his safeguarded benefits. As at June 2017, these were as follows:

- *He had accrued 38 years and 4 months' qualifying service between 17 November 1978 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 £27,681.76;*

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

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

- *The estimated revalued annual scheme pension at 65 was £34,937 and at 60 was £25,106;*

- *On death before retirement, a refund of contributions of £87,076.46 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 T 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 £670,945.41 which had been reduced by 8% due to the BSPS being in deficit (the transfer value was subsequently increased to £692,824.06 following a cash injection into the BSPS by Tata Steel).*

D C Financial recorded the following information about Mr T and his partner's circumstances:

- *He was 55, unmarried, in good health and employed by Tata Steel on a gross annual salary of about £45,000;*

- *His partner was 54, in good health and was employed in two part-time roles generating a combined gross annual salary of about £12,000;*

- *They had three children aged between 20 and 23;*

- *Their assets totalled £80,800 which comprised their jointly owned home valued at £80,000 and cash savings of about £800;*

- *Their liabilities totalled about £27,400 which comprised an outstanding repayment mortgage of about £22,400 on their jointly owned home which was due to be repaid in 2025 (when Mr T would be 63 and his partner 62), a personal loan of about £4,400 due to be repaid in 2020 and credit card debt of about £600;*

- *Their joint net income covered outgoings with monthly surplus disposable income of about £1,000;*

- *Through his employment, he had life cover equivalent to 5 times his salary if he died while in service. He and his partner didn't have any other life cover;*

- *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 26% of his pensionable salary into his plan (this included an element of salary sacrifice);*

- *His partner didn't have any private or occupational pension savings in her name;*
- *He planned to retire at 60 while his partner planned to retire at her State Pension Age of 67 but both were unsure of their estimated retirement income needs;*
- *They were both on course to receive their full State pensions at 67; and*
- *He had a 'moderate' risk profile of 5 on a scale of 1 to 10 where 1 was 'no risk' and 10 'high risk'.*

D C Financial's recommendation to Mr T

In July 2017, D C Financial issued its suitability report to Mr T. The suitability report stated that Mr T had the following objectives and wanted to transfer to a personal pension to achieve these, as follows:

> *"1. You wish to access £100,000 tax free cash from your pension which you will use to pay off your mortgage and an outstanding loan [which totalled about £26,800]. You would also like to purchase a shared property in [overseas] as you would like to retire there in the future, and do some home improvements. The remainder of the tax free cash will remain invested.*
>
> *2. You are uncertain of the future of the scheme and you want control of your own pension fund.*
>
> *3. You are concerned of the BSPS entering the Pension Protection Fund, and losing the flexibility of accessing your fund.*
>
> *4. To take any tax free cash now, you would have to start taking an income from the British Steel Pension Scheme. Penalties are imposed by the BSPS for accessing benefits before the normal scheme retirement age of 65.*
>
> *5. The inflexible death benefits concern you after your death, the pension ceases. You feel it is important to be able to pass on any unused pension fund to your partner and children."*

The suitability report also stated that Mr T planned to retire at 60 and his retirement income need at that time would be as follows:

> *"Your required level of income in retirement is to be around £24,125 per annum gross (£24,125 is a withdrawal of 4.22% on £570,945 (amount left after the £100,000 tax free cash is taken off)). The withdrawal rate can be reduced when your state pension commences at age 67. Your current State Pension is estimated at £6,217.64 per annum, you need further years of National Insurance contributions to receive the full state pension. The State Pension will provide a secure and inflation proofed income from your state pension age."*

Critical yield

D C Financial calculated the following critical yield figures based on a transfer value of £670,945.41 being invested in a personal pension. This showed the average annual *investment return required by the personal pension to provide benefits of equal value to either the BSPS or PPF:*

	At age 60 based on a full pension	**At age 60 based on a reduced pension and maximum tax-free cash**	**At age 65 based on a full pension**	**At age 65 based on a reduced pension and maximum tax-free cash**
BSPS	*11.25%*	*Not calculated*	*6.71%*	*Not calculated*
PPF	*Not calculated*	*Not calculated*	*2.02%*	*1.41%*

After setting out in the suitability report the advantages and disadvantages of a pension transfer compared to retaining safeguarded benefits, D C Financial recommended that Mr T transfer to a personal pension to achieve his objectives.

Mr T accepted the recommendation in July 2017. While waiting for the transfer to be completed, Mr T requested, without consultation with D C Financial, that it arrange for the maximum tax-free cash be paid to him once the transfer had completed because he had found a more expensive property overseas.

On 3 October 2017, the transfer was completed. The transfer value of £692,824.06 was invested in a new personal pension. In line with Mr T's instruction, this was immediately and fully crystallised to enable him to withdraw the maximum tax-free cash of £173,206 (rather than the figure of £100,000, as originally intended and upon which D C Financial's recommendation was based). The balance of the crystallised money remained in the personal pension and invested across different funds to provide taxable income to Mr T at a later date.

D C Financial's initial adviser charge of £8,000 was deducted from the personal pension fund value. In addition, the total ongoing annual charge was as follows:

- *Adviser charge – 1.00%*
- *Product charge – 0.25%*
- *Fund charges across recommended funds – these ranged from 0.63% to 1.25%*

Therefore, the total ongoing annual charge would be somewhere between 1.88% and 2.5% depending on the relative values of the underlying investment funds.

<u>This complaint</u>

In October 2019, Representative A, on behalf of Mr T, complained to D C Financial about the suitability of the pension transfer advice it provided in July 2017. Its position can be summarised as follows:

- *In May 2016, the trustees of the BSPS indicated that the BSPS2 would provide greater benefits than the PPF and only marginally less generous benefits than the BSPS. This information was available to D C Financial at the time of its recommendation to Mr T;*

- *Mr T had heard worrying rumours about the steelworks and the security of his safeguarded benefits. Everything he had heard about the PPF and a potential successor scheme, the BSPS2, was very negative;*

- *He was unsure what to do so sought advice from D C Financial. It made no effort to* *assuage his concerns. Instead, it advised him to opt-out of the BSPS and to transfer the value of his safeguarded benefits to a personal pension rather than the PPF or BSPS2. It allowed him to think that a transfer to either the PPF or BSPS2 would be a poor outcome;*

- *His safeguarded benefits offered guaranteed income and represented most of his retirement provision meaning he'd be heavily reliant on it to provide retirement income. He doesn't recall D C Financial highlighting the potential risks of transferring out of the BSPS. The adviser gave him the impression that he could retire at 60 and that this would be sustainable due to the size of the transfer value. There wasn't any mention of some of the key risks he now faces with his pension – investment risk, longevity risk and inflation risk;*

- *There wasn't any discussion about the retirement provision he was building up in his Tata Steel defined contribution plan and how this could help meet his objectives but, in any event, this didn't offer guaranteed benefits like the BSPS.*

- *He was, and still is, in good health and so there wasn't any reason to think he wouldn't reach or even exceed his average life expectancy;*

- *While he had death in service benefits of six times his salary through his employment with Tata Steel, there wasn't any discussion about how separate life cover could meet his death benefit objective despite D C Financial being aware he had substantial monthly surplus disposable income available to pay for this;*

- *D C Financial made no effort to establish whether Mr T and his partner intended to get married to secure the spouse's pension available under the PPF or BSPS2.*

- *Rather, it simply allowed Mr T to transfer without exploring all the possibilities and options;*

- *He didn't understand how valuable safeguarded benefits were until long after he transferred out of the BSPS. He now knows that had he transferred to either the PPF or BSPS2, he wouldn't have to worry about the markets, inflation or the charges he now faces through the personal pension. Rather, he'd have peace of mind and a guaranteed, escalating income for life without the costs and charges he's now paying;*

- *He cannot recall completing a risk profile or agreeing to the 'moderate' risk profile determined by D C financial. He's not a sophisticated investor and didn't want to take any significant risks with his pension;*

- *He was encouraged to believe that he'd be better off if he transferred, not worse off. He wasn't made aware of the level of benefits he was likely to receive from the personal pension or by how much his fund would grow after charges. Due to his wider financial situation including limited other savings and investments, he didn't have the capacity to accept the risks associated with the pension transfer;*

- *He didn't have any specific objectives other than to protect the benefits he had built up. D C Financial's records made it look like he was obsessed with purchasing a property overseas when he wasn't. It was true that he wanted to purchase a property but he'd always planned to do that when he retired and would've waited if he was told that was the suitable thing to do;*

- *Like most people he was interested in retiring early if he could but didn't know if this was possible or whether it would be a good idea. There wasn't any discussion about his retirement income needs and so he's unsure how D C Financial determined that his gross annual income need from 60 was £24,125. The adviser persuaded him that it was a no-brainer to transfer out because he could achieve all his objectives risk-free. But the adviser failed to explain to Mr T what he could've received from the PPF or BSPS2 at 60 and so he transferred from an uninformed position because he didn't know all the important facts;*

- *He didn't recall being shown the suitability report issued to him by D C Financial at the time. But having read a copy as part of making this complaint, he considered it full of technical language that he didn't understand. The information he recalled receiving at the time seemed to suggest that even if he took out a lump sum and a monthly income, he'd still end up with more money than he started with;*

- *Until he made this complaint he didn't realise his revalued annual scheme pension at 65 was £34,937 under the BSPS and £30,121 under the PPF. The critical yields applicable to his case weren't explained to him;*

- *The transfer value paid represented poor value for money because it was less than 20 times' his revalued BSPS scheme pension at 65. He felt this ought to have been a red flag to D C Financial that a pension transfer was unsuitable; and*

- *D C Financial failed to adhere to several regulatory requirements including COBS 4.2.1(1) R, COBS 9.2.1(1) R, COBS 9.2.1(2) R), COBS 9.2.2 R and COBS 19.1.*

To put things right, Representative A requested D C Financial to pay redress to Mr T on the basis that he instead transferred to the BSPS2 and not a personal pension.

<u>D C Financial's response to Mr T's complaint</u>

D C Financial didn't uphold Mr T's complaint because it was satisfied that its advice to transfer to the personal pension was suitable. Its position can be summarised as follows:

- *The basis of Mr T's complaint, as set out by Representative A, contained several inaccuracies and isn't a true reflection of the advice, process or service it provided to Mr T. The complaint submitted was generic and based on a narrative Representative A had pursued in the financial press and on social media about other BSPS members' negative experiences;*

- *Contrary to Representative A's assertion, it didn't advise Mr T to opt-out of the BSPS on 31 March 2017. Rather, he left the BSPS on that date because it had closed to further benefit accrual;*

- *Its advice was tailored to Mr T's personal circumstances, considering his current and future plans, needs and objectives. It wasn't a rushed process. Rather, meetings and correspondence took place over several months, meaning Mr T had plenty of time to reflect and consider his options. He expressed satisfaction with its advice at every stage of the process, including at subsequent annual review meetings, also recommended D C Financial to colleagues and retains D C Financial as his financial adviser. So it was surprised to receive this complaint;*

- *Mr T was very knowledgeable about the BSPS and his entitlements, including the lack of a spouse's pension to his unmarried partner. He wasn't interested in the* *reduction of his benefits under a new scheme. At their initial meeting in February 2017, Mr T had already made his mind up to transfer out of the BSPS due to his distrust of Tata Steel and his concerns about the value of his safeguarded benefits being transferred to the PPF. The situation with Tata Steel was unprecedented. With so much uncertainty surrounding the BSPS and his future employment, Mr T felt more comfortable with his pension benefits being under his control in a personal pension;*

- *His retirement plan involved retiring overseas at 60 and receiving gross annual income of £24,125. In preparation of this, he had decided that he required an immediate lump sum of £100,000 to cover the cost of purchasing a property overseas and to repay his debts which would immediately reduce monthly outgoings by £655. He wanted to ensure that all major property expenses, purchase and set up costs were taken care of while still earning his salary from Tata Steel. Mr T saw the ability to access partial tax-free cash at 55 as an opportunity to achieve his retirement objectives since it would enable him to spend time overseas during periods off work during the five-year period up to 60 as part of his retirement preparations. The idea of being debt free was also very appealing to Mr T and met one of his objectives. He wasn't prepared to wait one year, let alone five or 10 years, to complete the property purchase. The only viable option to meet his objectives was a pension transfer to a personal pension;*

- *Contrary to Representative A's view, details about the BSPS2 weren't known at the time of its advice in July 2017 so it couldn't consider that option in formulating it recommendation. The potential establishment of the BSPS2 wasn't known until the 'Time to Choose' exercise was completed in December 2017 which was after its recommendation in July 2017. Therefore, it could only consider the BSPS, PPF and pension transfer to a personal pension as the range of viable options. In its opinion, neither the BSPS nor PPF would've met Mr T's objectives, meaning a transfer to a personal pension was the only option;*

- *Transferring to the PPF would've meant Mr T wasn't able to meet his retirement objectives to purchase a property overseas as soon as possible, to retire at 60, and then be in receipt of gross annual income of £24,125. If Mr T had transferred to the PPF he would've suffered a 10% reduction compared to the scheme pension payable by the BSPS. This would be reduced further if he accessed benefits at 60 in line with his objective. Furthermore, 48.40% of his pension income wouldn't increase in payment [in respect of service before 6 April 1997] and therefore wouldn't be protected against inflation. Had Mr T transferred to the PPF and at 60 taken the projected tax-free cash of £131,953 and a reduced annual pension of £19,775, he'd need to live a number of years beyond his life expectancy to receive an amount equivalent to the transfer value of £692,824.06 paid by the BSPS when he was concerned that he had a reduced life expectancy. Transferring to the PPF guaranteed that Mr T couldn't meet his objectives – he'd need to work longer, accept a retirement income below his gross annual income need of £24,125 and delay or cancel his plans to purchase a property overseas. Furthermore, since Mr T was unmarried, the PPF wouldn't pay a spouse's pension to his partner and so offered no security to her;*

- *In its view, since the BSPS was closing, the critical yield figures for the PPF were more relevant for considering required investment returns. On the basis Mr T took the maximum tax-free cash, the critical yield from a personal pension to match the PPF at age 65 was 1.41% and likely achievable;*

- *Contrary to Representative A's claim, Mr T's target gross annual income figure of £24,125 wasn't fabricated but instead based on an analysis of his estimate outgoings in retirement. Its retirement income modelling showed that Mr T's gross annual income need of £24,125 from 60 was sustainable from the recommended personal pension during his expected lifetime. This considered the projected inflation-proofed State pension payable from 67 and money built up in the Tata Steel defined contribution pension plan at different stages in retirement, meaning he'd draw more income from the personal pension in the early years and less in later years;*

- *Accessing tax-free cash and flexible or no income wasn't available under the BSPS or PPF. Taking income from the BSPS of PPF before 65 would've required Mr T to draw actuarily reduced taxable income that wasn't required. And due to his employed earnings, most of the pension income would've been taxed at the higher rate of 40% until he retired at 60;*

- *Mr T was of the view that due to the nature of his job working in heavy industry for nearly 40 years, he had a reduced life expectancy. He was keen to ensure his pension benefits wouldn't be lost on death and that the full value of his safeguarded benefits be utilised with flexible options available to his beneficiaries. He was concerned about providing for his partner who didn't have any personal or occupational pension savings in her name and, since they were unmarried, thought that she wouldn't be entitled to a spouse's pension under the BSPS or PPF. So he viewed a transfer to a personal pension as an opportunity to provide long term security for his partner. By transferring, in day one, death benefits increased from £87,076.46 [value of refund of contributions payable by the BSPS on death before retirement] to £684,824.06 [value of personal pension immediately following the pension transfer after D C Financial's initial adviser charge of £8,000 was deducted]. Life cover was discussed with Mr T but he rejected it as an option because of the likely cost and that he didn't want to start another financial product. Despite knowing the lack of financial protection for his partner, Mr T never arranged life cover protection to compensate for lack of a spouse's pension and still wasn't interested when it was discussed. The option of a pension transfer provided a definitive solution to the death benefit objective;*

- *Through his employment, Mr T had life cover equivalent to 4 times' his salary if he died while in service and not 6 times' his salary, as stated by Representative A;*

- *A partial transfer wasn't an option under the BSPS. And if the BSPS was transferred to the PPF then the opportunity for a pension transfer in the future would be lost;*

- *Contrary to Representative A's claim that Mr T didn't recall seeing the suitability report, he in fact signed it to confirm he understood and agreed with the advice to transfer. It also provided Mr T with a list of advantages and disadvantages of maintaining safeguarded benefits compared to transferring to a personal pension, so he made the decision to transfer from an informed position in the knowledge of the range of risks associated with both options including the loss of guaranteed benefits;*

- *Between February and June 2017, the transfer value increased from £392,800 to £692,824.06 – it acted in Mr T's best interests by ensuring that the pension transfer didn't complete until he received the highest transfer value offered; and*

- *Since the transfer, Mr T had withdrawn at least £264,174 from his personal pension, something he wouldn't have been able to do through the BSPS or PPF. But he withdrew more money than was planned for including taking the maximum tax-free* *cash and several taxable withdrawals against its advice. Mr T was warned about this, the loss of his personal allowance, triggering of the Money Purchase Annual Allowance and that he'd be jeopardising his standard of living in retirement, but he decided to act against its advice. It didn't think Mr T would've made this complaint had he followed his original retirement plans. It believes he made this complaint to recoup some of the money it believes he spent recklessly since the pension transfer under his own instruction.*

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

Our investigator thought that Mr T's complaint should be upheld. His findings can be summarised as follows:

- *Mr T's safeguarded benefits amounted to 38 years and 4 months' pensionable service and so represented most of his retirement provision. He was heavily reliant on the value of these benefits to provide secure retirement income;*

- *While Mr T was building up additional retirement provision in his Tata Steel defined contribution pension plan, it was the case that he had limited other investments and savings upon which he could rely to support his desired standard of living in retirement. This meant he had a very low capacity for loss to absorb financial loss in connection with his safeguarded benefits;*

- *Prior to meeting D C Financial, Mr T hadn't previously obtained financial advice and had no experience of investing and managing significant sums of money. So it would've been difficult for him to understand and manage the risks associated with investing the transfer value of £692,824.06, which was more than eight times' the value of his home, to meet his income needs throughout retirement;*

- *The critical yield figure of 11.25% per year on transfer to a personal pension (based on Mr T taking benefits at 60, in line with his recorded early retirement objective) was likely unachievable and inconsistent with his moderate risk profile. The required rate of investment growth was significantly higher than the relevant discount rate of 3.0% per year published by this service and the FCA's projection rates for pensions. As a result, he concluded that the pension transfer would likely lead to Mr T receiving substantially lower retirement benefits compared to the BSPS;*

- *While D C Financial acknowledged in its suitability report that the critical yield was unlikely to be achieved, it didn't explain the implications of this to Mr T. The advice was geared towards providing a gross annual income of £24,125 but it was unclear how this figure was determined because the fact find document noted that Mr T was unsure of the estimated level of retirement income he required. The figure of £24,125 wasn't indexed against inflation in D C Financial's cashflow modelling so it was unclear how it could continue to meet Mr T's living costs throughout retirement. This contrasted with the BSPS and PPF options which would offer escalation in payment and therefore provide some protection against inflation;*

- *He wasn't convinced Mr T's various objectives for transferring including early retirement, purchasing an overseas property, repaying debt, covering the cost of immediate home improvements, obtaining control, concerns about his continuing employment, avoiding the PPF and changing the format of death benefits were sufficient to justify relinquishing his safeguarded benefits or that there was an exceptional reason that superseded the general suitability considerations. He therefore concluded that the pension transfer was unsuitable because it was likely*

Mr T would be worse off by transferring;

- *He thought that D C Financial misinformed Mr T about the benefits payable by the BSPS at 65. This was because in its suitability report it incorrectly presented Mr T's revalued BSPS pension at 65 as £27,681.76 when that was the figure when he left the scheme at 55 on 31 March 2017. As stated, in the Transfer Value Analysis System ("TVAS") report, with revaluation, the future BSPS pension at 65 was estimated to be £34,937. The investigator stated that the suitability report didn't set out the estimated future benefits of the BSPS and PPF and so didn't correctly inform Mr T of what he was relinquishing by transferring;*

- *In addition, the critical yield at 60 on transfer to the PPF wasn't disclosed in the suitability report to enable Mr T to compare it with the figure of 11.25% for the personal pension option. This meant Mr T made the decision to transfer from an uninformed position. Overall, he wasn't satisfied that D C Financial provided a balanced assessment of the PPF option to Mr T;*

- *In his opinion, Mr T couldn't afford to take benefits earlier than 60 and maintain his lifestyle in retirement and so his expectations around this and his other objectives, such as purchasing a property overseas, should've been managed by D C Financial. He said he wasn't persuaded that Mr T would've insisted to proceed against advice had he been provided a suitable recommendation; and*

- *D C Financial ought to have advised Mr T to maintain his safeguarded benefits because of the valuable guarantees it offered.*

- *To put things right, our investigator recommended that D C Financial 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 T maintained his benefits in the BSPS (which was ultimately transferred to the PPF) and would be a 20% income tax payer in retirement. In addition, he recommended that D C Financial pay Mr T £300 for the upset caused by the transfer and the expectation that he'll be worse off in retirement.*

<u>D C Financial's response to our investigator's assessment</u>

D C Financial didn't accept our investigator's assessment that its recommendation was unsuitable. But, to bring this complaint to a conclusion, it commissioned an independent actuary to undertake a redress calculation. This showed that, as at 12 November 2020, Mr T hadn't suffered a financial loss. Representative A requested further details about the loss assessment to satisfy itself that the 'no loss' outcome was correct. This complaint was referred to me for review because D C Financial was unable to provide the information requested by Representative A in the format it wanted.

I requested further details from D C Financial about the loss assessment carried out by the independent actuary on 12 November 2020. In response to my request, D C Financial appointed a legal firm to represent it ("Representative B") which provided substantial comments for my consideration, which essentially repeated the submissions previously provided by D C Financial.

Representative B also provided the additional information I requested about the loss assessment calculation. The actuary's report stated that the loss had been carried out in line with the pension review methodology, as amended by the FCA in October 2017. The calculation showed that the capitalised value of Mr T's personal pension was £759,362.44, *which comprised £433,028.41 remaining money in the personal pension and risk adjusted withdrawals of £326,334.03. In arriving at the risk adjusted figure of £326,334.03, the actuary used the FTSE UK Private Investor Income Index as a proxy growth rate applied to the actual withdrawals of £289,174.01 Mr T had taken from the personal pension up to the date of the loss assessment. Conversely, the equivalent capitalised value of Mr T's benefits at the same date, had he instead transferred to BSPS2, was £716,032.58. So the actuary concluded that Mr T hadn't suffered a financial loss. Representative B confirmed that when carrying out the loss assessment the actuary considered the potential loss on the most beneficial basis on the assumption Mr T was married and transferred to the BSPS2, even though he was unmarried and the BSPS2 wasn't a viable option at the time of D C Financial's recommendation.*

Before making my final decision, Representative B requested that I hold an oral hearing with the parties to scrutinise Mr T's version of events and the position put forward by Representative A regarding the basis of this complaint.

I arranged for a copy of the submissions sent by Representative B, including the additional information about the loss assessment, to be provided to Representative A to give it the opportunity to comment. It replied that it didn't have anything to add at that stage but requested the opportunity to do so in the future if I was minded to not uphold Mr T's complaint.

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. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Both parties to this complaint have submitted substantial comments and evidence for my consideration. I've considered all the evidence afresh including both parties' most recent submissions. 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 it affects what I think is the right outcome.

<u>Request for an oral hearing</u>

Representative B requested that I hold an oral hearing with the parties to scrutinise Mr T's version of events and the position put forward by Representative A regarding the basis of this complaint. I don't think this is necessary.

Oral hearings aren't designed for the parties to plead their case or to cross-examine the other party – they're only granted by an ombudsman if they think it will help them get to the bottom of what happened and to ultimately make a decision. In this case, I don't think a hearing is necessary because I'm satisfied that there's sufficient documentary evidence already provided by the parties to enable me to reach a fair and reasonable decision.

But if either party wishes to make additional verbal submissions, it may do so to the investigator, or by leaving a voicemail message with the investigator for my attention.

The genesis of this complaint

D C Financial said it's surprised that Mr T complained because he expressed satisfaction with its advice at every stage of the process, including at subsequent annual review meetings, also recommended it to colleagues and retains it as his financial adviser. It said that Mr T only made this complaint to recoup some of the money it believes he's spent since the pension transfer.

There may be any number of reasons why Mr T made this complaint. 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 T, 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 T made this complaint doesn't mean it's without merit, as I think is implied by D C Financial, or that he's acted unreasonably. D C Financial will, I hope, agree that, regardless of how his concerns materialised, Mr T is entitled to complain about the advice it provided if he's concerned it was unsuitable.

I'll now go on to consider the suitability of D C Financial's pension transfer advice.

The FCA's suitability rules and guidance

What follows isn't a comprehensive list of the rules and regulations which applied at the time it advised Mr T 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 objective and risk profile. To ensure that this is the case, and in line with the requirements COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

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

COBS 19.1.2R required the following:

> *"A firm must:*

(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;

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

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

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

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

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

COBS 19.1.7G also stated:

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

And COBS 19.1.8G stated that:

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

(1) a summary of the advantages and disadvantages of its personal recommendation;

(2) an analysis of the financial implications (if the recommendation is to opt-out); and

(3) a summary of any other material information."

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

The important point to make here is that the FCA refers to "clearly" in its rules. In my view, borderline cases – those which appear evenly balanced as to whether to transfer or not –

don't meet the "clearly" requirement, as required by the FCA. Therefore, if I conclude that alternative options could've met Mr T'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 D C Financial after its recommendation in response to this complaint is essentially irrelevant to my consideration of the advice given in 2017, although I accept some circumstances, such as the use of pension funds beyond what was expected may be factored into a redress calculation.

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 its recommendation in July 2017 to decide whether its pension transfer recommendation was suitable and clearly in Mr T's best interests.

<u>Mr T's situation</u>

Mr T's situation at the time D C Financial advised him in July 2017 was unusual for the reasons set out in the background above. After the BSPS closed on 31 March 2017, there followed a period of uncertainty regarding the future of the scheme.

It's my opinion that at the time D C Financial issued its recommendation to Mr T on 25 July 2017, there was insufficient information available about the BSPS2 to enable it to carry out a proper analysis of that option. It wasn't certain that the BSPS2 would go ahead until at least the RAA was approved by the Pensions Regulator on 11 August 2017 which was after D C Financial issued its recommendation. But there was no imminent threat of the BSPS entering the PPF – on the contrary, there had already been an update in May 2017 that the key commercial terms of the RAA had been agreed. Given that the whole purpose of the consultation was to prevent the BSPS entering the PPF, I therefore think that it was just as likely as not, if not more likely, by that point, that the BSPS would avoid entering the PPF by being restructured into a successor scheme – as it then did. And so I think it's strongly arguable that D C Financial should've delayed its recommendation until more detail became available, but, for the purpose of making a determination, and on the basis that it advised Mr T before the outcome of the consultation was known, I'm going to proceed on the basis that D C Financial essentially had two options – beyond that of waiting to learn the results of the consultation – to consider when it issued its recommendation to Mr T, as follows:

1. *Advise him to maintain his safeguarded benefits in the knowledge that there was a possibility they would ultimately be transferred to the PPF in the future; or*
2. *Advise him to transfer to an alternative pension plan such as a personal pension.*

D C Financial said that at their initial meeting in February 2017, Mr T had already made his mind up to transfer out of the BSPS due to his distrust of Tata Steel and his concerns about the value of his safeguarded benefits being transferred to the PPF. I acknowledge that the situation was rapidly evolving and there were serious concerns relating to the BSPS at the time D C financial advised Mr T. It's undeniable that it was a period of great uncertainty for individuals such as Mr T. 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 T had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, D C Financial.

I recognise that there was no perfect solution for Mr T. And that his safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on D C Financial *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, D C Financial was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.*

D C Financial believes that a pension transfer was necessary at that time and that it fulfilled Mr T'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.

And in line with the FCA's default position, it's my view that D C Financial should've only considered a pension transfer to a personal pension if it could demonstrate, on the contemporaneous evidence, that it was clearly in Mr T's best interests rather than maintaining his safeguarded benefits.

Critical yield and discount rates

The TVAS rules applied at the time D C Financial advised Mr T. This required it to conduct 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 defined benefits scheme, which in this case was the BSPS.

The TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives. But a TVAS has a role to play where it's likely the individual would use the accumulated fund to provide steady, secure income during retirement. So a TVAS was likely useful for a client, like Mr T, that intended to use their safeguarded benefits towards achieving a minimum retirement income objective. And 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 therefore useful in that regard.

D C Financial's recommendation to Mr T was provided before the FCA published instructions in Finalised Guidance FG17/9 regarding how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by this service on our website. While businesses weren't required to refer to these rates when giving advice on pension transfers, I consider that they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in Mr T's case. The closest discount rate to this time which I'm able to refer to was published by this service for the period before 1 October 2017 and was 3.0% based on Mr T taking benefits at 60, in line with his early retirement objective. But even if D C Financial rejects that measure as a reasonable comparator, 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, D C Financial calculated the critical yield figures in the table below based on a transfer value of £670,945.41 being invested in a personal pension. This showed the average annual investment return required by the personal pension to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 60 based on a full pension	At age 60 based on a reduced pension and maximum tax-free cash	At age 65 based on a full pension	At age 65 based on a reduced pension and maximum tax-free cash
BSPS	11.25%	Not calculated	6.71%	Not calculated
PPF	Not calculated	Not calculated	2.02%	1.41%

Bearing in mind the discount rate and FCA's projection rates noted above, it's my view that the critical yield figures for the BSPS, which ranged from 6.71% to 11.25% per year, depending on when and how Mr T accessed the benefits from the personal pension, demonstrated that the transfer value of £670,945.41 represented poor value for money. This is because the invested transfer value would need to achieve significant investment growth to match the relinquished safeguarded benefits. I acknowledge that the transfer value was subsequently increased from £670,945.41 to £692,824.06 by the time the transfer was carried out, meaning the critical yield figures shown in the table above would be marginally lower if all other underlying assumptions remained unchanged. But it doesn't change my view that the transfer value represented poor value for money.

Based on the above considerations, I think it was highly likely that Mr T would receive benefits from the personal pension of a lower overall value than the BSPS at retirement, bearing in mind investment in the personal pension would need to align to his 'moderate' risk profile and therefore restrict the potential for the kind of investment growth required to match the relinquished safeguarded benefits. And it seems D C Financial agrees with my assessment because in its suitability report it stated, "The critical yield required is high and it would be very unlikely that an investment could provide a return to match the benefits you are giving up". So based on this alone, a transfer wasn't in Mr T's best interests.

Notwithstanding the above, the TVAS report states that the annual ongoing adviser remuneration to D C Financial was assumed to be at £1 rather than an amount equivalent to 1.00% of the personal pension fund value, as stated in the suitability report. If I'm reading the TVAS report correctly then this is a failing on the part of D C Financial because the difference between £1 and 1.00% of the personal pension fund value as an annual charge is clearly significant, bearing in mind the personal pension fund value was £684,824.06 immediately following the pension transfer (and after D C Financial's initial adviser charge of £8,000 had been deducted). And if my understanding is correct, it means the invested transfer value would need to achieve even greater investment growth than indicated by the TVAS report to account for the ongoing adviser charge. So the critical yield figures presented to Mr T would've therefore be understated, further undermining the case for a pension transfer.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). 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.

D C Financial's rationale for transferring

In accordance with COBS 9.2.2R, D C Financial undertook its fact finding for Mr T and then set out its assessment of his circumstances and objectives regarding his safeguarded benefits. The latter, as set out above, may be summarised as follows:

- *To draw tax-free cash to immediately repay debt and cover the cost of home improvements;*

- *To draw tax-free cash to immediately purchase a property overseas with a view to residing in it permanently when he retires at 60;*

- *To receive gross annual retirement income of £24,125 from 60 onwards without reduction or penalty;*

- *To provide death benefits to his partner and children; and*

- *To control his own pension fund due to concerns about his future employment with Tata Steel and the uncertainty regarding the future of BSPS, including the risk that it might transfer to the PPF.*

I've considered these objectives and concerns further below. To make my findings easier to follow, I've set them out under separate headings.

<u>Debt repayment and home improvement objectives</u>

At the time of D C Financial's advice in July 2017, Mr T and his partner were 55 and 54 respectively and on course to repay the personal loan of about £4,400 in three years' time in 2020 and the mortgage of about £22,400 in eight years' time in 2025. The credit card debt of £600 could be repaid at any time. These liabilities totalled £27,400. D C Financial recorded that Mr T wanted to defer drawing a pension income until he was 60 but draw immediate tax-free cash so that he could repay this debt. When responding to this complaint, it said that repayment of the debt would reduce monthly outgoings by £655 which was a key motivating factor for Mr T.

D C Financial said that, unlike a personal pension, the flexibility to draw tax-free cash but defer income until a later date wasn't available through the BSPS or PPF. And that the only way to achieve the debt repayment objective was therefore by transferring to a personal pension. It said the lack of flexibility to take immediate tax-free cash but defer income under the BSPS and PPF rendered those options unsuitable.

Accessing pension benefits early at 55, whether as tax-free cash, income or both, would likely lead to reduced retirement benefits later in life. Like many people, Mr T might have wanted to repay his debt. But, given his background, it's my view that he didn't have the necessary knowledge or experience to understand whether it made financial sense to do this by accessing his safeguarded benefits early to obtain tax-free cash at the cost of reduced retirement benefits later in life. While he may have wanted to repay his debt at that time, suitable advice might have been to do nothing or to use surplus disposable income to repay it sooner. Given his inexperience, it's my view that Mr T was relying on D C Financial to provide suitable advice and to act in his best interests in this regard.

The suitability report doesn't elaborate on the reasons why Mr T wanted to immediately repay his debt. There's no suggestion that he was having trouble in making the total monthly debt repayments of £655 at the time D C Financial provided advice or that this might be the case in the future. Indeed, D C Financial recorded that Mr T had monthly surplus disposable income of about £1,000, so it doesn't seem he was struggling financially or why it was a key motivating factor to increase the monthly surplus disposable income from £1,000 to £1,655. Therefore, it's unclear to me why it was deemed suitable for Mr T to relinquish his safeguarded benefits and the valuable guarantees to repay debt.

As noted above, the FCA expects businesses to adequately consider alternative options to achieve the client's objectives to enable them to maintain safeguarded benefits. In my view, there were alternative options, as follows:

- *Mr T, then aged 55, could've opted for early retirement benefits from the BSPS. The suitability report didn't include the benefits payable by the BSPS at 55. Rather, it simply stated that, "There would be a 30% reduction in the scheme pension if you were to retire at age 55 and an 18% reduction at 60". A personalised figure – in monetary terms – wasn't presented to Mr T to help him make an informed decision about the BSPS option, which itself is a disclosure failing bearing in mind he wanted to access some of his benefits at 55. Given the significant value of his safeguarded benefits, it's my view that early retirement at 55, even with the 30% reduction, would've generated sufficient tax-free cash to repay the total debt of £27,400 had Mr T opted to convert some of his safeguarded benefits into tax-free cash. This course of action would've enabled Mr T to maintain his safeguarded benefits, albeit with a 30% reduction due to early payment, but nonetheless still achieve the debt repayment objective;*

- *Alternatively, Mr T could've decided to let the mortgage and loan run to their full repayment terms. He could clearly afford the repayments given that he had monthly surplus disposable income of about £1,000 after paying all essential bills and debt repayments. And interest rates were at the time, and had been for the preceding several years, very low by historical standards. So it's unlikely the interest charged on the mortgage and loan was punitive and certainly not as expensive as relinquishing safeguarded benefits. This option would've enabled Mr T to maintain his safeguarded benefits; or*

- *Alternatively, Mr T could've used some or all the monthly surplus disposable income of about £1,000 to repay the debt sooner, possibly before his planned retirement at 60. This option would've enabled Mr T to maintain his safeguarded benefits. This seems the most sensible course of action to me based on what was known at the time.*

I think that these were potentially viable, alternative options to achieve the debt repayment objective and ought to have been properly assessed. But I cannot see evidence these options were seriously considered by D C Financial. So I don't agree with its assessment that a pension transfer was the only suitable option. It's my view that D C Financial should've considered and presented these alternative options in a fair and balanced way to Mr T so that he could make an informed decision on the available options and whether it was in fact suitable to repay the debt immediately at that point in time by accessing his safeguarded benefits early. But there's inadequate evidence that D C Financial did this.

As for the home improvement objective, the suitability report doesn't specify how much tax-free cash Mr T required for this. So it's unclear how much tax-free cash was needed. This would surely be the first step towards assessing how the home improvements might be funded. Or whether Mr T's surplus monthly income could be used to pay for a loan to cover the cost of the home improvements rather than relinquishing his safeguarded benefits.

In conclusion, regarding his debt repayment and home improvement objectives, it's my view that Mr T made the decision to transfer from an uninformed position. I'm not satisfied that D C Financial demonstrated, on the contemporaneous evidence, that it adequately considered alternative options or why it was clearly in Mr T's best interests to relinquish his safeguarded benefits to achieve these objectives.

Property purchase objective

At the time of its advice, D C Financial recorded that Mr T wanted to draw tax-free cash to immediately purchase a property overseas with a view to residing in it permanently when he retired at 60. When responding to this complaint, D C Financial said Mr T was adamant he wanted to buy a property at that time and wasn't prepared to wait one year, let alone five or 10 years, to do this. Conversely, Representative A said that D C Financial's records made it look like Mr T was determined to buy a property when he wasn't. It said it was true that he wanted to buy a property but, before meeting D C Financial, had always planned to do that when he retired at 60 and would've waited if he was told that was the suitable thing to do. So while it's not in dispute that Mr T wanted to buy a property overseas, there's disagreement about when he planned to do this. It's also unclear about how much he planned to spend on the property purchase, which I'll come on to now.

*The suitability report is confusing regarding the amount earmarked for the property purchase. In one section it stated, "You want to take £100,000 of tax free cash immediately, the remainder [money in personal pension] will remain invested at present. **You had explained you wished to invest £100,000 in a property share** in [overseas] (where you ultimately wish to retire to). You also wished to make various gifts to your children and make a few home improvements" [my emphasis added]. This suggests that the full fax-free cash of £100,000 would be used to buy the property. There's no mention of any tax-free cash being earmarked for debt repayment.*

*But then in another section of the suitability report it stated, "You wish to access £100,000 tax free cash from your pension **which you will use to pay off your mortgage and an outstanding loan**. You would also like to purchase a shared property in [overseas] as you would like to retire there in the future, and do some home improvements. The remainder of the tax free cash will remain invested" [my emphasis added]. This suggests that the debt totalling £27,400 would be repaid in the first instance, leaving about £72,600 to cover the cost of home improvements and buying the property. So it seems that about £70,000 might have been earmarked for the property purchase.*

To further complicate matters, while waiting for the pension transfer to be completed, Mr T requested, without consultation with D C Financial, that it arrange to pay him the maximum tax-free cash because he had found a more expensive property to buy. So he ended up receiving tax-free cash of £173,206.

There's no contemporaneous evidence that Mr T had found a property to buy or what the likely cost would be at the time D C Financial advised him. This is supported by the fact that the suitability report references different valuations relating to the property purchase of anywhere between £70,000 and £100,000 and that Mr T, after the recommendation, requested the maximum tax-free cash of £173,206 to assist with the purchase of a more expensive property. So I think it's fair to say that there was, at the very least, a lack of certainty or clarity regarding this objective.

I also have concerns relating to the urgency which has been attributed to Mr T in seeking an overseas property. But even if I accept that he wanted to buy a property as urgently as D C Financial has suggested, then it's my view that it ought to have more clearly defined the amount of tax-free cash required to support its recommendation. Given the lack of certainty surrounding the property purchase, both in terms of the likely purchase cost and timing of purchase, I'm not convinced it was clearly suitable for Mr T to relinquish his safeguarded benefits at that time to achieve this objective. But, again, even if I accept that Mr T was looking to buy a property in the immediate future, as asserted by D C Financial, it's my view that there were in any case alternative options, as follows:

- *Mr T, then aged 55, could've opted for early retirement benefits from the BSPS. As noted above, the suitability report didn't include the benefits payable by the BSPS at 55. Rather, it simply stated that, "There would be a 30% reduction in the scheme pension if you were to retire at age 55 and an 18% reduction at 60". A personalised figure – in monetary terms – wasn't presented to Mr T to help him make an informed decision about the BSPS option, which itself is a disclosure failing bearing in mind he wanted to access benefits at 55. Given the significant value of his safeguarded benefits, it's my view that early retirement at 55, even with the 30% reduction, would've likely generated sufficient tax-free cash to buy a property. I acknowledge that I make this finding without a firm view on the cost of the property or the amount of tax-free cash that might have been payable by the BSPS at 55, but that's because D C Financial didn't clarify these matters at the time, as it ought it have done. But it seems, in any event, that because there wasn't a firm figure in mind regarding the cost of the property, Mr T may have been prepared to limit how much he spent based on the maximum tax-free cash available from the BSPS; or*

- *Alternatively, Mr T could've used some or all of the monthly surplus disposable income of about £1,000 towards buying the property. For example, by taking out a bridging loan. This course of action would've enabled Mr T to buy a property at 55 while allowing him to delay taking his safeguarded benefits until his planned retirement at 60 or perhaps longer (see my comments below under 'Income objective'), limiting the impact of the early retirement reduction. Then, at retirement, he could commute some of his scheme pension into tax-free cash to repay the bridging loan. As noted above, interest rates were at the time, and had been for the preceding several years, very low by historical standards. So, overall, the cost of a bridging loan is likely to have been more beneficial compared to the overall – and permanent - cost of relinquishing safeguarded benefits at 55.*

I think that these were viable, alternative options to achieve the property purchase objective and ought to have been assessed. But I cannot see evidence that these options were considered by D C Financial. So I don't agree with its assessment that a pension transfer was the suitable option here. It's my view that D C Financial should've considered and presented these alternative options in a fair and balanced way to Mr T so that he could make an informed decision on the options and whether it was in fact suitable to relinquish his safeguarded benefits at that time to buy a property. But there's inadequate evidence that D C Financial did this.

In conclusion, regarding achieving his property purchase objective, it's my view that Mr T made the decision to transfer from an uninformed position. I'm not satisfied D C Financial demonstrated, on the contemporaneous evidence, that it adequately considered alternative options or why it was clearly in Mr T's best interests to relinquish his safeguarded benefits at that time to achieve this objective.

I've thought about what decision Mr T might have made if he was fully informed. While I can't know for certain, I think it's likely, on balance, that he would've delayed buying the property at that time if he knew the scale and consequences of relinquishing his safeguarded benefits.

Income objective

D C Financial recorded that Mr T wanted to receive gross annual retirement income of £24,125 from 60 onwards without reduction or penalty after drawing tax-free cash from 55, as set out above. It said the plan was that Mr T would draw that level of income from the personal pension until his State pension started at 67, at which point he'd reduce the level of *withdrawal from his personal pension by an amount equivalent to his State pension. At the time of D C Financial's recommendation, Mr T's annual State pension was estimated to be £6,217.64. Assuming he remained in employment until 60, and therefore paid further National Insurance contributions in the interim period, it appears he'd be entitled to the full State pension at 67. The full State pension in 2017/18 was £8,296.60. It increases each year in line with changes to the CPI. But even with this increase to the State pension, I think it's fair to say that the personal pension would still be required to provide a significant proportion of Mr T's income need for many years into his retirement to maintain his target gross annual retirement income of £24,125.*

D C Financial said that, unlike a personal pension, the flexibility to draw varying levels of income at different points in time and separately to tax-free cash wasn't available through the BSPS or PPF. And that the only way to achieve the flexibility Mr T desired was by transferring to a personal pension. It said the lack of income flexibility under the BSPS and PPF rendered those options unsuitable.

In my view, to determine 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. Representative A said there's no evidence to show how D C Financial determined that Mr T's gross annual income need from 60 was £24,125. I agree. Firstly, the fact find document recorded that Mr T was unsure of the estimated level of retirement income he required. And, secondly, there's no contemporaneous evidence I've seen that shows a breakdown of Mr T's estimated outgoings in retirement to support the need for gross income of £24,125. So it's unclear to me how D C Financial arrived at the figure of £24,125 and whether, in fact, Mr T required that level of retirement income.

But even if I accept that Mr T's retirement income need was £24,125 from 60, I make the following observations. The basis of D C Financial's advice was that the figure of £24,125 would remain level throughout Mr T's retirement, despite it recording he was in good health and therefore could expect a normal life expectancy into his late 70s or early 80s. So it's unclear how level income of £24,125 from 60 onwards would keep pace with inflation over the next 20 year period, and possibly beyond, without Mr T having to withdraw more money from his personal pension than planned for by D C Financial in its recommendation. As noted above, I recognise that the State pension would increase in payment, but it would take many years for this to reach and escalate beyond £24,125.

This contrasted with the BSPS and PPF which, in addition to the State pension, would offer escalation in payment and therefore provide further protection against inflation. I acknowledge that under the PPF only service after 6 April 1997 would escalate in payment. But, as noted above, the basis of D C Financial's advice was that the income of £24,125 would remain level throughout Mr T's retirement. So I don't think D C Financial would've necessarily considered it an issue that only about half of the PPF income would escalate in payment in respect of service between 6 April 1997 and 31 March 2017 when no guarantees applied to the personal pension.

D C Financial recorded that Mr T wanted flexible income and, due to the uncertainty regarding the future of the BSPS, including the risk that it might transfer to the PPF, he also wanted control of his own pension fund. But I'm not convinced that there was a genuine need for flexibility and control. It's my view that Mr T required certainty rather than flexibility given it was very likely he'd be heavily reliant on the value of his safeguarded benefits to meet a significant proportion of his retirement income need of £24,125. As for Mr T's apparent desire to control his pension fund, he hadn't controlled his safeguarded benefits *between 17 November 1978 and 31 March 2017. So it's unclear why he suddenly desired or needed control. And he didn't have any experience of managing large sums of money and dealing with the various risks this entails, so it strikes me as odd that he'd suddenly want to take this on. Therefore, I'm not persuaded, on the evidence, that Mr T's need to control his pension savings to mitigate the risk of his safeguarded benefits being transferred to the PPF outweighed the risks associated with a pension transfer. I think his misapprehensions about the PPF should've been appropriately managed by D C Financial.*

As explained in the sections above, I have my doubts whether there was a genuine urgency to repay debt and buy a property at 55 and so, if properly advised, Mr T might have maintained his benefits in the BSPS until he retired at 60. If I accept that his retirement income need at 60 was £24,125, it's my view there were alternative options to the pension transfer, as follows:

- *Mr T could've maintained his safeguarded benefits and taken early retirement at 60. For the BSPS, the estimated revalued annual scheme pension at 60 was £25,106 (the estimated maximum tax-free cash and reduced pension option wasn't calculated) which exceeded the target annual income of £24,125. And in the event Mr T's safeguarded benefits were transferred to the PPF before he was 60, the estimated revalued annual income at 60 was £19,775 plus tax-free cash of £131,952. I recognise that the PPF annual income of £19,775 is £4,350 less than the target income of £24,125. But Mr T could've used £30,450 of the tax-free cash of £131,952 to cover the income shortfall for the seven-year period to 67 and left a substantial amount of cash of about £100,000 to buy the overseas property. So it's fair to say that both the BSPS and PPF could've met Mr T's annual retirement income need of £24,125 from 60 and would've entailed far less risk, management and costs compared to the recommended personal pension; or*

- *Alternatively, Mr T could've maintained his safeguarded benefits in the knowledge it might be transferred to the PPF with the aim of leaving these untouched for as long as possible. Then at 60 he could've used money built up in his Tata Steel defined contribution plan to meet his annual income need of £24,125 in the first instance. He joined that plan in April 2017 and, according to the fact find document, was contributing 26% of his pensionable salary into it each year. His gross annual salary was about £45,000.*

- *Given it was Mr T's intention to continue working full-time with Tata Steel for the five-year period until he retired at 60, it seems D C Financial could've reasonably expected that about £60,000 would've been invested in his Tata Steel defined contribution pension plan by the time he reached 60. This ignores likely investment growth and increases in contributions linked to rises in Mr T's salary. So the pension savings of around £60,000 could've likely met the annual retirement income need of £24,125 for about two and a half years, at which point Mr T would need to take early retirement from the BSPS (or, more likely, the PPF) to continue meeting the income need. The benefit of delaying taking benefits from the BSPS (or the PPF) is that it would limit the early retirement reduction applied. It was recorded that Mr T was concerned about his future employment with Tata Steel. In the event he was made redundant during the five-year period up to 60, it's my view he'd likely receive a significant redundancy payment bearing in mind he had been employed by the company since 1978. The safety net of a significant redundancy payment would've mitigated the risk of contributions not being paid into the Tata Steel defined contribution plan for the full five-year period to 60 if Mr T lost his job in the intervening period. And in the event Mr T left the employment of Tata Steel before 60, I think it's likely that he'd find alternative employment, albeit most likely outside of the steel* *industry, and, with the legal requirements of auto-enrolment, would build up additional defined contributions elsewhere over the period to 60.*

So, whichever way it's viewed, I think Mr T would likely have access to substantial cash through either his defined contribution pension savings, redundancy payment in the event of losing his employment, or a combination of both, if applicable. Both of which he could've used to meet his annual income need of £24,125 from 60 onwards in the first instance, enabling him to delay drawing his BSPS (or PPF) benefits for as long as possible.

I acknowledge that following the pension transfer, Mr T took flexible payments from his personal pension which triggered the Money Purchase Annual Allowance. This means that only contributions up to £4,000 into his Tata Steel defined contribution plan currently benefit from tax relief. But this eventuality has only arisen because of the transfer. Mr T likely wouldn't have taken flexible payments had a different course of action, such as those I've set out above, been recommended by D C Financial.

I think that these were viable, alternative options to achieve the income objective and ought to have been properly assessed. But I cannot see evidence that these options were considered by D C Financial. I recognise that under these alternative options Mr T would potentially be in receipt of excess income over his annual income need of £24,125 once the State pension started at 67. But any excess income could've been reinvested for future use. It's my view that D C Financial should've considered and presented these alternative options in a fair and balanced way to Mr T so that he could make an informed decision on the available options. But there's inadequate evidence that it did this.

<u>*Misleading information in the suitability report*</u>

It's my view that, in its suitability report, D C Financial didn't fairly present the estimated retirement income payable by the BSPS or PPF which prevented Mr T from making an informed decision.

With regard to the BSPS, the report stated, "Your current accumulated pension in the British Steel Scheme is £27,681.76 per annum at age 65, as a deferred member of the scheme this will increase each year to the normal scheme retirement age of 65. When in payment the income would be inflation proofed. There would be a 30% reduction in the scheme pension if you were to retire at age 55 and an 18% reduction at 60". I think it's fair to say that an inexperienced investor like Mr T would've interpreted this to mean that his estimated BSPS annual scheme pension at 65 was £27,681, £22,699 at 60 and £19,377 at 55.

However, as I've said above, the figure of £27,681.76 was the scheme pension at the date of leaving the BSPS on 31 March 2017. This figure would be revalued to 65. As stated in the TVAS report, with revaluation, the estimated BSPS scheme pension at 65 was £34,937 and £25,106 at 60. So the suitability report provided a misleading picture of the estimated benefits payable by the BSPS. As a result, Mr T wasn't correctly informed as to what he was relinquishing. I acknowledge that the TVAS report sent to Mr T included the revalued figure of £34,937, but it would've required Mr T to cross-reference this with the suitability report, spot the mistake and then question D C Financial about it. I don't think it's reasonable to expect Mr T to have done this. Furthermore, the suitability report included the statement "The BSPS scheme does not offer flexible income or PCLS which you wished to access". This was clearly incorrect because it was possible to commute some of the BSPS scheme pension into tax-free cash. Again, I think this misled Mr T about the benefits available under the BSPS. It was D C Financial's responsibility to provide accurate information about the BSPS in its suitability report to enable Mr T to make an informed decision.

As for the PPF, the suitability report didn't state what that option would pay – in monetary terms – at any age including 55, 60 and 65. So Mr T wasn't placed into an informed position regarding the PPF either.

Finally, the pension transfer was portrayed by D C Financial in its suitability report as allowing for early retirement without the "penalties" which would be applied to the BSPS scheme pension. The report stated, "You are currently in good health and are not planning to retire until age 60 and feel the penalties imposed for early retirement under the BSPS are too high". In listing the advantages of the pension transfer, D C Financial stated, "The fund can be accessed from age 55 without penalty". The reality was of course that the personal pension 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 T so he could understand that accessing the BSPS, PPF or personal pension 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 T made the decision to transfer from an uninformed position regarding achieving his income objective. I'm not satisfied D C Financial demonstrated, on the contemporaneous evidence, that it adequately considered alternative options or why it was clearly in Mr T's best interests to relinquish his safeguarded benefits when it was clear that both the BSPS and PPF options could've met his retirement income need at 60 and with far less risk than the pension transfer it recommended.

<u>Death benefit objective</u>

D C Financial recorded Mr T's death benefit objective as follows:

> *"The inflexible death benefits concern you after your death, the pension ceases. You feel it is important to be able to pass on any unused pension fund to your partner and children."*

In its suitability report, D C Financial stated:

> *"You are aware that by transferring your British Steel pension you will be giving up all the above guaranteed benefits. Miss [name], your partner is aware of your intention to transfer away from the defined benefit scheme, however she is not entitled to the 50% spouse's pension as you are not married. Your children would not qualify for a dependent's pension as they are over 16. You would be giving up guaranteed and secure income for life by transferring the British Steel Pension."*

The fact that Mr T and his partner were unmarried was a key driver underpinning D C Financial's recommendation to transfer. But I haven't seen any evidence that D C Financial established with the BSPS how it would likely treat Mr T's partner in the event of his earlier death. In my view, a business acting in its client's bests interests would've investigated this specific point and documented it since the answer would clearly influence the decision to transfer or otherwise. Rather, it seems that due to Mr T's unmarried status, D C Financial simply assumed that his partner wouldn't be entitled to any benefits under the BSPS in the event of his earlier death. I'm not so certain. I'll explain why.

Pension scheme trustees have certain fiduciary duties when exercising their duties. These include acting:

- *in line with the trust deed and rules;*
- *in the best interests of the scheme beneficiaries;*
- *impartially; and*

- *prudently, responsibly and honestly.*

Mr T's safeguarded benefits included the potential provision of benefits to any person who met the definition of 'dependant' under the trust deed and rules of the scheme. Therefore, following his death, the BSPS trustees would automatically assess whether there were any dependants – for example, a spouse, children or other relatives who financially depended on Mr T. The BSPS trust deed and rules applicable as at 31 March 2016 defined dependants of a deceased member, as follows:

> *(i) the widow, widower, Same Sex Spouse or Civil Partner of the deceased;*
>
> *(ii) the issue of the deceased;*
>
> *(iii) the grandparents of the deceased and the grandparents of the widow or widower or Same Sex Spouse or Civil Partner of the deceased and the grandparents of any previous or deceased wife or husband or Same Sex Spouse or Civil Partner of the deceased;*
>
> *(iv) the issue of each of the grandparents of the deceased and the issue of each of the grandparents of the widow or widower or Same Sex Spouse or Civil Partner of the deceased and the issue of each of the grandparents of any previous or deceased wife or husband or Same Sex Spouse or Civil Partner of the deceased and the spouse of any such issue;*
>
> *(v) the person or persons (if any and whether of full age or not) to whom the deceased has at any time put himself in loco parentis or their issue and any person who held the deceased in loco parentis or such person's issue; and*
>
> *(vi**) any person who in the opinion of the Trustee was wholly or in part dependent on the earnings of or financially inter-dependent with the deceased at his death"*** *[my emphasis added]*

Mr T and his partner had lived together for many years while raising their three children, the oldest of which was born in 1993. His partner was 54, in good health and had two part-time employed roles generating a combined gross annual salary of about £12,000 while Mr T had a gross annual salary of about £45,000. His was the main source of income into the family home. Their joint income paid for and provided a home for them, with the bulk of their living costs covered by Mr T's salary. His partner didn't have any private or occupational pension savings in her name while Mr T had substantial safeguarded benefits. Based on this, I think it's fair to say that Mr T's partner was financially dependent on him for the provision of ordinary necessities of life and would continue to be so for the foreseeable future and likely throughout her retirement. This also seems to have been the conclusion of D C Financial, given its advice was based on Mr T's partner being financially dependent on him and the uncertainty as to whether she would be catered for within the scheme in the event of his earlier death.

Therefore, based on the above considerations, and in the absence of adequate research carried out by D C Financial at the time of its advice, it's my conclusion that had Mr T nominated his partner, the trustees of the BSPS, exercising their fiduciary duties, would more likely than not conclude that she was wholly or in part dependent on him – and therefore decide to pay her benefits in the event of his earlier death. I consider it unlikely that the trustees would reach any other decision given the level of her financial dependency, including the fact that she didn't have any private or occupational pension provision in her name upon which she could rely.

Although I think it more likely than not the BSPS would've paid benefits to Mr T's partner, it's unclear what would be paid. I think the BSPS trustees would likely make an assessment on a case-by-case basis. And I think it's fair to say that the greater level of financial dependency on the deceased member, the higher level of benefits paid. And in this case, it's clear that Mr T's partner was heavily dependent on him. Given these facts, I'd have expected D C Financial to have investigated the trustees' position to demonstrate that it was acting in its client's bests interests before recommending a pension transfer. Since there's no evidence that it did, it's my view that Mr T made the decision to transfer from an uninformed position. In fact, I'd go as far as to say that D C Financial misinformed Mr T when it told him his partner wouldn't be entitled to any benefits under the BSPS when my view is the opposite, for the reasons explained. When responding to this complaint, D C Financial didn't provide any evidence that persuades me that the BSPS trustees wouldn't pay benefits to Mr T's partner on his earlier death.

It's worth noting here that the benefits paid by the PPF to a spouse, civil partner or other relevant dependant is based on the former scheme rules. Therefore, bearing in mind the definition of 'dependant' under the BSPS, I think it's fair to say that Mr T's partner would more likely than not be entitled to benefits under the PPF if he nominated her to receive survivor's benefits in the event of his earlier death.

Notwithstanding the above, I note that while his safeguarded benefits were maintained in the BSPS, a lump sum equivalent to a refund of contributions of £87,076.46 plus interest at 3% per year compound would be paid to Mr T's partner. Furthermore, through his employment, Mr T had life cover based on a multiple of his salary. There's a dispute about the multiple. When responding to this complaint, D C Financial said that the multiple was four times but Representative A said it was six times. I'm going to rely on what was recorded by D C Financial in the fact find document which states five times. So that would be five times £45,000, meaning a further lump sum of about £225,000 would be paid to Mr T's partner in the event he died while still employed by Tata Steel – regardless of whether his safeguarded benefits were maintained in the BSPS, transferred to the PPF or a personal pension. Therefore, it seems to me that in the immediate future, certainly while Mr T remained employed by Tata Steel, that a lump sum of at least £225,000 would be payable to his partner if he died before her. So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits.

<u>Was there an alternative option to meet the death benefit objective?</u>

I acknowledge that the recommended personal pension 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 occurs 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 personal pension the death benefits available would be significant (subject to investment performance).

When responding to this complaint, D C Financial said that, due to the nature of his job working in heavy industry for nearly 40 years, Mr T had a reduced life expectancy. But there's no mention of this in the contemporaneous evidence. Rather, both the fact find document and suitability report state that Mr T was in good health – there wasn't any reference to a reduced life expectancy. In its correspondence to this service, Representative B, on behalf of D C Financial, stated that Mr T was in good health, so it too shares my view. Based on the evidence, I'm going to work on the basis that Mr T had a normal life expectancy. Therefore, he could expect to live into his late 70s or early 80s.

As I've noted above, the value of his safeguarded benefits represented the backbone of his *retirement provision – he'd inevitably require this money to meet his core income needs in retirement. Therefore, withdrawing tax-free cash at 55, and then more money during retirement to meet his income need, would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. It's impossible to say with any degree of certainty what fund might reasonably be available to Mr T's partner based on his expected rate of withdrawal and life expectancy – and therefore how the personal pension might provide financial support for his partner.*

As noted above, the FCA expects businesses to adequately consider alternative options to achieve the client's objectives to enable them to maintain safeguarded benefits. If it was a genuine desire that Mr T provide for his partner and children on his death (in addition to that provided above while he remained employed by Tata Steel), then life cover could've achieved the same objective of providing a lump sum to his beneficiaries. Pure life cover for a defined term is generally cheap and may have been affordable for Mr T given he was 55 and recorded as being in good health. D C Financial recorded that Mr T had monthly surplus disposable income of about £1,000. So I don't think affordability of additional life cover would've been an issue had it been properly explored.

But I cannot see evidence that D C Financial adequately investigated the alternative option of life cover. For example, I haven't seen evidence that it quantified Mr T's death lump sum need, over what term, how this might change over time, how it might be met by other means or present life cover quotes to him. In its suitability report, D C Financial stated, "We provide advice on the widest range of retail investment products including life policies, personal pensions, stakeholder pensions, unit trusts, investment trusts, open-ended collective investment schemes and structured capital-at-risk products", so it seems it had the means to investigate and provide personalised life cover quotes, but didn't do so.

Had this been properly researched and explained to Mr T, he might have made a different decision regarding the pension transfer, bearing in mind his early retirement objective could've been met by the BSPS and PPF, as I've set out above. When responding to this complaint, D C Financial said that life cover was discussed with Mr T but he rejected it as an option because of the likely cost and that he didn't want to start another financial product. But I haven't seen evidence that there was a meaningful discussion about this including obtaining quotes or that he rejected this option due to cost. And as for Mr T not wanting to start another financial product, I'm not convinced he wouldn't have agreed to this bearing in mind he started a new personal pension on the recommendation of D C Financial.

In conclusion, Mr T had no recorded health issues at the time of D C Financial's recommendation 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 children. So I'm not convinced there was any real merit in Mr T transferring to a personal pension at that time to provide a lump sum death benefit. It's my view that there's no real evidence that a death lump sum, certainly beyond what was already in place whilst employed by Tata Steel, was required.

<u>Mr T's concerns about the PPF</u>

When responding to this complaint, D C Financial said that Mr T wasn't interested in the potential reduction of his benefits under the PPF. And that at their initial meeting in February 2017, he'd already made his mind up to transfer out of the BSPS due to his distrust of Tata Steel and his concerns about the value of his safeguarded benefits being transferred to the PPF. Consequently, he wanted his benefits under his control to avoid these being transferred to the PPF.

At the time D C Financial advised Mr T, there was a possibility that the value of his safeguarded benefits would ultimately be transferred to the PPF in the future if he maintained them in the BSPS. The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of defined benefits 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 T could expect to receive a minimum of 90% of his BSPS scheme pension, although this would be affected by the revaluation and escalation rates under the PPF.

This contrasted with a personal pension where there's no promise of a minimum level of benefits payable. In its 2016/17 annual report, publicly available at the time of D C Financial's 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 was no reason at that time to question the financial viability of the PPF to provide benefits in the future.

In the case of Mr T, had the BSPS been transferred to the PPF, his benefits would've been calculated as follows. At the time D C Financial advised Mr T in 2017 he was 55. His scheme pension at the date of leaving the BSPS on 31 March 2017 was £27,681.76. This figure would be revalued up to the PPF assessment date, whenever that was. The benefits would be based on 90% of the revalued BSPS scheme pension built up immediately before that date. And then, once in the PPF, the benefits would be revalued every year up to 65 (or early retirement date if the member retired early) subject to a cap of 5% for service from 6 April 1997 to 5 April 2009 and 2.5% after. Then, once benefits come into payment, the amount in respect of service on or after 6 April 1997 would escalate each year in line with CPI up to a maximum of 2.5%.

Mr T accrued 38 years and 4 months' qualifying service between 17 November 1978 and 31 March 2017. I acknowledge that under the PPF, only his service between 6 April 1997 and 31 March 2007 was guaranteed to be revalued, as set out above. But I don't think this limited revaluation meant that the PPF was an unsuitable outcome. After all, there wasn't any guaranteed revaluation under the personal pension recommended by D C Financial.

In my view, D C Financial inappropriately presented the PPF option in the negative and an outcome for Mr T to avoid. In its suitability report it stated, "You are satisfied with your CETV, and do not want to stay within the scheme any longer and risk entering the Pension Protection Fund (PPF)". And when listing the advantages of a pension transfer it stated, "Removes the risk of your pension entering the Pension Protection Fund". And when listing the disadvantages of maintaining safeguarded benefits it stated, "Risk of default and the scheme entering the Pension Protection Fund (PPF)…"

Based on what it stated in its suitability report, I think it's more likely than not that D C Financial emphasised these points in verbal discussions with Mr T which would've probably further coloured his misapprehensions about the PPF and an outcome to avoid at all costs.

If Mr T was apparently concerned about the BSPS transferring to the PPF which would result in him losing 10% of his starting scheme pension, then I have to also question why, as an individual who hadn't previously obtained financial advice and had no experience of investing and managing significant sums of money, he would accept the risk of transferring to a personal pension which exposed him to inflation, investment and longevity risks, where the loss could be significantly greater than 10%. So it seems odd to me that Mr T wasn't interested in the potential reduction of his benefits under the PPF, as asserted by D C Financial, yet was 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 clearly reliant on D C Financial to provide a fair and balanced assessment of the PPF and to act in his best interests in this regard. But I don't think it did. Rather, it unfairly presented the BSPS, and therefore the PPF, as an outcome for Mr T to avoid.*

Given the possibility that the BSPS would transfer to the PPF, I think D C Financial ought to have presented in its suitability report the estimated benefits payable by the PPF – in monetary terms – at 60 and 65 to enable Mr T to make an informed decision. But, as I've noted above, it didn't do this. So it's my view he made the decision to transfer from an uninformed position regarding the PPF.

<u>*If properly informed, would Mr T have still insisted on the pension transfer?*</u>

In potential mitigation of D C Financial's advice, I've also thought about whether Mr T, if placed in a fully informed position that his objectives could've been met by the PPF, as I've set out above, would nevertheless still have insisted on the pension transfer if advised to retain his safeguarded benefits. On balance, it's my view that had Mr T's fears about the security of his safeguarded benefits been adequately allayed and was placed into an informed position about the alternative options, he wouldn't have insisted on a pension transfer given his inexperience, moderate risk profile and his wider personal and financial circumstances. I'm not persuaded that, if fully informed, he would've relinquished his safeguarded benefits in exchange for the unlimited downside risks associated with the pension transfer.

<u>*Conclusion*</u>

In its final response letter to this complaint, D C Financial said that the pension transfer was the only option available to meet Mr T's objectives. However, for the reasons explained above, I'm not satisfied that it demonstrated, on the contemporaneous evidence, that it adequately considered alternative options to meet Mr T's objectives or why it was clearly in his best interests to relinquish his safeguarded benefits to achieve these.

Mr T's safeguarded benefits were the backbone of his (and his partner's) retirement provision. In my view, the primary concern here should've been the security of those benefits. A combination of the BSPS or PPF benefits and, if necessary, those derived of the Tata Steel defined contribution plan, along with the State pension would've met Mr T's retirement income need from 60 onwards. I'm not convinced that there was a genuine, or at least clearly demonstrated, need to repay the debt early, to purchase a property overseas at that time or to provide a death lump sum to his beneficiaries in exchange for the loss of guaranteed retirement income. As for the death benefit objective, as noted above, I think it's more likely than not that the BSPS and the PPF, if required, would pay benefits to Mr T's partner based on the fact she was entirely reliant on him to support her standard of living and didn't have any private or occupational pension provision in her own name.

It's my view that D C Financial's failure to carry out adequate analysis and presentation of alternative options resulted in Mr T making the decision to transfer from an uninformed position. And had this not been the case, I'm confident that he wouldn't have proceeded with the transfer.

The key contributing factors here relate to inadequate consideration of alternative options to achieve Mr T's stated objectives, the unbalanced and misrepresentative portrayal of the value of Mr T's safeguarded benefits compared to the recommended pension transfer and exposing his significant retirement provision to more risk than he was likely 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 to be fair compensation based on the position Mr T would've been in had he opted for the PPF and taken benefits at 60. I explained why I thought Mr T would've opted for the PPF rather than the BSPS2 because it was likely the better option for members who expected to retire early and/or take the maximum tax-free cash available, which was applicable to Mr T's situation. I stated that redress should be calculated in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*.

I asked the Representatives for Mr T and D C Financial to provide any further comments or evidence that they wanted me to consider before I made my final decision. Both Representatives provided additional comments, some of which related to the proposed redress methodology. After considering those comments, I was still minded to uphold this complaint but change the basis of the redress methodology. I explained why to the Representatives and gave them a further opportunity to comment which they both did.

While I was considering the Representatives' additional comments, the FCA launched a consultation on 2 August 2022 regarding changes to FG 17/9 and set out its proposals in a consultation document – *'CP22/15-calculating redress for non-compliant pension transfer advice'*. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023. Our investigator asked Representative A whether Mr T preferred any redress to be calculated now in line with the current guidance under FG 17/9 or wait for the any new guidance and rules to be published. It confirmed Mr T preferred for any losses to be calculated under the current methodology but, if this complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, that it expects D C Financial to carry out a calculation in line with the updated rules and/or guidance.

What I've decided – and why

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

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

The findings I made in my provisional decision and set out above form part of this final decision. I've considered all the additional comments and evidence provided to me in response to my provisional decision. I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the parties. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

<u>Suitability</u>

In response to my provisional decision, Representative B for D C Financial said that the advice provided to Mr T was suitable both in accordance with the standard of a reasonably competent financial advisor and in accordance with the FCA's rules and guidance at the time of the advice. It accepted that the suitability report included incorrect information and could've presented some of the information to Mr T in clearer way. But it considered these issues relatively minor because they were either correctly stated elsewhere and/or would've been clarified during discussions with Mr T. When looking at the advice holistically, it was satisfied that Mr T was provided with sufficient information to understand the risks associated with transferring his BSPS benefits to a personal pension. In its view, Mr T acted in an imprudent manner by withdrawing large sums from his personal pension and so always intended to transfer regardless of what D C Financial advised him to do. Therefore, it didn't agree that this complaint should be upheld and Mr T awarded compensation.

I've carefully considered Representative B's comments. For the reasons explained in my provisional decision, I don't think D C Financial's advice to transfer to the personal pension could be regarded as suitable in the circumstances. I won't repeat my reasons here. Nothing Representative B has said in response to my provisional decision changes my view on this. And I disagree with its view that the failings in the suitability report were minor. The suitability report significantly understated the estimated pension payable by the BSPS at 65. And it didn't state what level of benefits the PPF would pay – in monetary terms – at any age including 55, 60 and 65. Mr T was relying on D C Financial to provide him accurate information. So it remains my view that he wasn't placed into an informed position regarding the benefits payable by the BSPS or PPF before deciding to accept the recommendation to transfer.

As noted in my provisional decision, Mr T was an inexperienced investor. Prior to the pension transfer, there's no evidence that he had any experience of handling or investing large sums of money. So I'm not surprised that he may have acted imprudently when he suddenly had access to a significant sum of money following the pension transfer. But access to that money came at the expense of relinquishing valuable guaranteed and escalating pension income that represented the backbone of his retirement provision.

It's my view that Mr T was heavily reliant on D C Financial to provide expert advice and to act in his best interests. These aren't general observations – they're specific to Mr T's situation. For the reasons explained, it's my view that D C Financial should've advised Mr T to retain his safeguarded benefits in the BSPS. I'm required to make a finding on the balance of probabilities. It remains my view that, on balance, Mr T, if fully informed and provided a suitable recommendation, wouldn't have acted against the professional advice of D C Financial had it advised him to maintain his safeguarded benefits in the BSPS and explained that his objectives could've been met by the PPF in the event of a transfer to that scheme.

The PPF

Representative A, on behalf of Mr T, said that when the prospect of the BSPS2 was first announced in 2016, it was intended to provide most members with better benefits than the PPF. It said it had taken advice from an actuary who confirmed that the only individuals who would've been better off in the PPF were those who were retiring early and were very close to that early retirement age at the time of the transfer. It noted that Mr T was 55 at the time of the advice, and while he was interested in taking benefits at 60, there wasn't any evidence he had concrete plans to retire at that age. Mr T is now over 60, working full-time and isn't regularly drawing an income from his pension. He was therefore not in the small minority for whom the PPF was the better option. It didn't agree with my view that the PPF was likely the better option for any members who expected to take the maximum tax-free cash or that the PPF would likely provide a higher level of tax-free cash at 60 than the BSPS.

It thought that had he been suitability advised, Mr T would've opted for the BSPS2 and taken benefits at 65 rather than from the PPF at 60. It said that it's also important to note that the BSPS2 would've enabled Mr T to transfer out later in life should it become necessary or advisable. This wouldn't be possible under the PPF. Consequently, it said the loss assessment calculation should be on a comparative basis with the BSPS2 and not the PPF. And given that Mr T is currently under 65, it said that this means a prospective loss assessment should be carried out rather than an actual loss assessment.

Having considered this, I'm not persuaded to change my opinion. The information recorded at the time Mr T was advised by D C Financial confirmed that he wanted to retire at 60 rather than 65. This was the basis of the recommendation. I don't think it's unreasonable for me to rely on this. And I'm content that it was Mr T's genuine desire to draw benefits earlier than 65 because, following the pension transfer, he took tax-free cash at 55 and then flexible income payments from his personal pension despite remaining in full-time employment; these withdrawals are inconsistent with the notion that Mr T wasn't intending to draw benefits until 65, as suggested by Representative A. Notwithstanding this point, although he may not have been presented with monetary amounts, at the time of the announced changes to the BSPS, Mr T would've been presented with information that indicated he'd be better off under the PPF than the BSPS2 if he took benefits at 60 – this supports what Representative A said it was told by an actuary. So, given his desire at that time to retire earlier than 65, had he been placed in an informed position, I think it's likely Mr T would've opted for the PPF with a view to taking benefits at 60 including the maximum tax-free cash. And as I set out in my provisional decision, it's my view that Mr T's retirement income need could've been met by from 60 using a combination of the income and tax-free cash provided by the PPF until he received the State pension at 67. Nothing the parties have said in response to my provisional decision changes my opinion on this.

So, it remains my view that compensation should be based on the position Mr T would've been in had he opted for the PPF and taken benefits early at 60 including taking the maximum tax-free cash. Since Mr T is now over 60, this means that an actual rather than prospective loss assessment should be carried out.

Mr T's partner

When D C Financial advised Mr T, it said that his partner wouldn't be entitled to any benefits under the BSPS. In my provisional decision, I concluded that the trustees of the BSPS, exercising their fiduciary duties and in line with the trust deed and rules, would more likely than not conclude that Mr T's partner was wholly or in part dependent on him – and therefore decide to pay her benefits in the event of his earlier death. I acknowledged that it was unclear what level of benefits might be paid but it would likely be linked to the dependant's financial dependency. And in this case, it was clear that Mr T's partner was heavily dependent on him. To carry through the provisional finding that his partner would receive some level of benefit rather than nothing, as implied by D C Financial when it advised him, I proposed that Mr T be treated as married rather than single in the actual loss assessment calculation.

In response, Representative B, on behalf of D C Financial, said that I had misinterpreted the trust deed and rules by concluding that Mr T's partner would be treated as a dependant and receive the same level of benefits as a spouse. So it disagreed the loss assessment should be calculated on the basis that Mr T is married despite the fact he was unmarried at the time of the advice and remains so.

Contrary to what Representative B said, I didn't explicitly state in my provisional decision that Mr T's partner would receive a 50% spouse's pension. I recognised that directing D C Financial to treat Mr T as married for redress purposes would automatically lead to calculations making allowances for a spouse's pension. But my intention was for the loss assessment to account for the dependant's benefits that I think would be paid in the event of Mr T's earlier death.

However, in light of Representative B's comments, I've reconsidered the matter including reviewing the trust deed and rules, and the BSPS website. The BSPS website states the following in reference to the definition of dependants:

"any person who the Trustee considers was wholly or partly dependent on or financially inter-dependent with your earnings at the time of your death – such as a 'common law' partner, fiancé or fiancée, living at the same address – may also qualify in these circumstances. ***But please note that no spouse's pension would be payable.*** [my emphasis added]

And under *"money when you die"* it states:

"When you start taking your pension, your payments are guaranteed for five years. If you die during this guarantee period, we pay a lump sum to your **dependants** *or personal representatives. This lump sum is the remainder of the pension instalments which we would have paid you over the guarantee period. The lump sum would be based on the value of the pension at the date of death."* [my emphasis added]

Based on this, I maintain my view that it's reasonable to think that Mr T's partner would likely be treated as a dependant. But I think the maximum level of benefit she'd likely receive would be a five-year guarantee period from the point Mr T started taking income. She wouldn't receive a 50% spouse's pension.

I further note that the FCA's *'FG 17/9 (guidance for firms on how to calculate redress for unsuitable DB pension transfers)'* doesn't make any allowances for unmarried partners in actual loss cases. For such cases, as is Mr T's, the actual marital status should be used, if known. The marital status of Mr T is clearly single and relevant to the loss assessment calculation.

Therefore, taking all the above into account, I've decided to change my mind. It's now my view that Mr T should be treated as single for the purposes of the loss assessment. I explained why I had changed my mind to the Representatives for both parties.

In response, Representative A for Mr T said that it strongly disagreed with my view that he should be treated as single for the purposes of the loss assessment. It said that he is now over 60 and doesn't intend to retire until 65. So this means that a prospective rather than an actual loss assessment should be carried out. And, as per FG17/9, actual marital status is irrelevant because it's assumed there's an 85% chance the member will be married at retirement. It said that there wasn't any concrete plans for Mr T to retire at 60 at the time of D C Financial's advice and so it would be incorrect to carry out an actual loss assessment on the basis he would've retired at 60 when the reality is that he's reached that age and hasn't.

I've carefully considered Representative A's comments. But for the reasons I've explained above, it's my view that the contemporaneous strongly indicates that, at the time, Mr T wanted to retire earlier than 65 and that, in my view, had he been placed in an informed position it's likely he would've opted for the PPF with a view to taking benefits at 60 including the maximum tax-free cash. And so, on this basis, it remains my view that an actual loss assessment should be carried out and based on Mr T's actual marital status which is single.

<u>*PPF buy-out*</u>

In my provisional decision, I indicated that the loss assessment should be carried out on the basis that Mr T opted for the PPF and took benefits early at 60, in line with his recorded objective. I noted that had Mr T opted for the PPF he may have been entitled to an increase in benefits as a result of the buy-out with PIC. And that I thought it was fair any such increase in benefits be taken into account when compensating Mr T.

Representative B doesn't accept that additional compensation should be paid as a result of the buy-out. It said that it's unreasonable to punish D C Financial by expecting it to increase the level of compensation arising out of the buy-out as this additional loss is far too remote from the original advice. In its view, any redress calculation should be based on the information available about the PPF at the time of D C Financial's advice. This is because at the time of the advice, it was inconceivable that the BSPS trustees would've been in position to purchase the buy-out with PIC and they were only able to do so because its funding position in 2020 was better than expected.

Representative A for Mr T said that he would possibly have been entitled to an increase in benefits after the buy-out had he opted for the PPF. So it thinks it's only fair that any such increases are taken into account when compensating him and that a second calculation should be carried out after the buy-out process has been completed.

I've considered the comments received from the both Representatives. A second calculation is fair in some circumstances. But, having reconsidered the matter, it's my view that had he been suitability advised, Mr T would've taken income and the maximum tax-free cash from the PPF at 60. Due to the lower early retirement reduction factor which would've applied in the PPF compared to the BSPS, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would've produced an overall better outcome for Mr T. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process. For this reason, it's my view that D C Financial should undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed.

Property purchase

Representative B said that Mr T's actions to take the maximum tax-free cash and then withdraw ad-hoc lump sums from his personal pension was contrary to D C Financial's advice. It said that Mr T took the maximum tax-free cash to purchase a property in Spain and that any subsequent increase in the value of that property should to be deducted from the redress figure because ignoring it would place him in a beneficial position he's not entitled to be in. In response to my provisional decision, Representative B again requested that I hold an oral hearing with the parties to scrutinise Mr T's intentions regarding the property purchase. It asked that I compel Mr T to provide to this service evidence of correspondence between him and estate agents or any other parties regarding Spanish properties.

As I previously explained, I don't think it's necessary to grant an oral hearing because I'm satisfied that there's sufficient documentary evidence already provided by the parties to enable me to reach a fair and reasonable decision.

Having again considered this point carefully, I don't agree with Representative B's position. I think it may have had a case if D C Financial had essentially advised Mr T to purchase a specific Spanish property – in other words, if the whole or overarching objective of the advice was to transfer in order to buy a specific Spanish property.

However, that's not what happened here. D C Financial may have known that buying a property in Spain was one of Mr T's objectives and its advice to transfer may have provided the opportunity for him to buy the property. But D C Financial didn't advise Mr T to purchase a specific Spanish property. I say this because, as set out in my provisional decision, there's no contemporaneous evidence that Mr T had found a property to buy or what the likely cost would be at the time D C Financial advised him. This is supported by the fact that the suitability report references different valuations relating to the property purchase of anywhere between £70,000 and £100,000 and that Mr T, after the recommendation, requested the maximum tax-free cash of £173,206 to assist with the purchase of a more expensive property. So it remains my view that there was, at the very least, a lack of certainty or clarity regarding this objective. Obtaining the correspondence to which Representative B refers wouldn't change my view on this.

So my conclusion is that the purchase of the property was incidental to the advice so, in assessing Mr T's financial loss, I don't think D C Financial should be given the credit of any increase in the property's value.

Putting things right

I stated in my provisional findings above that in July 2017 when D C Financial issued its recommendation to Mr T there was insufficient information available about the BSPS2 to enable it to carry out a proper analysis of that option. However, I recognise that had Mr T been advised to retain his benefits in the BSPS he would've been contacted in October 2017 as part of the *'Time to Choose'* communication exercise and presented the opportunity to transfer to either the PPF or BSPS2.

Therefore, in the interests of completeness, I've considered whether the loss assessment should be carried out on the basis Mr T had the option to transfer to either the PPF or BSPS2. My view is aligned with that of our investigator in that D C Financial ought to have advised Mr T to retain his safeguarded benefits. I think that had he been given the choice of either the PPF or BSPS2 and placed into an informed position regarding the features, risks and benefits of both options, Mr T would've likely opted for the PPF.

I have this opinion because the PPF was likely the better option for members who expected to retire early and/or take the maximum tax-free cash available. But the BSPS2 was likely the better option for members who expected to draw benefits at the scheme normal retirement age of 65. On balance, I think Mr T would likely taken benefits at 60 in line with his recorded early retirement objective, suggesting that the PPF would be the better option. I recognise that there would be a 10% reduction in the starting pension entitlement within the PPF and that income in respect of service before 6 April 1997 wouldn't escalate in payment. The BSPS2 wouldn't cut the starting entitlement for deferred members. But the reduction for early retirement under the PPF, proposed here at 60, was lower and would likely have more than offset the 10% reduction. The commutation factor for converting pension income into tax-free cash was also slightly more favourable under the PPF compared to the BSPS2 – and it's my view that maximum tax-free cash was attractive to Mr T. And so both the starting income and the tax-free cash would likely have been higher under the PPF compared to the BSPS2 at 60.

<u>*FCA consultation*</u>

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document – CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA stated that it considers the current redress methodology in FG17/19 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has stated that it expects businesses to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while the consultation takes place. But, until changes take effect, businesses should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

Our investigator asked Representative A whether Mr T preferred any redress to be calculated now in line with current guidance under FG 17/9 or wait for the any new guidance and rules to be published. It confirmed Mr T preferred for any losses to be calculated under the current methodology. I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr T.

D C Financial must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions at the date of this decision. It should be carried out on the basis that Mr T took benefits including the maximum tax-free cash available from the PPF at age 60. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of this final decision.

D C Financial may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr T'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 T's SERPS/S2P entitlement.
If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T's personal pension. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the personal pension if it would conflict with any existing protection or allowance.

If a payment into the personal pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a notional deduction to allow for 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 his likely income tax rate in retirement – presumed to be 20%, as stated in my provisional decision. So making a notional deduction of 15% overall from the loss adequately reflects this.

If this complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect D C Financial to carry out a calculation in line with the updated rules and/or guidance in any event.

<u>*PPF buy-out*</u>

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc ("PIC") will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be completed by April 2023.

It's been announced that:

> *"When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'*

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out."

In my provisional decision, I stated that I was minded to require D C Financial to carry out a second calculation once the buy-out process was completed to ensure that Mr T isn't disadvantaged. A second calculation is fair in some circumstances. But, having reconsidered the matter, it's my view that had he been suitability advised, Mr T would've taken income and the maximum tax-free cash from the PPF at 60. Due to the lower early retirement reduction factor which would've applied in the PPF compared to the BSPS, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would've produced an overall better outcome for Mr T. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process. For this reason, I require D C Financial to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties and bring finality to proceedings.

If Mr T accepts this final decision he will be doing so on the basis of my understanding as set out above. It's important that Mr T is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

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.

My final decision

<u>Determination and money award:</u> I uphold this complaint and require D C Financial Limited to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr T any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require D C Financial Limited to pay Mr T any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I would also recommend that D C Financial Limited pays Mr T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T. If Mr T were to accept this final decision on the above basis, the determination and money award would be binding on D C Financial Limited. My recommendation wouldn't be binding on D C Financial Limited. Further, it's unlikely that Mr T could accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept this final decision.

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

The loss assessment calculation must be provided to Representative A in an easy to understand format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 23 December 2022.
Clint Penfold
Ombudsman