DRN-3628985

The complaint

Mr R complains about the suitability of the advice provided by WPS Financial Group Limited ("WPS") in September 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

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

In March 2016, Mr R'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 BSPS was a defined benefits ("DB") pension scheme that provided a safeguarded and guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

The details of Mr R's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 30 years and 3 months' qualifying service between December 1986 and March 2017;
- The scheme pension provided was based on his final salary, qualifying service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his annual scheme pension was £18,641.40. The scheme pension would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would also escalate annually by a prescribed amount;
- Payment of benefits before age 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60. If retiring early due to incapacity, the pension from date of leaving would be revalued to date of payment and paid without the usual early retirement reduction;
- The estimated revalued annual scheme pension payable by the BSPS at age 65 was £29,481 or a reduced pension of £19,538 plus tax-free cash of £130,255. And if paid early from age 55 it was £15,921 or a reduced pension of £11,259 plus tax-free cash of £75,063;
- In the event the BSPS fell into the PPF, the estimated revalued annual scheme pension payable by the PPF at age 65 was £23,805 or a reduced pension of £18,423

plus tax-free cash of £122,421. And if paid early from age 55 it was £16,775 or a reduced pension of £13,768 plus tax-free cash of £91,493;

- The cash equivalent transfer value of his safeguarded benefits was £469,521.52.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

Following the announcement, Mr R was contacted by the BSPS as part of the *'Time to Choose'* communication exercise. This explained that scheme members had three options regarding their safeguarded benefits:

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

Options 1 and 2 would've enabled Mr R to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

Mr R wanted advice on what to do regarding his preserved benefits in the BSPS. He had an existing relationship with WPS and so contacted it for advice.

On 19 September 2017, WPS issued its suitability report to Mr R recommending that he transfer the value of his preserved benefits in the BSPS to a PPP. At that time his circumstances were recorded by WPS as follows:

- He was aged 47 and not in good health following a serious injury at work many years ago which led to a disability and restricted mobility. He was able to continue working and intended to do so for as long as possible but thought it likely he would retire before age 65 due to the impact of his disability on his health;

- His wife was aged 46 and in good health.

- They had two financially dependent children aged 12 and 16;

- He was employed full-time by Tata Steel and paid gross annual income of about £38,000;

- His marital home was valued at about £500,000. He had investable assets of about £1m. This was made up of about £600,000 held on deposit and about £400,000 in investments. The source of this money was the result of a compensation payment he received following his serious injury at work;

- He didn't have any debts or liabilities;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full State pension at age 67 and had been a member of Tata Steel's defined contribution ("DC") pension scheme since April 2017. The contribution rate paid into his DC plan was 16% of his gross annual salary of £38,000; and

- On a scale of 1 to 10 with 1 as lowest risk and 10 as highest risk, his risk profile was determined to be a 6 which was described as *'High Medium'* risk.

WPS's suitability report confirmed that Mr R had the following objectives and priorities:

- *"You intend to retire at age 55 with an income of around £15,000 per annum*
- *Your current employer is winding up their final salary pension scheme and have offered you the option to transfer to an alternative arrangement*
- *You wanted me to limit my advice to this area only*
- *You do not wish to stay with your current employer's scheme, which will either be transferred into the PPF or into BSPS2.*

WPS recommended that the transfer value in the PPP be invested 70% into the *'Flexible Guaranteed Cautious Fund'* and 30% into the *'Vanguard Lifestyle 60% Equity'* fund to align with Mr R's *'High Medium'* risk profile.

Mr R accepted the recommendation, following which the transfer to the PPP was completed.

<u>*This complaint*</u>

During 2021, Mr R contacted this Service to raise a complaint about the suitability of WPS's pension transfer advice in September 2017. In summary, he said he was concerned that the pension transfer wasn't in his best interests bearing in mind his state of health and his view that he would need to retire and access his pension benefits earlier than age 65 due to ill-health. Details of Mr R's concerns were forwarded to WPS to give it the opportunity to respond.

After considering the matter, WPS didn't uphold this complaint. In summary, it was satisfied that its pension transfer advice was suitable in the circumstances and enabled Mr R to achieve the flexibility he required.

One of our investigators considered this complaint and recommended that it be upheld. This was because she thought that WPS's recommendation to transfer wasn't clearly demonstrated to be in Mr R's best interests. To put things right, our investigator recommended that WPS 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 R opted for the BSPS2, took benefits at the scheme normal retirement age of 65 and would be a 20% income taxpayer in retirement. In addition, she recommended that WPS pay Mr R £300 compensation for the trouble and upset caused by its unsuitable recommendation.

WPS didn't agree with our investigator's conclusion and provided substantial comments in response. Our investigator considered these but wasn't persuaded to change her mind. Since agreement couldn't be reached, this complaint was placed in the queue to be reviewed by an ombudsman.

While waiting for this complaint to be allocated to an ombudsman, WPS carried out a loss assessment using third party actuarial software which showed that Mr R hadn't suffered a loss based on the FCA's FG17/9 redress methodology. It sent a copy of the calculation output to Mr R and stated that the no loss outcome was evidence its pension transfer advice was suitable. The loss assessment calculation was on the basis that Mr R would take benefits early from the BSPS2 at age 55 and in the form of a reduced pension and the maximum tax-free lump sum available.

Mr R didn't accept the loss assessment outcome. He said that it was incorrect to assume he would take reduced benefits early at age 55 because of he had access to significant capital outside of his pension which would've enable him to defer taking benefits from the BSPS. And he also commented that, due to his wider wealth, it was unlikely he would opt to take the maximum tax-free cash.

In May 2023, our investigator wrote to WPS and Mr R to tell them that the FCA had developed a BSPS-specific redress calculator to calculate redress due under the BSPS consumer redress scheme, as set out in PS22/13. And that the FCA was encouraging businesses to use that calculator for non-scheme cases, such as this complaint made by Mr R. Our investigator stated that in my final decision I may direct WPS to use the FCA's calculator and invited any comments that the parties wanted to make.

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.

My role, as set out in DISP 3.6.1R, is to decide this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances. And 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 unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I've carefully considered all the available evidence afresh including WPS's substantial comments in response to our investigator's assessment. I'd like to make clear that the purpose of this final decision isn't to repeat or address every single point raised by Mr R and WPS. 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.

The FCA's suitability rules and guidance

WPS was authorised and regulated by the FCA at the time it provided its recommendation to Mr R. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, WPS was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr R. The suitability rules and guidance that applied when WPS provided its recommendation to Mr R were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr R's case – 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 follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can *clearly* demonstrate it's in their client's best interests.

In assessing the suitability of WPS's recommendation, it's necessary for me to have due regard to the FCA's rules and guidance set out above at the time it advised Mr R in September 2017.

Mr R's situation

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

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

It's undeniable that it was a period of great uncertainty for scheme members. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS and because the value of their benefits represented their sole or main retirement provision. In Mr R's case, following a serious accident at work, he had a disability and restricted mobility – while he wanted to continue working for as long as possible, he thought it likely he would retire before age 65 due to the impact of his disability on his health and was unsure what this might mean in terms of his pension benefits.

I think the uncertainty surrounding the BSPS only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr R had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, WPS.

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

So, while the situation was somewhat unusual, Mr R still had the option to retain guaranteed benefits in either the PPF or BSPS2.

In response to our investigator's view, WPS stated that it wasn't appropriate for her to consider the BSPS2 as a comparator scheme because it didn't exist at the time it advised Mr R in September 2017. I disagree. I think that the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. The whole reason the BSPS2 was conceived was to provide a new long-term DB scheme for former members of the BSPS which is why it was stated as an option in the *'Time to Choose'* communication.

So I think it's reasonable for me to decide this complaint on the basis that the BSPS2 was an option for Mr R. Based on his circumstances it's my view that he would've been better off choosing the BSPS2 instead of the PPF.

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

<u>*Transfer analysis*</u>

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

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

WPS calculated the following critical yield figures for Mr R on the basis he invested a transfer value of £454,694.53 in the recommended PPP:

Scheme	At age 65 taking a full pension only	At age 65 taking a reduced pension and maximum tax-free cash	At age 55 taking a full pension only	At age 55 taking a reduced pension and maximum tax-free cash
BSPS	7.17%	5.89%	12.45%	9.49%
PPF	4.15%	3.75%	7.7%	6.94%

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

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and it was 4.4% per year for the period to the scheme normal retirement age of 65. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. I've taken this into account, along with the composition of assets in the discount rate, Mr R's *'Medium High'* attitude to risk and also the term to age 65. Based on these considerations, I think Mr R was likely to receive benefits of a substantially lower overall value than the BSPS2 (even if that scheme moved to the PPF). I think it's highly unlikely Mr R could've achieved returns above the regulator's middle projection rate every year until he retired, particularly as he would likely reduce his investment risk the closer he got to retirement.

There would usually be no point relinquishing safeguarded benefits in order to 'stand still', given the risk that the transfer might underperform. So, from an economic point of view, it's questionable whether there was a reasonable prospect that Mr R would be financially better off by transferring on a like-for-like basis when compared to the scheme pension. And it seems WPS agrees because in its suitability report it stated, in reference to the critical yield figure of 5.89% applicable at age 65, that *"This, in our opinion, is not an achievable return based on your retirement time horizon and potential returns from the recommended fund portfolio".*

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 in the context of Mr R's recorded objectives.

Mr R's objectives

WPS's suitability report confirmed that Mr R had the following objectives and priorities:

- *"You intend to retire at age 55 with an income of around £15,000 per annum*
- *Your current employer is winding up their final salary pension scheme and have offered you the option to transfer to an alternative arrangement*
- *You wanted me to limit my advice to this area only*
- *You do not wish to stay with your current employer's scheme, which will either be transferred into the PPF or into BSPS2.*

Based on this, it seems to me that Mr R had two key objectives relating to the value of his preserved benefits in the BSPS: (1) having the flexibility to retire early from age 55 onwards and receive annual income of about £15,000; and (2) transfer away from the BSPS to a new private arrangement to obtain control of his benefits to avoid a transfer to the PPF or BSPS2.

I've considered these two objectives under separate headings below.

Flexibility and early retirement objective

It was recorded that Mr R wanted to retire at age 55 and receive annual income of about £15,000. There's no reference to the income need increasing in payment to counter the effects of inflation. It's unclear how this figure was determined. It appears it was a notional figure put forward by Mr R rather than being based on a proper analysis carried out by WPS taking into account his expected expenditure in retirement – and, therefore, the required income need to cover this.

Due to Mr R's disability and his concerns about what impact this might have on his ability to continue working, I think it's understandable that he was attracted to a flexible arrangement that would enable him to draw the value of his BSPS benefits as and when he required them. However, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed and escalating income offered by the BSPS2. I'll explain why:

- Mr R had suffered a serious injury at work that led to his disability many years before WPS's pension transfer advice in 2017. During that preceding period, despite his restricted mobility, Mr R had been able to continue working. I've not seen any evidence that indicated his circumstances in 2017 were such that it was reasonably foreseeable that he would likely qualify for unreduced early retirement benefits due to incapacity either then or some point in the future. Rather, discussions centred around Mr R's desire to continue working for Tata Steel for as long as possible until his normal retirement age of 65, but he was clear that he didn't think this would be likely given his disability. And so advice was on the basis that he'd likely take benefits early, probably from age 55 which is reflected in his stated objective.

- Mr R was aged 47 at the time of the advice. A key point here is that, following the pension transfer, he couldn't access the money in the PPP until age 55 at the earliest. And so, in my view, there wasn't any pressing need to transfer at that time given that Mr R would've retained the option to transfer at a later date under the BSPS2, if then deemed suitable and, more importantly, when his retirement income need could be determined with greater accuracy than at age 47.

- Mr R had been an active member of the Tata Steel DC pension scheme since April 2017. The contribution paid into his DC plan was 16% of his gross annual salary of £38,000, which was about £6,080 in monetary terms. This would change in line with increases in his salary. As noted above, Mr R was aiming to continue working for as long as possible. But if it turned out that he did retire at 55, then over that eight-year term to age 55, he would invest about £48,600 into his DC pension plan. This ignores likely increases linked to his salary and investment returns. So, I think it's fair to say that by age 55, Mr R would have access to enough DC pension savings to cover about three years' worth of his annual income need of £15,000 – suitable advice would've been to use this money in the first instance. And if it turned out that he was able to continue working beyond age 55, then his DC pension savings would continue to grow in value with additional contributions and likely growth, until such time as he needed them.

- In addition, Mr R had investable assets of about £1m. This was made up of about £600,000 held on deposit and about £400,000 in investments. So if Mr R retired at age 55 and exhausted his DC pension savings within a few years, I think it's fair to say that access to this significant, liquid capital of about £1m would've comfortably met his annual income need of £15,000 until he reached the BSPS2 normal retirement age of 65.

- Then from age 65, he could draw unreduced benefits from the BSPS2. The estimated revalued annual scheme pension payable by the BSPS at age 65 was £29,481 or a reduced pension of £19,538 plus tax-free cash of £130,255. And for the PPF, the estimated revalued annual scheme pension at age 65 was £23,805 or a reduced pension of £18,423 plus tax-free cash of £122,421. The estimated revalued scheme pension payable by the BSPS2 at age 65 wasn't calculated but, as explained above, was likely to be somewhere between the BSPS and PPF figures. And so, based on this, I think it was likely the BSPS2 would provide guaranteed and escalating income from age 65 in excess of Mr R's annual income need of £15,000 until his death.

- Finally, Mr R was on course to receive a full State pension from age 67, which would've provided another source of guaranteed and escalating income until his death. Any excess income from the BSPS2 and State pension could be re-invested for future use.

- So, from age 65 onwards, Mr R's core retirement income needs could've been met by guaranteed and escalating pensions which would've offered some inflation protection unlike the recommended PPP.

Based on the above considerations, I don't think there were any compelling reasons at that time for Mr R to relinquish the guarantees attached to his safeguarded benefits given the critical yields attached to the transaction and that I think his income need from age 55 could've been met by other sources in the first instance. This would've enabled him to retain benefits in the BSPS2 and draw these unreduced from age 65.

The alternative, blended approach I've suggested likely would've enabled Mr R to achieve the same income objective but with significantly less risk. And it seems that WPS understood this at the time. In its suitability report it stated that the critical yields weren't achievable and the following regarding when Mr R should draw benefits:

> *"In your instance, as mentioned previously, you have substantial other assets which can (and likely will) be used to help generate income as and when required. When you reach age 55, your income requirements will be reviewed and the most suitable method of providing that income will be assessed, whether through your pension, investments or a combination of the two.*
>
> *It is our recommendation, therefore, that you do <u>not</u> take benefits earlier than the normal retirement age of the scheme. Should you take early retirement, your pension would be greatly reduced, and this is not an advisable course of action. Your occupational scheme would offer much better benefits if you did retire at this earlier age. However, this would not provide the flexibility you have requested in how these benefits are taken."*

So, on one hand, WPS recommended that Mr R transfer to a PPP to provide the flexibility to draw benefits early from age 55 onwards but then, as part of the same recommendation, advised him not to draw any benefits earlier than age 65 because it wasn't in his best interests to do so. This doesn't make sense to me. In my view, the transaction resulted in all the investment, inflation and longevity risk being transferred from the BSPS to Mr R for no clearly defined advantage.

The available evidence simply doesn't support the position as to why future flexibility would've been a sufficiently compelling reason for Mr R to relinquish valuable benefit guarantees at that time, especially when it was clear his income need could be met by other means and the fact that the basis of WSP's advice was that he should avoid withdrawing the value of his safeguarded benefits flexibly before age 65.

In conclusion, I haven't seen any evidence that shows the pension transfer to the PPP served any actual need, or that Mr R gained any clearly defined advantage compared to the alternative option of transferring to the BSPS2. And so I'm not persuaded that a pension transfer was clearly demonstrated to be in his best interests in meeting his flexibility and early retirement objective.

<u>Control objective</u>

It was recorded that Mr R wanted to transfer away from the BSPS to a new private arrangement to obtain control of his benefits to avoid a transfer to the PPF or BSPS2. In the suitability report it was noted, *"You now wish to take greater control of the pension yourself to allow you to access the fund as and when you see fit".*

I think it's fair to say that Mr R was concerned about the risk that the value of his preserved benefits would be transferred to the PPF. I accept that such concerns were common among steelworkers at the time, and that it would've been a major motivation behind many of them transferring out. So I can understand why Mr R wanted to have control and security over his benefits by transferring to a PPP.

That being said, I think that by September 2017 the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. But, in any event, I don't consider a transfer to the PPF was an outcome for Mr R to avoid at all costs. I'll explain why.

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

Had WPS advised Mr R to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 47.

A transfer to the BSPS2 would've also removed any immediate concerns Mr R had about the PPF. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a PPP before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr R or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF. In my view, Mr R was reliant on WPS to provide a fair and balanced assessment of the BSPS2 and PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr R the features, risks and benefits of those alternative options and allaying his misapprehensions.

If Mr R was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer.

In summary, I think that WPS failed to adequately allay Mr R's misapprehensions and that he therefore made the decision to transfer to the PPP from an uninformed position regarding the BSPS2 and PPF options.

If properly informed, would Mr R have transferred anyway?

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

Mr R might have chosen to transfer against advice on the basis of his concerns regarding the BSPS. However, bearing in mind that many members transferred to the BSPS2 even though such concerns were widely held, I don't think, on balance, he would've insisted on transferring. Given Mr R's reliance on WPS, I think it's likely he would've accepted a recommendation for the BSPS2 had it advised him to take that course of action. As a result, I think it's fair and reasonable to uphold this complaint.

Putting things right

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

Our investigator concluded that, if properly advised, Mr R would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. In response, WPS stated that was an unfair comparison because, in its view, the BSPS2 didn't exist at the time of its advice and was merely a proposal and not guaranteed to go ahead. It also said that there isn't any evidence Mr R has suffered a financial loss.

While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by September 2017 the risk of the BSPS falling into the PPF had receded by a large extent, as I've explained above. So I think WPS should've considered the BSPS2 as a viable option. Notwithstanding this point, the FCA has stated that for redress purposes, the BSPS2 should be used as the comparator scheme unless there's evidence the member would've chosen the PPF.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. For the reasons set out above, I think it's likely that, properly advised, Mr R would've envisaged accessing his substantial investable assets of about £1m and DC pension savings in the first instance to meet any flexible income and lump sum needs before starting to take his safeguarded benefits at age 65. And so it's the case that I think benefits offered by the BSPS2 from age 65 which should be used for comparison purposes.

WPS must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

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

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

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

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

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

In addition, WPS should pay Mr R £300 compensation for the trouble and upset caused by its unsuitable recommendation.

My final decision

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

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that WPS Financial Group Limited pays Mr R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr R.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 August 2023.
Clint Penfold
Ombudsman