

## The complaint

Mr S complains about the suitability of the advice provided by Corville Financial Services Ltd ("Corville") in June 2016 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP"). Corville has since been acquired by a different regulated business. That other business has informed this service that, as part of the acquisition, responsibility for the advice complained about has been transferred to it. To make this final decision easier to follow, I've referred to Corville throughout.

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

## What happened

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

In March 2016, Mr S's former employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income. 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.

As of June 2016, the details of Mr S's safeguarded benefits in the BSPS were as follows:

- He had accrued 33 years and 7 months' qualifying service between April 1978 and March 2011;
- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in March 2011, his annual scheme pension was £17,774.76. 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. By June 2016, the annual scheme pension had been revalued to £20,086.08;
- 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 cash equivalent transfer value of his safeguarded benefits was £262,088.28

Mr S was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. He met one of Corville's financial advisers in June 2016. A fact-find and attitude to risk questionnaire were completed which recorded the following information about Mr S:

- He was 55, divorced, in good health, unemployed and had two children who were financially independent;
- His assets comprised about £56,000 in cash savings which were being used to meet his living costs;
- He didn't have any liabilities – he lived with family and didn't have any rental or mortgage costs;
- His monthly expenditure was £1,300 – this was being met by using his cash savings;
- He planned to retire at 65. His State pension age was 66 and 9 months;
- His risk profile was determined to be 5 on a scale of 1 to 10, where 1 was lowest risk and 10 highest risk. The rating of 5 was described as '*Low end of Moderate*' risk.

In June 2016, Corville's adviser issued a suitability report to Mr S. This confirmed that he had the following objectives and needs regarding his safeguarded benefits:

- *"Have as much flexibility as possible regarding the amount/timing of taking pension income early.*
- *Have as much flexibility as possible regarding death benefits pre and post 75.*
- *Leave the scheme tax free before the age of 75 to your children.*
- *Maintain the option to use some or your entire fund to purchase an annuity in the future.*
- *Ability to choose the level of pension you require at retirement. Plan to use all your tax allowance at that time.*
- *Break ties with your former employer."*

Corville advised Mr S to transfer the value of his safeguarded benefits of £262,088.28 to a PPP to achieve his objectives. It was noted in the suitability report that, following the pension transfer, the money would initially be held in cash in the PPP. This was because another business ("Firm M") would advise Mr S on investing the value of the PPP to align with his risk profile – it was noted in the suitability report Firm M had informed Corville that it initially intended to invest the value of Mr S's PPP in a "*Cautious portfolio*".

The costs associated with the advice were set out in the suitability report. These were to be deducted from the value of Mr S's PPP, summarised as follows:

Initial charge

- £4,500 – initial adviser charge

Ongoing annual charges based on PPP fund value

- 1.00% ongoing adviser charge
- 0.70% annual management charge
- 0.50% platform charge

### This complaint

The Representative, on behalf of Mr S, contacted this service to register a complaint about Corville regarding the suitability of the pension transfer advice it provided to him in June 2016.

One of our investigators considered this complaint and recommended that it be upheld. This was because he thought that Corville's recommendation to transfer wasn't in Mr S's best interests and was therefore unsuitable. To put things right, our investigator recommended that Corville 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 S maintained his safeguarded benefits in the BPS and would be a 20% income taxpayer in retirement. In addition, he recommended that Corville pay Mr S £300 compensation for the trouble and upset caused by its unsuitable pension transfer advice.

The Representative, on behalf of Mr S, provided comments in response to our investigator's assessment and recommended remedy. In summary, it stated that:

- Mr S intended to retire at the BPS normal retirement age of 65 and so his financial loss should be calculated to that age;
- In the event redress is paid to Mr S as a lump sum the notional reduction of 15% for income tax – as noted in the investigator's assessment – shouldn't apply to the part of the redress which reflects the compensation for the adviser and product charges; and
- Corville should provide to it details of its calculations in a clear, simple format.

Corville didn't accept our investigator's assessment and provided comments in response. In summary, it stated it had disclosed the relevant risks to Mr S and advised him against the pension transfer because the critical yield figure of 14.3% indicated that he'd be worse off. But it agreed to facilitate it in order to meet his objectives for flexibility before and after retirement. Corville also said that it thought our investigator had used the benefit of hindsight in reaching his conclusion because some of the information regarding changes to the BPS – including the introduction of the successor scheme, the BPS2 – wasn't known at the time it advised Mr S in June 2016.

Our investigator considered the additional comments received from Corville but wasn't persuaded to change his opinion. Since agreement couldn't be reached, our investigator stated that this complaint would be referred to an ombudsman for review.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted Corville and the Representative in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked the Representative to confirm with Mr S that, in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told the Representative that if we didn't receive an answer, we'd assume Mr S would prefer redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how*

*to calculate redress for unsuitable DB pension transfers’*. As at the date of this final decision, the Representative didn’t confirm which option Mr S preferred.

## **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.

I’d like to clarify that the purpose of this final decision isn’t to repeat or address every single point raised by the Representative on behalf of Mr S and Corville. 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*

Corville was authorised and regulated by the FCA at the time it advised Mr S. This meant that when it advised him it was required to consider the suitability rules and guidance in the Conduct of Business Sourcebook (“COBS”) section in the FCA’s Handbook. In assessing the suitability of Corville’s recommendation, it’s necessary for me to have due regard to these rules and guidance.

Primarily, Corville 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 S. The suitability rules and guidance that applied when Corville provided its recommendation to Mr S 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 S’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 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 should start by assuming that the existing DB pension scheme is suitable and only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

### Mr S's situation

I think it's fair to say that when Corville advised Mr S in June 2016 there was a great deal of uncertainty regarding the future of the BSPS. This is because Mr S's former employer, Tata Steel, had announced in March 2016 that it would be examining options to restructure its business including decoupling the BSPS from the company. At that time, the BSPS was one of the largest DB pension schemes in the UK with approximately 125,000 members. In my view, considering what was known at that time, there wasn't any imminent threat of the BSPS entering the PPF while Tata Steel was examining the options and consulting with members. And so I think it's strongly arguable that Corville should've delayed its advice to Mr S until more detail became available.

But for the purpose of deciding this complaint, and on the basis that Corville advised Mr S before the outcome of the consultation was known, I'm going to proceed on the basis that

Corville essentially had two options – beyond that of waiting to learn the results of the consultation – to consider when it advised Mr S, as follows:

1. Advise him to maintain his safeguarded benefits in the BSPS in the knowledge that there was a possibility they would ultimately be transferred to the PPF once the outcome of the consultation was known; or
2. Advise him to transfer to an alternative pension plan such as a PPP.

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

Mr S still had the option to retain guaranteed benefits in the BSPS until the outcome of the consultation was known. Given the FCA's view on safeguarded benefits, it's my fair and reasonable opinion that Corville should've started its advice process by assuming the BSPS was suitable for Mr S and to only recommend a pension transfer if it could clearly demonstrate it was in his best interests.

#### Corville's advice to Mr S

I recognise that there wasn't a perfect solution for Mr S. And that his safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on Corville to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, Corville was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In responding to our investigator's assessment, Corville stated it had made Mr S aware of the risks associated with the pension transfer and advised against it in its suitability report. I've read the suitability report. I can see that Corville highlighted the risks and made clear that, in its view, the critical yield figure of 14.3% was unlikely to be achieved meaning, from an economic point of view, he'd be worse off and so it advised against a transfer. But it nevertheless advised Mr S transfer to achieve his objectives for flexibility before and after retirement.

There's no evidence that the transaction was carried out on an insistent client basis – this is where a client wishes to take a different course of action from the one recommended and wants the business to facilitate the transaction against its advice. In this case, despite documenting in its suitability report its reservations about the suitability of the pension transfer, Corville nevertheless advised Mr S to transfer.

In my view, disclosure of risks isn't the same as suitability. In other words, just because Corville told Mr S that he'd likely be worse off as a result of the pension transfer doesn't absolve it from any responsibility for the suitability of the transaction. In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

### Transfer value analysis

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 Corville advised Mr S. 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 – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the pension payable by the DB pension scheme.

In its suitability report, Corville stated that the critical yield figure had been calculated as 14.3%. But it provided conflicting information regarding to which age that figure had been calculated – in one section of the report it stated the figure of 14.3% was based on Mr S taking benefits at 60 but in another section, it was at age 65. So it's unclear to me what the correct critical yield figure was based on Mr S taking benefits at the BPS normal retirement age of 65. In the absence of evidence to the contrary, I've assumed it was to age 65 given that it was recorded that he intended to retire at that age.

Corville's advice to Mr S 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. Before 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 S'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 4.1% based on Mr S taking benefits at 65, in line with his recorded intention of retiring at that age. But even if Corville 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 my view, the discount rate and FCA projection rates clearly show that the financial viability of the pension transfer was questionable and would've required Mr S to accept a very high-risk investment approach to provide the potential for the sort of investment returns required over the investment timeframe to age 65 to match the benefits provided by the BPS, let alone exceed it. But the evidence shows that investing on a very high-risk basis wouldn't have been suitable for Mr S.

I note that he was recorded as having a '*Low end of Moderate*' risk profile and that the value of his PPP was to be invested in a "*Cautious portfolio*". The evidence indicates that he had very limited investment knowledge and experience before this pension transfer. There's no evidence that he had experience of investing significant sums of money. Given the critical yield applicable in this case, I think it was clear that Mr S would be financially worse off as a result of the pension transfer if he invested in line with his risk profile. Corville accepted as much in its suitability report.

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.

### Flexibility of pension benefits

Corville recorded that Mr S wanted the ability to draw benefits flexibly before and after retirement. This was the key driver for the pension transfer.

Mr S had accrued 33 years and 7 months' qualifying service in the BSPS. So I think it's fair to say that when the time came to retire that he'd be heavily reliant on the value of these benefits to fund any capital or income needs in retirement, particularly since he wasn't building up any additional provision elsewhere due to his unemployed status at that time.

I think it's clear that Mr S was attracted to a flexible arrangement. However, he was 55 at the time and so about 10 years away from when he said he intended to retire at age 65. While I don't doubt Mr S would've liked the flexibility to draw any level of benefit he wanted, plans can change over such a long period of time. Mr S's immediate income needs were being met by his cash savings, so I don't think there was any need to transfer his preserved benefits at that time, especially given the high critical yield attached to the transaction. In any event, I'm not convinced Mr S required flexibility. I think it's unlikely that he would've required the ability to draw varying levels of income and capital lump sums. The evidence indicates that when he retired that he'd likely require a steady, secure income stream for the rest of his life given his wider personal and financial situation.

The transaction resulted in all the investment, inflation and longevity risk being transferred from the BSPS to Mr S but he didn't envisage retiring until 65. The available evidence simply doesn't support the position as to why flexibility would've been a sufficiently compelling reason for Mr S to relinquish valuable benefit guarantees at that time.

In conclusion, while I understand Mr S's reasons and motivations for flexible benefits, I don't think Corville clearly demonstrated why it was in his best interests to relinquish his safeguarded benefits at that time to achieve future flexibility. I simply don't agree the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS.

### Death benefits

Death benefits are an emotive subject and of course when asked most people would like their loved ones to be taken care of when they die.

The recommended PPP offered flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, death lump sum or income drawdown or any combination of these. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP, the death benefits available would be significant (subject to investment performance) due to the simple fact Mr S didn't envisage retiring until 65 and so it was likely that the fund wouldn't be materially depleted in the foreseeable future.

Mr S was aged 55 and recorded as being in good health. So he could expect life expectancy into his late 70s or early 80s. It doesn't seem that there were any immediate concerns regarding his health such that there was a compelling reason to change the format of the death benefits to that provided by the BSPS.

The value of Mr S's safeguarded benefits represented the backbone of his retirement provision built up by that time. He was unemployed and wasn't building up further pension provision elsewhere. So it seems to me that when the time came to withdraw money from



the PPP to meet Mr S's income needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

While I appreciate death benefits are important to consumers and that Mr S was at that time divorced meaning a spouse's pension wasn't required, the priority here was to advise him about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. So I don't think death benefits paid in a different format justified a pension transfer at that time given that Mr S didn't have any immediate health concerns.

### Control of pension benefits

Corville recorded that Mr S was concerned about the financial security of the BSPS and the prospect that the value of his safeguarded benefits could be transferred to the PPF. As a result, he wanted to break ties with his former employer transfer away from the BSPS to remove the risk of reduced benefits and to have control over his benefits.

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 S could expect to receive around 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF which were different to the BSPS. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable.

If Mr S was apparently concerned about his safeguarded benefits being transferred to the PPF which would result in him losing around 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP to obtain "control" but in doing so expose the backbone of his retirement provision to unlimited downside risk where the loss could be significantly greater than 10%. That simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Corville to provide expert advice on this point, but I think it failed to do this. It's therefore my view that Corville failed to adequately allay Mr S's misapprehensions and that he therefore made the decision to transfer from an uninformed position.

### If properly informed, would Mr S have transferred anyway?

Based on the evidence I've seen, I'm not persuaded a pension transfer was in Mr S's best interests and that Corville's recommendation could therefore be regarded as suitable in the circumstances. So I think it's fair and reasonable to uphold this complaint.

In potential mitigation of Corville's advice, I've also thought about whether Mr S, 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 S, as a layperson, wouldn't have been familiar. It's my view that he was heavily reliant on Corville, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice. Given Mr S's reliance on Corville to provide expert advice, I think it's unlikely, on balance, he would've transferred against its advice had it advised him to maintain his safeguarded benefits in the BSPS and declined to facilitate the pension transfer.

I'm satisfied that my findings are based on information that was available to Corville at the time it advised Mr S in June 2016.

## Putting things right

It's my opinion that a fair and reasonable outcome would be for Corville to put Mr S, as far as possible, into the position he would now be in but for the unsuitable pension transfer advice he was given.

My view is aligned with that of our investigator in that Corville should've advised Mr S to retain his safeguarded benefits in the BSPS. When the advice was given in June 2016, there was insufficient information available about the successor scheme, the BSPS2, to enable Corville to carry out a proper analysis of that option. However, it's my view that had Mr S been given suitable advice in June 2016 to maintain his benefits in the BSPS, he would've been contacted in October 2017 as part of the BSPS's '*Time to Choose*' communication exercise and presented with 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 that Mr S transferred to the PPF or BSPS2. 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 S would've likely opted for the BSPS2. I'll explain why.

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. Mr S was unmarried at the time. But I think it's likely that, properly advised, he would've envisaged accessing his safeguarded benefits at 65 in line with his recorded intention. There's no evidence to suggest that he intended to take his benefits earlier than 65. This means no early retirement reduction would apply. As a result, the benefits payable at 65 were likely to be higher under the BSPS2 than the PPF. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

The calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr S takes benefits at the scheme normal retirement age of 65.

### FCA consultation

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document – [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA stated that it considers the current redress methodology in [Finalised Guidance \(FG\) 17/9](#) 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance – <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has stated that it expects firms 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 firms 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.

We've previously asked the Representative to confirm with Mr S whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and rules to be published. He didn't make a choice. So, as set out previously, I've assumed in this case he doesn't want to wait for any new guidance. 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 S.

Corville 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. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S's acceptance of this final decision.

Corville may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr S'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 BPS on Mr S's SERPS/S2P entitlement.

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

If a payment into the PPP isn't possible or has protection or allowance implications, it should be paid directly to Mr S 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 previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

I've thought about the Representative's point regarding the 15% deduction from any redress payable. It believes this is unfair as it doesn't account for the adviser and product charges that would've been deducted from the fund value over that time. While I understand the Representative considers this may unfairly reduce the redress payable, I'm mindful that it isn't possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr S back into the DB pension scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed here fairly compensates Mr S for the impact of the unsuitable pension transfer advice he received.

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 Corville to carry out a calculation in line with the updated rules and/or guidance in any event.

In addition, Corville should pay Mr S £300 for the distress and inconvenience this matter has caused him.

The compensation amount must, where possible, be paid to Mr S within 90 days of the date Corville receives notification of her acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes Corville to pay Mr S.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply. Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate.

Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Corville Financial Services Ltd to pay Mr S 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 Corville Financial Services Ltd to pay Mr S any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Corville Financial Services Ltd to pay Mr S any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Corville Financial Services Ltd pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S. If Mr S accepts this final decision, the money award becomes binding on Corville Financial Services Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr S can accept my final decision and go to court to ask for the balance. Mr S may want to consider getting independent legal advice before deciding whether to accept this final decision.

Corville Financial Services Ltd should provide details of its calculations to Mr S's Representative in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 January 2023.

Clint Penfold  
**Ombudsman**