DRN-3740200

The complaint

Mr H complains about the suitability of the advice provided by AMG Wealth Solutions LLP ("AMG") in February 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mr H 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 he provided to both the Representative and AMG. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr H'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 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.

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.

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

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

Options 1 and 2 would've enabled Mr H to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr H's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 10 years and 8 months' qualifying service between July 2006 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 £7,016. 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; and

- The cash equivalent transfer value of his safeguarded benefits was £151,165.10.

In response to the announcement by Tata Steel, Mr H contacted AMG for advice. He met one of its advisers in January 2018. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr H:

- He was aged 36 and his wife aged 33. They were both in good health. They had two financially dependent children aged between 2 and 8;

- He was employed full-time by Tata Steel and paid gross annual income of about £44,000 (his base annual salary was about £32,000). His wife was employed part-time by the NHS as a nurse and paid gross annual income of about £20,000;

- Their assets comprised the marital home valued at £145,000 and cash savings of £10,000. They didn't have any other savings or investments;

- Their liabilities comprised a repayment mortgage of £80,000 on their marital home which was due to be repaid in 13 years' time when he would be aged 49. They didn't have any other debts or liabilities;

- After paying for bills and essentials, they had surplus disposable income of several hundred pounds available every month;

- In addition to the value of his safeguarded benefits in the BSPS, he was on course to receive the full State pension at age 68 and had been a member of Tata Steel's defined contribution ("DC") pension scheme provided by Aviva since April 2017. The total annual contribution into his DC plan was 16% of his gross annual salary. His wife had accrued 12 years' pensionable service in the NHS Pension Scheme by that point; and

- He was a first time investor. On a scale of 1 to 10 where 1 was lowest risk and 10 was highest risk, his risk profile was determined to be 3 which was defined as *'Low Risk'.*

Following the fact find meeting, AMG issued its suitability report to Mr H in February 2018. The report confirmed Mr H's financial goals, objectives and priorities related to his safeguarded benefits, as follows:

- *"You wanted me to review your deferred defined benefit scheme accrued from your pensionable service within the British Steel Pension Scheme. The Scheme closed on March 2017.*

- *You are not trusting of your employer as you have said things have changed so considerably over the last 24 months. The ongoing stability of your pension is causing you concern and therefore want it reviewed.*

- *You ideally would not want to work at TATA past age 60 and if possible retire at that point.*

- *You are looking to invest for potential growth whilst remaining within your acceptable levels of risk and you would like flexibility with regards to how your funds can be accessed at retirement via a personal pension as opposed to the way that benefits are to be paid by the new scheme currently on, which on indication is likely to be BSPS2.*

- *You wish to access your pension fund when you stop working to provide a variable income. You wish to have the ability to access the fund as fits with your income needs and the flexibility to reduce or increase your benefits with due consideration for your Aviva pension plan and your state pension.*

- *You would like to ensure that your funds are an inheritable asset for* [Mr H's wife] *upon your death with the ability to include provision for* [Mr H's children] a*s well.*

- *Your initial wish is to invest for the long term (20 years +) although you may wish to access your funds prior to age 65 if your employment situation changes in the future.*

- *You are unsure at this stage what this may mean in reality but likely to be closer to 60 than your state pension age.*

- *You also realise that any investment may become considerably longer depending on how you access your funds into retirement.*

- *We had a conversation at our meetings with regards to the potential way that you could invest to obtain your desired pension requirements and you have asked that for now to limit the risk and volatility you are subject to. As you have stated you are coming out of a guaranteed environment and would like control over volatility as your perception is stock markets are very high.*

- *We discussed inflation proofing and you agreed that the fund being invested with exposure to some equities was important to achieve that.*

- *Your beneficiaries will also receive a payment of 4 x your salary upon death whilst a member of the TATA Aviva scheme, although a further lump sum from this pension would be helpful it is not the main priority."*

The costs associated with the recommendation were set out in the suitability report. The initial advice charge for recommending the transfer was 2.00% (or £3,023.30). The total ongoing charge was 1.28% - this included product, investment and ongoing advice charges. It was agreed that all charges would be deducted from Mr H's PPP fund value.

Mr H accepted the recommendation, following which the transfer to the PPP was completed. AMG recommended that, after the deduction of its initial adviser charge, the transfer value be invested across a range of funds to align with Mr H's *'Low Risk'* profile.

<u>*This complaint*</u>

During 2021, the Representative, on behalf of Mr H, complained to AMG about the suitability of its pension transfer advice. In summary, it stated that Mr H was concerned the advice wasn't in his best interests and had caused him to suffer a financial loss.

AMG didn't uphold this complaint. In summary, it stated that it had considered all three options available to Mr H (the PPF, BSPS2 or pension transfer) and that a pension transfer was the only viable option to enable him to achieve his recorded objectives. In its view, neither the BPS2 nor PPF would've enabled Mr H to achieve his objectives. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr H with all the necessary information and risk warnings in good time to be able to make an informed decision.

One of our investigators considered this complaint and recommended that it be upheld because, in his view, AMG failed to demonstrate that transferring to the PPP was clearly in Mr H's best interests. He thought suitable advice would've been to transfer to the BSPS2. To put things right, our investigator recommended that AMG carry out a redress calculation in line with the FCA's guidelines on the basis that Mr H transferred for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, he recommended that AMG pay Mr H £300 compensation for the trouble and upset caused by its unsuitable recommendation.

AMG disagreed with our investigator's assessment and provided additional comments in response. Our investigator considered those comments but wasn't persuaded to change his view and recommendation that this complaint should be upheld. Since agreement couldn't be reached, this complaint has been referred to me to review and decide. This is the last stage of our process.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And 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.

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. I'm satisfied that I've been provided with sufficient evidence to decide this complaint.

To make my findings easier to follow, I've set them out under separate headings below.

<u>*The FCA's applicable rules and guidance*</u>

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of AMG's actions here.

> PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly*
>
> PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*
>
> COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)*

The provisions in COBS 19 which specifically relate to a DB pension transfer were as follows:

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."*

And COBS 19.1.3 G stated:

> *"In particular, the comparison should:*
>
> *(1) take into account all of the retail client's relevant circumstances;*
>
> *(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;*
>
> *(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;*
>
> *(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and*
>
> *(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."*

Under the heading "Suitability", the following was set out:

COBS 19.1.6G:

> *"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"*

COBS 19.1.7G:

> *"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."*

COBS 19.1.7B:

> *"In considering whether to make a personal recommendation, a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme or other scheme with safeguarded benefits as sufficient in itself.*

COBS 19.1.8G:

> *"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 AMG's advice to Mr H, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

Mr H's situation

The situation for Mr H 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 in October 2017:

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 individuals such as Mr H. 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 H had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, AMG.

Options 1 and 2 would've enabled Mr H 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 H, 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 H still had the option to retain guaranteed benefits in either the PPF or BSPS2. Based on his age, circumstances and uncertainty about when he would retire (which I'll come on to later), it's my view that he would've been better off choosing the BSPS2 instead of the PPF because of the higher level of income it would pay at age 65.

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 AMG should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr H 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 AMG advised Mr H. 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.

AMG calculated the following estimated benefits and critical yield figures for the BSPS and PPF:

Scheme	At age 65 based on taking a full pension	At age 65 based on taking a reduced pension and maximum tax-free cash	Critical yield
BSPS	£14,403		6.54%
BSPS		Not calculated	Not calculated
PPF	£11,213		5.10%
PPF		£8,978 plus tax-free cash of £59,852	4.88%

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

In its suitability report AMG stated the critical yield figures but didn't express its view on whether it thought they were achievable. But it did state, in reference to Mr H, *"You are comfortable with these growth rates but understand it will be dependent upon on the investment risk you take with regards to the funds and the level of return is not guaranteed".* In the fact find document it was noted that Mr H was a first-time investor. And he was also determined to have a *'Low Risk'* profile. So I'm not convinced he had the necessary expertise to be able to form a view on the achievability of the critical yield figures and, therefore, how he was apparently "*comfortable"* with this.

AMG's recommendation to Mr H was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published on our website.

In response to our investigator's assessment, AMG expressed concern about this Service referring to discount rates when deciding complaints about pension transfers because there wasn't any regulatory requirement for it to refer to these when it advised Mr H. In its view, the discount rates don't have any relevance in assessing the suitability of its advice.

I agree with AMG that businesses weren't required to refer to discount rates when giving pension transfer advice. But I consider that they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The discount rates we refer to are based on a typical investment spread across shares and bonds. Over the last thirty years, the bond component in the discount rates has increased to reflect the more cautious approach typically being taken when members transfer a large number of years' of DB qualifying service. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 4.7% based on Mr H taking benefits at the scheme normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's *'Low Risk'* attitude to risk and the investment timeframe to age 65. Based on these factors, I think the critical yield figures meant that there was limited scope to match the benefits likely payable by the BSPS2, let alone exceed them. 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 H would be financially better off by transferring on a like-for-like basis when compared to the scheme pension. I think the figures show that there was a strong possibility Mr H would be worse off at age 65 by transferring to the PPP.

Notwithstanding the above, the basis of the recommendation was that Mr H was seeking to take benefits earlier than age 65. There's reference in the suitability report that he was looking to access benefits at age 60 at the latest. If that was the case then I would've expected AMG to also calculate the critical yield figures at age 60 to enable Mr H to make an informed decision. But it inexplicably only calculated and presented the figures at age 65 in the suitability report. I think this is a material oversight because the figures at age 60 would've been higher (compared to at age 65) due to the shorter investment timeframe and impact of the initial advice charge on the required growth rate. This means that Mr H wasn't provided accurate information about the level of investment growth required to match the scheme pension if he took benefits at age 60. In my view, this oversight further undermines the case for a pension transfer at that time.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B. 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 H's recorded objectives.

Mr H's objectives

Based on the fact find document and suitability report, Mr H had several objectives regarding his safeguarded benefits, which I think can be distilled into three broad areas, summarised as follows:

- **Control:** He was concerned about the longevity of Tata Steel and that the value of his safeguarded benefits could be transferred to the PPF, leading to a reduction in the level of benefits he would receive when he retired. Due to these concerns, he wanted control over his pension benefits by transferring away;

- **Flexibility and early retirement:** He wanted the flexibility to retire early and preferably no later than age 60 and, at that point, be able to draw variable levels of income taking into account his retirement income from his Aviva DC pension plan and State pension; and

- **Death benefits:** He wanted to ensure that, in the event of his earlier death, any unused pension benefits be passed on to his family, but this wasn't a priority because of the existing cover he already had in place.

I recognise that Mr H's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on AMG 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, AMG was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

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.

Control objective

It's clear that one of Mr H's main motivations for considering a pension transfer was due to his concerns about the BSPS and the risk it might fall into the PPF. In its suitability report AMG referenced Mr H's concerns about the BSPS as follows: *"You are not trusting of your employer as you have said things have changed so considerably over the last 24 months. The ongoing stability of your pension is causing you concern and therefore want it reviewed".*

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 H wanted to have control over his benefits by transferring to a PPP.

That being said, AMG's advice was provided in February 2018, after the *'Time to Choose'* pack had been issued to members. 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. AMG stated in the suitability report that *"the current indication is that the BSPS 2 scheme will be set up".* So it seems it agrees that the risk of a transfer to the PPF had reduced by that point.

In any event, I don't consider a transfer to the PPF was an outcome for Mr H 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 H 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 AMG'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.

A transfer to the BSPS2 would've removed any immediate concerns Mr H had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to an alternative scheme before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr H or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF.

If Mr H 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, as a *'Low Risk'* investor, 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 AMG failed to adequately allay Mr H's misapprehensions and that he therefore made the decision to transfer to the PPP from an uninformed position regarding the security of his benefits under the BSPS2 and PPF options.

Flexibility and early retirement objective

Mr H's safeguarded benefits, accounting for 10 years and 8 months' qualifying service, represented the backbone of his retirement provision built up by that time. His other savings and investments included cash savings of about £10,000 and benefits built up in his Aviva DC pension plan. Taking this into account, I think it's fair to say that when Mr H came to retire, he would be reliant, in some part, on the value of his BSPS benefits to generate a minimum level of core retirement income to support his standard of living in retirement.

It was recorded that Mr H wanted the flexibility to retire early and preferably no later than age 60 and, at that point, be able to draw variable levels of income taking into account his retirement income from his Aviva DC pension plan and State pension. But 'flexibility' isn't an objective in itself. The suitability report, for example, states that the PPP would give Mr H the flexibility to take a variable income instead of a fixed income but didn't explain why this was so important. And it wasn't explained why he didn't want a fixed or guaranteed retirement income stream. In my view, there's no real evidence that Mr H required irregular lump sums, variable income or staggered income during retirement. This is supported by the fact that AMG failed to establish Mr H's target income figure and how this might change over the course of his retirement (such as more income in the early years and less in later years). Rather, the suitability report simply stated, *"You have stated that you would currently like to retire around age 60 but this is just your preference and will be dependent on income and expenditure at that time".*

I'm concerned that AMG didn't establish Mr H's target retirement income need. In my view, where a client has a retirement income need – as Mr H did – 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 core income required to cover the expected expenditure from the target retirement age – and this would then provide a basis for the recommendation. But in Mr H's case, AMG didn't do this. Rather, it seems that it thought it was reasonable to defer establishing Mr H's income need until he retired. I don't think this approach was appropriate because without understanding Mr H's retirement income need it's difficult to conclude that the pension transfer was *clearly* demonstrated to be in his best interests.

Notwithstanding this point, I think it's important to note that the further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. And in Mr H's case, being 36 at the time of the advice, I think that even if AMG had attempted to establish Mr H's retirement income need, it would've been difficult to calculate an accurate figure with such a substantial timeframe until age 60. With such a time horizon until pension benefits could be accessed, it makes the case for a pension transfer – for the sake of achieving possible early retirement – more difficult to justify.

Had AMG advised Mr H 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 36. I think this is a key point. This approach would've entailed significantly less risk for Mr H compared to the pension transfer at that time. Mr H cannot access money in the PPP until age 55 at the earliest. So I don't think there was any need to transfer at that time, especially given the critical yield figures attached to the transaction. Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr H for the period until he retired. It also led to Mr H concentrating all his private retirement provision on a DC basis which offered no guarantees but was based entirely on investment performance and charges. I think the risks associated with the pension transfer were inconsistent with Mr H's *'Low Risk´* profile.

If it was a genuine requirement that Mr H required access to flexible benefits from age 60 then I make the following observation. He had been an active member of the Tata Steel DC pension scheme since April 2017. He and Tata Steel were, in total, contributing 16% of his gross annual income of about £44,000 into his DC pension plan every year, which was about £7,000 in monetary terms. This would increase in line with increases in his salary. It appears that Mr H intended to continue working in the same role for Tata Steel until he retired at age 60. And in the event he left that employment before then, I think it's likely that he'd find alternative employment and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it.

So over the 24-year period to age 60, it's likely that Mr H would build up significant DC pension savings. Based on contributions alone, I estimate that about £170,000 would be invested in his DC pension plan over that timeframe if he continued to be employed by Tata Steel. This ignores likely increases in his salary (and therefore higher pension contributions) and investment growth.

So if Mr H did have a need for flexible benefits from age 60, I think this could've been met in the first instance by using his likely significant DC pension savings. This course of action would've enabled Mr H to maintain his safeguarded benefits in the BSPS2 to provide guaranteed, escalating income to meet his core income need in retirement from age 65. The estimated revalued annual scheme pension payable at age 65 was £14,403 for the BSPS and £11,213 for the PPF. I think it's likely that the revalued pension payable by the BSPS2 at age 65 likely fell somewhere in between these figures. And if it turned out the DC pension savings didn't provide adequate income for the *full* five-year period between age 60 and 65, Mr H could take his benefits from BSPS2 at some point in between, meaning the early retirement factor wouldn't be as great as at age 60.

The alternative, blended approach I've suggested above may have enabled Mr H to achieve his flexibility objective from age 60 but with significantly less risk. I haven't seen any evidence that AMG adequately considered, presented and discounted this alternative blended approach to Mr H to enable him to make an informed decision.

In summary, the contemporaneous evidence simply doesn't support the position as to why flexibility and early retirement objectives would've been a sufficiently compelling reason for Mr H at age 36 to relinquish valuable benefit guarantees at that time by transferring to a PPP. I haven't seen any evidence that shows the pension transfer to the PPP led to Mr H gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2.

Death benefits objective

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. However, while death benefits might be important for members such as Mr H, there generally shouldn't be a disproportionate emphasis on this compared to their own retirement needs.

AMG recorded that, in the event of his earlier death, Mr H wanted any unused pension benefits to be passed on to his family. The suitability report stated, "Y*ou would like to ensure that your funds are an inheritable asset for* [Mr H's wife] *upon your death with the ability to include provision for* [Mr H's children] a*s well".* But it then went on to note that the provision of death benefits wasn't a priority because of the existing life cover Mr H already had in place.

That existing cover was mainly through Mr H's employment. He had death in service life cover based on a multiple of four times' his salary, meaning a lump sum of about £128,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a PPP. The value of Mr H's Aviva DC plan would also be payable to his nominated beneficiaries, the value of which would increase over time with 16% of his earnings being invested into that scheme annually. In addition, Mr H and his wife had joint life and critical illness designed to repay their mortgage in the event either of them died before the end of the term. So I agree that he had a reasonable level of existing life cover in place relative to his earnings and liabilities.

While the provision of death benefits wasn't a primary motivating factor for the pension transfer, I think it's important to highlight the following.

The existing death benefits shouldn't be underestimated. In the event of Mr H's earlier death, the BSPS2 would've paid his wife a guaranteed spouse's pension based on 50% of his revalued pension which escalated annually.

The recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under age 75 the benefits are paid free of income tax – after age 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 and for the period until Mr H withdrew retirement benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value until at least age 55. But Mr H was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time. Withdrawing money from the PPP to meet his income and lump sum needs possibly from age 60 onwards would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

If Mr H wanted to provide a lump sum to his family on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr H had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr H given he was then aged 36 and recorded as being in good health. But, in any case, as noted above, Mr H already had some cover in place.

While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr H about what was best for his own retirement provision. A pension is primarily designed to provide income in retirement. It's my view that Mr H had no health issues at the time AMG advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his family. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit.

If properly informed, would Mr H have transferred anyway?

For the reasons explained above, I'm not persuaded that a pension transfer was clearly demonstrated to be in Mr H's best interests. As a result, I think it's fair and reasonable to uphold this complaint.

In potential mitigation of AMG's advice, I've also thought about whether Mr H, 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 H, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on AMG, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice.

Mr H might have chosen to transfer against advice on the basis of his concerns. However, bearing in mind that many other members transferred to the BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience and '*Low Risk'* attitude to risk, I don't think, on balance, that he would've insisted on transferring. Given Mr H's reliance on AMG, I think it's likely he would've accepted a recommendation for the BSPS2 had it advised him to take that course of action.

Putting things right

A fair and reasonable outcome would be for AMG to put Mr H, 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 H would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. While some information on the benefits of the BSPS2 were still to be confirmed, it's my view that by February 2018 the risk of the BSPS falling into the PPF had receded by a large extent. I think AMG should've considered the BSPS2 as a viable option. So, in addition to the PPF, I think it's fair to consider the BSPS2 as a potential comparator scheme for redress purposes.

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. Given the timeframe, I'm not convinced that it could be reasonably determined in 2018 that the PPF was the likely better option for Mr H. And so I think, given the lack of clarity surrounding when Mr H would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF. As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

AMG 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.

AMG 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 Mr H's Representative and this Service upon completion of the calculation.

The 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 H'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, AMG should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H 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 H receives could be augmented rather than receiving it all as a cash lump sum;

- if Mr H accepts AMG's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, AMG 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 could've been taken as tax-free cash and 75% would've been taxed according to Mr H'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, AMG should pay Mr H £300 compensation for the trouble and upset caused by its unsuitable recommendation.

My final decision

Determination and money award: I uphold this complaint and require AMG Wealth Solutions LLP to pay Mr H 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 AMG Wealth Solutions LLP to pay Mr H any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require AMG Wealth Solutions LLP to pay Mr H any interest as set out above on the sum of £160,000.

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

If Mr H accepts this final decision, the money award becomes binding on AMG Wealth Solutions LLP. My recommendation wouldn't be binding. Further, it's unlikely that Mr H can accept this final decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 21 September 2023.
Clint Penfold
Ombudsman