

The complaint

Mr H complains about the suitability of the advice provided by Estate Capital Financial Management Limited (“Estate Capital”) in November 2017 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 her assessment which she provided to both the Representative and Estate Capital. 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 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. The details of Mr H’s safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 6 years and 4 months’ qualifying service between November 2010 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 £5,768.05. 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;
- The estimated revalued annual scheme pension payable by the BSPS at age 65 was £9,640 or a reduced pension of £6,389 plus tax-free cash of £42,594;
- In the event the BSPS fell into the PPF, the estimated revalued annual scheme pension payable by the PPF at age 65 was £7,894 or a reduced pension of £6,072 plus tax-free cash of £40,535.
- The cash equivalent transfer value of his safeguarded benefits was £132,863.55.

Mr H contacted Estate Capital for advice. He initially met one of its advisers in August 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr H:

- He was aged 43 and in good health. His wife was aged 38 and in good health. They had two financially dependent children aged between 12 and 15;
- He was employed full-time by Tata Steel and paid gross annual income of about £38,000. His wife was employed by the local council and paid gross annual income of about £12,000;
- Their assets comprised their marital home valued at £210,000. Between them they had cash deposits of about £9,500 and Mr H had a portfolio bond valued at about £15,000;
- Their liabilities comprised a repayment mortgage of £55,000 on their marital home which was due to be repaid in 2034. They didn't have any other 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 total annual contribution into his DC plan was 16% of his gross annual salary. His wife was a member of the Local Government Pension Scheme ("LGPS") and expected to receive an annual pension of about £10,000 from age 65. It was noted that Mr H also had a DB pension with a different employer which was estimated to provide an annual pension of £3,301 from age 60;
- On a scale of 1 to 10 with 1 as "*No Risk*" and 10 as "*Highly Speculative*" he was initially categorised as a 5 but, following a discussion, this was upgraded to 6, or "*Balanced*" risk, because Mr H wanted "*to be more speculative with this sum of money*"; and
- He didn't have any plans for early retirement.

In November 2017, Estate Capital issued its suitability report to Mr H recommending that he transfer the value of his preserved benefits in the BSPS to a PPP and invest the value into its *'Estate Capital Balanced Alpha Portfolio'* to align with his *"Balanced"* risk profile. The costs associated with the recommendation were set out in the suitability report, as follows:

Initial charge

- 2% based on the transfer value paid to the PPP

Ongoing annual charges deducted from the PPP fund value

The ongoing charge was expected to be about 1.84%, broken down as follows:

- 0.75% ongoing adviser charge
- 0.35% platform charge
- 0.74% investment management charge (this was a weighted average based on investment across a number of underlying funds and would vary over time between 0.5% and 2%)

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

This complaint

During 2021, the Representative, on behalf of Mr H, complained to Estate Capital about the suitability of its pension transfer advice. In summary, the Representative stated that the pension transfer wasn't clearly demonstrated to be in Mr H's best interests and had led to him losing valuable guarantees and secure income without good reason.

Estate Capital didn't uphold this complaint. It noted that the complaint received from the Representative was generic and provided no clear reasons why Mr H was complaining, and so in its final response letter it instead provided a general overview of the advice provided and why it believed it was suitable.

One of our investigators considered this complaint and recommended that it be upheld. This was because she thought that Estate Capital's recommendation to transfer wasn't clearly demonstrated to be in Mr H's best interests. She noted that the critical yield figures attached to the transaction indicated that there was limited potential for Mr H to be better off by transferring. She reasoned that Mr H didn't plan to retire earlier than age 65 and so, with an investment time horizon of over 20 years, there wasn't any urgency to transfer at that time, particularly since there was a lack of clarity about what his circumstances and retirement income needs would be so far into the future. She wasn't persuaded that it was suitable for Mr H to relinquish guaranteed income and instead take on the investment risks associated with the pension transfer to the PPP for what she considered to be generic objectives. She thought Mr H should've been advised to transfer to the BSPS2.

To put things right, our investigator recommended that Estate Capital 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 H opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, she recommended that Estate Capital pay Mr H £300 compensation for the trouble and upset caused by its unsuitable recommendation.

The Representative, on behalf of H, accepted our investigator's assessment. It provided some comments expressing its view about how the loss assessment calculation should be

carried out.

Estate Capital disagreed with our investigator's view and stated that this complaint shouldn't be upheld. It provided substantial comments in response, summarised as follows:

- This Service was acting unfairly by encouraging former members of the BPS to complain. It said our uphold rate for complaints about BPS pension transfers was significantly higher than the FCA's findings of unsuitable advice in its thematic reviews on pension transfer advice – and so there is a disparity in approach between this Service and the FCA which it finds concerning;
- This Service issues “boiler plate” decisions which don't reflect the actual circumstances of the complaint – so it's concerned Mr H's complaint hasn't been considered fairly on its own merits with the outcome already pre-determined;
- In the case of the BPS, members were forced to make a decision. This was an important point that the investigator had failed to properly consider. It thought that our investigator had also failed to properly consider the evidence including Mr H's handwritten notes setting out his feelings and motivations for the pension transfer;
- Our investigator had misinterpreted the relevance of the critical yield since there wasn't an option to retain benefits in the BPS (which was the basis upon which the critical yield had been calculated). In any event, it didn't think the Transfer Value Analysis System (“TVAS”) and critical yield was a reliable benchmark for assessing suitability because it had since been replaced by the Appropriate Pension Transfer Analysis (“APT”). It considered the discount rate of 4.5% to be achievable and that, from a financial viability point of view, Mr H wouldn't be worse off by transferring;
- Our investigator had focused too much on the loss of guarantees and failed to adequately consider the benefits Mr H achieved by transferring. It said that his top three priorities were: “*Increase pension*”, “*Provide for spouse and dependents in the form of a lump sum*” and “*lump sum death benefits before retirement*” – and that this had been achieved by transferring.
- There wasn't any evidence Mr H required guaranteed income. In its view, the only other viable option for Mr H was the PPF and that his objectives couldn't be met by that scheme. It said that the investigator's view that the BPS2 should've been recommended and used as the comparator scheme for redress was flawed because the BPS2 didn't exist when it advised Mr H in November 2017;
- Our investigator had failed to take into account Mr H's other income sources in retirement which must be considered in assessing the suitability of the pension transfer advice and so her assessment was flawed;
- It rejected our investigator's view that it failed to exercise reasonable skill, care and diligence in its dealings with Mr H and so didn't consider it was obliged to carry out a loss assessment. Nevertheless, to bring this matter to close, it carried out a loss assessment in line with the FCA's FG17/9 methodology using third-party actuarial software. It carried out two loss assessments using the PPF and BPS2 as comparator schemes on the basis Mr H took benefits at age 65 and PPP fund value of £148,309.38 as of 7 July 2021. It said that both loss assessments showed Mr H hadn't suffered a financial loss. But, as a gesture of goodwill, it offered to pay him compensation of £1,000.

Mr H rejected Estate Capital's compensation offer £1,000 and requested that this complaint be referred to an ombudsman for review.

In May 2023, our investigator wrote to Estate Capital and the Representative 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 H. Our investigator stated that in my final decision I may direct Estate Capital to use the FCA's calculator and invited any comments that the parties wanted to make by 8 June 2023. Neither party provided any additional comments.

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.

Before going any further, I'd like to apologise to the parties for the length of time it's taken to issue this final decision. To make my findings easier to follow, I've set them out under separate headings below.

FOS's approach to deciding complaints

Estate Capital has expressed its concerns about how we decide complaints. It says that we use letter templates. It also says that our approach to assessing complaints about BSPS pension transfers is flawed. This is because, in its view, we don't follow FCA rules and guidance which has resulted in inconsistencies in approach between the FCA and this Service when assessing the suitability of pension transfer advice. It's concerned our investigator didn't assess this complaint on its own facts and that the recommended uphold outcome was already pre-determined.

I want to address Estate Capital's concerns. Firstly, I can assure it that we consider each case on an individual basis based on the available evidence. While some cases may appear to have similar circumstances, they can have different facts involved and so won't necessarily have the same findings or outcome. In the case of BSPS pension transfers, many members were facing the same, uncertain situation following the announcement by Tata Steel in March 2016 which resulted in a significant number being advised to transfer away. The background and circumstances were very similar for lots of members – and so it's inevitable that our decisions on complaints about BSPS pension transfers will include similar content when setting out the background, circumstances, the reasons for the recommendation to transfer and when referencing relevant FCA rules and guidance. But the similarity in content on different decisions doesn't mean the outcome of this complaint was pre-determined as Estate Capital believes to be the case.

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 Estate Capital'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 the Representative, on behalf of Mr H, and Estate Capital. 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

Estate Capital was authorised and regulated by the FCA at the time it provided its recommendation to Mr H. 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, Estate Capital 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 H. The suitability rules and guidance that applied when Estate Capital provided its recommendation to Mr H 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 H'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 Estate Capital’s recommendation, it’s necessary for me to have due regard to the FCA’s rules and guidance applicable at the time it advised him in November 2017.

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, Estate Capital.

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.

In response to our investigator's view, Estate Capital stated that it's incorrect to consider the BSPS2 as an option for Mr H because it didn't exist at the time it advised him in November 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. 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.

So I think it's reasonable for me to decide this complaint on the basis that the BSPS2 was an option for Mr H. Based on his age, marital status, circumstances and that he didn't have any plans to retire earlier, 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 that 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 Estate Capital 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.

Transfer 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 Estate Capital 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.

The TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives. But TVAS has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. So it was useful for a client, like Mr H, that likely intended to use his safeguarded benefits towards achieving a minimum retirement income objective. The critical yield also gives an indication of the value offered by the transfer value and the ability to secure comparable benefits on the open market. So it's also useful in that regard.

In response to our investigator's assessment, Estate Capital commented that the TVAS is no longer relevant after it was replaced by the APTA rules in October 2018 – my interpretation of this is that Estate Capital is seeking to downplay the importance of the critical yield figures

applicable to Mr H's case. Whilst undeniably useful in demonstrating the amount needed to replicate scheme benefits, since the APTA rules didn't apply at the time of the advice complained about, they're of little relevance in deciding this complaint.

Estate Capital calculated the following critical yield figures for Mr H on the basis he invested in the PPP it recommended:

Scheme	At age 65 taking a reduced pension and maximum tax-free cash	At age 65 taking a full pension only
BSPS	5.36%	6.76%
PPF	3.75%	4.12%

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time Estate Capital 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 critical yield figures for the BSPS2 likely fell somewhere in between the figures above.

The TVAS report was based on a total ongoing charge of 0.73%, broken down as follows:

- 0.35% pa platform charge
- 0.38% pa investment charge (lower than is stated in the suitability report)

There's no reference in the TVAS report to the initial and ongoing advice charges.

It appears to me that the TVAS report didn't include the full range of charges applicable to the transaction. This is because the suitability report confirmed there was an initial charge of 2% based on the transfer value paid to the PPP and a total ongoing charge of 1.84% (rather than 0.73%), broken down as follows:

- 0.75% pa ongoing adviser charge
- 0.35% pa platform charge
- 0.74% pa investment management charge

If my understanding is correct, this means that the critical yield figures presented to Mr H were significantly understated and, therefore, misleading – this is because the invested transfer value would need to achieve a higher level of investment growth than was stated in the TVAS report to account for the initial adviser charge and higher ongoing charge. And so it's likely Mr H made the decision from an uninformed position. This was a significant error.

Estate Capital'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.

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. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 4.5% 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 'Balanced' risk profile and the investment timeframe to age 65. Based on these factors, I think the critical yield figures above meant that there was limited scope to match the benefits payable by the BSPS2, let alone exceed them – and this view ignores the fact that I think the critical yield figures above were understated, further undermining the case for a pension transfer.

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.

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 H's recorded objectives.

Mr H's objectives

In November 2017, Estate Capital issued its suitability report to Mr H. The report confirmed his objectives as follows:

"You explained at the [fact find] meeting that your objectives at this time are to ascertain the suitability of transferring your benefits accumulated in the above Final Salary scheme [BSPS] to a personal arrangement."

The suitability report included generic statements about why an individual might consider a pension transfer. But, beyond the excerpt above, it didn't detail Mr H's specific objectives about what he was looking to achieve by contemplating a pension transfer at that time. Mr H completed a risk attitude questionnaire which presented a list of statements regarding his preserved benefits in the BSPS which he was instructed to list in order of priority. He indicated the following:

1. *Increase pension*
2. *Provision for a spouse's and dependent's pension*
3. *Lump sum benefits upon death before retirement*
4. *Security of the pension fund*
5. *Tax free lump sums at retirement*
6. *Ability to retire early*

In response to our investigator's assessment, Estate Capital stated that Mr H's top three priorities were those numbered (1) to (3) above but for (2) clarified he wanted to provide for his spouse and dependents in the form of a lump sum.

I think there's a lack of colour and detail in the contemporaneous evidence regarding Mr H's specific circumstances. I'm concerned that Estate Capital failed ascertain sufficient detail about Mr H's specific objectives, as was required under COBS 9.2.2R. In assessing the suitability of the pension transfer, I've considered each of these six generic objectives under separate headings below.

Increase pension

Mr H's primary objective was to increase his pension. The estimated revalued annual scheme pension payable by the BPS at age 65 was £9,640 or a reduced pension of £6,389 plus tax-free cash of £42,594. And in the event the BPS fell into the PPF, the estimated revalued annual scheme pension payable by the PPF at age 65 was £7,894 or a reduced pension of £6,072 plus tax-free cash of £40,535. As noted above, it was known at the time Estate Capital advised Mr H that the BPS2 would, at age 65, pay a higher level of benefits than the PPF but lower than the BPS, so the projected income and tax-free cash figures for the BPS2 likely fell somewhere in between these figures.

Estate Capital recorded that Mr H also had a DB pension with a different employer which was estimated to provide an annual pension of £3,301 from age 60 and was a member of Tata Steel's DC pension scheme into which 16% of his gross annual salary was being invested. And he'd also likely be entitled to a full State pension from age 67. In addition, his wife had also accrued benefits in the LGPS. So it's clear Mr H and his wife wouldn't be solely reliant on the value of his BPS benefits to support their standard of living in retirement. It was stated in the suitability report that because Mr H had other sources of retirement income he wanted to "*take a more speculative approach*" with the value of his BPS benefits. It was for this reason his risk profile was altered so that he would take on a higher level of investment risk.

I think it's fair to say that, when asked, most people would like to increase their pension income. So I'm not surprised Mr H had this as a generic objective. Mr H had no plans to retire earlier than age 65. I'm concerned that the suitability report doesn't make any reference to Mr H's target retirement income from that age and how this would be met by the pension transfer and other sources. For example, there's no analysis or reference to Mr H's likely fixed outgoings, discretionary spending plans and excess income for saving in retirement – and, therefore, what level of income would be required to meet this. In any event, being aged 43 at the time, I think it would've been very difficult to predict what Mr H's retirement income need from age 65 was likely to be.

It may well have been the case that, in conjunction with his other sources of retirement income, the projected income provided by the BPS2 would've met Mr H's retirement income need in any event. But this wasn't established by Estate Capital because it failed to adequately determine his target retirement income need and how this would be met. The lack of clarity on this point undermines the case for a pension transfer, particularly since Estate Capital advised him to invest on a higher risk basis so that he could adopt a more speculative approach.

In conclusion, I cannot see that there was any compelling reason for Mr H to transfer at that time and to take on all the risks associated with the transaction for a generic objective of increasing his pension.

Death benefits

Mr H's next most important objectives related to providing benefits to his wife and children on his death. Estate Capital has clarified that Mr H preferred to provide death benefits in a lump sum format.

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. 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 and for the period until Mr H withdrew 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.

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.

The value of Mr H's BPS benefits would likely represent a moderate proportion of his retirement provision by the time he came to retire. Withdrawing money from the PPP to meet his income and lump sum needs from age 65 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. So it's questionable what level of benefit his wife and children would ultimately receive from the PPP.

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 BPS. I note that, according to the fact find document, he 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 aged 43 and recorded as being in good health. However, I cannot see evidence that Estate Capital adequately investigated the life cover option. For example, I haven't seen evidence that Estate Capital quantified Mr H's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

But, in any case, I understand that through his employment Mr H had death in service life cover based on a multiple of four times' his salary, meaning a lump sum of about £152,000 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 BPS, PPF or a PPP. In addition, the value of his Tata Steel DC pension plan would 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.

So it seems to me that in the immediate future, certainly while Mr H remained employed by Tata Steel, that a lump sum of at least £152,000 would be paid on his death. I think it's worth noting that at that time the only debt Mr H and his wife had was the repayment mortgage of £55,000 on their marital home.

It appears that Mr H intended to remain employed by Tata Steel until he retired, so I think it's fair to say that there wasn't any expectation the death in service benefits would disappear in the foreseeable future. This leads me to conclude that there wasn't any immediate need to transfer at that time to provide death benefits in a different format bearing in mind the cover already in place while Mr H remained employed by Tata Steel.

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 Estate Capital 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.

Security of the pension fund

It was recorded that Mr H was concerned about the BSPS and the risk that this might fall into 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 H wanted to have control and security over his benefits by transferring to a PPP.

That being said, as noted above, I think that by November 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 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 Estate Capital'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 Estate Capital 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 43. I think this is a key point.

A transfer to the BSPS2 would've also 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 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 H 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 H was reliant on Estate Capital 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 H the features, risks and benefits of those alternative options and allaying his misapprehensions.

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 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. He was relying on Estate Capital to provide expert advice on this point, but I think it failed to do this. The suitability report doesn't deal with Mr H's concerns about the PPF. So he likely thought that a transfer to the PPF was an outcome to avoid at all costs and probably reinforced his view a transfer to a PPP was the best course of action.

In summary, I think that Estate Capital 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 BSPS2 and PPF options.

Ability to retire early

This was identified as the least important objective for Mr H. That's understandable given that he didn't have any plans to retire earlier than age 65. But I've noted that in the suitability report, Estate Capital portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. It stated, "*The personal pension option will offer the flexibility to retire early without penalty*". I think this was misleading. The reality was of course that the PPP would've had less time to grow if accessed earlier than 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr H so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65.

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 Estate Capital'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 Estate Capital, 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 regarding the BSPS. However, bearing in mind that many members transferred to the BSPS2 even though such concerns were widely held, and bearing in mind also his lack of investment experience, I don't think, on balance, that he would've insisted on transferring. Given Mr H's reliance on Estate Capital, 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 Estate Capital 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. In response, Estate Capital 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 H has suffered a financial loss.

While some information on the benefits of BSPS2 were still to be confirmed, it's my view that by November 2017 the risk of the BSPS falling into the PPF had receded by a large extent, as I've explained above. So I think Estate Capital 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. Mr H didn't have any plans to retire earlier than age 65. Therefore, I think 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.

Estate Capital 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>.

Estate Capital 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 Representative 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 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, Estate Capital 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 Estate Capital'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, Estate Capital 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 be taken as tax-free cash and 75% 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, Estate Capital 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 Estate Capital Financial Management Limited 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 Estate Capital Financial Management Limited 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 Estate Capital Financial Management Limited 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 Estate Capital Financial Management Limited 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 Estate Capital Financial Management Limited. 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 28 July 2023.

Clint Penfold

Ombudsman