

## The complaint

Mr H complains Joslin Rhodes Lifestyle Financial Planning Limited ('JR') gave him unsuitable advice about transferring the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension, causing him a financial loss.

Mr H is represented in this complaint, but to keep things simple I'll only refer to Mr H.

## What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

Mr H was concerned about what that announcement meant for the security of his preserved benefits in the BSPS. So, in May 2016, Mr H met with JR for advice. Over several meetings, JR gathered information about Mr H's circumstances and objectives. Ultimately, JR recorded Mr H was age 55, had three adult children and a long-term partner, but was not married and had no plans to get married. That Mr H's monthly income was £2,300 and his partner's monthly income was £900. That their monthly essential expenses totalled £2,050 including £425 for rent, with a further £721 of monthly discretionary expenses. And that their credit card and other debt totalled £7,650, for which they repaid £333 per month. Mr H and his partner had no savings but Mr H expected to receive an inheritance of £1,500 in the future. JR recorded that Mr H and his partner were both entitled to a state pension, and his partner also had an occupational pension scheme that JR estimated would provide monthly income of £340.

JR also recorded that Mr H wanted to retire early at age 61 and be able to access his pension funds when he chose, including tax free cash ('TFC') totalling £56,000 to buy the house he and his partner rented, landscape the garden, repay debts and take holidays. That Mr H and his partner needed monthly retirement income totalling approximately £2,013 (£1,292 for essentials plus a further £721 for leisure), and that this would increase to £4,100 at age 85. That Mr H wanted his pension fund to provide his partner and children with death benefits they wouldn't be entitled to under the BSPS. And that Mr H was worried about the BSPS falling into the PPF and the PPF's financial stability. JR assessed Mr H's attitude to risk as 'balanced' (or, medium) and assessed his capacity for loss as 'low'.

In its Pension Transfer Value Analysis (TVAS) report, or suitability report, dated 8 August 2016, JR advised Mr H to not transfer out of the BSPS, as it gave Mr H several advantages - a guaranteed lifetime income compared with the level of income that might be secured through a personal pension, the option to take TFC, no personal investment responsibility or risk, and no personal fees or charges.

JR discussed this recommendation with Mr H on 9 August 2016, and its notes of that meeting record that Mr H still wanted to transfer against JR's advice - because he'd lost trust in his employer and the BSPS, he didn't want BSPS to get out of paying death benefits to his partner and children, and he wanted to buy his house sooner rather than later without the benefit reduction and income tax he'd incur if he did this under the BSPS.

Mr H wrote an 'insistent client' letter to JR dated 16 August 2016, which said he'd read and understood the TVAS report. But that he still wanted to transfer to a personal pension in order to access £25,000 TFC immediately so he could repay debts, and make home improvements. He also wanted money available to him to purchase his home. He said he wasn't interested in buying life assurance. And that passing on his pension funds to his partner and children, having flexibility and control, and not having to worry about the PPF were more important to him than losing guaranteed income from his main pension provision and having less income in retirement.

So, JR treated Mr H as an insistent client. The new TVAS report JR produced dated 28 August 2016 increased Mr H's attitude to risk to 'moderately adventurous' and his capacity for loss to 'medium', and recommended a personal pension Mr H could transfer his DB benefits to. Mr H followed this advice and transferred £297,124.67. Soon after, Mr H took £25,000 TFC and repaid his debts.

In September 2020 Mr H complained to JR about its advice to transfer out of the BSPS. Mr H later acknowledged that JR's 8 August 2016 TVAS report had advised him not to transfer out of the BSPS, but argued it shouldn't then have treated him as an insistent client and recommended a personal pension investment that was higher risk than his true attitude to risk and capacity for loss.

In response, JR said it had taken Mr H through a full advice process, told him about the risks of transferring from the BSPS to a personal pension, and recommended that he didn't transfer. But Mr H nonetheless made an informed decision to still transfer, so it had treated him as an insistent client in line with the regulator's guidance and its own process. And it then gave Mr H new and suitable advice about which personal pension to invest in, in line with his attitude to risk, capacity for loss and objectives.

Mr H asked our Service to look into this complaint, and one of our Investigators upheld it. They thought JR hadn't given Mr H clear and balanced information on which to make an informed decision about transferring. In particular, they said JR didn't thoroughly understand Mr H's income and expenditure, didn't give Mr H balanced information about death benefits, didn't reassure Mr H about the possibility of his scheme moving to the PPF, didn't include all the relevant information in its cashflow models, didn't present information in a clear and balanced way, and assessed Mr H's attitude to risk too highly from the start.

Our Investigator thought that if not for this, Mr H would have stayed in the BSPS and transferred his benefits to BSPS2 when the time came. So she asked JR to calculate compensation based on this assumption, and said it should also pay Mr H £200 compensation for the distress and inconvenience caused by its mistake.

Mr H generally agreed with our Investigator. He told us he was made redundant in March 2020 and started taking benefits from his employer's defined contribution ('DC') pension scheme. And then took benefits from this personal pension in October 2021 at age 61.

JR disagreed with our Investigator and provided further comments. In summary, JR said that in 2016, Mr H didn't disclose his employer's new DC pension or death in service benefit. That the generic life insurance quotes it gave Mr H in 2016 cost about the same as the personalised quotes it gave Mr H in 2019. That it wasn't known if or when the BSPS

would fall into the PPF and it told Mr H about the PPF's benefits and limitations. That it hadn't fully updated its cashflow models but this didn't change Mr H continuing as an insistent client. And it had increased Mr H's attitude to risk at his explicit request and invested his personal pension accordingly. JR also said Mr H's new personal pension had performed well so he'd not been caused a financial loss. That Mr H was always inclined to transfer from the BPS to a personal pension, shown by his willingness to meet JR so often over so many months. And his complaint was motivated by the chance to increase his pension funds, and he'd brought parts of his complaint outside JR's complaints process and benefitted from specialist legal advice.

Our Investigator didn't change their view of Mr H's complaint. As agreement couldn't be reached, the complaint was referred for an Ombudsman's decision.

Whilst that referral was underway, our Service contacted both Mr H and JR to explain that Mr H could choose to have any redress calculated now in line with the regulator's current guidance in FG 17/9, or he could instead choose to wait for any new guidance/rules to be published by the regulator, as expected in early 2023. JR didn't provide a response to this. Mr H argued he didn't need to make this choice yet as his complaint wasn't currently being considered by an Ombudsman. Mr H was informed that if he didn't make a choice, the redress calculation would be based on the current guidance.

This complaint was passed to me for consideration. On 9 December 2022 I issued my provisional decision. In summary, I said JR's communications weren't clear or fair, and it didn't act in Mr H's best interests or with due care and skill. And if JR had carried out a fair insistent client process, Mr H wouldn't have insisted on going ahead with the transfer. So in 2016, JR should not only have advised Mr H not to transfer to a personal pension, but also advised him to wait for further details about the possible outcomes regarding his preserved BPS benefits. And if it had done, Mr H would more likely than not have opted for the BPS2.

I noted that redundancy in 2020 essentially led Mr H to retire that year, and that he didn't access his personal pension benefits until October 2021, at age 61. Instead, he accessed his DC scheme first. Bearing in mind the actuarial reductions under the BPS2, I said that I thought Mr H would still have done the same thing and accessed his BPS2 benefits in October 2021 at age 61. Therefore, I thought JR should compensate Mr H for its unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr H through the BPS2 at age 61 for comparison purposes. And that JR should pay Mr H £200 compensation for the unnecessary distress it caused him.

Mr H generally agreed with my provisional decision, but suggested JR should calculate redress based on the benefits available to Mr H through the BPS2 at age 63, and not age 61 as I'd said. He explained that when he was made redundant in March 2020, his DC pension was worth about £24,000 and he received redundancy payments totalling £21,000. Mr H said he was aware of the actuarial reductions for accessing BPS2 benefits early, so would have delayed doing so for as long as possible. Mr H said he was healthy and would've prioritised his long-term security of income. And so he would have taken part-time work and used his redundancy payment and DC pension income to delay accessing his BPS2 benefits until age 63. Mr H also told us he chose to have redress calculated in line with the regulator's current FG 17/9 guidance.

JR confirmed it had received my provisional decision, but didn't provide any further comments or evidence for me to consider.

I'm now in a position to make my final decision.

### **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. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

#### *The applicable rules, regulations and requirements*

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 JR'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 9 which deal with the obligations when giving a personal recommendation and assessing suitability. The provisions in COBS 19 which specifically relate to a DB pension transfer. And I've also taken into account that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable.

In February 2016 the regulator provided guidance about what steps it expected businesses to take when advising an insistent client. There are three key steps, which it set out on its website as follows.

- 1. You must provide advice that is suitable for the individual client, and this advice must be clear to the client. This is the normal advice process.*
- 2. You should be clear with the client about the risks of their chosen course of action. If the advice includes a pension transfer, conversion or opt-out, there may be additional requirements. These may include ensuring the advice is provided by or checked by a pension transfer specialist, comparing the defined benefit (DB) scheme with the defined contribution (DC) scheme and starting by assuming the transfer is not suitable (see COBS 19.1).*
- 3. It should be clear to the client that their actions are against your advice.*

The regulator said the advice should be set out clearly in the suitability report, and that it needed to be clear with its client about the risks of their chosen course of action and that they are acting against its advice. It also added that if the client used their own words to indicate that they want to act against its advice, this would normally be clear.

The regulator also published additional guidance on its website giving examples of good and poor practice. It gave the following example of good practice relating to suitability

reports:

*“The adviser gave a personal recommendation in clear and unambiguous terms regarding both the advice on whether or not to transfer and, if the client chose to transfer, the receiving product and the funds into which the client was advised to invest.*

*The adviser discussed the client's reasons and the risks of not accepting the personal recommendation. The adviser documented the reasons, the discussion and its outcome in a separate document to the original personal recommendation.*

*Robust warnings were given and documented.”*

Whilst this was guidance, and not rules, I would've expected JR to have been aware of this and ensured that the advice and process it followed was consistent with the regulator's expectations.

Having considered everything, I'm upholding this complaint. Before I explain why, I must acknowledge that both parties have provided me with a great deal of detailed comments and evidence, and I've carefully considered everything I've been provided with. But while I mean no discourtesy, my decision won't mention everything I've been provided with. Instead, my decision will only address the comments and evidence I see to be relevant in reaching a fair and reasonable outcome to this complaint.

I also acknowledge JR has questioned Mr H's motivation for complaining, the legal support he's had and the process he's followed. But Mr H is entitled to complain about JR's 2016 advice regardless of his reasons, and to seek support with that. And ultimately, JR has had the opportunity to investigate and respond to the points Mr H has raised.

All parties accept that JR recommended Mr H did not transfer from the BPS to a personal pension. So, my decision is going to focus on what I consider to be the key issue, which is whether it was fair for JR to then treat Mr H as an insistent client.

I know that the date when Mr H wrote his 'insistent client' letter is disputed – it's dated 16 August 2016 but Mr H says he in fact wrote it during the discussion on 9 August 2016 at JR's direction. I note JR seems to have given Mr H a leaflet setting out what issues his insistent client letter needed to address. But regardless, I don't think the dispute about this letter changes anything here. Because it's not disputed that Mr H himself wrote the letter or that JR only started treating Mr H as an insistent client after 16 August 2016.

While I have considered all the comments and evidence available here, I think the key documents are JR's TVAS report dated 8 August 2016 and the notes JR made of its discussion with Mr H about that report on 9 August 2016. Having carefully considered these, I think there were failings in the advice process which meant Mr H wasn't fully informed about his position. And I think it's more likely than not that the provision of full information and better analysis would've influenced Mr H's decision making. I'll explain why.

JR recorded that Mr H wanted the flexibility to retire early at 61 and access TFC in order to buy the house he and his partner rented, landscape the garden, repay debts and take holidays. I appreciate Mr H may have liked the idea of doing these things, but JR didn't record any pressing need for him to do them. I acknowledge the 'closing comments' section of JR's 8 August 2016 TVAS report said *“We believe it would be appropriate to clear your outstanding debts from your natural 'stream' income. The purchase of your property would be best deferred until the point where you access the British Steel pension scheme at which point you could draw sufficient tax free cash to cover this purchase, and potentially further cash to allow for greater flexibility in terms of lump sum expenditure.”* But I think it's fair to

say this is mildly put and that JR didn't properly discuss or challenge Mr H's wish for flexibility here. And that it didn't make clear to Mr H that while he might wish to do these things, they were not pressing needs such that he needed to take risks with his pension.

Having considered all the evidence provided, it seems to me that a key reason why Mr H wanted to access TFC as soon as possible was to repay debt, and the monthly repayments were taking up quite a bit of his and his partner's monthly disposable income. So JR's starting point ought to have been exploring debt management or loan consolidation with Mr H. If the debt was consolidated by Mr H taking a loan, the monthly debt repayments could've likely been reduced. And if Mr H wanted to borrow a higher amount to make home improvements, that would also have likely been affordable and preferable to transferring Mr H's pension. Any remaining debt could've been repaid when Mr H retired using the TFC. And Mr H and his partner purchasing their home wasn't imminent, so transferring Mr H's pension when he didn't know if or when this would happen was premature.

In addition, I don't think JR clearly and simply explained to Mr H that transferring his DB benefits to a personal pension for this flexibility would come at a very significant cost. The 'personal considerations against transferring' section of JR's 8 August 2016 TVAS report says:

- *"We strongly encourage you to review the full report in detail however, in summary, the results of the transfer value analysis are not in favour of a transfer.*
- *The critical yield figure of 17.33% indicates that in pure actuarial/monetary terms (based on standardised reasonable assumptions), it would not be advantageous to transfer out of the British Steel pension scheme (see report for full details).*
- *If we were to look at these figures in isolation, we would strongly recommend remaining within the British Steel scheme."*

And the report went on to set out many pages of figures and analysis, based on different scenarios. But regardless of whatever Mr H himself thought his attitude to risk and capacity for loss was, Mr H was still a retail client with no significant investment experience. And I think JR's explanation that a transfer was '*not in favour*' and '*would not be advantageous*' was far too vague and did not make it clear enough that Mr H would be significantly worse off in retirement if he transferred his DB benefits to a personal pension. And that if he withdrew the same income he was entitled to under the DB scheme, his pension would most likely run out before he died.

I don't think the very significant financial impact of transferring was made clear when JR met with Mr H about the TVAS report on 9 August 2016. Instead, JR's meeting notes show that JR presented transferring to a personal pension as just another choice that would work for Mr H. JR's meeting notes say *"We noted that it would appear that both routes would achieve his desired outcome. I then presented the transfer value analysis report and discussed this in depth. We focused particularly on the personal considerations for and against transfer and I explained that although both options appeared to work it was the case that remaining in the defined benefit scheme and appeared to be the route of lesser risk. Therefore if both roads lead to the same place then it is better to take the one that appears more guaranteed to get you back."*

I know JR argues Mr H's personal pension has in fact performed well so he hasn't suffered a financial loss. That may be so, but this wasn't something JR or Mr H could have known in 2016, and I need to base my decision on whether the advice was suitable at the time. In any case, that's a matter for the redress calculation – it's possible that because of the performance achieved this may not show a loss. But this doesn't mean JR's advice was suitable or that this complaint shouldn't be upheld.

Even if I thought Mr H did have a pressing need to retire early at age 61 and take TFC, which I don't, I think JR should have made it clear to Mr H that he could do these things under either his current scheme or the PPF, or that he could wait until more was known about the BSPS2. Of course, it's possible BSPS2 might not have gone ahead, but Mr H's pension wasn't at risk of moving to the PPF in the immediate future, so I think JR should've emphasised that Mr H had time on his side and ought to have waited for the outcome of the consultation.

JR recorded that up to age 85, Mr H and his partner needed monthly retirement income totalling approximately £2,013, made up of £1,292 for essentials plus a further £721 for a football season ticket and holidays. This totalled about £24,153 per year. But I think it's fair to say that the £721 was discretionary spending which Mr H and his partner could choose to spend none, some or all of. So, it follows that Mr H's retirement income needs could've been less than £24,153 per year, and perhaps closer to £15,504.

JR's 8 August 2016 TVAS report said Mr H's existing BSPS would give him an annual income of £21,795 per year from age 61 if he took a full pension, or £14,764 per year if he took maximum TFC and a reduced pension. While JR didn't calculate what the PPF would provide Mr H with if he retired at age 61 as he wished, JR's TVAS report did say the PPF would give Mr H £25,839 per year from age 65 if he took a full pension, or £19,656 if he took maximum TFC and a reduced pension. And given the more favourable early retirement factors under the PPF, I don't think it would've been substantially less than the amount available to Mr H through the BSPS, particularly if he took TFC.

I'm mindful that JR recorded Mr H wanted TFC of £56,000, significantly less than the maximum TFC he could have taken. I'm also mindful that Mr H would've had additional income from his other pension which would be building up over the next six years. JR says Mr H didn't tell it about this new DC pension from his employer, but given that JR was the professional here and Mr H asked it for advice about his pension options in light of the well publicised BSPS changes, it's reasonable to think JR would specifically ask Mr H if his employer had set up a new pension for him. But I've seen nothing to suggest JR did. Mr H had at least another six years to build up this new DC pension, and he could take 25% of it as TFC and draw down further sums if he needed extra income until his state pension became payable at age 66.

More importantly, Mr H's partner was entitled to take her DB scheme benefits at age 60, the same year Mr H would reach age 61. And JR's TVAS report assumed she would be entitled to retirement income of £4,083 per year plus £1,875 of TFC, though it noted this was yet to be confirmed.

All of this means that I think Mr H and his partner had sufficient retirement income between them to meet all of their essential retirement spending and most of their discretionary spending even if Mr H retired at age 61 and accessed his DB scheme benefits. And I think that would've been the case even if Mr H moved with the scheme to the PPF. I think JR should have made this clear to Mr H. And I think JR should also have told Mr H clearly and simply that he was choosing flexibility he didn't really need in return for significantly lower benefits in retirement, in addition to the risks of running out of funds or not leaving behind enough death benefits for his partner - I'll come to this as I now turn to the matter of death benefits.

JR's TVAS report dated 8 August 2016 said that a key reason for Mr H to transfer to a personal pension was so that the remaining value of his pension could be passed to his partner, and possibly to his adult children, in the event of his death. Mr H and his partner weren't married, so his partner wasn't likely to be entitled to the spouse's pension under

Mr H's DB scheme or the PPF. And neither the DB scheme or the PPF would provide Mr H's children with any pension benefits in the event of his death, because the children's pension provision only went up to age 23 and Mr H's children were older than that.

My understanding is that neither the BSPS2 nor the PPF will pay a spouse's pension to an unmarried partner. So I accept it's not likely that Mr H's partner would have been able to receive a spouse's pension under the BSPS2 or the PPF at the time of the advice. And I also accept JR explored with Mr H whether he and his partner planned to marry in the future, and it was recorded that they did not plan to marry.

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 lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. I don't think JR properly explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

If Mr H died before retirement then his partner would be entitled to a death in service benefit – assuming she was nominated as his beneficiary. I know JR says Mr H didn't mention whether his employer provided death in service benefits. But as I've said above, Mr H was an inexperienced investor and JR was the professional here. And it's reasonable to think that Mr H's employer, a large business already involved in offering other employee benefits such as the pension Mr H asked JR for advice about, might offer death in service. So I think it's fair to have expected JR to have specifically asked Mr H to check whether he had death in service that his partner might benefit from. Had it done so, JR would have been able to explain to Mr H that he had six times his salary death in service, so about £240,000, that his partner would receive in the event of his death before retirement. But JR didn't do this.

I realise death in service would no longer be an entitlement once Mr H had retired. But I don't think JR provided Mr H with clear and balanced information about his other options for protecting his partner and children in the event of his death. I say that because page four of the TVAS, titled 'Primary Personal Considerations in favour of transferring', said "*Death benefits; protecting [your partner] / potential benefits for your children*" was "...arguably the most important of the considerations in favour of transferring out of the British Steel Pension Scheme." So death benefits were presented as a very important reason for Mr H to transfer from the BSPS to a personal pension.

But JR's modelling shows that if Mr H took TFC and a reduced pension at age 65, (equivalent to the benefits he was entitled to under the DB scheme) and achieved a growth rate of 5%, then his personal pension fund would be depleted by age 76 - and retiring and taking TFC earlier at age 61 would impact this even more. So there may not have been a large sum left, if any at all, to pass on when Mr H died. Had JR clearly and simply explained this to Mr H, this would have addressed Mr H's concerns that while "*He accepts that death benefits could be replaced by an insurance policy but he maintains that he would be aggrieved that British steel would get out of paying the [death] benefits to [his partner] for his children.*" as recorded in JR's meeting notes on 9 August 2016. In any event, JR should not have encouraged Mr H to believe that prioritising the potential for higher death benefits through a personal pension over his security in retirement was a reasonable thing to do.

Furthermore, if Mr H genuinely wanted to leave a legacy for his partner and his children, which didn't depend on his existing DB scheme, investment returns or how much of his pension fund remained on his death, I think JR should've instead fully explored life

insurance. I acknowledge that Mr H's insistent client letter said he wasn't interested in buying insurance, but I think this was based on Mr H's belief that there would still be significant funds left in the event of his death, if he transferred to a personal pension. And as I've explained, it was a very real risk that there wouldn't be.

Based on the documents from the time of the advice, I've seen nothing to suggest Mr H's health meant life insurance couldn't have been considered for him, and he and his partner had some disposable income each month. JR's TVAS report dated 8 August 2016 gave Mr H non-personalised quotes for life insurance – it said that it could cost him about £100 a month to get either whole of life cover of £85,000, or term assurance cover of £330,000, before medical underwriting. But it seems likely these quotes were discounted by Mr H because they were not specific to him and because of the cost. And I don't think that this was a balanced way of presenting this option to Mr H.

Basing the first quote on a much lower cover amount, albeit over potentially a longer term, would have left Mr H thinking this option didn't provide the cover he needed. And basing the second quote on significantly more than the transfer value of Mr H's pension benefits made that quote more expensive because it essentially assumed Mr H would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr H wanted to leave whatever remained of his pension to his spouse or children, which would be a lot less than this if he lived a long life. So, the starting point should have been for JR to ask Mr H how much he would ideally like to leave to his partner or any other beneficiary, and how much he could afford to contribute. Insurance on this basis was likely to be available and of much more interest to Mr H, and would have enabled him to leave a legacy without risking his retirement income.

Although it's evident that JR was unaware of Mr H's DC scheme, I think it would've discovered this if appropriate questions had been asked of Mr H. And had it known about the DC scheme it would've known that Mr H could've nominated his partner as the beneficiary of this scheme. Although this would've been a smaller sum, I think making Mr H aware of this would've reassured him that he already had the means of ensuring part of his pension wouldn't die with him and could be passed on. Furthermore, it may have been the case that Mr H was in receipt of extra pension income that he didn't need, particularly once his state pension became payable. JR ought to have advised Mr H that he could reinvest this money for the benefit of his partner or children, for example through a trust.

Overall, I don't think that the alternative means of providing a legacy for Mr H's partner and children were properly explored by JR. And I think that led Mr H to believe that the only way he could ensure his partner would benefit from his pension was to transfer out of the scheme.

I acknowledge that when Mr H sought advice from JR, he was very concerned about his pension and the thought that the BSPS might soon move to the PPF. And I accept Mr H may have been inclined to transfer out of the BSPS because of these concerns, as JR argues. However, JR's role was to discern what Mr H's wants and needs were and why Mr H wanted to transfer his pension. JR's role wasn't simply to facilitate what Mr H wanted. JR had to act in his best interests.

By the time the advice was given, it was possible the BSPS would be moving to the PPF at some point. But Mr H was worried this might happen imminently and I don't think JR reassured him (as it could and should have) that this wasn't the case, since a consultation process was still underway. Instead, JR's notes of its meeting with Mr H on 21 July 2016 shows that it reinforced this concern, noting *"[Mr H] is concerned about timescales and fearful that the British Steel pension will go into the pension protection fund in the next week. I have explained that although that is a possibility there is nothing he can do about*

*it because we need to go through the advice process before he makes his decision and any transfer is actions.*” So, instead of reassuring Mr H that he still had time and that he should wait until the outcome of the consultation, it essentially confirmed Mr H’s fears that his pension could fall into the PPF at any time.

That said, JR’s financial analysis showed Mr H was unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension, particularly if he retired early. So, I think JR ought to have reassured Mr H that the possibility of his scheme moving to the PPF wasn’t as concerning as he thought. The PPF would’ve still provided Mr H with a significant, guaranteed income, and he could’ve retired early from this scheme with TFC (likely at a higher rate than the BSPS would provide). And I don’t think there was any risk of the PPF benefits changing or being reduced, which Mr H’s letter seems to suggest he thought was a possibility.

Furthermore, the scheme moving to the PPF was only one of the outcomes; it was possible another scheme with reduced benefits would be agreed (the BSPS2). I appreciate Mr H told JR he was unhappy that his employer continued to reduce or modify his benefits so he may have been dismissive of a new scheme. But JR’s job was to reassure Mr H that even if the benefits were reduced, his DB pension was still far more valuable than the transfer valued offered to Mr H, which the high critical yields demonstrate was very poor value for money.

Instead, JR’s TVAS report dated 8 August 2016 listed *“removing worry around scheme developments”* as a reason to transfer to a personal pension, and spoke about the PPF in overall negative terms. It said *“The benefits provided by the PPF are not as attractive as the main scheme”* and *“By transferring...it removes future worries around any reduction [of] scheme member benefits or potential PPF scenarios.”* In addition, the later section of the report titled ‘Pension Protection Fund (PPF)’ went on to summarise the PPF, saying, *“The PPF provides very valuable benefits, and in some cases, Pension Commencement Lump Sums and Children’s Pensions, that will frequently provide better benefits than the scheme. However, the number of “small print” terms where the benefits are noticeably worse than the original scheme will mean that members will receive benefits of a much lower value than the headline 90% or 100% would suggest.”* So JR didn’t reassure Mr H about the PPF as it could and should have, but instead reinforced Mr H’s existing concerns.

I appreciate JR recommended that Mr H should not transfer to a personal pension, and I accept its 8 August 2016 TVAS report included risks about that. But I think JR didn’t present Mr H with information in a clear and balanced way within both the TVAS report and its meeting with Mr H about that report, and I think that seriously undermined JR’s recommendation not to transfer.

In this situation I’d expect the emphasis of the documentation to be the reasons why the transfer was not in Mr H’s best interests. But while the TVAS report recommended that Mr H not transfer and listed the transfer risks first, these risks were generic in nature and not specific to Mr H. JR then listed the reasons for Mr H to transfer - these were much more personal to Mr H, and were given prominence over the insufficiently personalised reasons not to transfer that the TVAS report then went on to list.

As I’ve said, JR’s notes of its meeting with Mr H to talk about the TVAS report show JR presented a personal pension as just another option Mr H could take, without clearly and simply setting out how detrimental it would be for Mr H. And JR’s notes go on to say that Mr H was still insistent on transferring his pension - the reasons it noted were largely emotional, such as Mr H’s loss of trust with his employer, his uncertainty around the BSPS, and feeling aggrieved that the BSPS might get out of paying the remainder of his pension

fund as death benefits to his partner. For the reasons I've explained, I think JR could and should have addressed each of these concerns with Mr H.

JR's meeting notes also show JR was already talking to Mr H about which personal pension he could transfer his DB benefits to, without giving him the time to consider its advice or the time to provide an insistent client letter. The notes say, *"We explored how a drawdown would work if he exercised that option and had a long discussion regarding portfolio choice. My recommendation was to start in the balanced portfolio largely due to his lack of investment experience and the significance of this pot to his overall situation. [Mr H] wanted to increase the risk profile whilst he is working and once the moderately adventurous. He anticipates reducing exposure when he retires. We had a blunt conversation about drops in the market in times of distress and how he would feel if his pot dropped by 50,000 or even £100,000 in extreme times. He felt sure that he would not be panicked by this scenario."* It's only after this that JR's notes mention it asked Mr H to take time to think about its advice, and told him it wouldn't do anything further for a week until Mr H provided an insistent client letter.

So, while JR recommended Mr H should not transfer out of the DB scheme, the ambiguous way it presented this to Mr H undermined its written recommendation to stay in the BPS. And JR didn't clearly and simply explain to Mr H how he could meet his objectives by remaining in the scheme. So, I don't think Mr H was able to make an informed choice – I think he believed the only way to meet his objectives was to transfer out.

If JR had emphasised what Mr H would be giving up and looked holistically at his circumstances, including his retirement provisions and what this might mean for his future, I'm not persuaded he'd have gone ahead with the transfer. I say this keeping in mind that I've seen no evidence Mr H had any investment or financial experience. So, I think it's likely he would have been strongly influenced by the professional financial adviser he'd engaged and was paying. Whilst I acknowledge JR's documents from the time of the advice suggest Mr H was adamant he wanted to transfer, I think this was due to incomplete, unclear and unbalanced advice on its part. And inexperience and misconceptions that Mr H had, which JR failed to address.

On balance, given these failings, I don't think it would be reasonable for me to conclude the process JR followed meant that Mr H can truly be regarded as an insistent client. JR's communications weren't clear or fair. It didn't act in Mr H's best interests. And it failed to act with due care and skill. If JR had followed the insistent client process correctly, I don't think Mr H would've insisted on going ahead with the transfer. Taking everything into account, I think that in 2016 JR should not only have advised Mr H not to transfer to a personal pension, but also advised him to wait for further details about the possible outcomes regarding his preserved BPS benefits.

I think JR's error here would have caused Mr H some distress, and I think the £200 suggested by our Investigator is a fair and reasonable amount of compensation for this.

I know Mr H argues that JR assessed his attitude to risk and capacity for loss too highly all along, but I don't think I need to consider this because I'm already upholding this complaint for the reasons I've explained – I don't think Mr H would have transferred out of his DB scheme in 2016 if JR had given him complete, clear and balanced advice.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed – it said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H's employer would be set up – the BPS2.

And in October 2017, BSPS members were sent a “Time to Choose” letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 22 December 2017. So if Mr H had stayed in BSPS as I think he would have done had JR given him properly reasoned advice, he would have had the choice to move to the PPF or transfer to the BSPS2.

So I’ve considered what Mr H would have more likely than not done when asked to make this choice. Given that he had already contacted JR for advice, I think it’s more likely than not that Mr H would have again contacted JR or another adviser in order to understand his options, so that he was placed into an informed position. And I think Mr H would more likely than not have opted for the BSPS2.

At the time of the advice, Mr H was about six years away from his possible retirement, so it was not close enough to be a concrete plan - and as I say, I don’t think Mr H had any pressing needs to retire early at age 61 in any case. And opting into the BSPS2 would have meant Mr H retained the option to transfer out of the scheme at a later date, should his circumstances dictate that this was in his best interests. And the escalation rates were generally better under BSPS2.

In his response to my provisional decision, Mr H said he would have delayed accessing his BSPS2 benefits until age 63 by finding part-time employment and using the income from this, his redundancy payment and his DC pension income to live on until then. Because he was in good health and prioritised his long-term security of income.

I appreciate Mr H’s further comments about what he thinks he would have done, bearing in mind the actuarial reductions under the BSPS2. But it remains the case that the personal pension Mr H in fact accessed in October 2021 was still his main source of retirement income, even though it was a personal pension and no longer a DB pension.

And I must also consider what Mr H actually did. Mr H was made redundant in March 2020 and he received a redundancy payment. And after this, Mr H accessed his DC pension first. So Mr H in fact already had access to two of the three sources of funds he’s recently said he would’ve used to delay accessing his BSPS2 benefits until age 63.

If Mr H wanted to also seek further employment in order to help prioritise his long-term security of income and delay accessing his main pension until age 63, then I think he could have done so. But there’s nothing to make me think Mr H did seek further employment. And I’m mindful that at the time of JR’s 2016 advice, Mr H wanted to retire early at age 61, even if JR didn’t record a pressing need for him to do so.

Therefore, I remain of the view that Mr H would still have accessed his BSPS2 benefits in October 2021 at age 61.

### **Putting things right**

A fair and reasonable outcome would be for JR to put Mr H, as far as possible, into the position he would now be in but for JR’s unsuitable advice. I consider Mr H would have remained in the BSPS and more likely than not moved with it to the PPF. So, JR should use the benefits offered by the BSPS2 for comparison purposes.

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

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

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

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr H whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr H.

JR must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. JR should use the benefits offered by the BSPS2 for comparison purposes.

For clarity, Mr H retired and started accessing his benefits in October 2021 at age 61, so this should be the basis for the calculations.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. 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 my final decision.

JR may wish to contact the Department for Work and Pensions (DWP) to obtain Mr H's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr H's SERPS/S2P entitlement.

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional

deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr H within 90 days of the date JR receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes JR to pay Mr H.

Income tax may be payable on any interest paid. If JR deducts income tax from the interest, it should tell Mr H how much has been taken off. JR should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90-day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90-day period in which interest won't apply.

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

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

### **My final decision**

Determination and money award: I uphold this complaint and require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £160,000.

I also require Joslin Rhodes Lifestyle Financial Planning Limited to pay Mr H £200 compensation for the distress caused by its mistake.

Where the compensation amount does not exceed £160,000, I additionally require Joslin Rhodes Lifestyle Financial Planning 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 only require Joslin Rhodes Lifestyle Financial Planning 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 Joslin Rhodes Lifestyle Financial Planning Limited pays Mr H the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts my final decision, the money award becomes binding on Joslin Rhodes Lifestyle Financial Planning Limited

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my 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 any final decision.

Joslin Rhodes Lifestyle Financial Planning Limited should provide details of its calculations to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 February 2023.

Ailsa Wiltshire  
**Ombudsman**