

## The complaint

Mr S complains about the suitability of the advice provided by AJH Financial Services Ltd (“AJH”) in October 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme (“BSPS”) to a personal pension plan (“PPP”).

Mr S is represented in this complaint by a law firm (“the Representative”).

## What happened

I issued my provisional decision on this complaint on 3 January 2023 in which I set out the background and my provisional findings. I’ve repeated what I said here:

*“In March 2016, Mr S’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 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 S, under the ‘Time to Choose’ 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 S 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 S’s safeguarded benefits in the BSPS at that time were as follows:*

- He had accrued 21 years and 2 months’ qualifying service between January 1996 and March 2017;*
- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his annual scheme pension was £21,703.56. The scheme pension comprised several*

*elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount.*

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60;*
- The revaluation and escalation rates were guaranteed in line with the BSPS rules;*
- The estimated revalued annual scheme pension payable by the BSPS at 65 was £29,890 or a reduced pension of £19,809 plus tax-free cash of £132,061. And at 58 it was £19,125 or a reduced pension of £13,294 plus tax-free cash of £88,630;*
- The cash equivalent transfer value of his safeguarded benefits was £528,133.14.*

*Mr S was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. He decided that he wanted transfer the value of his safeguarded benefits away to a new private arrangement. He contacted AJH to obtain advice and to facilitate the transaction. 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 S:*

- He was aged 51, in good health, married and had two financially dependent children aged 18 and 21. He didn't wish to include his wife in his financial planning as they were about to separate, and he expected to be divorced by the time he retired;*
- He was employed by Tata Steel and was paid gross annual income of about £70,000. He intended to continue working for Tata Steel until retirement. He ideally wanted to retire at age 58 but no later than age 60;*
- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") pension scheme since March 2017. The total annual contribution into his DC plan was 16% of his annual salary, which was about £11,000 in monetary terms. This would increase in line with changes to his salary. He also had an old PPP but details of this, including its value, weren't recorded. He expected to receive a full State pension (at age 67);*
- His assets comprised the marital home valued at £250,000 and cars worth about £15,000. He didn't have any savings or investments other than the value of his pension arrangements;*
- His liabilities comprised a mortgage of £30,000 on the marital home which was due to be repaid in 2022 and credit card debt of £9,000;*
- His monthly outgoings were £1,700 meaning he had surplus disposable income of about £2,000.*
- He was an inexperienced investor. His risk profile was determined to be 4 on a scale of 1 to 10, where 1 was lowest risk and 10 highest risk. The rating of 4 was described by AJH as 'Lowest Medium' risk.*

AJH recorded that Mr S had several objectives attached to his safeguarded benefits in the BSPS, summarised as follows:

- **Control:** He was concerned about the financial security of the BSPS and the prospect that the value of his benefits could be reduced in the future following a transfer to either the BSPS2 or PPF. As a result, he wanted to break ties with the BSPS and transfer away to remove the risk of reduced benefits;
- **Flexibility and early retirement:** He wanted the ability to draw benefits flexibly so that he could choose when and how to take these, ideally from age 58 but no later than age 60; and
- **Death benefits:** He wanted to maximise the level of death benefits payable to his children in the event of his early death and to provide them with flexibility in how they would be paid. He wasn't interested in the prescribed death benefits offered by either the BSPS2 or PPF, especially since he expected to be divorced by the time he retired.

In October 2017, AJH issued its suitability report recommending that Mr S transfer the value of his safeguarded benefits in the BSPS to a PPP and invest it in different proportions in three of the provider's funds to align with his 'Lowest Medium' risk profile. It confirmed the reasons why it recommended a transfer to a PPP in favour of the PPF and BSPS2 options for the following reasons:

- "You can invest in investment funds that have the potential for growth over the longer term
- You are able to access your pension benefits from age 55
- The death benefits are completely tax free before the age of 75 when paid to your beneficiaries and only taxable at their marginal rate of tax after 75.
- When taking benefits there are no restrictions on the amount of money you can withdraw at any one time.
- You are to be able to vary the underlying funds and risks within the pension to reflect any changes in your personal circumstances.
- You do not want the inconvenience and cost associated with moving your pension provision from one provider to another every time you move between different stages in your retirement plan. The Flexible Retirement Account caters for most aspects of retirement planning needs, from tax-efficient savings in the Personal Pension option through to provision of your income in retirement through the Drawdown option."

Mr S accepted the recommendation. The pension transfer was completed in November 2017. The costs associated with the recommendation were set out in AJH's suitability report. These charges were to be deducted from Mr S's PPP, summarised as follows:

#### Initial charge

- £1,000 – initial adviser charge payable to AJH

#### Ongoing annual charges based on the PPP fund value

- 0.50% adviser charge – to provide ongoing advice payable to AJH
- 1.11% fund charge – payable to the PPP provider

### *This complaint*

*In 2021, the Representative, on behalf of Mr S, complained to AJH about the suitability of its pension transfer advice. AJH didn't uphold this complaint and so the Representative referred the matter to this Service.*

*One of our investigators considered this complaint and recommended that it be upheld. This was because she thought that AJH's recommendation to transfer wasn't in Mr S's best interests and was therefore unsuitable. To put things right, our investigator recommended that AJH carry out a redress calculation in line with the FCA's 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' on the basis that Mr S opted for the PPF (rather than the BSPS2) and would be a 20% income taxpayer in retirement. In addition, she recommended that AJH pay Mr S £300 compensation for the trouble and upset caused by its unsuitable recommendation.*

*The Representative, on behalf of Mr S, responded and stated that when the prospect of the BSPS2 was first announced in 2016, it was intended to provide most members with better benefits than the PPF. It said it had taken advice from an actuary who confirmed that the only individuals who would've been better off in the PPF were those retiring early and very close to that early retirement age at the time of the transfer. It noted that Mr S was aged 51 at the time of the advice and, while he was interested in taking benefits early and no later than age 60, there wasn't any concrete evidence that he'd be able to retire early. He was therefore not in the small minority for whom the PPF was the better option. So it didn't agree with our investigator's view that the PPF was likely the better option for Mr S or that it should be used for comparison purposes in the redress calculation. Rather, it thought that the BSPS2 should be used for comparison purposes and on the basis that Mr S would likely take benefits at age 65.*

*AJH didn't accept our investigator's assessment and provided substantial comments in response. In summary, it stated that it had complied with and considered the FCA's rules and guidance, including making Mr S aware of the risks associated with the transaction. It was satisfied it had taken reasonable steps to demonstrate suitability and that the transfer was in his best interests taking into account his objectives and wider financial situation. It stated that before engaging its services, Mr S had already made his mind up about transferring. And so it believed he would've transferred anyway regardless of its advice. Nevertheless, it stated that Mr S hadn't suffered a financial loss and, to prove this, was prepared to settle this complaint on the basis it sourced the most favourable lifetime annuity based on Mr S's circumstances. In essence, it believed that Mr S should be compelled to secure a lifetime annuity to replicate the format of a scheme pension.*

*The Representative, on behalf of Mr S, rejected AJH's offer and stated that he preferred redress to be based on the FCA's 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'.*

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

*While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding*

*new pension transfer redress guidance. The investigator asked the Representative to confirm with Mr S, in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The Representative confirmed that Mr S would prefer redress on the current methodology set out in 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'.*

### **What I've provisionally decided – and why**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

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

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

*There were also specific rules and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr S's case – these were contained in COBS 19.*

*COBS 19.1.2R required the following:*

*"A firm must:*

*(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*

*(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*

(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and

(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."

Under the heading "Suitability", COBS 19.1.6G set out the following:

*"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can **clearly demonstrate, on contemporary evidence**, that the transfer, conversion or opt-out is in the client's best interests."* [my emphasis added]

COBS 19.1.7G also stated:

*"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."*

And COBS 19.1.8G stated that:

*"When a firm prepares a suitability report it should include:*

*(1) a summary of the advantages and disadvantages of its personal recommendation;*

*(2) an analysis of the financial implications (if the recommendation is to opt-out); and*

*(3) a summary of any other material information."*

*Businesses are required to 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 AJH's recommendation, it's necessary for me to have due regard to the FCA's rules and guidance.*

#### Mr S's situation

*The situation at the time AJH advised Mr S 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:*

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

*Options 1 and 2 would've enabled Mr S to retain guaranteed pension 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 S, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age of 65 (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 when needs could be determined with greater accuracy than at age 51 – the PPF didn't offer these additional features.*

*So while the situation was somewhat unusual, Mr S still had the option to retain guaranteed pension income in either the PPF or BSPS2. Due to his age and circumstances, it's my view Mr S would've been better off choosing the BSPS2 instead of the PPF based on what was known at that time including the uncertainty concerning whether he would, in fact, be able to retire earlier than 65.*

*Given the FCA's view on safeguarded benefits, it's my fair and reasonable opinion that AJH should've started its advice process by assuming the BSPS2 was suitable for Mr S and to only recommend a transfer to the PPP if it could clearly demonstrate it was in his best interests.*

#### *AJH's advice to Mr S*

*In responding to this complaint, AJH stated that before engaging its services, Mr S had already made his mind up about transferring and it was always his intention to do this. And so it believed he would've transferred anyway regardless of its advice. Notwithstanding this point, it stated that, when advising Mr S, it had complied with and considered the FCA's rules and guidance including making him aware of the risks associated with the transaction. This included making him aware that, in its view, the critical yield figure attached to the proposed transfer was unlikely to be achieved meaning, from an economic point of view, he'd be worse off – I've covered this in more detail below. But it nevertheless advised him to transfer to achieve his objectives for control, flexibility and to leave a legacy for his children on death.*

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

*In my view, disclosure of risks isn't the same as suitability. In other words, just because AJH told Mr S that the critical yield was unlikely to be achieved doesn't absolve it from any responsibility for the suitability of the transaction. In my view, financial planning isn't simply*

about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has the option not to facilitate the transaction.

### Transfer value analysis

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

AJH calculated the following critical yield figures:

Scheme	At age 58 based on a full pension	At age 58 based on a reduced pension and maximum tax-free cash	At age 65 based on a full pension	At age 65 based on a reduced pension and maximum tax-free cash
BSPS	13.7%	10.1%	8.5%	6.9%
PPF	*not stated in the suitability report	9.2%	*not stated in the suitability report	5.1%

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

AJH's recommendation to Mr S 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. While businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this Service for the period before October 2017 is 4.1% based on Mr S taking benefits at the BSPS normal retirement age of 65 and 3.3% based on him taking benefits at age 58 in line with his early retirement objective. 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.

In my view, the discount rate and FCA projection rates when compared to the critical yield figures imply that Mr S would've needed to accept a high-risk investment approach to provide the potential for the sort of investment returns required to match the critical yield figures noted above. But that would only come with accepting the risk of significant investment loss. This is because the relationship between risk and reward is closely related.

I note that Mr S was recorded as having a 'Lowest Medium' risk profile. The evidence I've seen indicates that he had very limited investment knowledge and experience before this



pension transfer. At the time of AJH's advice, he didn't have any savings or investments other than an old PPP and had recently joined Tata Steel's DC pension scheme. There's no evidence that Mr S had experience of investing significant sums of money.

Given the critical yield figures applicable in this case, I think that there was limited scope for the PPP to provide benefits that matched the relinquished benefits, let alone exceed them. And it seems that AJH agrees because in its suitability report, when expressing its view on the critical yields, it stated, "In my opinion, as it is your intention to retire early, if based on the Critical Yield alone, the level of growth required to purchase an annuity to match the benefits from the existing Scheme of 10.1% based on a joint life and Tax Free Cash being taken, I do not believe is achievable, particularly taking into consideration your objectives and the low annuity rates currently available".

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 taking into account Mr S's objectives regarding control, flexibility and early retirement, and death benefits.

#### Control objective

Given the level of uncertainty surrounding the BSPS at the time, I can understand that Mr S was concerned about the financial security of his safeguarded benefits and so wanted to have control over these by transferring them away to a PPP.

It was noted in the suitability report in reference to Mr S, "You are still employed by Tata Steel, and have concerns over the solvency of the pension fund and whilst this has been alleviated to some extent, the indication that the BSPS will go to the Pension Protection Fund [PPF] still gives you cause for concern".

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr S could expect to receive 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 AJH's recommendation, the PPF's financial position remained robust with an increase in its surplus funds to £6.1bn. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Had AJH advised Mr S 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 51. I think this is a key point.

A transfer to the BSPS2 would've also removed any immediate concerns Mr S 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 S 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 S was reliant on AJH 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 S the features, risks and benefits of those alternative options and allaying his misapprehensions.*

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

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

#### *Flexibility and early retirement objective*

*It was recorded that Mr S wanted to retire at age 58 but no later than 60. The fact find document recorded that he required monthly income of about £1,000 in retirement.*

*In its suitability report, AJH recorded that it recommended the pension transfer to a PPP to enable Mr S to flexibly access his safeguarded benefits early. I think it's clear that Mr S was attracted to a flexible arrangement. But I'm not convinced, based on the evidence provided, that he had a genuine need to access his safeguarded benefits flexibly with varying levels of income and lump sums during retirement. The evidence indicates that when he retired that he'd likely require a steady, secure income stream for the rest of his life.*

*A key point here is that Mr S couldn't access the money in the PPP until age 55 at the earliest. So I don't think there was any need to transfer his safeguarded benefits at age 51, especially given the high critical yield figures attached to the transaction.*

*Mr S was nine years away from his target of retiring no later than age 60. While I don't doubt he would've liked the flexibility to draw any level of benefit he wanted, plans can change over such a long period of time, particularly since it was noted he and his wife were about to separate and that he expected to be divorced by the time he retired. It was recorded that he didn't have any savings or investments other than the value of his pension arrangements. So it seems to me there was the possibility that, as part of the divorce settlement, Mr S would be required to relinquish part of his pension arrangements given their significant value relative to what was recorded about his wider wealth – a reduction in pension income would likely mean Mr S would have to delay his plans for early retirement. I acknowledge that no information was recorded about his wife's personal assets and how this might impact the expected divorce settlement but that just underlines the uncertainty.*

*AJH portrayed the PPP option in the suitability report as allowing for early retirement without the "penalties" which would be applied to the PPF or BSPS2 options. The reality was of course that the PPP would've had less time to grow if accessed earlier at age 60 and any resulting income would need to last longer. I cannot see that this was explained to Mr S 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.*

*So, given the timeframe of nine years and expected divorce, I think it's fair to say that in 2017 it was uncertain what Mr S's financial situation might look like in the future and whether*

he could, in fact, retire no later than age 60. There's inadequate evidence that AJH considered what impact the expected divorce could have on Mr S's future financial situation or its recommendation.

*But if I assume it was a realistic objective that Mr S could retire at 60, and assuming the divorce settlement didn't reduce his retirement provision, I make the following observations.*

*I note that Mr S had been an active member of the Tata Steel DC pension scheme since March 2017. He and his employer were, in total, contributing 16% of his gross annual salary of about £70,000 into his DC pension plan, which was about £11,000 in monetary terms. This would increase in line with increases in his salary. He intended to continue working for Tata Steel until retirement. In the event Mr S left that employment, I think it's likely that he'd find alternative employment, albeit perhaps outside the steel industry, and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it. So I think it's fair to say that over the nine year period to age 60, it's likely that Mr S would build up significant DC pension savings – the contributions alone over that nine year period would be about £100,000, ignoring any investment growth.*

*So if Mr S did have a genuine need for flexible benefits no later than age 60, it seems that this could've been met in the first instance by using his significant DC pension savings. This course of action would've likely enabled Mr S to achieve his monthly income need of £1,000 for the five-year period from age 60 until he could take unreduced benefits from the BPS2 at 65.*

*As noted above, the projected revalued pension payable by the BPS was £29,890 at age 65. I acknowledge that the annual pension payable by the BPS2 would've been lower, but I think it's fair to say that even the lower figure would be sufficient to meet Mr S's recorded monthly income need from age 65. This would then be followed by the full state pension at 67.*

*So, from 65 onwards, most of Mr S's core retirement income need could've been met by guaranteed and escalating pensions which would've offered some inflation protection unlike the recommended PPP. And if it turned out the DC pension savings didn't provide adequate income for the full five-year period between 60 and 65, Mr S could've taken his benefits from BPS2 at some point in between, meaning the early retirement factor wouldn't be as great as at age 60. Alternatively, he could've considered a transfer to a PPP at that time, if then deemed suitable, when his retirement income and lump sum needs could be determined with far greater accuracy than at 51.*

*Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr S. But I don't think he needed to take on these risks at that time for the reasons explained above.*

*The course of action recommended by AJH led to Mr S concentrating most of his retirement benefits on a DC basis which offered no guarantees but was based entirely on investment performance. The alternative, blended approach I've suggested above likely would've enabled Mr S to achieve early retirement and income objectives but with significantly less risk. I haven't seen evidence that AJH adequately considered and discounted this alternative course of action. The available evidence simply doesn't support the position as to why flexibility would've been a sufficiently compelling reason for Mr S to relinquish valuable benefit guarantees at that time.*

*In conclusion, while I understand Mr S's reasons and motivations for flexible benefits and early retirement, I don't think AJH clearly demonstrated why it was in his best interests to relinquish his safeguarded benefits at that time to achieve future flexibility, especially given the level of uncertainty about Mr S's future financial situation. I simply don't agree the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2.*

#### *Death benefits objective*

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

*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 S could draw any benefits from 55 onwards, 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 for at least 4 years.*

*But Mr S 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 S's safeguarded benefits would represent the backbone 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 60 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.*

*If it was a genuine objective for Mr S to provide a lump sum to his children on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr S 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 S given he was aged 51 and recorded as being in good health. However, I cannot see evidence that AJH adequately investigated the life cover option. For example, I haven't seen evidence that it quantified Mr S'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 note that through his employment, Mr S had life cover based on a multiple of four times' his salary, meaning a lump sum of about £280,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a PPP. In addition, the value of his Tata Steel DC pension plan and other old PPP (details of which weren't obtained by AJH) would be paid as a lump sum to his nominated beneficiary(ies). So, it seems to me that in the immediate future, certainly while Mr S remained employed by Tata Steel, that a lump sum of at least £280,000 would be paid on his death. It was noted that Mr S intended to remain employed by Tata Steel until he retired.*

*So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits bearing in mind the cover already in place while Mr S remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled*

*AJH and Mr S enough time to properly investigate obtaining additional life cover so that he could maintain safeguarded benefits in the BSPS2.*

*It's my view that Mr S had no health issues at the time AJH 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 children. So I'm not convinced there was any real merit in Mr S transferring to a PPP at that time to provide a lump sum death benefit. There's no real evidence that a death lump sum was required for his children.*

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

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

*In potential mitigation of AJH's advice, I've also thought about whether Mr S, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr S, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on AJH, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice regardless of his own views. Given Mr S's reliance on AJH to provide expert advice, I think it's unlikely, on balance, he would've transferred to a PPP against its advice had it advised him to opt for the BSPS2 instead."*

In summary, my provisional decision was that it was fair and reasonable to uphold this complaint based on the available evidence. I went on to set out what I considered was fair compensation on the basis that Mr S had instead opted for the BSPS2. I asked both parties to this complaint to provide any further comments or evidence that they wanted me to consider before I made my final decision.

The Representative's response to my provisional decision

Mr S's Representative acknowledged receipt of my provisional decision. It didn't provide any additional comments or evidence for me to consider.

AJH's response to my provisional decision

AJH didn't accept my provisional decision and provided substantial comments in response. These additional points can be summarised as follows:

- **FCA rules and guidance:** It said that it had adhered to all relevant FCA rules and guidance when it advised Mr S. And that it treated him fairly and always acted in his best interests including providing him enough information to make an informed decision;
- **Mr S's understanding:** Mr S had received the 'Time to Choose' pack and other information that meant he was aware of the three options available to him including that the BSPS2 and PPF options provided guaranteed income. But he wasn't interested in guaranteed income and preferred flexible benefits provided by a PPP;
- **Mr S's objectives:** I was inexplicably fixated on Mr S wanting to retain his safeguarded benefits and providing a legacy on death to his children. It thought that I

had ignored Mr S's recorded objectives including his desire to maximise tax-free cash. It said that Mr S didn't wish to pay for life cover so reference to it in my provisional decision was irrelevant. In its view, Mr S's objectives and retirement income need couldn't be met by either the BSPS2 or PPF;

- **Mr S's divorce:** It was fully aware that Mr S intended to divorce before retirement and had considered the impact this would have on his retirement plans when formulating its recommendation. It said that Mr S's wife was seeking to obtain 50% of his pension savings and 70% of the equity in the marital home. It questioned how Mr S could've agreed a divorce settlement with the same outcome at age 55 using either the BSPS2, PPF and his Tata Steel DC pension plan.
- **Mr S's investment experience:** It disagreed with my view that Mr S didn't have any experience of investing large sums of money since he was an active member of the Tata Steel DC pension scheme;
- **Timing:** It didn't agree that Mr S should've delayed a decision to transfer. This was because it was known that any transfer value offered by the BSPS2 in the future would be less and so, had he delayed, he'd have been worse off. Notwithstanding this, transferring at that time enabled him to obtain tax-free cash at age 55 based on the higher transfer value offered by the BSPS;
- **Change of adviser:** Since its advice, Mr S had changed financial adviser which had resulted in him paying higher ongoing fees than it was charging him;
- **Suitable option:** It doesn't agree that the BSPS2 was the most suitable option for Mr S. This is evidenced by the fact that at age 55 he crystallised money from his PPP by taking tax-free cash and zero income, an option that wouldn't have been available under the BSPS2. Mr S's actions since the pension transfer clearly show that he wanted and has used the flexibility provided by the PPP. It questioned why if Mr S was so convinced that the advice was unsuitable he still hadn't secured a lifetime annuity with the value of his PPP. In its view, the fact that Mr S hadn't secured a lifetime annuity supported its position the pension transfer was suitable;
- **Financial loss:** It had performed a loss calculation that showed, as at January 2023, Mr S hadn't suffered a financial loss but had instead made a financial gain. So, in its view, Mr S is now in a better financial position because of its advice since he can currently secure a lifetime annuity that would provide a higher level of income than the BSPS2, but he has failed to do so; and
- **Legal proceedings:** It said that if I proceed to issue a final decision upholding this complaint that it will instigate legal proceedings by bringing a judicial review challenging my decision.

On 25 May 2023, our investigator wrote to AJH 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. And that the FCA was encouraging businesses to use that calculator for non-scheme cases, such as this complaint made by Mr S. Our investigator stated that in my final decision I may direct AJH to use the FCA's calculator. So she invited the parties to provide any additional comments they wanted me to consider before making my decision.

AJH responded and stated that it intended to use the FCA's BSPS-specific redress calculator. It requested that this Service provide it with the fund value of Mr S's PPP as at

1 April 2023 and a copy of the '*Time to Choose*' booklet issued to him by the BPS in October 2017.

The Representative responded and stated that a Pension Sharing Order applies to Mrs S's pensions benefits because of his divorce. And that AJH may therefore need to seek actuarial support when calculating Mr S's financial loss.

### **What I've decided – and why**

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

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Before going any further, I'd like to apologise to the parties for the length of time it has taken me to issue this final decision after issuing my provisional decision on 3 January 2023. The reason for the delay was mainly because this Service was waiting for clarification from the FCA about whether businesses should be required to use its redress calculator non-BPS consumer redress scheme cases. Clarification from the FCA has now been received and so I'm now able to set out my final decision below.

The findings I made in my provisional decision and set out above form part of this final decision. I've carefully considered AJH's comments in response to my provisional decision. In my view, most of its comments concern events after its pension transfer advice in 2017 and a reimagining of his circumstances and objectives at the time of its advice. As set out in my provisional decision, in deciding this complaint, it's necessary for me to have due regard to the contemporaneous evidence only – anything that happened after the pension transfer is essentially irrelevant in deciding whether AJH provided a suitable recommendation to Mr S. So I won't comment on events after its advice.

AJH agrees that the critical yield figures attached to the transaction were unlikely to be met and that Mr S would, as a result of the pension transfer to the PPP, likely be financially worse off from an economic point of view when comparing the benefits on a like-for-like basis to the DB pension scheme. There's no dispute about this. I explicitly stated that financial viability isn't the only consideration when giving pension transfer advice, as set out in COBS 19.1.7B (G). And that there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. So in deciding this complaint I haven't merely focused on the critical yield.

AJH has set out what it believes those other considerations were and why it continues to believe that a pension transfer was the most suitable course of action for Mr S in favour of the BPS2 and PPF options. AJH said that in my provisional decision, I had inexplicably fixated on Mr S retaining his safeguarded benefits and providing a legacy on death to his children and that I had ignored Mr S's recorded objectives. AJH said that Mr S wanted to take the maximum tax-free cash at age 55. It also said that his income need wouldn't have been met by alternative options from age 55. And that Mr S had investment experience of managing large sums as a result of being a member of the Tata Steel DC pension scheme and understood the risks attached to the pension transfer.

But the contemporaneous evidence simply doesn't support this. My provisional findings were based on what was recorded at the time – and this clearly shows that Mr S had three broad

objectives relating to control, flexibility and early retirement from age 58 but no later than age 60 and to maximise the level of death benefits payable to his children. The basis of AJH's advice wasn't built around Mr S taking benefits at age 55. My view remains the same that Mr S would likely rely on the value of his safeguarded benefits to provide secure income in retirement. AJH said that Mr S didn't wish to pay for life cover so my reference to it in my provisional decision was irrelevant. But, as I set out above, I cannot see evidence that AJH adequately investigated the life cover option. So it's not clear how it can conclude that he wasn't prepared to pay for life cover when there's inadequate evidence that it was properly considered and discounted.

Mr S joined the Tata Steel DC pension scheme in March 2017, several months before AJH advised him and so had limited investment experience. So I don't agree with its view about Mr S having experience of investing significant sums. It remains my view that he was an inexperienced investor and was reliant on AJH to provide expert advice.

As for Mr S's impending divorce, AJH said that it was fully aware that he intended to divorce before retirement and had considered the impact this would have on his retirement plans in formulating its recommendation. If that's the case, then I would've expected it to mention it in its suitability report. But there's no reference to Mr S's impending divorce, how this might impact his retirement plans or how this was factored into the recommendation to transfer to the PPP. So I'm not convinced that AJH properly considered Mr S's personal situation and how this might affect its recommendation. I think given the uncertainty that Mr S should've been advised to transfer to the BSPS2.

I agree that Mr S was aware of the three options available to him, as set out in my provisional decision. But he wasn't an expert and had appointed AJH to provide suitable advice. For the reasons set out, I think it failed to provide a suitable recommendation.

It remains my view that AJH didn't clearly demonstrate, on the contemporaneous evidence, that the pension transfer was in Mr S's best interests. So I think it's fair and reasonable to uphold this complaint. In conclusion, nothing AJH has said in its response to my provisional decision changes my opinion on the merits of this complaint.

I acknowledge AJH's threat that if I proceed to issue a final decision upholding this complaint that it will instigate legal proceedings by bringing a judicial review to challenge my decision. That's its prerogative. The threat of legal action doesn't alter my view on what I think is a fair and reasonable outcome in the circumstances of this complaint.

### **Putting things right**

A fair and reasonable outcome would be for AJH to put Mr S, as far as possible, into the position he would now be in but for the unsuitable advice he was given.

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.

Our investigator concluded that, if properly advised, Mr S would've opted for the PPF on the basis that she was satisfied retiring no later than age 60 was an achievable objective for Mr S. I disagree for the reasons explained in my provisional decision. Given the timeframe of nine years and expected divorce, I think it's fair to say that in 2017 it was sufficiently



uncertain what Mr S's financial situation might look like in the future and whether he could, in fact, retire no later than age 60.

With these factors in mind, I'm not convinced that it could be reasonably determined in 2017 that the PPF was the likely better option for Mr S. And so I think, given the lack of clarity surrounding Mr S's ability to retire early, the BPS2 was likely the better option for him based on what was known at the time and that at age 65 the BPS2 would provide a higher level of benefits than the PPF.

In summary, as set out in my provisional decision, I think it's likely that, properly advised, Mr S would've envisaged accessing any DC pension savings in the first instance to meet his income and lump sum needs before starting to take his safeguarded benefits from the BPS2. As such, the calculation on the basis of entering the BPS2 should be carried out.

In response to our investigator's assessment, AJH stated that Mr S hadn't suffered a financial loss and, to prove this, was prepared to settle this complaint on the basis it sourced the most favourable lifetime annuity based on Mr S's circumstances. In essence, it believes that Mr S should be compelled to secure a lifetime annuity to replicate the format of a scheme pension rather than continuing to enjoy the flexibility provided by the recommended PPP. It's evident that Mr S will benefit from flexibility by virtue of the position he's in now. But that has only arisen because of the unsuitable advice provided by AJH. And ultimately the FCA has set out what it deems to be appropriate redress to put right instances of unsuitable DB pension transfer advice. I see no reason to depart from the FCA's guidance in the circumstances of this complaint.

AJH 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>.

AJH should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to the Representative on behalf of Mr S and our Service upon completion of the calculation.

For clarity, Mr S hasn't yet retired, and, as far as I'm aware, has no plans to do so at present. So, compensation should be based on the BPS2's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 S'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, AJH should:

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S 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 their redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum;
- if Mr S accepts AJH's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr S 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 S's end of year tax position.

Redress paid to Mr S as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, AJH may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr S'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, AJH should pay Mr S £300 for the distress and inconvenience this matter has caused him.

AJH should note that a Pension Sharing Order applies to Mr S's pensions benefits because of his divorce. Therefore, AJH may need to seek actuarial support when calculating Mr S's financial loss.

### **My final decision**

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

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

I understand that Mr S has changed financial advisers and is no longer a client of AJH Financial Services Ltd. To enable AJH Financial Services Ltd to carry out the loss assessment, Mr S will need to agree to provide it such information as necessary to complete the calculation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 July 2023.

Clint Penfold

**Ombudsman**