

## **The complaint**

Mr M has complained that Pensionhelp Limited gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a Personal Pension Policy (PPP).

## **What happened**

In March 2016, Tata Steel UK Ltd 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, 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 defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M’s employer would be set up – the BSPS 2.

This was, however, intended to receive deferred benefits only. The main defined benefit OPS had been replaced by a new defined contribution scheme. The existing scheme was due to be closed in the near future, with the options being set out in a subsequent letter in October 2017 for deferred members to either transfer their benefits to the successor scheme, BSPS 2, the Pension Protection Fund (PPF) or into a private arrangement, such as a PPP.

Mr M discussed his pension arrangements with a separate firm in late 2017, but it confirmed that it was unable to provide advice regarding Mr M’s defined benefits within the BSPS. It referred Mr M to Pensionhelp and, in a “fact find” document dated 23 October 2017, Mr M’s circumstances were recorded as follows:

- He was aged 48, and in good health.
- He was single, with no dependants, and lived in rented accommodation with his mother.
- He was employed by Tata Steel with annual income of around £28,000.
- His only other asset was £1,600 held as cash.
- Mr M’s only other pension provision was the defined contribution scheme he had joined on 1 April 2017, following the closure of the BSPS pension.

- Although Mr M's initial risk rating was recorded as being "7 out of 10", where "10" was the highest, following further discussion, this was reduced to "4 out of 10" – or "low/medium".

In terms of Mr M's deferred benefit entitlement, he had accrued 28 years' service in the (existing) BPS and had been quoted a cash equivalent transfer value (CETV) of £296,773.

According to the transfer value analysis (TVAS) report, Mr M could expect to receive an annual pension of £17,779 from the BPS at age 65, or a tax free lump sum of £78,552 and a reduced annual pension of £11,782.

At Mr M's "desired" retirement age of 60, he could expect to receive an annual pension of £12,811 from the BPS, or a tax free lump sum of £58,636 and a reduced annual pension of £8,795.

Within a "financial summary" produced in January 2018, Mr M's priorities were recorded as follows:

- The ability to retire at age 60 and flexibility of income, as he didn't wish to take the scheme benefits at that age. This, the report said, was because the scheme was being moved into the Pension Protection Fund in March 2018, which would result in a reduced income, which didn't fit in with his plans or expenditure needs.
- Provide a legacy for his extended family in the event of his death.

It was recorded that the pension benefits were important to Mr M, accounting for more than 75% of his total assets, and he was reluctant to take undue risks with it.

A TVAS report indicated the amount of growth required by the transferred funds to match those being relinquished in the scheme – the critical yield. These were set out as follows:

#### BPS

- Retirement at age 65 with full scheme pension – 7.7% pa
- Retirement at age 65 with tax free cash taken – 5.92% pa
- Retirement at age 60 with full scheme pension – 9.4% pa
- Retirement at age 60 with tax free cash taken – 6.9% pa

#### PPF

- Retirement at age 65 with full scheme pension – 4.71% pa
- Retirement at age 65 with tax free cash taken – 4.37% pa
- Retirement at age 60 with full scheme pension – 5.75% pa
- Retirement at age 60 with tax free cash taken – 5.33% pa

Pensionhelp said that the critical yields weren't achievable based upon Mr M's attitude to risk. But it said that the critical yields shouldn't be considered in isolation and that there may be reasons to transfer away from the scheme, such as the desire for flexibility and leaving the pension fund to Mr M's nominated beneficiaries.

Pensionhelp recommended that Mr M transfer his deferred benefits to a PPP in order for him to achieve his objectives, and Mr M accepted the recommendation. The SIPP received the transferred funds on 27 March 2018.

The fees which applied to the transfer advice were as follows:

- A £5,935 initial fee, equating to 2% of the CETV.
- An ongoing annual fee of £2,908, equating to 1% of the fund value.
- There would also be ongoing product charges amounting to around £3,635 pa.

Mr M's representative complained to Pensionhelp in April 2021, saying that it didn't think he'd been given the right advice and that he'd suffered financial loss as a result.

Pensionhelp declined to uphold the complaint, however. Dissatisfied with the response, Mr M referred his complaint to this service.

One of our investigators considered the matter, and thought that the complaint should be upheld. He said the following in summary:

- Mr M was 48 at the time of the advice and had accrued over 28 years' benefits in the BPS. They would form the entirety of his pension provision, and were therefore valuable to him.
- The regulator's requirement, when considering a transfer of defined benefits, was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.
- In determining whether this was the case, he first considered the required critical yield to match the scheme benefits.
- The advice had been given during the period in which this service was publishing information with which businesses could calculate future "discount" rates for complaints about transfers which were being upheld.
- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.
- The investigator said that the discount rate was 4.3% pa for a period of 16 years to Mr M's normal retirement date (65), compared to respective required critical yields to match the non-commuted BPS benefits at 65 of 7.7% and to match them at 60 of 5.92% (although according the TVAS, this was in fact higher at 9.4%).

- He also noted that, in the suitability report, Pensionhelp had itself said that the critical yields were unachievable – although it had added that if the same level of scheme income was taken as drawdown from the SIPP, the pension funds would last until Mr M was 102.
- But the actual level of required income assumed from age 60 was significantly higher than that which would have been paid from the scheme, and so there was high risk that the pension fund would be exhausted in Mr M's lifetime.
- But this in any case seemed to be based on Mr M's current gross income, with no meaningful analysis having been undertaken as to what Mr M would need in retirement once, for example, other commitments had been repaid.
- Based on the fact find, Mr M only appeared to need a retirement income of £875 pm.
- The investigator also queried the risk rating attributed to Mr M, saying that his answers to certain questions in the risk profiling indicated a low rating.
- He also had a low capacity for loss, given his limited other pension provision, that he didn't own his own property and that he only had other assets of £1,700 in cash deposits.
- The deadline for making his decision as part of the "time to choose" exercise was 22 December 2017, and as the advice process began in October 2017, this should have provided enough time to give the BPS 2 the consideration it deserved.
- Full details of this replacement scheme were available by the time of the advice.
- The suitable recommendation would therefore have been for Mr M to retain his benefits in the BPS, and then transfer into the BPS 2.
- Mr M's concerns relating to the future of the BPS should have been managed, but Pensionhelp instead told Mr M that the BPS would be moving into the PPF.
- The other rationale for transferring – flexibility of death benefits, whilst offering a different format of payment – wouldn't have justified the transfer. The primary purpose of the scheme benefits was to provide for Mr M's retirement, rather than provide a lump sum for relatives.
- Whilst risk warnings may have been given, this wouldn't make otherwise unsuitable advice suitable.
- Mr M also didn't have enough time to properly consider the 21 page suitability report – along with the 26 appendix to that report. They were posted on 11 January 2018, but there was a clear warning that the CETV would expire two weeks later.
- This would have put pressure on Mr M and he signed the documents on 14 January 2018.

The investigator recommended that Pensionhelp undertake a loss calculation in accordance with the regulator's guidance (FG 17/9) for such complaints – and on the basis that Mr M would have opted to join the BPS 2.

He said that any redress should in the first instance be paid to Mr M's pension plan, but if this wasn't possible, it should be paid directly to Mr M, with a notional deduction for the (basic rate) income tax he would have paid on the pension benefits.

Mr M agreed with the investigator's findings. Pensionhelp disagreed, however, saying the following in summary:

- In terms of comparing the options available to Mr M, whilst a move to the BSPS 2 had some advantages, it was understood at the time that any transfer value after such a move would be around 25% lower – which seemed logical given the lower indexation within that proposed scheme.
- No formal advice service had been put in place for members, and for those who sought advice externally, there was a lack of information available for individual cases, due to the scheme administration team being overwhelmed.
- It was the BSPS which needed to be used for comparison purposes in the TVAS, but the comparative benefits of the BSPS 2 could still be taken into account.
- It was, however, by no means a certainty that the BSPS 2 would be established and it was dependent upon which members chose to join the new scheme, along with any unexpected changes in the value of the scheme's investments. Had it not proceeded, all members would in any case have moved into the PPF.
- If members hadn't made a decision by 11 December 2017, then they would remain in the old scheme.
- Mr M had said that he required a flexible income, giving him the option of retiring early, taking a higher income in the early years of his retirement and then reducing this as other income sources became available. He didn't want a guaranteed income in retirement.
- This, coupled with the evidence that the benefits would be lower in both the BSPS 2 and the PPF, was why it didn't consider them to be viable options.
- Remaining in the BSPS 2 wouldn't have been risk free – if underlying investment growth was insufficient, then this would affect future transfer values. And there were concerns about it being able to meet its future obligations, especially with a new owner which would have wanted to reduce costs.
- The BSPS 2 would be revalued in line with the CPI rather than the more generous RPI by which the BSPS was revalued.
- All indications were therefore that the BSPS 2 would have offered lower pension benefits at retirement and lower transfer values in the future.
- Although it understood the guidance of assuming a defined benefit transfer to be unsuitable, it considered the circumstances here to be exceptional.
- It acknowledged that its assessment of Mr M's income needs in retirement could have been clearer – he would only need £14,100 pa in retirement rather than the "aspirational" income of double that.

- But it considered that it did prepare a meaningful analysis of this, which took into account other changing factors. Mr M hadn't indicated that he would need any lump sums in retirement.
- Mr M's own comments in terms of his priorities in the fact find indicated that he was seeking a flexible income which he could control immediately, rather than relying on the uncertainty of his pension being retained by Tata or moving into the PPF. He also confirmed that he was happy to accept investment risk and that he felt strongly that he would like to pass on a legacy after his death.
- Mr M was willing to accept the trade-off between a secure income and risk to achieve his objectives of flexibility, which would enable him to retire early, and change his income levels as required.
- Although he confirmed that this pension was very important to his retirement provision, the circumstances and uncertainties surrounding the future of the BPS still indicated that transferring would be in his best interests.
- The pension which it predicted Mr M would receive from the BPS at 60 - £12,811 pa - wouldn't have provided him with enough income for his needs – and it was likely he would receive a lower sum still from both the BPS 2 and the PPF – with them offering £11,953 and £11,875 pa at age 60 respectively.
- But once the state pension began at age 67, this would have been well in excess of his needs. By contrast, the flexible income – and tax free cash - from drawdown would have enabled him to change his income levels as required and also offered tax efficiency in withdrawals.
- The growth level assumed to age 60 within the SIPP was 4.5%, and so not far off the discount rate of 4.3% mentioned in the investigator's assessment.
- Flexibility of income would have enabled Mr M to withdraw higher amounts in the early years of retirement, as was typically required, and then lower amounts when older – the reverse was true of the scheme benefits, however.
- The additional benefits produced from the 16% overall contribution to his defined contribution scheme might have been worth around £55,000 at age 60, and this would have helped plug any gaps up to his state pension age.
- It didn't agree that its assessment of Mr M's attitude to risk was flawed – the risk profiling tool was provided by an industry recognised third party.
- Having identified inconsistencies in the answers provided by Mr M, and following discussions with the introducing agent, it was agreed that Mr M was a "4 out of 10" rather a "7 out of 10". A telephone note demonstrated that a conversation was held on this with Mr M, and although this took place after the advice was given, Mr M had expressed no concern with the amendment.
- The deadline for clients to confirm their decision as part of the "time to choose" exercise was 11 December 2017, not 22 December 2017. It received the time to choose pack from the introducer on 26 October 2017, which was just 33 working days before this. This didn't give it "plenty of time", as had been suggested by the investigator, in which to issue the suitability report.

- Mr M didn't need to act almost immediately to secure the CETV quote. Even if it had received Mr M's agreement to proceed just one day before the deadline, it could have forwarded this to the scheme. The two week period Mr M had to digest the contents of the report would have been sufficient, and Mr M confirmed that he was happy that he understood the content.
- The available evidence also suggested that, had Mr M allowed the existing CETV quote to lapse, he would likely not have received a new one within 12 months.
- It was also fairly obvious from the media coverage at the time that the scheme was about to enter the PPF assessment period any day and the chances of obtaining a new quote before this were slim. Once in the PPF assessment, there would be nothing which Pensionhelp could do. The BSPS did then enter PPF assessment in March 2018.
- It agreed that the primary purpose of the pension funds was to provide Mr M with retirement provision, and Mr M had confirmed that the restructuring of the death benefits wasn't a concern for him. This suggested that he wished to spend his pension while he was alive, but he did also mention that he wanted to leave some kind of legacy as well, if possible.
- A life assurance policy would likely not have been appropriate, as Mr M had no dependants. And as there would have been no benefit from a spouse's pension, the money which would otherwise have been set aside for this would be retained by the scheme.
- By transferring, Mr M could have either left the lump sum pension fund benefit or established a guaranteed annuity at a later point if required.
- It agreed that the critical yields were unachievable, as set out in the suitability report.
- But as observed by the investigator, the discount rate quoted didn't need to be referenced, nor relied upon, when providing advice.
- Comparing critical yields against likely achievable rates of growth also didn't take account of consumers' individual needs and their willingness for the trade off in order to achieve their flexibility objectives.
- A TVAS would always show a high required growth rate, due to the way in which the assumptions are set, which was designed to ensure that clients appreciate the value of the guaranteed benefits and what they are relinquishing. The growth rate won't be achievable in any but the most specific circumstances, and it simply wasn't possible to buy an annuity to match the scheme benefits.
- But although, in circumstances where an individual required a guaranteed income, a transfer wouldn't be suitable, this didn't mean that a transfer wouldn't be suitable in the right circumstances.
- Compared to other critical yields which were being calculated in the winter of 2017, 7.7% was quite low and indicated that the transfer value being offered was appropriate and in fact quite generous.

- If the focus was placed upon the hurdle rate, which calculated the cost of the annuity assuming no spouse's pension, no increases in payment and no guarantee – and was therefore more appropriate for Mr M – these were 2.57% at age 60 for the full pension and 1.27% for a reduced pension with tax free cash. These were well below the discount rate of 4.3% and its own targeted investment return of 4.5%.
- The critical yields shouldn't therefore be considered at all in this case.

The investigator didn't agree with the points made by Pensionhelp, however, and as agreement couldn't be reached on the matter, it was agreed that it would be referred to an ombudsman for review.

The investigator then wrote to both parties explaining that, on 2 August 2022, the FCA launched a consultation on proposed changes to the redress guidance for defined benefit transfers. Mr M was provided with the opportunity to have redress calculated on the basis of the current guidance, or to wait until any new guidance was in place (expected in early 2023).

If no response was received, the investigator said that we would assume that Mr M didn't want to wait for any new guidance, and for the redress calculation to be undertaken on the basis of the existing guidance.

Pensionhelp then submitted further points on the matter of any redress calculation, saying that it needed to be done on the basis of a comparison with the PPF, rather than the BPS 2. In support of this, it said that, at the time of the advice, the following applied:

- The BPS 2 couldn't exist until the end of March 2018 – the trust deed and rules to which the scheme needed to adhere didn't take effect until this time, and the structure of the proposed BPS 2 wasn't known until after the time to choose exercise.
- Until that point, the BPS 2 was only a proposal.
- If a member didn't make a decision, they would default into the PPF.
- If advice occurred before the end of the time to choose exercise, then it was based on the known facts at the time. And it wasn't known whether the BPS 2 would proceed, or, if it did, the basis of the scheme rules.
- It was known with hindsight that the BPS 2 did proceed, but this didn't take account of the "factual matrix of this matter".

The investigator noted the points, and said that they would be added to the file, but commented that he considered that a transfer into the BPS 2 was an option which members could choose as a part of the time to choose exercise.

Pensionhelp responded further, saying that, without prejudice to its position that the advice to transfer had been suitable, it had undertaken a loss calculation.

It said that the fund held by Mr M would be sufficient to allow the purchase of a deferred annuity to replicate the benefits of the scheme.



It added that the rule of mitigation required a claimant to take steps to minimise their loss and to avoid taking reasonable steps which increase the loss. An injured party cannot recover damages for any loss which could have been avoided by taking reasonable steps, it said – in this instance, Mr M converting his pension funds into a deferred annuity.

If this step wasn't taken, then it couldn't be legally responsible for any losses created by failing to mitigate, Pensionhelp argued. It was making this offer now to record the "no loss" position, and it said that it would wait to hear as to whether Mr M accepted this position and had taken steps to mitigate loss.

The complaint was referred to me for review. At my request, the investigator then enquired of Mr M's representative as to his decision making during the "time to choose" exercise and whether he made an active selection relating to remaining in the BPS or transferring to the BPS 2.

The investigator also enquired as to whether, if the complaint was upheld, Mr M's preference would be to have a loss calculation undertaken on the existing basis, or to await the new methodology for defined benefit transfer redress calculations.

In response, Mr M's representative said that Mr M would like any redress to be calculated in line with current methodology. And with regard to Mr M's decision making during the time to choose exercise, it said that he couldn't recall what his decision had been at the time. Mr M's representative has further confirmed that the scheme administrator has no record of Mr M having made a decision with regard to the "time to choose" exercise.

I then asked the investigator to enquire of Pensionhelp as to whether it had sourced a provider which would arrange a deferred annuity for Mr M, and whether this would exactly replicate the scheme benefits. I also enquired as to whether the calculation had been undertaken in accordance with FG 17/9.

In response, Pensionhelp said that the loss calculation replicated the projected scheme benefit from the BPS 2 pension fund at the scheme's normal retirement age, using the revaluation and escalation rates provided by the scheme.

It added that the "no loss" outcome indicated that a future annuity could be bought which would exceed the benefits offered by the scheme, but that it wasn't its role to source the availability or a provider for Mr M.

Whilst deferred annuities might be available from time to time for retail clients, this was unusual, Pensionhelp said.

Pensionhelp further confirmed that the loss calculation was undertaken in line with FG 17/9.

I issued a provisional decision on the complaint on 27 February 2023, in which I set out my reasons as to why I considered the complaint should be upheld. The following is an extract from that decision.

*"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 (FSMA) and DISP, 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.*

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

*This isn't a comprehensive list of the guidance, rules and regulations which applied, but provides useful context for my assessment of the business' actions here.*

*Within the FCA's handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client".*

*The FCA's suitability rules and guidance that applied at the time Pensionhelp advised Mr M were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Pensionhelp, 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 objective and risk profile.*

*In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, Pensionhelp needed to gather the necessary information for it to be confident that its advice met Mr M's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.*

*There were also specific requirements and guidance relating to transfers from defined benefit schemes – these were contained in COBS 19.1.*

*COBS 19.1.2 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 19.1.6 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."*

*COBS 19.1.7 also said:*

*"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 19.1.8 set out 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."*

*I've therefore considered the suitability of Pensionhelp's advice to Mr M in the context of the above requirements.*

#### *Pensionhelp's rationale for transferring*

*Mr M wasn't categorised as an "execution only" or insistent client, and Pensionhelp was taking him through the advice process, with Mr M having been referred to it by a third party introducer. Therefore, Pensionhelp could be confident that he would be acting upon its advice.*

*In accordance with COBS 9.2.2R, fact finding was undertaken for Mr M and his circumstances and objectives were recorded – as I've noted above.*

*As with the investigator, I've noted above within the COBS rules that the FCA's guidance was that the starting assumption for an assessment of Mr M's options was that a transfer would be unsuitable, unless it could clearly be demonstrated that it was in his best interests in order to meet specific objectives. And I note that Pensionhelp also acknowledged this in the suitability report.*

*And so I'll therefore explore these objectives further below. But initially, I'll consider the advice to transfer from a purely financial perspective – so, in broad terms, how likely was it that Mr M would be better off financially as a result of the transfer.*

#### *The financial case to transfer*

*Pensionhelp obtained a TVAS report for comparison purposes to determine the viability of the transfer to meet Mr M's objectives from a financial perspective.*

*The suitability report was issued after the FCA's revised guidance which was released in late October 2017, and which provided "discount rates" for levels of growth which were deemed achievable for particular time periods until prospective retirement. And before that, similar rates were published by this service. As noted by both the investigator and Pensionhelp, businesses weren't required to reference these when providing advice on transfers, but they would nevertheless have been a useful indicator of the type of investment return deemed feasible at the time.*

*The discount rate deemed achievable for the 16 years left to the scheme retirement age of 65 was 4.3% pa. And the growth rates used in the TVAS to illustrate the benefits which might be payable from a PPP were 2.5% (low), 4.5% (mid) and 6.5% (high).*

*The critical yields to age 65, at 7.7% for full pension income benefits with no tax free cash,*

and 5.92% with tax free cash being taken, and then 9.4% pa and 6.9% pa respectively at age 60, therefore comfortably exceeded both the discount (or growth) rate deemed achievable over the same period, and the mid-band growth rate used by the pension provider – which might perhaps be a reasonable assumption for a “medium” risk investor.

But as I’ll address further below, Mr M was categorised as having a low/medium risk attitude, and so relying on the mid band of projected growth within the TVAS wouldn’t, in my view, be appropriate. It might be reasonable to assume that potential growth would fall somewhere between the low band (2.5% pa) and the mid band (4.5%) growth projections.

The above critical yields were calculated on the basis of the BSPS benefits, rather than the BPS 2 benefits. The critical yields to match those which would be produced by the PPF at age 60 were 5.75% pa with full pension income, and 5.33% pa with tax free cash and a reduced income. At age 65, they were 4.71% pa and 4.37% respectively.

Given what was known about the proposed BPS 2 and Mr M’s own projected benefits (received on 26 October 2017) when the TVAS was produced in December 2017, I think it ought to have been possible to produce critical yields for that proposed successor scheme as well. But in the absence of those, I think that assuming critical yields somewhere between those for the BPS and the PPF wouldn’t be unreasonable in estimating those which might be required for the BPS 2. But these would still have been higher than the growth rate which would reasonably have been projected for an investor such as Mr M.

Pensionhelp itself said it considered the critical yields to be unachievable, and I agree - I think it’s more likely than not that the critical yields were in fact unachievable, year on year, for the number of years that Mr M had until he reached retirement age and given his recorded attitude to investment risk.

And as a reminder, these growth rates were required to just match the scheme benefits. From a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. As set out and repeated by the investigator, the guidance was that it needed to be clearly demonstrated that the transfer would be in Mr M’s best interests. As such, my view is that the transfer couldn’t be justified from a financial perspective, especially given the valuable guarantees which Mr M would be relinquishing. But the feasibility of achieving a critical yield alone wouldn’t in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

#### The requirement for control and flexibility - and early retirement

Before I assess these objectives in greater detail, I think it’s firstly fair to say that Pensionhelp did provide warnings on the guarantees which would be relinquished, but as Pensionhelp will be aware, and as noted by the investigator, risk warnings alone wouldn’t render unsuitable advice suitable. And irrespective of the detail contained in a suitability report, this also wouldn’t make otherwise unsuitable advice suitable. Pensionhelp needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr M.

As I’ve said above, Pensionhelp’s reasoning for the recommended transfer, despite the likely inability of the transferred benefits to match those which would have been produced by the scheme, was that Mr M required flexibility of income due to his particular circumstances and objectives. And so I’ve given this argument careful consideration.

I’d initially say that, even without investment experience or other assets other than a small amount on deposit, I do acknowledge that Mr M may have understood the principle of risk/reward that would be associated with flexible income drawdown, and that there may

have been discussions around such concepts with colleagues who were going through the same process.

However, I have similar concerns to those expressed by the investigator regarding the reliability of that risk rating for Mr M, given his lack of investment experience and other assets beyond pension savings. Whilst I acknowledge Pensionhelp's comments relating to the tool it used to determine Mr M's risk attitude, these can only provide a general guide to a likely risk rating, and some of the apparent inconsistencies in the answers given by Mr M, along with the specific answers themselves, for example, his agreement to the statement that he generally sought safer investments, even if this meant lower returns, would reasonably in my view have cast doubt on whether Mr M should be attributed anything greater than a "low" risk attitude.

But I think there's also the wider issue about Mr M's capacity to take financial risks with his pension funds which is pertinent to the overall suitability of what was recommended here. The investigator concluded that Mr M had an overall low capacity of loss, given his paucity of other assets. And I'm inclined to agree. Mr M had joined the replacement defined contribution scheme, and so would likely have accrued a reasonable amount of money purchase benefits given the overall contribution rate (if he remained with the same employer). But other than the state pension which wouldn't be payable until age 67, the defined benefits accrued through the BSPS were likely to have been his main source of guaranteed income. Through transferring, Mr M was effectively putting a lot of his eggs in one "money purchase basket". Any reduction in the benefits payable from them would therefore have had an impact on his financial security in retirement.

And Pensionhelp was aware of the importance Mr M attached to these pension benefits. In the fact find document, it was recorded that Mr M considered them to be very important as they were his only means of pension provision at that time.

But I also don't think Mr M in any case needed to take the associated risks here. In terms of the "control and flexibility" argument, I understand that this would be that Mr M would have control over his pension funds, outside of the BSPS, and could alter the income he withdrew from a flexi-drawdown, or phased withdrawal, arrangement to satisfy changing income needs. But as with the investigator, it's unclear as to why Mr M would have wanted or needed such flexibility, given the investment risk associated with it, and bearing in mind his recorded (if not likely lower) attitude to risk and apparent lack of any similar historical investment which might otherwise indicate a preparedness to take risks with his pension income.

And I've also thought about whether Mr M could meet his objectives of retiring early whilst also retaining the valuable guarantees offered by either the BSPS 2 or the PPF. And in my consideration of this, I acknowledge that there was no facility for Mr M to take tax free cash from the BSPS 2 or PPF without also starting to take an income. But I also note that Pensionhelp has said that lump sums weren't in any case a primary objective for Mr M, and so the lack of separation in that regard wouldn't necessarily have posed a problem.

But as noted above, by age 60, Mr M would have accrued around 13 years' worth of defined contributions in the replacement scheme. Pensionhelp estimates that this would have a value by that point of around £55,000, and that this could be used to plug any gaps between him starting to take flexible benefits and his state pension beginning. I agree – it's likely that he could have relied on the proceeds of his defined contributions plan for flexible access to pension benefits, from whatever age after 60, and then taken guaranteed benefits from either the BSPS 2 or the PPF as and when needed. It's entirely possible in my view that, based on his earnings, contribution rates and age, and also dependent upon which age after 60 he in fact retired, he would have been able to rely upon the accrued benefits from the

*defined contribution scheme to defer retirement at the normal defined benefit scheme age of 65, and then be subject to no early retirement income deduction.*

*Alternatively if, on the basis of an income requirement which outstripped this over the five year period up to age 65 – although I would say that I don't think the actual income requirement was demonstrably known at the time of advice, or could in any case reasonably have been known with any certainty given his distance from retirement - Mr M could then have begun to take the scheme benefits early if needed.*

*Mr M would also have been able to choose a tax efficient level of income (or lump sum withdrawals if he later decided he wanted them) through the defined contribution accrual, until the point that he either needed, or chose, to begin taking benefits from either the BPS 2 or the PPF. And so any need for flexibility of income could have been addressed in this way.*

*Mr M may then have been in the fortunate position of receiving an income which was higher than his actual needs, especially when the state pension began, but he could have simply reinvested any excess as he saw fit, or, to provide a legacy for his extended family (which I address further below), immediately gift it away to avoid it being subject to inheritance tax.*

*Pensionhelp has said that Mr M was willing to accept the trade-off between a secure income and risk to achieve his objectives. As I've said above, although there were inconsistencies in the answers he provided to determine his risk attitude, I think Mr M may have understood the principle of risk/reward, and risk warnings were provided by Pensionhelp. Mr M was accruing further benefits in his defined contribution scheme, and given the contribution rates to that scheme (my understanding is that this was 10% and 6% employer and employee contributions respectively) and the number of years left to retirement, compared against the benefits accrued in the final salary scheme, around 13 years of his pension accrual would likely be derived of the defined contribution scheme. As such, Mr M was already by necessity taking investment risk through the replacement scheme.*

*But in light of this, and given that in the 28 years up to that point Mr M had been accruing defined benefits, I think the guarantees attached to those defined benefits would have been of considerable value (as noted in the fact find and suitability report) and shouldn't have been relinquished lightly in favour of a flexibility which could in any case have been met by fairly uncomplicated planning around his defined contribution and defined benefit pension accruals and accessibility from age 60. And on that particular note, I must also emphasise that Mr M was 48 at the point of advice, and therefore at least 12 years away from retirement.*

*I've also noted the comment in the suitability report that the main driver behind the transfer advice was that the BPS was in financial difficulty, along with the RAA which Pensionhelp said would split his pension the following March.*

*As with others in his position, I think it's fair to say that Mr M would have been concerned about the future of the BPS and his associated benefits. But Mr M's concerns around this should have been managed appropriately. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.*

*I don't think this happened here. There was no prospect of the BPS funds being lost to the employer, even if Mr M distrusted it, and the RAA didn't intend to "split" members' pension benefits. Further, the whole point of the BPS consultation, which had resulted in the*

agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the point of the advice (and in fact by the time of the “time to choose” exercise) the BSPS 2 seemed more likely than not to be a viable alternative. I’ve noted what Pensionhelp has said about the conditions which still needed to be met for the BSPS 2 to be established, but when the advice was given, there was no imminent prospect of the BSPS entering the PPF without there being an alternative to this – the BSPS 2. In fact, I think it’s reasonable to say that all indications were to the contrary.

I also have significant concerns around the way in which the situation at that time was portrayed to Mr M. As I’ve said above, contrary to what Pensionhelp said about there being a “split” in Mr M’s pension benefits in March 2018, that wouldn’t have been the case. Mr M could opt to have his benefits transferred into the BSPS 2, or, if he retained them in the BSPS, into the PPF.

Furthermore, Pensionhelp said the following in the suitability report, in the section entitled “Why are you considering a transfer?”:

“You have indicated that your priorities are to be able to have greater flexibility in how you can take your benefits retiring at age 60, provide a legacy for your mother or siblings/ nephews and nieces in the event of your death and to be able to maximize your income with a potential loss of guarantees.

This is because you plan to retire at age 60 and do not wish to take the scheme benefits offered at that age. **This is because the Scheme is being moved into the Pension Protection Fund (PPF) next March which would mean you would immediately lose 10% of your pension and then have a reduced fixed income for life** which does not fit in with your plans or expenditure needs.” (my emphasis)

And then again, under the same heading:

“**When** the Scheme moves into the Pension Protection Fund next March you will lose flexibility as a transfer would not be permitted and the revaluation and increases in payment currently applied to your preserved pension will be reduced.” (my emphasis)

This would have conveyed a sense of certainty to Mr M that this would be the case. But without the accompanying commentary that this would not likely be the case (subject to conditions being met) if Mr M opted to transfer into the BSPS 2, this would in my view have misled Mr M into believing that his pension funds would inevitably be moving into the PPF. But this wasn’t the case.

And Mr M therefore didn’t need to make any decisions about transferring out his defined benefits at that point. The prospect of Mr M’s accrued benefits needing to enter the PPF had receded. But even if this remained the more likely outcome, this would still have provided him with valuable benefit guarantees, and a more favourable early retirement reduction if he did in fact take scheme benefits earlier than age 65. Mr M’s plans, including retirement, may in any case have changed significantly in the 12 intervening years between then and him reaching age 60. Any flexibility requirements could have been addressed nearer to, or at, the point of Mr M’s retirement – and Mr M would have been able to transfer out of the BSPS 2 if needed.

I’ve noted what Pensionhelp has said about the likely lower transfer value from the BSPS 2, given the lower revaluation rates, but for the reasons given, I think that Mr M could have achieved a degree of flexibility with his pension benefits without needing to transfer at all. And even if he did ultimately decide that flexi access drawdown was his preferred option – and again, this could have been established closer to his actual retirement age – Mr M or his

*adviser could then assess at that point whether the transfer represented good value.*

*And so on the basis of what I've said above, it follows that I don't think the planned early retirement, or any other requirement around control over, and flexibility of, income, was sufficient reason for Mr M to transfer his deferred benefits.*

### Death benefits

*Pensionhelp has confirmed that the restructuring of the death benefits wasn't recorded as being important for Mr M, but he'd indicated his desire to leave some kind of legacy. The death benefits offered by the transfer would certainly be more beneficial to Mr M and his extended family – specifically his nephews and nieces, for the reasons identified by Pensionhelp. And after the transfer, a lump sum would be payable to his beneficiaries, rather than in the form of spouse's/dependants' pensions from the scheme.*

*But I have several concerns about this as a reason for transferring Mr M's benefits. Firstly, he had no particular health issues, other than high blood pressure which was being managed by medication, which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.*

*The second is that, as observed by the investigator, accrued pension provision is intended to provide for an individual's retirement rather than a desire to leave a legacy for extended family members. The recommendation needed to be given in the context of Mr M's best interests rather than those of his siblings or nephews and nieces.*

*And unless the financial needs of the individual concerned are given prominence over the extended family, this cannot be said to be acting in that individual's best interests. The desire to leave a legacy to his nephews and nieces cannot reasonably have subjugated Mr M's own personal requirement to benefit from his accrued pension benefits. The wish to leave a legacy should have been properly weighed against the guaranteed benefits Mr M was relinquishing, and Pensionhelp should have advised him that his own financial benefit took priority here.*

*I've also seen no detail as to why a death benefit payment to his siblings or nephews and nieces from his pension might have been important to Mr M - for example, financially straitened circumstances or some kind of financial dependence. And there was no record of Mr M needing to provide for his siblings or nephews and nieces as part of his normal outgoings. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr M compromising the security of his own financial future.*

*So for the reasons given, I don't think the prospect of a lump sum benefit for Mr M's siblings or nephews and nieces by way of transferring his defined benefits constituted sufficient reason to transfer and lose otherwise valuable guaranteed benefits for Mr M personally.*

### What should Pensionhelp have done – and would it have made a difference to Mr M's decision?

*There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's fair to say that this was a period of great uncertainty for individuals such as Mr M. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.*

*Furthermore, as I've also said above, there was no need for Mr M to make any decision*



*about his BPS benefits at this point in time and it was the responsibility of Pensionhelp to explain to Mr M why he didn't need to make any irreversible decision on relinquishing valuable scheme pension guarantees at that time. As I've said above, there was no imminent prospect of Mr M's scheme benefits needing to enter the PPF, which would have ruled out a later transfer. On the contrary, whilst I acknowledge it wasn't at that point guaranteed, I think the indications were that the BPS 2 would more likely than not be successfully implemented.*

*I've also thought very carefully about whether the service provided to Mr M was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BPS. Mr M, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BPS, but he was nevertheless entitled to an impartial review of his options.*

*And looking at those options, one of the key recorded objectives - possible early retirement - was in any case achievable within the BPS 2, and would have remained so even in the scenario of entry into the PPF.*

*For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits in the scheme, and I'm satisfied that Mr M's income needs could likely have been met by well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would have been sufficiently compelling reasons for Mr M to relinquish valuable benefit guarantees - especially at the age of 48.*

*My further view is that, if properly discussed, Mr M's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, and a future pension which would, other than the state pension from age 67, be entirely dependent upon investment returns - rather than being partially dependent upon them as would otherwise have been the case through the defined contribution scheme.*

*Although not a stated objective, tax free cash for whatever purpose would have been available both from his accrued defined contribution and defined benefit pension funds. Death benefits were also payable from the defined benefit scheme, should Mr M's relationship circumstances change in the future, albeit in a different format from those available from the PPP.*

*The critical yield is usually a telling indicator of the value of the benefits being relinquished. As I've set out above, the critical yields were higher than the discount rate and the mid band growth rate set out by the TVAS pension provider. And I'd reiterate that I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits, given Mr M's recorded (or likely lower) risk attitude.*

*I've noted what Pensionhelp has said about reliance not being placed on critical yields when considering defined benefits transfers, and that, given the assumptions used to calculate them, it would be unlikely that transferred benefits could match the required growth levels. I agree that the format of a TVAS is designed to demonstrate the value of the guarantees being relinquished, but that doesn't necessarily mean that the assumptions are unrealistic. It may also be expensive to buy an annuity to replace the guaranteed scheme benefits, but I don't see how this is anything other than representative of the reality of that situation. This is why a guaranteed scheme income is of such significant value.*

*Pensionhelp has also suggested that using the hurdle rate would be more appropriate for an*

*individual such as Mr M, who was unmarried with no dependants, and so wouldn't benefit from the associated death benefits which are included within a calculation of the value of the scheme benefits. But this also strips out the guaranteed escalation in the scheme income, which is a not inconsiderable benefit.*

*Pensionhelp acknowledges that, if a consumer such as Mr M is seeking to replace or better the benefits which would be produced by scheme, then a transfer would be inadvisable. Again, I agree. And this also I think undermines Pensionhelp's point as to why, given that the benefits in either the BPS 2 or the PPF were likely to be lower than those from the BPS, it didn't consider them to be viable options. The pension benefits from either the BPS 2 or the PPF were still likely to be higher than those produced by the transfer.*

*But whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what Pensionhelp considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.*

*I don't think the evidence suggests that Mr M was intent on effecting the transfer. And the advice process was Pensionhelp's opportunity to take proper account of Mr M's circumstances and objectives, along with any preconceived concerns about his employer and the scheme benefits, and advise him not to transfer, for all the reasons set out above. I certainly acknowledge that it wouldn't be straightforward to effectively unwind concerns which Mr M may have had about his employer and the prospects of the BPS. But I think the advantages of Mr M retaining his scheme benefits, if set out in terms similar to those above, would have persuaded Mr M to do just that. And I think any concerns about the pension scheme would have been assuaged if properly managed.*

*In terms of Mr M's own responsibilities in deciding whether to still proceed (and as I've said above, I accept that Mr M was given risk warnings and was more likely than not capable of understanding them), I don't disagree that properly informed, correctly advised individuals would be in a position to take that kind of responsibility and decide for themselves if they wanted to transfer their defined benefits.*

*The problem here, though, is that this was a complex matter involving many factors with which Mr M, as a layman, wouldn't have been familiar – hence his reliance on a professional party to take those factors into account and provide suitable, balanced and accurate advice.*

*For the reasons given above, my view is that Mr M simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility. Taking account of Mr M's circumstances, including his recorded (if not likely lower) attitude to risk, his objectives and the guarantees which the BPS offered and would have persisted with either the BPS 2 or the PPF, my view is that Pensionhelp should have advised against the transfer.*

*And I think that, had this happened, Mr M would have followed that advice and not transferred his benefits to the PPP.*

### Summary

*For the reasons given, my view is that a fair and reasonable assessment of this case leads to a clear conclusion – that the recommendation to transfer wasn't suitable for Mr M, nor was it in his best interests. The key contributing factors here are: Mr M's recorded (if not likely lower) attitude to risk and its incompatibility with the type of investment risk which would have likely been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr M's options and the future benefits available from both the BPS defined benefits and defined contributions – a failure to adhere*

to COBS 19.1.2 (2) and 19.1.8.

*Furthermore, at least two of the key benefits sought by Mr M were available without needing to transfer – possible early retirement and flexibility through utilising the different types of scheme benefits which would have been available to him (or indeed through the PPF).*

*My view is that, taking account of the critical yields, Mr M's recorded (if not likely lower) attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely (as also agreed by Pensionhelp), albeit I acknowledge, not impossible, that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer.*

*As the other reasons for transferring were insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, it would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr M's best interests.*

*In closing, I think it's worth noting one of the comments that Pensionhelp made in the suitability report, when referencing the importance of these pension benefits to Mr M, in that he was reluctant to take "undue risks" with them. My view is that, for all the reasons given above, and the alternatives available to Mr M to achieve his objectives, the advice to transfer comfortably met the definition of an "undue risk".*

#### Putting things right

*As I set out above, on 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.*

*In this consultation, the FCA has 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 M 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.*

*Mr M has confirmed through his representative that he would like his complaint to be settled in line with the current methodology.*

*A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. As with the investigator, I consider he would have retained his benefits in the BSPS, and with suitable advice, have then transferred into the BSPS 2.*

*As set out above, I note that Pensionhelp has challenged this assumption, saying that, at the time of the advice, the BSPS 2 was only a proposal, and that the default position if members didn't make a decision was that their benefits would remain in the BSPS and then transfer into the PPF.*

*Mr M needed to make a decision by 22 December 2017 as to which option he wished to choose – not 11 December 2017 as suggested by Pensionhelp. This was the original deadline, but it was extended to 22 December 2017 to allow members more time to make their decision.*

*I've therefore thought carefully about the timescales involved here, as clearly, if Pensionhelp had reasonably been unable to provide a recommendation by 22 December 2017, and Mr M hadn't made a decision on whether to opt to join the BSPS 2 or remain in the BSPS, then the PPF would be the appropriate comparator here.*

*But as with the investigator, I think that Pensionhelp ought to have been in a position to consider the overall situation, including the announcement relating to the RAA on 16 May 2017, the Pension Regulator's approval of the proposal on 11 August 2017, and members being contacted between 9 and 11 October 2017 as part of the "time to choose" exercise.*

*Pensionhelp said that it only received the "time to choose" member pack from the introducer on 26 October 2017, which coincided with the referral letter on the file, although I note that the Pensionhelp fact find had been completed on 23 October 2017, presumably by the introducer. But this still allowed just over eight weeks for a suitability report to be produced before the 22 December 2017 deadline. And given what was known about the situation at the time, with such a deadline pending, I think Pensionhelp ought to have been in a position to suitably advise Mr M on whether to opt for the BSPS 2 or to remain in the BSPS and then move into the PPF.*

*The BSPS 2 may not have been a certainty at the point of the "time to choose" exercise, but I think it's reasonable to say that it was envisaged as being more likely than not to be implemented, given the advantages which it would have for many members over the PPF when they were considering their options. As such, and given my conclusions on why a transfer out wasn't suitable advice here, my view is that it would have been reasonable for Pensionhelp to suitably advise Mr M on which option to choose.*

*In terms of the differences between the two schemes, there would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS 2 wouldn't cut the starting entitlement for deferred members.*

*In terms of death benefits, under the BPS 2 the spouse's pension would be set at 50% of Mr M's pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. Mr M wasn't married at the time of the advice, and I can't see that it was recorded that he envisaged this happening in the future, and so I don't think this particular enhancement over the PPF benefits would have outweighed those relating to his own early retirement (although it would have been a consideration for other members who were married, and so would have contributed to the BPS 2 being favoured on this basis).*

*The reduction for early retirement under the PPF was lower and the commutation factors for the tax free cash entitlement were also slightly more favourable. And so, on the basis of prospective early retirement, both the starting income and the tax free cash would likely have been higher with the PPF.*

*As a reminder, one of Mr M's recorded objectives was the ability to retire at age 60. And so*

*this would have been a point which required careful consideration when weighing up whether he should opt for the BPS 2 or remain in the BPS with a likely subsequent move into the PPF.*

*But for the reasons set out above, if Mr M envisaged retiring at age 60, I think it's likely that, properly advised, Mr M could have accessed his defined contribution scheme benefits to make up any income shortfall in the period between retirement and starting to take his defined benefits, which could then have been deferred until normal scheme retirement age. The advantages of early retirement through the PPF wouldn't therefore have applied. And so, for the reasons given, my view is that it's the benefits offered by the BPS 2 which should be used for comparison purposes.*

*I've also noted Pensionhelp's comment about there being a "no loss" situation as at the date in October 2022 that it undertook a comparison between the value of Mr M's pension funds and the cost of establishing a deferred annuity on his behalf to replicate the benefits which would have been paid by the scheme.*

*I note that Pensionhelp isn't suggesting that Mr M should buy a deferred annuity with his pension funds, and that it has indicated that this might not be possible for a retail client such as Mr M.*

*But it's worth noting that Pensionhelp has said that it has undertaken the loss calculation in accordance with FG 17/9, and that this has determined a "no loss" position. Should Mr M accept this, then he or his representative should let me know in response to this provisional decision.*

*Otherwise, my current view is that Pensionhelp Limited should undertake a redress calculation in line with the 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. This calculation should be carried out as at the date of any final decision along these lines, 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 M's acceptance of any final decision along these lines.*

*I don't think there's any clear or persuasive evidence that Mr M would have accessed his defined benefits before the normal scheme retirement age of 65. So, compensation should be based on him taking benefits at this age and, as set out above, on the basis that he would have opted to transfer to the BPS 2.*

*Pensionhelp Limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M'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 M's SERPS/S2P entitlement.*

*If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M'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 M 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 compensation amount must where possible be paid to Mr M within 90 days of the date Pensionhelp Limited is notified of Mr M's acceptance of any final decision along these lines. Further interest should be added to the compensation amount at the rate of 8% per year simple from the date of any final decision along these lines to the date of settlement for any time, in excess of 90 days, that it takes Pensionhelp Limited to pay Mr M.*

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

*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.*

*Determination and money award: In the event that this decision remains the same, I would require Pensionhelp Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £160,000.*

*Where the compensation amount does not exceed £160,000, I would additionally require Pensionhelp Limited to pay Mr M any interest on that amount in full, as set out above.*

*Where the compensation amount already exceeds £160,000, I would only require Pensionhelp Limited to pay Mr M any interest as set out above on the sum of £160,000.*

*Recommendation: If the compensation amount exceeds £160,000, I would also recommend that Pensionhelp Limited pays Mr M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M. If Mr M were to accept any final decision along these lines, the money award would be binding on Pensionhelp Limited.*

*My recommendation wouldn't be binding on Pensionhelp Limited. Further, it's unlikely that Mr M could accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision along these lines.*

*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 Pensionhelp Limited to carry out a calculation in line with the updated rules and/or guidance in any event."*

*Neither party submitted any further comments in response to the provisional decision.*

*The investigator has since contacted both parties to explain that the FCA has developed a BSPS-specific redress calculator to determine redress under the BSPS consumer redress scheme. She said that the FCA was also encouraging businesses to use the calculator for non-scheme cases, such as this.*

The investigator further said that, when issuing my decision, I may require Pensionhelp Limited to use the FCA's BSPS-specific calculator to determine any redress due to Mr M.

The investigator said that, if either party didn't think it was appropriate to use the BSPS-specific redress calculator in the circumstances of Mr M's complaint, they should let her know by 5 June 2023.

Neither party has submitted further comments in respect of this.

### **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.

My conclusions on the complaint remain the same as those set out in the provisional decision, and for the same reasons.

### **Putting things right**

I've amended how I consider Pensionhelp Limited should put things right, as set out in the investigator's further comments relating to the BSPS-specific redress calculator. I consider that it would be appropriate to use that calculator here, given the BSPS-specific circumstances.

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. As set out in the provisional decision, I consider Mr M would most likely have remained in the occupational pension scheme and opted to join the BPS 2 if suitable advice had been given.

Pensionhelp Limited 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>.

Pensionhelp Limited should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr M and our Service upon completion of the calculation.

For clarity, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, 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 M's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Pensionhelp Limited should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M 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 their defined contribution pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts Pensionhelp Limited's offer to calculate how much of its redress could be augmented, request the necessary information and not charge Mr for the calculation, even if he ultimately decides not to have any of its redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Mr M 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 M'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.

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.

**Determination and money award:** I require Pensionhelp Limited to pay Mr M the compensation amount as set out above, up to a maximum of £160,000.

**Recommendation:** If the compensation amount exceeds £160,000, I would also recommend that Pensionhelp Limited pays Mr M the balance.

If Mr M accepts this final decision, the award will be binding on Pensionhelp Limited.

My recommendation wouldn't be binding on Pensionhelp Limited. Further, it's unlikely that Mr M could accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept my final decision.

### **My final decision**

My final decision is that I uphold the complaint and direct Pensionhelp Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 July 2023.

Philip Miller  
**Ombudsman**