DRN-4474623

The complaint

Mr M complains about the suitability of the advice provided by Esteem Money Ltd ("Esteem Money") in October 2017 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

What happened

I issued my provisional decision on this complaint on 23 November 2023 in which I set out the background and my provisional findings. I've repeated what I said here:

"Mr M had built up safeguarded benefits in the BSPS while employed by Tata Steel UK Ltd ("Tata Steel"). The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members.

In March 2016, Tata Steel 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 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. By that point, Mr M had built up 28 years and 9 months' pensionable service in the BSPS between June 1988 and March 2017. His annual scheme pension as at the date of leaving the scheme was £15,545.56. This would be revalued over the term to retirement by a prescribed rate.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed. This was approved by The Pensions Regulator in August 2017 – under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied. Members were told that if the re-structure was approved, they would have 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*

In September 2017, terms of the re-structure were confirmed enabling trustees of the BSPS to start to talk to members in detail. This led to the 'Time to Choose' communication pack being issued to members, including Mr M, in October 2017. The pack provided more detail about the three options available and was intended to help members choose an option.

Mr M was concerned about what the announced changes meant for the security of his safeguarded benefits in the BSPS. He was introduced to Esteem Money by another business, Lawrence Miller and Company, to provide pension transfer advice. The following information about Mr M was recorded in October 2017:

- *He was aged 47, in good health and unmarried. He was co-habiting with a long term* *partner. He didn't have any children financially dependent on him;*

- *He was employed full-time by Tata Steel and paid gross annual income of about £37,500. He didn't expect his employment status to change in the foreseeable future;*

- *His assets comprised his residential home valued at about £150,000. He didn't have any other savings or investments;*

- *His liabilities comprised a mortgage of about £30,000 outstanding on his residential home which was due to be repaid in five years' time. He also had an unsecured loan of about £3,000;*

- *After paying for bills and essentials, he had surplus disposable income of about £600 available every month;*

- *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 April 2017. The total annual contribution paid into his DC plan was 16% of his gross annual salary. He was also on course to receive the full state pension at age 67;*

- *Through his employment he had a lump sum death in service benefit of three times' his salary;*

- *He was an inexperienced investor with little knowledge and experience of investments. On a scale of 1 to 5 where 1 (Cautious) was lowest risk and 5 (Adventurous) was highest risk, his risk profile was determined to be 3 or 'Moderate' risk. This was defined as, "You prefer to invest in a broad range of core stock-market linked investments, where the overall returns achieved are more closely linked to the performance of the underlying assets. In so doing, this will provide you with the potential to benefit from real capital growth. However, you should be aware that investment values will fluctuate according to market conditions".*

- *His capacity for loss was determined to be 'Moderate'. This was defined as, "Your sensitivity to volatility is realistic and you recognise that markets fluctuate, and that some short- term volatility must be accepted in order to achieve your investment objectives. You have sufficient assets outside of your portfolio and an investment time horizon far enough in the future to withstand small to medium losses without any detrimental effect to your living standards."*

On 27 October 2017, Esteem Money issued its suitability report to Mr M. This confirmed his objectives regarding his safeguarded benefits were as follows:

- *"To review your former employer's pension with a view to meeting your retirement goals.*
- *Specifically, you want to preserve the death benefits for your long-term partner in the event of you predeceasing her.*
- *You also want to be able to access benefits at 55 in a flexible manner to allow you to retire early and pursue your catering business venture."*

Esteem Money explained in the suitability report that Mr M had three options regarding his safeguarded benefits, as previously communicated by the BSPS. And that the BSPS had offered a transfer value of £412,996.03 in respect of his pensionable service if he transferred to a PPP. Esteem Money calculated the following critical yield figures based on that transfer value (excerpt from the suitability report):

Normal Retirement Date 65

Scheme	Pension pa (No Lump Sum)	OR	Tax Free Lump Sum	Pension pa	CY	HR
Current DB Pension	£24,810		£109,619	£16,442	7.59%	3.56%
BSPS2	£22,793		£100,706	£15,105	5.95%	3.07%
PPF Benefits	£19,884.64		£102,494.59	£15,412.41	4.55%	

Desired Retirement Date 55

Scheme	Pension pa (No Lump Sum)	OR	Tax Free Lump Sum	Pension pa	CY	HR
Current DB Pension	£13,344		£62,911	£ 9,436	12.33%	0.96%
BSPS2	£12,808		£60,385	£ 9,057	8.47%	0.52%
PPF Benefits	£14,012.29		£76,611.30	£11,519.43	7.57%	

Esteem Money discounted the PPF and BSPS2 options and instead recommended that Mr M accept the transfer value of £412,996.03 and transfer to a PPP to achieve his objectives for the following reasons:

- *"To preserve the death benefits for [Mr M's partner].*
- *While invested your fund will benefit from tax advantaged growth.*
- *Benefits can be taken at any time from age 55.*
- *25% of the uncrystallised pension fund can be taken as a Pension Commencement Lump Sum (tax free cash) payment.*
- *A broad range of investment opportunities offering enhanced flexibility.*
- *You will benefit from much greater freedom and flexibility regards accessing your pension benefits.*
- *There will be no death benefit charge on an uncrystallised pension fund if death is before age 75 and the value of pension benefits is within the lifetime allowance."*

It recommended that the PPP fund value be invested with two discretionary fund management ("DFM") providers to align with Mr M's 'Moderate' risk profile (excerpt from the suitability report):

Discretionary Fund Manager	Portfolio Name	Objective	Risk Rating	Allocation
Brewin Dolphin	Cautious Portfolio	The portfolio's objective is to provide outperformance of the Wealth Management Association (WMA) Conservative Index over the medium term. Returns will be generated through both capital growth and income, with a bias towards developed and liquid capital markets. The risk will be diversified by holding collective investments. The management of the portfolio aims to meet the objective conservatively by taking managed risk through fund selection and asset allocation.	Moderately Cautious	£403,801.09
LV=	Balanced Index	The sub-Fund invests with the aim of achieving a benchmark allocation of 80% in the Global Equity 50/50 Index sub Fund; 6% in the UK Conventional Gilts All Stocks Index sub-Fund; 6% in the Sterling Non-Gilts Bond All Stocks Index sub-Fund; 3% in the UK Index Linked Gilts All Stocks Index sub-Fund and 5% in the Sterling Liquidity sub-Fund	Moderate	£3,000

Esteem Money stated in the suitability report that the introducer, Lawrence Miller and Company, would provide ongoing advice and reviews to Mr M in connection with the recommended PPP. The costs associated with the recommendation were as follows:

<u>1.50% initial advice charge deducted from the PPP fund value</u>

- *1.50% (or £6,194.94) – initial adviser charge for recommendation and implementation, split between Esteem Money and the introducer, Lawrence Miller and Company*

<u>1.43% ongoing annual charges deducted from the PPP fund value</u>

- *0.80% discretionary fund management charge*
- *0.13% investment management charge*
- *0.50% ongoing annual advice charge payable to Lawrence Miller and Company*

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

<u>This complaint</u>

During 2022, Mr M complained about the suitability of the pension transfer advice Esteem Money had given him in 2017. He felt that he had been misled about the ability to retire early under the BSPS2. And that he had also been misled about the investment returns he would receive under the PPP compared to the revaluation rates applicable to his safeguarded benefits. He was also unhappy about the level of fees involved in the transaction. In his view, the pension transfer advice was unsuitable and had caused him to suffer a financial loss.

Esteem Money didn't uphold this complaint. It clarified that it was only responsible for the pension transfer advice – and that it couldn't be held responsible for the subsequent investment performance of the PPP. In summary, it was satisfied the advice was suitable because, in its opinion, it was the only option available that fully met Mr M's stated objectives to maximise the death benefits available to his partner and to have the flexibility to retire early from age 55. It was satisfied that it had adhered to and considered relevant FCA rules and guidance including providing Mr M with all the necessary information and risk warnings in good time to be able to make an informed decision. It didn't believe the alternative options of the PPF or BSPS2 could've met Mr M's objectives.

One of our investigators considered this complaint and recommended that it be upheld because, in his view, Esteem Money had failed to demonstrate that transferring to the PPP was clearly in Mr M's best interests. He thought that the pension transfer to the PPP was an unsuitable outcome for Mr M. Given his circumstances and objectives, he thought Mr M should've been advised to transfer to the PPF on the basis of prospective early retirement at age 55. To put things right, our investigator recommended that Esteem Money carry out a redress calculation in line with the FCA's guidelines on the basis that Mr M transferred to the PPF, took benefits at age 55 and would be a 20% income taxpayer in retirement. In addition, he recommended that Esteem Money pay Mr M £300 compensation for the trouble and upset caused by its unsuitable recommendation.

Mr M accepted our investigator's assessment. Esteem Money didn't agree with our investigator and provided substantial additional comments in response. In summary, it maintained its position that the pension transfer met Mr M's stated objectives and so its advice should therefore be regarded as suitable.

Our investigator considered those additional comments but wasn't persuaded to change his view and recommendation that this complaint should be upheld. Since agreement couldn't be reached, this complaint has been referred to me to review.

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.

<u>FOS's approach to deciding complaints</u>

In response to our investigator's assessment, Esteem Money expressed it concerns about how we decide complaints. It says our approach to assessing complaints about BSPS pension transfers is flawed and that we don't follow FCA rules and guidance which has resulted in inconsistencies in approach between the FCA and this service when assessing the suitability of pension transfer advice. It's concerned our investigator didn't assess this complaint on its own facts and that the recommended uphold outcome was already pre-determined.

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

My role, as set out in DISP 3.6.1R, is to decide this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances. And when considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. And *where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.*

I've carefully considered all the available evidence afresh including Esteem Money's substantial comments in response to our investigator's assessment. I'd like to make clear that the purpose of this decision isn't to repeat or address every single point raised by the parties. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

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

The below isn't a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Esteem Money's actions here.

> *PRIN 6 : A firm must pay due regard to the interests of its customers and treat them fairly*
>
> *PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading*
>
> *PRIN 9: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment*
>
> *COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)*
>
> *COBS 4.2.1R: A firm must ensure that a communication or a financial promotion is fair, clear and not misleading*

The suitability rules and guidance that applied when Esteem Money advised Mr M were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R.

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

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*

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

And COBS 19.1.3 G stated:

"In particular, the comparison should:

(1) take into account all of the retail client's relevant circumstances;

(2) have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme;

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up;

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the retail client's funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the retail client prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme."

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

COBS 19.1.6G:

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

COBS 19.1.7G:

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

COBS 19.1.7B:

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

COBS 19.1.8G:

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

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

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

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

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

In assessing the suitability of Esteem Money's advice to Mr M, it's necessary for me to have due regard to the FCA's rules and guidance stated above.

Mr M's situation when Esteem Money advised him

The situation for Mr M 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. Three options were available, as stated by the BSPS in its 'Time to Choose' communication pack and repeated by Esteem Money in its suitability report.

The BSPS was one of the largest DB pension schemes in the UK with approximately 125,000 members. It's undeniable that it was a period of great uncertainty for BSPS members, many of whom had been largely passive pension savers and found themselves having to make major and irreversible choices about their financial futures. I think it's fair to say that many members were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. As a result, I think it was essential for any regulated adviser making a recommendation to a BSPS member to have a detailed understanding of each of the options available and of their customer's personal circumstances.

In response to our investigator's assessment, Esteem Money stated that when it advised Mr M in October 2017 it wasn't certain that the BSPS2 would go ahead and so shouldn't be considered as an option in deciding this complaint. I disagree. It's my view that by October 2017 there wasn't an imminent threat of the BSPS entering the PPF – on the contrary, by that time the key commercial terms of the RAA had been agreed and approved by The Pensions Regulator. Given that the whole purpose of the consultation was to prevent the BSPS entering the PPF, I think, by October 2017, it was more likely than not the BSPS would avoid entering the PPF by being restructured into a successor scheme – as it then did. And so I think the option of joining the BSPS2 should've been considered by Esteem Money. Indeed, it's clear from its suitability report that it had considered the BSPS2 at the time it advised Mr M, going as far as calculating critical yield figures for that scheme.

The PPF and BSPS2 options provided guaranteed lifetime income but there were differences between them for deferred members like Mr M. The PPF was designed to provide members with at least 90% of their starting pension value but the BSPS2 was designed to provide members with 100%. The PPF was likely the better option for unmarried 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 members or those who expected to draw benefits at or close to the scheme normal retirement age of 65. The BSPS2 provided the potential for discretionary increases to the scheme pension, a higher level of spouse's pension and the option to transfer to a PPP at a later date, if then deemed suitable. The benefits available under the PPP option would be dependent on the performance of underlying investments and annuity *rates available at retirement – in other words, there were no guarantees regarding the level of benefits paid.*

I don't believe that the circumstances surrounding the BSPS altered the FCA's position or its expectations of firms. Our investigator thought Mr M should've been advised to transfer to the PPF on the basis of prospective early retirement at age 55. I disagree. In my view, based on Mr M's circumstances and the uncertainty about when he would be able to retire, it's my view that the BSPS2 was likely the better option for him bearing in mind the FCA's view on safeguarded benefits and what was known at that time. So it's my fair and reasonable opinion that Esteem Money should've only recommended a transfer to the PPP in favour of the BSPS2 if it could clearly demonstrate why it was in Mr M's best interests, as referenced in COBS 19.1.6G.

Having considered the evidence, it's currently my opinion that Esteem Money's pension transfer advice to Mr M was unsuitable. My view can be summarised as follows:

- *The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr M's safeguarded benefits, accounting for 28 years and 9 months' pensionable service, represented his most valuable asset. Esteem Money assessed Mr M as having a 'Moderate' capacity for loss. The definition for this included the statement, "…You have sufficient assets outside of your portfolio and an investment time horizon far enough in the future to withstand small to medium losses without any detrimental effect to your living standards". I disagree. Mr M had very limited other assets outside of his safeguarded benefits that could be used to support his retirement income needs. Given the lack of other assets, Esteem Money ought to have recognised that Mr M was likely to be heavily reliant on the value of his safeguarded benefits to generate a minimum level of core income to support his standard of living in retirement until state pension age. And that he therefore had a very limited capacity for loss. So I think it was important not to expose the value of his safeguarded benefits to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so;*

- *According to the contemporaneous evidence, one of Mr M's objectives was to retire early from the steel industry at age 55 to enable him to pursue a catering business venture he had just started. But he was then aged 47 and so couldn't access any benefits until age 55 at the earliest under the PPP. So the basis of the advice wasn't to enable Mr M to retire immediately – rather, it was based on the prospective withdrawal of pension benefits several years in the future. In my view, with such a time frame until pension benefits could be accessed, it made the case for a pension transfer at that time – for the sake of achieving possible early retirement from age 55 – more difficult to justify;*

- *Esteem Money stated that early retirement at age 55 was allowed under the BSPS2 subject to a reduction in the annual pension income. The reduction wasn't a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally. I think Esteem Money portrayed the PPP option as allowing for early retirement earlier than age 65 without penalty. The reality was of course that the PPP would've had less time to grow if accessed earlier than age 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr M 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;*

- *The further away from retirement an individual is, the harder it is to establish a realistic income figure and whether early retirement would in fact be possible. There's conflicting contemporaneous evidence in Esteem Money's records. A document titled 'Pension Planning Supplementary Fact Find' noted that Mr M's annual retirement income need from age 55 was £15,000 in 2017 terms. But in a document titled 'Retirement Planning Report' it stated the annual retirement income need from age 55 was £24,000 in 2017 terms. There's no reference to whether these were gross or net figures or how the conflict in the target income figure was resolved. To confuse matters further, there's no reference in the suitability report about Mr M's target income need and, therefore, what the pension transfer to the PPP was targeting – rather, the suitability report refers to an accompanying illustration but it's unclear what illustration this is. Regardless of which figure the advice was based on, I think it would've been difficult to calculate an accurate target income figure with such a substantial time frame until age 55;*

- *Notwithstanding the confusion about Mr M's retirement income need, I'm concerned about Esteem Money's approach to this. In my view, where a client has a retirement income need – as Mr M clearly did due to the lack of other assets – the starting point is to establish a realistic target income based on the client's likely fixed outgoings, discretionary spending plans and excess income for saving. This information would then reveal the core income required to cover the expected expenditure from the target retirement age – and this would then provide a basis for the recommendation. But in Mr M's case, Esteem Money didn't do this. Rather, it seems it's used a notional figure of either £15,000 or £24,000 without any supporting evidence based on Mr M's likely fixed outgoing and discretionary spending plans. I don't think this approach was appropriate because without understanding Mr M's retirement income need it's difficult to conclude that the pension transfer at that time was clearly demonstrated to be in his best interests;*

- *One of the reasons for the pension transfer was to enable Mr M to access pension benefits from age 55 to enable him to pursue a catering business venture he had just started. I'm not convinced it was clearly in Mr M's best interests to relinquish valuable benefit guarantees attached to his main pension provision to pursue a business venture several years in the future. His plans may well have changed by the time he reached age 55. Furthermore, there's no evidence Esteem Money considered and discounted alternative options such as borrowing money to facilitate the venture;*

- *Overall, it's my view that Esteem Money failed to obtain the necessary information relating to Mr M's financial situation including his anticipated income and expenditure during retirement when assessing whether it was suitable for him to transfer out of the BSPS to achieve his early retirement objective. It may well have been the case that Mr M's retirement income and lump sum needs could've been met by the BSPS2 but Esteem Money failed to establish this. Ultimately, however, there's insufficient evidence to demonstrate why it was in Mr M's best interests to transfer at that time to achieve his early retirement objective or whether he could in fact retire earlier than age 65;*

- *Transferring to the PPP led to the investment, inflation and longevity risks associated with his safeguarded benefits being transferred from the scheme to Mr M. Those risks would've been retained by the BSPS2 had he transferred to that scheme – I cannot see that there was any compelling reason for Mr M to take on those risks at that time, particularly since he couldn't access any benefits for at least several years;*

- *Had Esteem Money advised Mr M to transfer to the BSPS2 he would've maintained* *safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he could immediately access benefits and, crucially, determine his retirement income and lump sum needs with far greater accuracy than at age 47;*

- *Esteem Money recorded that Mr M wanted to transfer his safeguarded benefits to a PPP to provide greater flexibility when drawing benefits from his pension fund rather than have guaranteed lifetime income. It's unclear why Mr M apparently didn't value guaranteed income. He had received guaranteed income all his working life. So I think a guaranteed retirement income from another source such as the BSPS2 before state pension age would've been valuable for an individual in his circumstances;*

- *Flexibility and control might sound attractive, but I can't see that Mr M had any concrete need for it. I'm not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits in the future. There's no real evidence that Mr M required the flexibility of irregular lump sums or variable income during retirement. But if he did require it, then any flexible needs could've been met by his DC workplace pension into which he was contributing 16% of his salary. And he'd also have access to tax-free cash under the BSPS2. This doesn't appear to have been adequately considered by Esteem Money;*

- *Mr M had surplus disposable income of about £600 available every month, which would increase once his mortgage was repaid in five years' time at around age 52. There's inadequate evidence that Esteem Money considered saving some of these additional monies in either a pension, investment or savings account to provide flexible income or lump sums rather than transferring and losing benefit guarantees;*

- *Esteem Money recorded that Mr M was concerned about the security of his safeguarded benefits and so wanted "control" over his pension. But he appears to have been a largely passive pension saver up until that point. There's no evidence he had experience of controlling, managing or investing large sums of money. In my view, Mr M had limited knowledge and experience to enable him to understand the risks involved in transferring his safeguarded benefits;*

- *It was noted that Mr M was concerned about a transfer to the PPF at a later date. While I understand that he may have been concerned about this, I don't consider a transfer to the PPF was an outcome to avoid. Under the PPF, Mr M would've received a minimum of 90% of his scheme pension. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. If Mr M was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of the scheme pension, then I question why, as an inexperienced investor, he would accept the risk of transferring to a PPP which exposed his benefits to unlimited downside risks where the loss could be significantly greater than 10%. This doesn't make sense to me;*

- *It was recorded that Mr M was concerned that neither the BSPS nor the PPF would provide benefits for his long-term partner because they weren't married. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr M about what was best for his own retirement provision. He was in good health at the time. Withdrawing money from the PPP to meet income and lump sum needs would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. I can't see that this was explained to Mr M. Through his employment he had a generous lump* *sum death in service benefit based on a multiple of three times' his salary. And the BSPS2 (had he been advised to opt for that option) would provide a refund of his personal contributions of about £50,000 as a lump sum. In addition, the value of his DC workplace pension plan would be payable as a tax-free lump sum. So it's clear his partner would receive a large (relative to what was recorded about their wider financial situation) lump sum death benefit from other sources in the event of his death. And if this was deemed insufficient, the surplus disposable income he had available could've been used to obtain life cover to provide a lump sum on death. These factors don't appear to have been adequately considered by Esteem Money;*

- *It's my view that Mr M had no health issues at the time Esteem Money 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 partner bearing in mind the cover already in place. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit at the cost of losing valuable benefit guarantees;*

- *The TVAS calculations showed that the critical yield figures to match the benefits under the BSPS2 were 5.95% at age 65 and 8.47% at age 55 on the basis Mr M opted for a reduced pension and tax-free lump sum. Esteem Money stated in the suitability report that it considered the critical yield figures as being "achievable and acceptable". I disagree. These critical yield figures compared with discount rates of 4.4% at age 65 and 3.5% at age 55, as explained by our investigator in his assessment. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. It's my view that a required investment growth rate ranging between 5.95% and 8.47% was incompatible with the discount rates and Mr M's PPP being invested in a DFM portfolio with a risk rating described as 'Moderately Cautious'. I think these factors showed that it was likely Mr M would be financially worse off as a result of the pension transfer;*

- *Notwithstanding the above, I think the critical yield figures were incorrect. While the cost of ongoing advice of 0.5% of the PPP fund value was taken into account, it appears that the figures were based on an initial advice charge of £1. But the initial advice charge was £6,194.94 (or 1.5% of the transfer value). Including that initial advice charge would've led to the critical yield figures being greater than stated, which further increased the risk that Mr M would be worse off by transferring. This meant that Mr M wasn't provided accurate information about the level of investment growth required in the PPP to match the scheme pension;*

- *In my view, the suitability report failed to meet the fair, clear and not misleading requirements of COBS 4.2.1R. It was generic with templated wording to describe Mr M's objectives with the result that the recommendation wasn't sufficiently tailored to his individual circumstances. I think it lacked sufficient colour and detail. As noted above, it appears it included misleading information regarding the critical yield figures due to the absence of the initial advice charge. And it failed to provide sufficient information on the alternative options, as I've set out above, to achieve his stated objectives. I think these inadequacies in the suitability report led to him making an uninformed decision to proceed with a pension transfer when this was not in his best interests.*

<u>Conclusion</u>

The transfer out of the BSPS was recommended on the grounds that it would meet Mr M's objectives of achieving early retirement, income flexibility, flexible death benefits and control *over investment choice. It appears to me that Esteem Money placed greater emphasis on Mr M's objectives, failing to assess whether the pension transfer was in his best interests and whether the objectives could in fact be achieved by transferring to the BSPS2.*

Overall, I don't think the contemporaneous evidence supports the position as to why Mr M's objectives would've been sufficiently compelling reasons for him to relinquish valuable benefit guarantees by transferring to a PPP at that time, especially in view of his good state of health and level of reliance on these monies to provide retirement income. Based on what I've seen, I think Esteem Money failed to give adequate consideration to the risk that Mr M couldn't financially bear the risks involved in the pension transfer.

I haven't seen any evidence that shows the pension transfer to the PPP led to Mr M gaining any clearly defined advantage compared to the alternative option of transferring to the BSPS2 at that time. As a result, I think it's fair and reasonable to uphold this complaint."

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 Esteem Money 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. I also said that Esteem Money should pay Mr M £300 compensation for the trouble and upset caused by its unsuitable recommendation.

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.

Both Mr M and Esteem Money have replied and confirmed that they accept my recommended outcome and proposed redress methodology.

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.

The findings I made in my provisional decision and set out above form part of this final decision. Given the responses received, I see no reason to depart from my provisional decision of 23 November 2023 to uphold Mr M's complaint. And so I've decided to proceed on this basis.

Putting things right

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

Properly advised, I think Mr M would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. I acknowledge that he had an aspiration to retire from age 55. However, he was about eight years away from that target retirement age when Esteem Money advised him. I think it's fair to say that plans about retirement can change over such a long period of time. I'm not persuaded that there's sufficient contemporaneous evidence that supports the position Mr M would've started taking his safeguarded benefits which involved taking a regular income at age 55. And I'm not convinced it could be reasonably determined at the time that the PPF was the likely better option for Mr M. And so I think, given his age and the lack of clarity surrounding when he would retire, the BSPS2 was likely the better option for him based on what was known at the time and that at age 65 the BSPS2 would provide a higher level of benefits than the PPF.

As such, the calculation on the basis of entering the BSPS2 should be carried out. For clarity, compensation should be based on the BSPS2's normal retirement age of 65 for the reasons explained. Esteem Money 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.

Esteem Money should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr M and our service upon completion of the calculation.

The calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr 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, Esteem Money 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 the redress prudently is to use it to augment his PPP
- 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 Esteem Money's offer to calculate how much of his redress could be augmented, request the necessary information and not charge him 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 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, Esteem Money may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr 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.

In addition, Esteem Money should pay Mr M £300 compensation for the trouble and upset caused by its unsuitable recommendation, as recommended by our investigator.

My final decision

Determination and money award: I uphold this complaint and require Esteem Money Ltd to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Esteem Money Ltd pays Mr M the balance.

If Mr M accepts my final decision, the money award becomes binding on Esteem Money Ltd. My recommendation wouldn't be binding. Further, it's unlikely that Mr M can accept my final 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 December 2023.
Clint Penfold
Ombudsman