complaint

Mr B is unhappy with the advice he was given by Mansion Park Limited to transfer deferred benefits from the British Steel Pension Scheme (BSPS) into a Personal Pension Plan (PPP). He says that he felt pressured into the transfer and that the proper steps in assessing the suitability of the transfer weren't followed by Mansion Park. He says that, had a proper investigation into the transfer been carried out and suitable advice given, he wouldn't have given up the valuable benefits in BSPS and lost secure income in retirement.

background

The background to this decision was set out in my provisional decision of 19 May 2020, a copy of which is attached and forms part of this final decision.

In my provisional decision, I set out my reasons for finding that the advice given by Mansion Park was unsuitable for Mr B. In short, the risk level needed to match the scheme benefits given up is incompatible with Mr B's attitude to risk. Mansion Park did not present the options to Mr B in a balanced way, seemingly from the outset it had a pre-determined bias towards transfer. I concluded Mansion Park hadn't taken Mr B's circumstances into account and acted in his best interests when it advised him to transfer.

In response Mr B said that he agreed with the content of the provisional decision but was angry that Mansion Park had tried to switch the blame for the transfer to him.

Mansion Park said in response, that the advice it gave met the objectives that were clearly laid out. It says the advice it gave, alongside Mr B's relative low income requirement in retirement, means that Mr B has the flexibility he requires, the income he requires and the possibility of increased death benefits.

It argues the critical yields and hurdle rates aren't relevant if the client isn't looking to replicate the benefits of the scheme. And in Mr B's circumstances it is clear he did not need the level of guaranteed income available with the BSPS. It says that flexibility and increased death benefits were more important to Mr B. And the advice given allows him to achieve this without an impact on his requirements in retirement.

Mansion Park say that its models show that Mr B wouldn't need to make income withdrawals and so the points made that the fund could decrease over time is highly unlikely. Mansion Park says that it appears we agree with the advice given but then counter and revert to the fact that Mr B is giving up a guaranteed income. It says the decision to transfer is never taken lightly but in this case it believes the advice was tailored to Mr B's precise needs and objectives, that were not otherwise available within the scheme.

my findings

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

Having done so I see no reason to depart from my original conclusions set out in my provisional decision. Mansion's Park response to my provisional decision is largely a summary of arguments it had already put forward and that were addressed in my provisional decision.

Mansion Park argues that its advice met Mr B's objectives and needs – and due to Mr B's financial circumstances he had no real need to draw on this fund in retirement. I've already made clear my view of the Mr B's stated objectives in my provisional decision (attached). But put simply, I don't agree with Mansion Park's premise for the advice being suitable.

Mr B was clearly a cautious investor, who was largely reliant on this fund for his retirement planning. He came to Mansion Park for advice due to his concerns about a reduction in value of his BSPS scheme. Yet Mansion Park's justification for the transfer largely seems to be that because Mr B's outgoings in retirement will be relatively low, his capacity for risk is high (despite all the evidence to the contrary) and that the potential of losing a very comfortable income in retirement wasn't important to him as he could pay the bills. Yet the evidence shows that Mr B was looking to protect the benefits he'd built up in the BSPS and potentially improve on these.

The adviser's own recollections of his meetings with Mr B state that he was very concerned about the loss of any value from his deferred pension. Yet Mansion Park now, in direct contradiction, say that the value of his deferred pension is immaterial to Mr B in justification of the risk its advice has put these benefits at.

Mansion Park argues that flexibility and increased death benefits were more important to Mr B than retaining the value of his fund to use in retirement. Again just considering Mr B's attitude to risk and concern about the decrease in his BSPS benefits paints a different picture. And Mansion Park itself earlier in the complaints process gave a reason for its justification for transfer as Mr B's desire not to sacrifice 10% of the benefits if the scheme went into the PPF. The conclusion that Mr B was more concerned with flexibility and the potential for increased death benefits (rather than protecting and building a comfortable income in retirement) seem to have come from Mansion Park's latter justification for the advice rather than from Mr B himself. Furthermore, the advice was not given on the presumption Mr B wouldn't be taking any income from the fund. So the potential advantages in terms of death benefits on transfer are lessened when this is considered.

What does Mansion Park need to do?

My aim is to put Mr B, as closely as possible, into the position he'd be but for Mansion Park's unsuitable advice. Reinstatement of Mr B's deferred benefits isn't possible. Therefore, Mansion Park Limited should undertake a redress calculation in line with the pension review methodology as amended by the Financial Conduct Authority in October 2017.

As with the investigator, and for the reasons given, my view is that had Mr B not transferred his pension funds to the PPP, he would have opted to join the BSPS II. One of Mr B's main concerns was the 10% reduction in the starting pension entitlement within the PPF. But the BSPS II wouldn't cut the starting entitlement for deferred members. Also, if Mr B's marital status didn't change, his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. For service after 5 April 1988 and up to 5 April 1997, the scheme would include a Guaranteed Minimum Pension (GMP) element increase in line with CPI, capped at 3% pa. Mr B's service accrued between 5 April 1997 and 5 April 2005 would also be increased in line with CPI, capped at 5% pa, and then 2.5% pa for his service thereafter.

And so it's the benefits offered by the BSPS II which should be used for comparison purposes.

This calculation should be carried out using the most recent financial assumptions published by the FCA at the date of the actual calculation. Mansion Park Limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B'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 B's SERPS/S2P entitlement.

The compensation in respect of any future loss should if possible be paid into Mr B'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 the future loss payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mr B would have been yet to take a tax-free cash sum from the occupational scheme, 25% of the future loss would be tax-free 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 future loss adequately reflects this.

Where we consider that total fair compensation requires payment of an amount that might exceed £150,000, this service may recommend that the business pays the balance.
If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Mansion Park Limited pays Mr B the balance.

It's unlikely that Mr B can accept an offer made by Mansion Park Limited and go to court to ask for the balance of the compensation owing to him. And so Mr B may want to consider getting independent advice.

The compensation resulting from the loss assessment must where possible be paid to Mr B within 90 days of the date Mansion Park receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Mansion Park to pay Mr B this compensation.

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

my final decision

I uphold Mr B's complaint about Mansion Park Limited and I require it to undertake the above calculation and, if it demonstrates a loss, compensate Mr B accordingly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 October 2020.

Simon Hollingshead
ombudsman

provisional decision of 19 May 2020

Complaint

Mr B is unhappy with the advice he was given by Mansion Park Limited to transfer deferred benefits from the British Steel Pension Scheme (BSPS) into a Personal Pension Plan (PPP). He says that he felt pressured into the transfer and that the proper steps in assessing the suitability of the transfer weren't followed by Mansion Park. He says that, had a proper investigation into the transfer been carried out and suitable advice been given, he wouldn't have given up the valuable benefits in BSPS and lost secure income in retirement.

Background

Mr B received several suitability reports from Mansion Park, owing to a change in the Cash Equivalent Transfer Value (CETV) offered by the BSPS. The following details were recorded in the final version sent to Mr B, as amended on 17 July 2017.

At the time of advice, Mr B's financial circumstances were recorded as follows:

- He was 45 years old, and employed as a design manager within the steel industry
- He was married with two dependent children
- His net monthly income was £2,194, with household outgoings of approximately £2,000 His wife was recorded as earning £30,000, but no net monthly figure was recorded. His home was valued at roughly £400,000, jointly owned and with a remaining mortgage of £118,000
- Mr B held £5,000 in investments but had no other savings
- Mr B's preferred retirement age was recorded as 65, with the option to retire at 60 if possible
- He was a member of his then employer's defined contribution scheme and had been since June 2016.

Mr B was initially offered a transfer value of £216,495 in March 2017. This was then increased to £545,643 on 9 June 2017, which was guaranteed for three months. Mr B was described as being aware of the issues surrounding the BSPS at the time, which he had also been discussing with two work colleagues. Mansion Park said that they had all come to the conclusion, before meeting with its adviser, that they'd lost faith in the BSPS and the scheme trustees. As such, they had asked Mansion Park to look at their options.

Mr B's deferred benefits with the BSPS were as follows:

- He had 26 years of qualifying service
- The scheme allowed Mr B to commute some of his benefits for tax free cash
- The pension income was defined by reference to his final salary and number of years' service. As at the date of leaving the scheme in May 2016, his pension would be £20,450 pa, subject to revaluation as below.
- It would be also be revalued in line with RPI for pre and post 1997 "excess of GMP" pension contributions. Post 1988 GMP payments would increase yearly in line with CPI, capped at 3%.
- He could take the pension early, possibly starting from age 50 – which at the time was yet to be confirmed by the scheme trustees. But retirement from age 55 was certainly possible.
- In the event of his death before retirement, it provided a refund of contributions plus interest, along with a spouse's pension. After retirement, this would be a five year guarantee of Mr B's full pension and then a reduced spouse's pension thereafter.

Mr B's objectives were recorded as follows:

- *"To take personal control of your deferred British Steel Pension provision*
- *To have the option of full Flexible Access Draw Down at age 55 or in the future and have access to tax free cash, should you wish to do so.*
- *Potential for growth over the medium to long term of your retirement fund.*
- *To be able to add to this retirement provision in the future.*
- *To be able to pass your pension provision, in the event of your death, down to your family.*
- *To increase your retirement provision, to enable you, if affordable, to retire at age 60, without penalties applied."*

Mr B was assessed as being a "cautious risk" investor. Mansion Park said that Mr B was happy to have his pension invested in a managed fund and that he was more comfortable with a cautious approach being taken with his portfolio. Given Mr B's distance from retirement, the potential for investing in higher risk funds was discussed, but he still preferred to take a cautious approach with his retirement provision.

Mansion Park described Mr B as having some knowledge of investments and how they work, based upon his membership of his occupational pension schemes and his experience of buying shares. Mr B was described as having been comfortable with fluctuations in the value of his investments in the past.

An exploration of the level of income which Mr B and his wife might need in retirement was made, with observations that the mortgage was likely to be repaid and they would no longer have financial dependants. A monthly expenditure figure of around £1,000 was calculated by deducting the mortgage repayment amount. An example was provided as to the sustainability of pension funds using flexi access drawdown. Mansion Park concluded that, even using conservative assumptions as to fund growth, the pension Mr (and Mrs) B would receive in retirement on the basis of an investment of £534,730 (after fees) would comfortably exceed their outgoings.

Mansion Park said:

"This is a medium to long term objective, which is important to you, would not critically impact on (you?) and your retirement plans should it not be achieved. You are however happy to accept some risk to the value of the capital in order to achieve better potential returns and if a loss occurred you would be happy to adjust this objective."

Mansion Park set out the key features of the BSPS's benefits, but said, with its own emphasis:

"There are, however, ***advantages to transferring*** *this arrangement to a Personal Pension Plan:*

Flexible access draw down options from age 55 or in the future, as you desire and depending upon your employment status and circumstances.

Potential for capital growth over medium to long term.

Pension would continue after your death (providing there are funds available).

Mitigate your personal taxation in retirement (keep within your Income personal allowance).

Add to this Plan at any time to increase your retirement provision.

If you die before age 75 it will pass to your nominee tax free and can be taken as a pension. If you die after 75, the pension will be taxed at the marginal rate of the beneficiary."

The report showed that for a retirement age of 65, the critical yield required by a PPP to match the benefits given up in the BSPS was 6.2% per annum. This growth rate was described by Mansion Park as being "*low and achievable*", given the past performance of the proposed investment fund. It added that *"owing to your stated objectives and the uncertainty of the Scheme, I am comfortable in recommending a transfer for you, despite the above figures*".

The growth needed each year to match the basic starting pension of the existing scheme, with no spouse's benefits, increases or guarantees, known as the 'hurdle rate', was 2.65% - also described as being achievable. The Transfer Value Analysis (TVAS) projected that, using the figures supplied by British Steel, Mr B's pension from the BSPS at age 65 would be £33,664 pa.

The critical yield which had been calculated for the previously provided CETV was 11.4%, which Mansion Park had described as being *"high and unachievable".* The hurdle rate had been 6.9%, which it considered to be achievable.

If the scheme benefits needed to be transferred into the Pension Protection Fund (PPF), the revalued pension Mr B could expect at retirement would be £27,305 pa. The critical yield to achieve this was 8.7%, which Mansion Park again thought was achievable, given the performance of the intended portfolio. But it seems this figure was copied from an earlier version of the report.

Mansion Park also said that the tool used to calculate this wouldn't have taken into account the annual mutual bonus Mr B would get from the pension provider if he were to transfer, so the critical yield in reality should be lower.

Taking all of this into account, Mansion Park said:

"I would understand why you wish to transfer your benefits to a Personal Pension/Stakeholder plan based on your current circumstances and will advise you accordingly."

Mansion Park recommended that Mr B transfer his funds into a PPP instead of the lower charging stakeholder plan. It said that this was more suitable for Mr B because the PPP had a wider choice of investment funds.

Mr B was recorded as not wanting to transfer his benefits into the British Steel Defined Contribution Scheme, as he wanted to keep these funds separate from his employer's scheme – he wanted to break all ties with his ex-employer - and to also have the ability to retire early, possibly at age 55. Mansion Park said that, although the BSPS allowed members to retire from the age of 50 (at the trustees' discretion), "penalties" would normally be applied. For illustration purposes, it said that the percentage of pension payable at ages 55, 60 and 64 were 70%, 82% and 95% respectively.

It said that a PPP, on the other hand, would allow him to take benefits from age 55 if he wished.

In the event that the scheme benefits were moved to the PPF, Mansion Park said that if Mr B had reached normal retirement date, and was receiving a pension, the PPF would generally continue to pay 100% of that. But the rate of increase in the pension in payment – matching inflation up to 2.5% pa for pensionable service accrued after 6 April 1997 - might be lower than that provided by the scheme

In the event of the scheme entering the PPF before retirement, Mansion Park said that Mr B's pension entitlement would be decreased by 10%. This would mean that 90% of the pension accrued immediately before the assessment date would then be revalued in line with inflation, capped at 5% pa for service accrued before 6 April 2009, and 2.5% pa for service accrued after that. Compensation would also be subject to an overall cap – which for the year commencing 1 April 2015 would be £32,761 at age 65, and after the 10% reduction had been applied. Once retirement age was reached, the part representing pensionable service after 6 April 1997 would be increased in line with inflation, up to 2.5% pa.

Mansion Park said the following:

"Once you transfer out of your final salary occupational pension scheme, your benefits will no longer be protected by the Pension Protection Fund".

Instead, Mr B would be covered by the Financial Services Compensation Scheme (FSCS), which would cover 100% of any pension losses in insured funds if he was still building up his pension pot.

The Scheme Actuaries had confirmed that the funding of the BSPS was in deficit – it was funded to 93%. Mansion Park said that, as Mr B had a significant amount of time before retirement, it was questionable as to whether the scheme would-be able to recover or join the PPF.

Mansion Park said that this uncertainty had led Mr B to lose faith in the BSPS. There was also publicity relating to the BSPS becoming a "Zombie Scheme", which meant that British Steel would

have no liability for it, in addition to the RPI revaluation moving to CPI. It noted that this had been agreed with Tata Steel at Port Talbot.

Mansion Park then gave the following warning relating to the loss of guarantees under the scheme:

"You should fully understand that on transferring your benefits from the British Steel Pension Scheme the guarantees that you currently enjoy would cease to apply. Your benefits will instead become dependent upon the future investment returns achieved by Royal London and annuity rates at the time of retirement and could be less than under your employer's former scheme. It may also not be possible to fully replicate the shape/type of benefits your former scheme promised due to lack of availability in the market place. This is acceptable to you given your attitude in relation to your pension."

Mansion Park recommended that Mr B should transfer his deferred benefits to a PPP with Royal London. This would be invested in the "Governed Portfolio 2". This invested in a range of assets, predominantly (48%) in global equities.

Mansion Park observed that this was a slightly higher equity content than would normally be recommended for a cautious risk investor – which it said would be between 20-40% - but that it had discussed this with Mr B and he was happy with the fund choice to achieve potentially higher returns. This investment strategy would be reviewed regularly, Mansion Park said.

It also brought to Mr B's attention a higher risk fund (with a greater focus on equities), which could be used until Mr B was closer to retirement, to then switch into a more cautious fund choice. But Mr B maintained that he preferred to take a cautious approach with his pension funds.

The fee for facilitating the transfer would be 2% of the transfer value, which amounted to £10,912. This would be taken from the transferred funds. In addition, a further 0.5% "*adviser charge*" would be paid annually, on a monthly basis, although Mr B was free to cancel this at any point.

<u>*The complaint*</u>

Mr B submitted the following key points of complaint:

- Mansion Park hadn't given proper consideration to his options, and he wasn't dealt with legally or ethically – the decision to transfer wasn't suitable
- Throughout the process, emphasis was placed on time pressures and deadlines. The discussions were all about transferring if the deadlines could be met, but Mr B has since become aware that the starting point for such discussions should be that the transfer was not in his best interests.
- It was made clear that the BSPS would most likely not exist in the future – it was haemorrhaging money. There was also much talk of an announcement which would be made shortly – the adviser led Mr B to believe that this would be notification that the BSPS was entering the PPF, and no other potential alternatives to this were mentioned.
- Mr B was misled about the death benefits available from the BSPS. He was told there would be a 50% reduction in the pension income for his widow and children in the event of his death. But he now thought differently and that the pot held in income drawdown might well run out before his own death.
- The answers he'd given for the risk profiling were steered by the adviser and were engineered to fit the adviser's own target portfolio and to help "rubber stamp" the transaction at board level.
- It was Mr B's belief that all discussions throughout the process were geared towards the transfer – as he was aware had also been the case with other Mansion Park clients. He hadn't met with anyone where the outcome hadn't been the same. The returns quoted as

being feasible from the chosen investment fund – an average of 9.28% pa - were unrealistic. It was implied that, by age 65, Mr B would have a pension of pot of around £1.25m, but growth levels have been significantly below those quoted.

- At no point was the alternative of staying with BSPS portrayed as being something to be considered. All conversations related to the deadline and the risks of not meeting that deadline.
- When Mr B challenged the critical yield figures as not *"stacking up"*, he was told by the adviser that the assumptions were very conservative and were only for illustration purposes – they didn't reflect likely growth rates. And as he would be entering drawdown rather than buying an annuity, they in any case had less significance.
- Despite having reservations about proceeding, Mr B felt that he was being advised by an expert in his profession and that he knew what was best for him. And given the time pressures, he agreed to go ahead.
- The suitability report was received two months into the three month transfer window, but it didn't include specifics such as how much money would be needed to buy an annuity, or when the drawdown fund might be exhausted. Mr B believed he should have received something with more detailed and specific information. The report he received didn't contain enough information for him to be able to make an informed decision, and also wasn't signed and dated.
- Only after he'd asked for all documents on record did Mr B realise that his estimated drawdown fund would only last until he was 72, or upon revision with updates figures, 84. Had he known this, he wouldn't have agreed to the transfer.
- No comparisons with other providers had been shared with him – and Mr B felt there were many advantages and disadvantages to each, about which he should have been consulted.
- Mr B was aware of other BSPS members who'd been strongly advised by other firms not to transfer their pension funds, and if they didn't follow that advice, had been categorised as "insistent clients". If he'd been advised not to transfer, he wouldn't have proceeded.
- Although Mr B made the adviser aware of paperwork from the BSPS which indicated that transfer values were likely to increase, the adviser was insistent that he and other colleagues went ahead.
- The fees which he'd been charged for the transfer were excessive and unreasonable – he thought they were an industry standard at the time, but he was now aware that much lower fees are typically charged.
- To obtain the same income he'd have received from the BSPS, he'd need a fund value twice that quoted as the "mid-estimate" in the pension transfer report.
- Mr B considered that the advice given to him contravened many of the requirements set out in the FCA's Conduct of Business Sourcebook (COBS).

Mansion Park's response to Mr B's complaint

Mansion Park didn't uphold Mr B's complaint. Mr B then referred the complaint to this service. And in its submission to us, a representative for Mansion Park set out what it considered to be the key aspects in response to the complaint, as follows:

- Despite the significant industry attention on defined benefits transfers and the repeated reviews by the regulator on the subject, a complaint involving such a transfer shouldn't be viewed with suspicion by this service. Nor should there be a preconception that a transfer would likely be unsuitable.

- The regulator had acknowledged that there will be very good reasons as to why a member of a defined benefit scheme might want to transfer, and that the pensions environment had changed.
- The regulator also recognised that it wasn't simply a case of determining the critical yield required to match the scheme benefits – the prominence of this was reduced by the introduction of the Appropriate Pension Transfer Analysis (APTA).
- There should be no "one size fits" all approach to considering defined benefits transfers. The individual circumstances of the consumer need to be taken into account.
- Mr B's individual circumstances and objectives had been taken into account by Mansion Park and were fully discussed with him. That Mansion Park was involved in a number of transfers with other clients wasn't evidence of a "commoditised process".
- The reasons for Mr B's transfer were clearly documented and set out in the final response letter. But to summarise, the main drivers were that the BSPS was inflexible in terms of the income which would be paid, with any early retirement resulting in "swingeing" cuts to that income, and with a restricted lump sum payout on death.
- The transfer to the PPP on the other hand meant that he would be able to retire early without financial penalty, would be able to vary his income, and would be able to pass on a lump sum to his dependants in the event of his death.
- The large lump sum received meant that the critical yield calculated wouldn't have been unachievable – that it might be was clearly explained, but this was in any case not the determining factor in Mr B's decision to transfer.

Summarizing, the representative said that much of what Mr B had said in his complaint was "wrong". But a review of the documents in any case endorsed Mansion Park's defence of the complaint, in that the reasons to transfer were specific to Mr B and denied that it was not in his best interests. It said that Mr B was fully aware of, and understood, the issues involved and he had plenty of time to consider the advantages and disadvantages of transferring.

Noting that several of Mr B' colleagues had submitted complaints at the same time and using the same "template", the representative expressed disappointment, and Mansion Park took *"exception"*, at the *"cynical way in which Mr B and his friends are now trying to use the system for further gain".*

The representative further asserted that it wasn't possible to determine whether Mr B had suffered any financial loss as a result of the transfer, as even if Mr B had stayed within the BSPS, he'd in any case have needed to have transferred into a scheme with less generous benefits at retirement. It was also unknown as to what would happen with Mr B's private pension arrangements up to retirement and his employment situation. It wouldn't therefore be possible to know whether he will be worse off in retirement.

<u>*Our investigator's assessment*</u>

Our investigator looked into this complaint and recommended that it be upheld. I've summarised the investigators points below:

- Mr B hadn't been recorded as an insistent client. Therefore, irrespective of his awareness of the advantages and disadvantages or provision of relevant documents, Mansion Park still needed to ensure that its advice was suitable.
- The investigator noted the point made by Mansion Park about the viability of the BSPS and the potential for it to enter the PPF. But he didn't think this, of itself, would justify the transfer.

- Although Mansion Park considered the critical yield to match the scheme benefits to be *"low and achievable",* the investigator's view was that the transfer presented a high risk that the eventual pension benefits would fall short of what could be expected from the BSPS.
- Mr B was recorded as having a low/cautious approach to risk and even with the chosen fund described as being slightly above this risk level – the potential for growth matching and or above the critical yield and what was being given up was low.
- Many of Mr B's objectives were seemingly met, or even bettered, by the OPS rather than the PPP. Although there may have been penalties to retire early in the scheme, Mr B would have had less of a fund available within the PPP due to the reduced time for growth – pushing the critical yield higher still. Mr B could also have taken tax free cash within the scheme.
- There was a seeming contradiction between the year on year investment growth figure of 5% needed to provide the quoted drawdown amount and the 6.2% critical yield for the benefits to match those from the BSPS.
- There was in any case negligible difference between the quoted income drawdown figure and that which would have been available from the BSPS. And the pension fund was predicted to be depleted by age 84 if Mr B took the quoted yearly figure.
- Apart from his membership of the defined contribution with his then employer, this was Mr B's only pension provision. He also had no savings (other than the investment in shares), so if he suffered even a temporary reduction in fund value at retirement, his standard of living would have been impacted.
- Mr B's retirement income at age 65 was expected to broadly match his current income, with the all the associated guarantees attached – even if the scheme had entered the PPF. It would also have increased in retirement.
- The death benefits available after the transfer were potentially more beneficial, as under the OPS a 50% spouse's pension would be paid. Whereas under the personal pension the fund value could be paid in full to the estate. Once in retirement, the lump sum available to his spouse would also have reduced over time.
- But given Mr B's circumstances, and that he had no adverse health condition or reduced life expectancy, the investigator didn't in any case think this would be a compelling reason to transfer.

Taking everything into account, the investigator thought that the complaint should be upheld. He recommended that Mansion Park assess whether compensation was due on the basis that Mr B would, with suitable advice, have not transferred his funds and opted to join the BSPS II when that alternative became available. The investigator noted that the BSPS II retained many of the same benefits as the BSPS, and so concluded that would have been Mr B's preference, rather than entering the PPF.

Mansion Park responded to the investigator's view as follows:

- It was evident from other complaints received that Mr B had colluded with two other colleagues in his evidence – which undermined its authenticity and reliability.
- The chronology demonstrated that no undue pressure had been put on Mr B – if it had been, he wouldn't have benefitted from the marked increase in the CETV three months after the adviser first met him.
- Due to the significant increase in the CETV, it was hard to imagine any circumstances in which the transfer wouldn't have been in Mr B's best interests.
- Mr B was due to repay his mortgage by the age of 58. The combination of Mrs B's employees' pension and both of their state pensions meant that, to pay the monthly outgoings, Mr B wouldn't ever have needed to draw on the BSPS pension.
- If he'd moved into the BSPS II or the PPF, Mr B would have faced significant "early redemption" penalties for retiring early.

- If he retired at 60, that still left only seven years in which to bridge the gap until his state pension began. The time left to contribute to further pension provision was ample for this.
- The turmoil around the employer and the pension scheme hasn't been taken into account. Members of the scheme were very nervous and Mr B (and his colleagues) chased Mansion Park a number of times to get the transfer to progress quickly
- As Mr B wouldn't likely need to draw on his pension, the ability to pass it on to his wife and children upon death as a lump sum, rather than with a 50% reduction, meant there was no justification for not transferring.
- One of the colleagues who had submitted an identical complaint had given good feedback – "10 out of 10" - about the adviser and the process. Although this wasn't Mr B's own feedback, it was nevertheless relevant as it seemed unlikely that such a rating would be given if they felt pressurised or unhappy with the service received

The investigator wasn't persuaded by Mansion Park's points. He didn't think the similarity between Mr B's complaint and those of his colleagues was a relevant consideration here – they'd all been advised to transfer out of the same scheme, by the same adviser, at approximately the same time. The investigator also said that each case would be looked at on its own merits, and that it wasn't unusual for a consumer to have been happy with the service provided at the point of sale. It might be some time later that they have concerns about the service received.

As to Mansion Park's assertions about the increase in the CETV and Mr B's lack of reliance on the BSPS pension, the investigator didn't consider this recognised Mr B's reasons for discussing his options in the first place. Mr B transferred his pension to achieve his financial objectives and the advice given wasn't suitable for that – or his circumstances and attitude towards his finances. This shouldn't be negated simply because Mr B might not have been reliant upon that income to fund his retirement, the investigator said.

He also noted that Mansion Park had recommended a transfer on the basis of the first – and significantly lower – transfer value, which had a high critical yield to match the ceding scheme benefits. The investigator acknowledged that there would have been reduced pension payable from the BSPS if Mr B retired early, but given the critical yield required to match the scheme benefits, he didn't think this was achievable with Mr B's stated attitude to risk.

Similarly, the investigator was mindful of the potential for enhanced lump sum death benefits in the event of the transfer. But he reiterated is point that these benefits would be greatly reduced over the time that the income was being drawn.

The investigator said that he'd made no findings on Mr B's arguments that he'd been put under undue pressure. He also accepted that the three month deadlines were imposed by the trustees of the BSPS rather than Mansion Park.

He also understood the situation relating to concerns about the BSPS at the time and the challenges this posed for advisers as well as consumers. But he didn't think these issues were sufficient reason alone to recommend a transfer away from the scheme, especially given the availability of comparable benefits in the PPF.

But given that agreement hadn't been reached on the outcome of the complaint, the investigator confirmed that it would be referred to an ombudsman for review.

Mansion Park thought that the investigator' response raised new concerns, in that it felt the responses given seemed to be justifications for the earlier findings rather than addressing the points raised.

In particular, Mansion Park felt that the issue of "collusion" had been sidestepped. Its view was that the consumers simply wouldn't have given good reviews of the service provided if they'd felt pressurised, and that this undermined the credibility of other evidence submitted – which had in any case been raised in a "throw everything at the wall and see what sticks" approach.

Furthermore, Mansion Park said, if a client wouldn't be reliant upon the scheme benefits in retirement, then common sense should prevail as their family would be financially better off in the long term through transferring. It added that it was struggling to find any justification that a transfer wouldn't

have been in any client's best interests. And in such circumstances, a critical yield would become almost irrelevant unless it was very high.

Mansion Park noted the investigator's comment about the PPP fund value being greatly reduced over time, but it said that with a fund value of over £500,000 and monthly outgoings of just over £1,000, this would be sustainable over a long period of time, even if there were no other income sources. Investment returns would need to be below what had historically been achieved for the fund not to grow in value, rather than reduce over time.

The problems facing the BSPS weren't grounds by themselves to transfer, Mansion Park agreed, but it sought acknowledgement that this was a genuine issue and a significant factor in many members wanting to transfer their benefits. And for the same of potential for fund growth and lump sum benefits for Mr B's family, it didn't agree that moving to the PPF would have been more appropriate for him.

As confirmed by the investigator, the complaint has been referred to me for review.

My provisional findings

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

The applicable rules, regulations and requirements

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 Mansion Park advised Mr B were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Mansion Park, 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, Mansion Park needed to gather the necessary information for it to be confident that its advice met Mr B'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."

Mansion Park's rationale for transferring

As a starting point, I think it's important to point out a fundamental flaw in the response to this complaint provided by Mansion Park's representative. It said the following (my emphasis):

"We fully appreciate that there is significant industry attention of the Issue of transferring away from Defined Benefit ("DB") pension schemes and that this area has been subject to repeated review and guidance by the regulator. However, none of this should mean that a complaint involving a transfer away from a DB Scheme should be viewed with suspicion by FOS, ***nor that there should be any preconception that advice to transfer away will likely be unsuitable."***

COBS 19.1.6 referred to above set out the precise opposite of this statement. If this was an accurate representation of Mansion Park's starting assumption, then it was a poor start to the process. Mansion Park needed to assume that the transfer would likely *not* be in Mr B's best interests – and by extension unsuitable - unless it could demonstrate otherwise. So what I need to decide is whether it has done so.

Mr B met with Mansion Park to discuss his options. My understanding is that he'd made no decision on what he should do with his deferred scheme benefits. And was seeking advice as to the options available. Mr B wasn't categorised as an insistent client, and so Mansion Park could be confident that he would be acting upon its advice.

In accordance with COBS 9.2.2R, Mansion Park undertook its fact finding for Mr B and then set out its assessment of his circumstances and objectives over the course of several progressively updated suitability reports, the last of which was issued on 17 July 2017, and which reflected the change in the CETV.

But I have concerns relating to aspects of that assessment and the way in which Mr B's options were then explored and set out. I'll explain why.

To begin with, Mr B's stated objectives reads to me rather like a "shopping list" for a transfer into a PPP with a future flexi drawdown arrangement. So, for example, even if I'm to accept that Mr B wanted to "*take personal control"* of his deferred BSPS benefits, rather than simply looking at his options, I think it's unlikely Mr B set the requirement of having the option of *"full Flexible Access Draw Down at age 55".* This would have been the result of the transfer - not a likely driver of someone who simply wished to explore their options.

The scope for early retirement was also a stated objective, which I accept seems plausible as something to be considered in a review of Mr B's options. But I have concerns relating to the way these options were then represented. The language used around the options for this within the BSPS was misleading – referred to throughout the suitability report as invoking "penalties". The reality is that, just as with a PPP (smaller pot, longer time period with a lower annuity rate), the scheme trustees would need to adjust the income Mr B would receive by retiring early. But this type of balance was absent from the explanation given to Mr B. The PPP was described as simply allowing for early retirement, without the "penalties" which would be applied by the scheme.

The suitability report also said that there was "publicity" that the BSPS could become a "Zombie Scheme". The justification for this description was that British Steel would have no liability for it and that within such a scheme, RPI revaluation might move to CPI. Mansion Park also questioned whether the scheme would be able to recover its deficit or enter the PPF in the future. But my understanding is that additional funding would need to be input for a scheme to be able to exist without a sponsoring firm. As it turned out, Tata Steel agreed to be the sponsoring firm, which meant an altogether improved position was likely, with the resulting BSPS II able to benefit from profitability within that company. There was also no justification for its conclusion on the important latter point relating to the PPF, which would of course negate any potential for it to become a "Zombie Scheme". And if the scheme entered PPF, many important guarantees would remain.

Furthermore, the PPF had already made the following announcement on 16 May 2017:

"We can confirm that the key commercial terms of a Regulated Apportionment Arrangement (RAA) have been agreed in respect of the British Steel Pension Scheme and anticipate discussions concluding in the near future. This would meet our published principles, including that an insolvency event of the scheme's sponsoring employer, Tata Steel UK, would otherwise be inevitable. Any RAA is subject to a 28 day period following an agreement leading to Pensions Regulator approval and PPF non-objection.

Following the RAA, it is anticipated that if risk-related qualifying conditions relating to funding and size can be satisfied, a new pension scheme sponsored by TSUK will be set up. Members would then be given the opportunity to move to this new scheme prior to the existing scheme being assessed for entry to the PPF. Members of the scheme can be reassured that we are there to protect them throughout this process and they will be able to receive at least PPF levels of compensation, should they remain in the scheme and BSPS enter the PPF assessment period."

So there were inherent guarantees here - known at the time of the advice – with levels of compensation at least equivalent to the PPF. But this wasn't explained fairly in the suitability report.

I've also noted perhaps more subtle, but nevertheless important, devices used by Mansion Park in seeming to set out the options available to Mr B, but placing a bias on the benefits of transferring. For example, having set out the key features of BSPS, which I accept was a comprehensive breakdown of those benefits, Mansion Park then said "There are, however, **advantages to transferring"** – this being its own emphasis.

And featuring prominently at the top of this list was *"Flexible access draw down options from age 55"* – an exact match to the stated "objective" referred to above.

The suitability report then referred to the critical yield as being *"low and achievable"*. I'd agree that 6.2% pa might have been achievable (although I address this prospect below), but in accordance with

COBS 19.1.7, consideration must also be given to the level of investment risk which would need to be taken to achieve this, year on year, for the next twenty or so years.

Mr B was recorded as being a “cautious” risk investor, which might reasonably indicate a preference for the type of pension arrangement which has guarantees attached. What’s also notable about this particular categorisation is that, although Mansion Park explored whether Mr B was prepared to take a higher risk for the sake of higher rewards, Mr B maintained his view of his attitude to risk. This to my mind was a flag which should have been picked up by Mansion Park. In my experience it’s not particularly uncommon for consumers to have expressed an initially cautious risk attitude, to then have been recorded as increasing this when the risk/reward concept was explained to them by an adviser. The reward potential can often prompt people to reconsider. But Mr B was unmoved by the discussion around this and maintained his preference for a cautious approach with his pension funds.

That’s not to say that I think Mr B’s attitude to risk was straightforward - despite his declared cautious risk approach, he nevertheless held £5,000 in shares, with no apparent savings. But I am satisfied, given that he declined several opportunities to rethink his risk rating, that he wanted to take a cautious approach with his pension planning in particular.

So to just match the scheme benefits, my view is that to achieve the critical yield of 6.2% pa Mr B would have needed to take an investment risk which was beyond that which he was prepared to accept. In support of this position, Mansion Park should have been aware of the industry growth projection rates used at the time – the lower, mid and upper rates were 2%, 5% and 8% respectively (and Royal London’s own growth projections were more conservative, being -0.5%, 2.4% and 5.4%). For someone with a cautious outlook, I would expect reasonable projected growth to be around the lower figure, and certainly below the mid-rate – so significantly below the 6.2% critical yield required just to match the scheme benefits.

That is, of course, if the portfolio was appropriately matched to that risk rating. The actual fund chosen for Mr B was the Royal London “Governed Portfolio 2” – a single managed fund despite Mansion Park advising against the cheaper stakeholder option because of the lack of fund choice. That fund had 48% investment in global equities. Mansion Park conceded itself that this was higher than would normally be appropriate for a cautious investor, but it said it had discussed this with Mr B and he was happy with this to achieve higher returns.

But this was in direct contradiction to his maintained position that he wanted to take a cautious approach with his pension funds. An attitude which was once again tested when Mansion Park suggested even higher risk funds – and which Mr B once again declined. Furthermore, Mr B had expressed concern at the prospect of a 10% reduction in his pension if the BSPS entered the PPF. And this should, in my view, have prompted Mansion Park to question whether the critical yield was compatible with the type of risks Mr B was prepared to take. My view is that it wasn’t.

Mansion Park has made much of Mr B’s *capacity* to take risks with his pension funds. In response to the investigator’s findings, it said that Mr B wouldn’t be reliant on his pension funds and could afford to not really draw on them at all to cover his likely household outgoings. As such, it said, the critical yield was largely irrelevant. This is a striking comment – and perhaps indicative of the mindset behind this transfer advice – in essence, Mr B could afford to risk his pension fund, so the transfer, with its associated benefits (which I’ll address later), was worth the risk.

But as a reminder, this was an individual who’d expressed caution when referring to his pension funds. He was someone who was concerned with losing 10% of the fund, let alone the potential to lose a lot more. Mr B didn’t view his pension benefits accrued over 26 years of service as being something which would be nice to have, but not essential. If Mansion Park considered, or now considers, that the baseline requirement for Mr B was to be able to fund his monthly household outgoings, then it fundamentally misunderstood his objectives and attitude to risk – thereby failing in its duty to “know its client” as set out in COBS 9.

Mr B was likely to receive a revalued annual pension at age 65 of £33,664 from the BSPS, and would not have been prepared to sacrifice nearly two thirds of this to simply be able to pay the bills. What was needed to cover the household expenses wasn't the main driver here.

And this is unsurprising - the benefits held in deferment with the BSPS were the main part of Mr B's pension planning, amounting to 26 years' membership of a defined benefit scheme. He'd recently joined a pension scheme with his new employer, but this was a defined contribution scheme and so didn't have the guarantees attached to the BSPS benefits, even if it entered the PPF.

He did have twenty years left to state retirement age, in which to accrue additional pension benefits. But the evidence simply doesn't support the position that Mr B was willing to jeopardise those deferred benefits within the BSPS with the associated level of risk required for potential gains. In fact, given his declared cautious stance and concerns about a 10% reduction, it's quite the opposite.

I also have concerns about the comparison made between the projected benefits from the PPP and those from the BSPS, or the PPF. Mansion Park provided Mr B with the illustration provided by Royal London. At the mid growth rate assumed by Royal London, Mr B's pension without taking tax free cash was predicted to be £25,200 pa. It compared this with the pension of £20,450 pa which it said the BSPS had projected as at the date of leaving.

But this was a clear misrepresentation – it wasn't comparing like with like. The BSPS figure lacked the revaluation assumed in the transfer value analysis, which is essentially the equivalent to the investment growth included in the Royal London projection. That pension including revaluation was predicted to be £33,664 pa. or if the scheme entered the PPF, a predicted pension of £27,305 pa. Both were therefore comfortably in excess of the "mid band growth" amount of £25,200 projected to be available from the PPP. This was a failure to adhere to COBS 19.1.2 (2), which required Mansion Park to provide information for Mr B to be able to make an informed decision. And had Mansion Park portrayed this fairly and honestly, I think Mr B may well have viewed things differently.

Mansion Park has also said that the death benefits offered by the transfer would be more beneficial to Mr B and his family. After the transfer, a lump sum would be payable to his beneficiaries, rather than in the form of dependants' pensions from the scheme. But there are two issues here – the first is that, as rightly noted by the investigator, Mr B had no particular health issues which would mean that death benefits for a 45 year old were of concern at that point. The second is that the benefits provided by the BSPS were valuable. A lump sum may have its appeal – and I recognise that in some situations the ability to pass a lump sum to a beneficiary or to the estate could be particularly advantageous when compared to an income stream through the spouse's pension. But a pension for Mr B's wife for life, a dependants' pension for his children until they left full time education, and a lump sum return of his own contributions would also have been of great benefit. And Mr B had expressed no desire for death benefits to take the form of a lump sum.

And so I cannot agree with Mansion Park's comment that the combination of the lump sum death benefit and the lack of need that Mr B would have for the pension would mean that there was no justification in *not* transferring. I take the opposite view, for all the reasons I've set out.

Allegations of "collusion"

Mansion Park has criticised the way in which Mr B and several of his colleagues have submitted their complaints. The similarities demonstrated in their submissions is, according to Mansion Park, evidence of "collusion". But in my view it's attributing disproportionate importance to this. People talk to each other, especially in situations like this, where many people in the same employment were advised to do the same thing – as we know is the case with British Steel. And Mansion Park was aware that they were going through the same process at the same time.

So it's unsurprising, and of no particular concern, that their submissions may look similar or the same – the circumstances were similar, and the underlying complaints are likely to be similar, in that they feel they received unsuitable advice to transfer out of a defined benefit scheme. Mansion Park calls

this "collusion", and that this throws into doubt the evidence submitted. But I take a different view. In our investigation, we've relied upon the documented facts as evidence. Notably, the investigator hasn't factored into his consideration issues such as Mr B (and his colleagues) saying he felt pressurized into transferring. He didn't need to, and neither have I. Even if that wasn't the case and Mr B was, at the time, quite happy with the service received, it doesn't undermine the other factual and documented evidence available, which in my view significantly compromises the case for the transfer.

And to be clear, we look at the individual circumstances of each complainant and whether the advice given was right for them. The submissions may be similar, for the reasons given above, but they will have unique personal circumstances and objectives, and that's what we consider.

And having taken those facts into consideration, my view is that Mansion Park should not have recommended the transfer.

What should Mansion Park have done – and would it have made a difference to Mr B's decision?

Mansion Park said it wanted this service to acknowledge that there were serious concerns relating to the BSPS at the time - and I'm quite prepared to do so. This was a period of great uncertainty for individuals such as Mr B, combined with short timeframes to make potentially life changing decisions. But this only serves to emphasise the need for a balanced assessment of the options available and ultimately, suitable advice.

I've also thought very carefully about whether the service provided to Mr B was a balanced appraisal of the options available to him – after all, this had been the purpose of the consultation. Mr B (and his colleagues) may have been concerned by developments relating to British Steel and the BSPS, but they were seeking an impartial review of their options.

Many of the recorded objectives were in any case achievable within the BSPS. Tax free cash was available from his scheme benefits, and growth over the medium to long term would be achieved by way of regular revaluations. And he was able to add to his retirement provision through his membership of his current employer's scheme. Death benefits were also payable from the BSPS, albeit in a different format from those available from a PPP.

Given what I consider to have been a lack of balance within the report, I have concerns about the probability of there being any outcome here other than the recommendation to transfer. This is heavily reinforced by Mansion Park's willingness to recommend, before the CETV was enhanced, the transfer at a critical yield of 11.4%, which it itself described as *"high and unachievable".* It justified the recommendation to transfer at that point by saying that it was suitable in view of Mr B's stated objectives and the concerns about the BSPS.

This leads me to believe that there might not have been any critical yield which Mansion Park would have thought undermined the case to transfer. And I'm unconvinced by what Mansion Park clearly considers as the overriding justification. The stated "objectives" were either self-fulfilling opportunities created by the transfer itself or ones which could in any case have been met by the BSPS - and there needed to be a much more balanced assessment of the scheme's attributes and prospects for Mr B to be able to make an informed decision.

I think that, had it done so – and provided a more balanced and open assessment of his options - Mr B would have followed that advice and left his deferred benefits where they were.

And I don't think a lack of awareness of the detail of the BSPS II and its features in any case changes the outcome here. Even if there was the prospect of Mr B's funds entering the PPF, my view is that, taking account of his circumstances, including his attitude to risk, his objectives and the guarantees which the BSPS offered, Mansion Park should have advised against the transfer.

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 B. The key contributing factors here are: Mr B's cautious attitude to risk and its incompatibility with the type of investment risk required to match the scheme benefits – a failing under COBS 19.1.7. And the unbalanced presentation of Mr B's options and the benefits available from the BSPS – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

As I've said above, I also have very real concerns about the inevitability of the outcome of the process, which it appears would have been the same irrespective of crucial aspects such as an unachievably high critical yield – an aspect which to my surprise has been described by Mansion Park as being largely irrelevant given the other issues involved and the described benefits of the transfer. But these other issues, or alleged problems, with the BSPS were in my view misrepresented, and many of the benefits available from the PPP were in any case available, albeit in a different format, from the ceding scheme.

Had Mansion Park taken proper account of Mr B's attitude to risk with regard to his pension funds and matched that with the likely corresponding investment returns, it would have realised that it was unlikely that the benefits available from the BSPS, or even the PPF, could be bettered through the transfer. As required by COBS 2.1.1R and COBS 19.1.6,
it would, or should, then have drawn the conclusion that transferring wasn't in Mr B's best interests.

What does Mansion Park need to do?

My aim to is put Mr B, as closely as possible, into the position he'd be but for Mansion Park's unsuitable advice. Reinstatement of Mr B's deferred benefits isn't possible. Therefore, Mansion Park Limited should undertake a redress calculation in line with the pension review methodology as amended by the Financial Conduct Authority in October 2017.

As with the investigator, and for the reasons given, my view is that had Mr B not transferred his pension funds to the PPP, he would have opted to join the BSPS II. One of Mr B's main concerns was the 10% reduction in the starting pension entitlement within the PPF. But the BSPS II wouldn't cut the starting entitlement for deferred members. Also, if Mr B's marital status didn't change, his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement. For service after 5 April 1988 and up to 5 April 1997, the scheme would include a Guaranteed Minimum Pension (GMP) element increase in line with CPI, capped at 3% pa. Mr B's service accrued between 5 April 1997 and 5 April 2005 would also be increased in line with CPI, capped at 5% pa, and then 2.5% pa for his service thereafter.

And so it's the benefits offered by the BSPS II which should be used for comparison purposes.

This calculation should be carried out using the most recent financial assumptions published by the FCA at the date of the actual calculation. Mansion Park Limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B'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 B's SERPS/S2P entitlement.

The compensation in respect of any future loss should if possible be paid into Mr B'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 the future loss payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mr B would have been yet to take a tax-free cash sum from the occupational scheme, 25% of the future loss would be tax-free 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 future loss adequately reflects this.

Where we consider that total fair compensation requires payment of an amount that might exceed £150,000, this service may recommend that the business pays the balance.
If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that Mansion Park Limited pays Mr B the balance.

This recommendation isn't part of my provisional determination or award. It wouldn't bind Mansion Park Limited. It's unlikely that Mr B can accept an offer made by Mansion Park Limited and go to court to ask for the balance of the compensation owing to him. And so Mr B may want to consider getting independent advice.

The compensation resulting from the loss assessment must where possible be paid to Mr B within 90 days of the date Mansion Park receives notification of his acceptance of my final decision, if it remains the same. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Mansion Park to pay Mr B this compensation.

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

My provisional decision

My provisional decision is that I uphold this complaint. I'm currently minded to direct Mansion Park Ltd to undertake the above calculation and, if it demonstrates a loss, compensate Mr B accordingly.