DRN-3403034

The complaint

Mr D complains about the suitability of the advice provided by Wealthmasters Financial Management Ltd ("Wealthmasters") in February 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension.

Mr D is represented in this complaint by a third party ("Representative").

What happened

I issued my provisional decision on this complaint on 28 February 2022. I set out the background and my provisional findings. I've repeated what I said here:

"In March 2016, Mr D's employer, Tata Steel UK Ltd ("Tata Steel") announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The 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 defined benefits pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017. In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("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 defined benefits pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr D, under the 'Time to Choose' exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. *Transfer to the PPF;*
2. *Transfer to the BSPS2; or*
3. *Transfer to an alternative pension plan such as a personal pension.*

Members had to decide which option they wanted by a deadline in December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

The details of Mr D's safeguarded benefits were as follows:

- *He had accrued 10 years and 6 months' qualifying service between 4 September 2006 and 31 March 2017;*

- *The scheme pension provided was a safeguarded benefit defined by reference to his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme on 31 March 2017, his annual scheme pension was £4,848.34;*

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

- *The revaluation and escalation rates were guaranteed in line with the BSPS rules;*

- *Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at 55 and a 18% reduction at 60;*

- *The estimated revalued annual scheme pension payable by the BSPS at 65 was £11,741 or a reduced pension of £7,781 plus tax-free cash of £51,876. And at 60 it was £8,509 or a reduced pension of £5,842 plus tax-free cash of £38,947;*

- *The estimated revalued annual income payable by the PPF at 65 was £8,995.02 or a reduced pension of £7,202.11 plus tax-free cash of £48,014.12. And at 60 it was £7,264.89 or a reduced pension of £6,024.83 plus tax-free cash of £40,165.56;*

- *On death before retirement, a refund of contributions of £14,780.35 plus interest at 3% per year compound and a 50% spouse's pension would be provided – after retirement, a potential lump sum equivalent to his remaining annual pension between the date of death and five years' after the date of retirement and a 50% spouse's pension thereafter calculated as if no tax-free cash was taken by Mr D at retirement;*

- *The provision of a dependant's allowance for any qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants; and*

- *The cash equivalent transfer value of his safeguarded benefits was £104,252.28 which had been reduced by 5% (from £109,739.24) due to the BSPS being in deficit.*

Mr D was concerned what the announcement by Tata Steel meant for the security of his safeguarded benefits. He initially contacted another business (which I shall call "Firm L") for advice. Firm L introduced Mr D to Wealthmasters.

Wealthmasters recorded the following information about Mr D's circumstances in February 2018:

- *He was 29, in good health and employed by Tata Steel on a gross annual salary of about £35,000;*

- *His was single with no financially dependent children but had been in a long-term relationship with his partner for about three years;*

- *His non-pension assets totalled £121,500 which included his home valued at £120,000 and cash savings and investments of about £1,500;*

- *His liabilities totalled about £90,000 which was the outstanding mortgage on his home, due to be repaid in 22 years' time when he would be 51;*

- *Through his employment with Tata Steel, he was entitled to a death in service lump sum benefit of four times' his salary;*

- *He had surplus monthly income of about £400 after paying all of his regular bills and outgoings – although he was spending all of this on renovations on his home while he lived at his parents' house;*

- *In addition to his safeguarded benefits, he was building up retirement benefits in the Tata Steel defined contribution pension scheme and had been since April 2017 – he and Tata Steel were, in total, contributing 16% of his pensionable salary into that plan;*

- *His preferred retirement age was age 60 in 2048. His State pension age was 68. Wealthmasters recommended that Mr D contact the Department of Work and Pensions to obtain a forecast of his estimated State pension; and*

- *On a scale of risk profiles described as 'cautious', 'moderately cautious', 'moderate', 'moderately adventurous' and 'adventurous', it was initially determined that he had a 'moderately adventurous' risk profile. But, after a discussion with Mr D, it was agreed that he had a 'moderate' risk profile because he wanted to adopt a more cautious approach regarding investment of his pension benefits.*

<u>*Mr D's needs and objectives*</u>

In its suitability report dated 12 February 2018, Wealthmasters recorded that Mr D had the following needs:

- *"You are a deferred member of the British Steel Pension Scheme (Final Salary) and you wish to review the benefits options of the scheme and you are also concerned about the stability of the scheme going forward, in light of the proposed sale of the British Steel business by its parent company Tata Steel. You have stated that you have informed the British Steel scheme administrators that you have elected for your British Steel pension rights to migrate to the British Steel 2 (BS2) pension scheme. However, you stated that you do not want your pension to transfer to the BS2 pension under any circumstance as you said in your own words, 'You Don't Trust British Steel', and you are concerned about the long term future of the scheme given the current outlook for the Tata business and the steel industry in the UK.*

- *As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 60 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65, to hopefully enjoy a longer period of retirement.*

- *As you cannot accurately predict how much of your income you will need at age 60, you anticipate requiring an annual of circa £15,000 per annum (in todays' terms) in retirement and you would like to have the flexibility to vary your level of income and not have to take all of tax free cash in one go, as you would like to make use of any personal tax allowances to minimise the effect of income tax on your pension income.*

- *The death benefits offered by the British Steel pension are of key importance to you, as you are not married, and one of your main concerns is that should you die your pension benefits would be retained by the British Steel Pension Scheme and you would prefer for them to pass to your next of kin."*

And that his objectives were as follows:

- *To retire at age 60 and have the ability to receive a tax efficient income and have the ability to vary your pension income to make use of personal tax allowance and where possible phase your tax free cash by taking it piecemeal, to further maximise tax efficiency.*

- *You are concerned that the British Steel will not meet this objective and you wish to consider an alternative pension arrangement to provide the flexibility you desire.*

Critical yield

Wealthmasters arranged for a TVAS report to be produced to calculate the following critical yield figures based on a transfer value of £104,252.28. This report showed the average annual investment return required by the personal pension to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 60 based on a full pension	***At age 60 based on a reduced pension and maximum tax-free cash***	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*5.48%*	*4.59%*	*5.13%*	*4.33%*
PPF	*4.36%*	*4.18%*	*3.92%*	*3.73%*

The suitability report stated that the critical yield figure at 65 based on Mr D taking the full pension was 5.73% rather than 5.13% as stated in the TVAS report.

Wealthmasters' recommendation to Mr D

Wealthmasters set out in its suitability report its recommendation that Mr D transfer the value of his safeguarded benefits to a personal pension instead of either the BSPS2 or PPF for the following reasons:

- *"The scheme [BSPS] is currently in deficit with insufficient funds to cover its liabilities.*

- *The pension scheme trustees have offered a competitive Cash Equivalent Transfer Value.*

- *The Transfer Value Analysis* report we have conducted using our research tool, Selecta pension has confirmed that pre-retirement death benefits would be greater following a transfer to a money purchase scheme.*

- *The Transfer Value Analysis* report has confirmed that post-retirement death benefits would be greater following a transfer to a money purchase scheme.*

- *The Transfer Value Analysis* report has confirmed that both pre <u>and</u> post retirement death benefits would be paid as a lump sum rather than an ongoing income which suits your personal requirements.*

- *Your personal circumstances would benefit from the flexibility provided by the pension freedom legislation at retirement.*

- *You require total flexibility with your pension arrangements both now and at retirement and a personal pension plan would meet both your current and ongoing requirements.*

- *You want to ensure that your next of kin receive the receive the benefits from your plan in the event of your death by obtaining the best death benefit options available and this is one of your biggest concerns as your pension would be retained by the scheme upon your demise.*

- *A personal pension would not penalise you or apply a reduction in benefits should elect to retire early and take pension benefits from age 60."*

**The Transfer Value Analysis report is generated by our defined benefits research tool, SelectaPension, this very technical document is available on request."*

The suitability report set out the generic advantages and disadvantages of a pension transfer compared to the PPF and BSPS2 options. Wealthmasters recommended that Mr D invest the value of his personal pension in the selected provider's portfolio fund to align with his 'moderate' risk profile with a chosen retirement age of 60. Mr D accepted Wealthmasters' recommendation.

The costs associated with the recommendation were set out in the suitability report, summarised as follows:

<u>Initial charges</u>

- *£999 – suitability report fee (to be waived on acceptance and implementation of Wealthmasters' recommendation)*
- *£2,500 – initial adviser charge deducted from the transfer value and payable to Wealthmasters*

<u>Ongoing annual charges</u>

- *0.45% of fund value – personal pension provider and investment charge*
- *0.5% of fund value – ongoing adviser charge payable to Firm L to provide ongoing advice and servicing on Mr D's personal pension*

<u>This complaint</u>

The Representative complained to Wealthmasters about the suitability of the pension transfer advice it gave to Mr D in February 2018. The Representative's position can be summarised as follows:

- ***Tata Steel and changes to the BSPS:** After Tata Steel announced that it would be examining options to restructure its business, including decoupling the BSPS from the company, Mr D heard a lot of worrying rumours about the steelworks and the security of his safeguarded benefits. He was only 29, not a sophisticated investor and never had to think about his retirement before the announced changes to the BSPS. Everything Mr D had heard about the PPF and the BSPS2 was very negative. Most of his colleagues were transferring out of the BSPS into private plans so he thought he might be better off doing the same but was unsure. He sought advice from Firm L who, in turn, introduced him to Wealthmasters in early February 2018. After listening to his concerns, Wealthmasters didn't do anything to allay Mr D's apprehensions about the security of his safeguarded benefits. While Mr D was worried about the situation, he wouldn't have transferred against professional advice had Wealthmasters advised him to maintain his safeguarded benefits;*

- ***BSPS safeguarded benefits:*** *Mr D's safeguarded benefits offered guaranteed income and represented most of his retirement provision built up by that time. So he'd be heavily reliant on it to provide retirement income. He didn't have specific objectives other than to protect the value of his benefits. He didn't understand how valuable safeguarded benefits were until long after he transferred out of the BSPS. He now knows that had he transferred to either the BSPS2 or PPF, he wouldn't have had to worry about the markets, inflation, or the charges he now faces through the recommended personal pension. Rather, he'd have peace of mind and a guaranteed, escalating income for life without cost;*

- ***BSPS2 and PPF options:*** *Mr D was unaware the trustees of the BSPS had indicated that the BSPS2 would provide greater benefits than the PPF and only marginally less generous benefits than the BSPS. This information was available to Wealthmasters at the time of its recommendation in February 2018. But it presented both the BSPS2 and PPF as unsuitable options. And so it allowed Mr D to think that a transfer to either the BSPS2 or PPF would be a poor outcome;*

- ***Mr D's objectives:*** *Wealthmasters mentioned control, flexibility, the ability to retire early and improved death benefits as significant benefits of transferring into a personal pension. But these weren't Mr D's own thoughts or concerns. His main objective was to protect the value of his safeguarded benefits. He didn't want to take much risk but was encouraged to do so by Wealthmasters due to his age and long investment time horizon to 60. Like most people, he was interested in retiring early but didn't know if this was possible or whether it was a good idea. There weren't any conversations about the pros and cons of each of his options other than that he'd be heavily penalised for taking his pension early under the BSPS2 or PPF. And as for the death benefit objective, it wasn't a priority for Mr D because he was young, healthy and, through his employment with Tata Steel, was entitled to a death in service lump sum benefit of four times' his salary which would've cleared his mortgage. He could've bought additional life cover cheaply if he needed more but this wasn't mentioned as an option by Wealthmasters;*

- ***Mr D's retirement income need:*** *Mr D's retirement income need at 60 could've been met by a combination of his Tata Steel defined contribution plan, or any other pension savings he might have accrued over the following 30 year period, and by taking benefits early under either the PPF or BSPS2. So there wasn't any good reason to relinquish the option of guaranteed income provided by either the PPF or BSPS2 at that time;*

- ***Fact-find process:*** *Wealthmasters' fact-find document included a "Final Salary Questionnaire" where he was asked to tick points as "not important", "important" or "very important". The questionnaire was completed in minutes and the trade-offs of the various options wasn't explored. At the end of the questionnaire, the following question appears: "in the areas marked very important please give your reasons in your own words why". But no notes were written in the comments box;*

- ***Advice process:*** *Mr D was encouraged to believe he would be better off by transferring. He wasn't aware of the level of benefits he was likely to get from the personal pension because Wealthmasters didn't explain it to him. He didn't understand the fees and charges he would pay, or inflation, because these things weren't explained either. According to the transfer quotation paperwork produced by the BSPS, the deadline to complete the pension transfer was 16 February 2018. Mr D first met Wealthmasters around 8 February, the suitability report was dated 12 February and the transfer paperwork sent to the pension provider on 13 February* *with a request that it be sent to the BSPS by special delivery to meet the deadline. Therefore, the process to complete the fact-finding process, transfer analysis, issuance of the suitability report and completion of the paperwork before the deadline was completed in a matter of days. The rushed nature of the transaction was contrary to the FCA's expectations and gave Mr D no time to reflect and consider his options;*

- ***TVAS report and critical yield:*** *The critical yield figures stated in the TVAS report weren't explained to Mr D. In any event, the assumed charges included in the TVAS report were understated and the critical yield figures were incorrect, leaving a false impression of the investment return required to match the relinquished safeguarded benefits. The suitability report stated a critical yield figure of '5.73%' but that figure doesn't appear in the TVAS report or any other analysis documents;*

- ***Illustrations and cashflow modelling:*** *The illustrations in the suitability report indicated that, after charges and inflation, Mr D's personal pension fund value might be £148,000 at 60 based on a mid-rate growth (1.7%) giving him an annual pension of £5,850 – this was less than that projected to be provided by the PPF at £7,264.89 at the same age. The effect of charges and inflation over time wasn't explained to Mr D to help him understand how these would impact the benefits he'd ultimately receive. Furthermore, Wealthmasters mispresented the projected growth rate under the personal pension. This was because the suitability report stated that, based on an assumed mid-rate growth of 2.4%, the fund value might be £165,000 at 60. But the pension provider's illustration appended to the suitability report assumed a mid-rate growth of 1.8% and indicated that the fund value might be £130,000 at 60. Likewise, the cashflow modelling prepared by Wealthmasters assumed the real rate of return for the personal pension would be 3%, implying that the personal pension would provide income longer than would actually be the case;*

- ***Disclosure of risks:*** *Wealthmasters gave Mr D literature which focused on the potential benefits of transferring to a personal pension without focusing to the same extent on the potential drawbacks, or on the potential benefits of maintaining his safeguarded benefits in the BSPS2 or transferring to the PPF. This was unfair and misleading. In one document provided by Wealthmasters titled, "Guide to Occupational Pensions and Defined Benefits", large sections were devoted to the benefits of transferring. Sub-headings in the document included: "Six good reasons to take a look at your transfer option", "why it's a good time to consider your transfer option" and "why might you take a transfer offer?". Only a quarter page at the end of the four-page document set out why maintaining safeguarded benefits might be the better option. In a further document tiled, "Pros and cons of cashing in or keeping a Defined Benefit Pension?" Wealthmasters included a step-by-step guide to transferring out. The document stated things like, "It's all very well having an excellent DB pension but will the company still be there to pay it, think BHS?". The benefits of the PPF were ignored in these documents as they were in Mr D's meetings with Wealthmasters. There wasn't any reason to think the BSPS2 would end up in the PPF because the situation wasn't comparable to BHS; and*

- ***Suitability:*** *Wealthmasters was in possession of all the relevant information and must have known Mr D would be worse off in retirement by transferring rather than opting for either the BSPS2 or PPF. It kept that from him and, instead, led him to believe that he'd better off by transferring. Overall, it thought that Wealthmasters failed to adhere to several regulatory requirements including COBS 4.2.1(1) R, COBS 9.2.1(1) R, COBS 9.2.1(2) R), COBS 9.2.2 R and COBS 19.1.*

To put things right, the Representative stated that Wealthmasters should pay redress to Mr D on the basis that he instead transferred to the BSPS2 and not a personal pension.

Wealthmasters' response to Mr D's complaint

Wealthmasters didn't uphold Mr D's complaint because it was satisfied that its advice to transfer to the personal pension was suitable and in line with the FCA's rules and guidance. It appointed a third party to provide, on its behalf, a substantial final response letter dated 3 March 2020 setting out its position. This can be summarised as follows:

- ***Basis of Mr D's complaint:** It acknowledged the FCA's default position that an adviser should start by assuming a pension transfer will not be suitable. But Mr D had unique circumstances and objectives which meant a pension transfer was suitable in his case. The basis of Mr D's complaint, as put forward by the Representative, was generic and on the basis that 'most pension transfers are unsuitable' but didn't include the specific reasons why it thought Wealthmasters' advice was unsuitable;*

- ***Media attention:** Given the media coverage concerning BSPS pension transfers, it believed that a blanket approach was being applied by the FCA and this service on such cases and that any adviser who recommended a BSPS transfer is automatically assumed to have given unsuitable advice. But it doesn't think this was fair and that each case should be assessed on its own merits which is exactly what it did when it advised Mr D by providing bespoke advice to achieve his unique objectives;*

- ***Financial loss:** It wasn't convinced that Mr D had suffered a financial loss as claimed by the Representative because it had failed to produce any evidence or calculations to support this;*

- ***Competence of the Representative:** It questioned whether the Representative was suitably qualified to assess the quality of its recommendation and requested evidence to demonstrate this. It held this view because if a competent person had read the relevant paperwork, it would be apparent that its recommendation achieved Mr D's objectives and was therefore suitable. It also questioned whether the Representative had treated Mr D fairly because of the way in which it presented his complaint which it believed to be contrary to the Solicitors Regulation Authority's guidelines;*

- ***FCA file reviews:** During 2017, the FCA began a focused review on the quality of pension transfer advice given to members of the BSPS. As part of this process, the FCA requested information from advisory businesses engaged in BSPS pension transfers including Wealthmasters. After reviewing its files, the FCA confirmed that no further information or remedial action was required. The FCA made no criticisms of Wealthmasters' advice or processes and it retained its permission to advise on pension transfers. In its view, the lack of FCA action demonstrated that Wealthmasters' advice process was robust resulting in suitable recommendations. This was borne out by the fact that as of January 2019, Wealthmasters had been approached by some 65 clients in respect of pension transfer advice and, of those, 26 clients were advised to transfer and 39 cases were advised to maintain their safeguarded benefits. This demonstrated Wealthmasters' professionalism, integrity and adherence to the FCA's rules and that it treated each client individually and advised them in line with their unique circumstances and requirements;*

- ***Situation surrounding the BSPS:** It recognised that the situation surrounding Tata Steel and the BSPS meant it was a worrying time for individuals like Mr D. It was a unique situation with members forced to make swift and potentially life altering* *decisions. Unfortunately, this led to some unscrupulous advisers taking advantage by seeking out and marketing to inexperienced scheme members with the sole aim of transferring the value of their safeguarded benefits out of the BSPS. In contrast, it never specifically sought BSPS members with a view to advising them. Rather, they approached Wealthmasters;*

- ***Information about the changes to the BSPS:** In the months leading up to its recommendation, the BSPS had provided Mr D with lots of information about the changes to the scheme and options available. Therefore, members that had limited knowledge or experience in relation to pension matters had the opportunity to gain a clearer understanding of the situation, familiarise themselves with the pros and cons of the options available before taking financial advice. So it didn't agree with Mr D's assertion that he didn't understand what was happening at the time it advised him;*

- ***BSPS2 and PPF options:** When Mr D approached Wealthmasters it was evident that he had lost confidence in Tata Steel and was worried about the future prospects of his employer and the security of his safeguarded benefits – those were his main areas of concern. The BSPS2 and PPF options were discussed with Mr D but he rejected them because they didn't enable him to achieve his objectives and because it meant he wouldn't get a clean break. Mr D didn't want to suffer the reduction in benefits under the PPF and he had genuine concerns regarding the long term viability of Tata Steel and what impact this might have on the BSPS2, which may ultimately end up being transferred to the PPF;*

- ***Advice process:** Following the introduction by Firm L, it treated Mr D as a new client and started its advice process from scratch. It took care to make sure it provided information in plain English and walked Mr D through every step so that he could make an informed decision. Its advice was tailored to his circumstances and objectives. Mr D made clear that he had no intention of entrusting the security of his safeguarded benefits to Tata Steel, the BSPS2 or the PPF. He thought it was highly likely that the BSPS2 would end up being transferred to the PPF. And he made it clear that he had a strong preference to retire early by 60 or before. He wanted to draw his benefits flexibly in accordance with his needs and without penalty. He also wanted to nominate his preferred beneficiary to receive death benefits. The recommended personal pension met Mr D's objectives. His objectives wouldn't have been met by the BSPS2 or PPF. He had time to review its recommendation for the personal pension, to raise any areas of doubt or confusion, consider his options and seek alternative advice if desired prior to proceeding. He could've also made use of the 'cooling off' period. But he expressed no concerns at the time which suggested that he was satisfied with the advice to transfer;*

- ***Mr D's understanding and acceptance of risk:** Mr D's capacity for loss and attitude to risk was based on the information he provided which initially indicated that he was a 'moderately adventurous' investor but it was agreed it would be sensible to downgrade this to a 'moderate' risk investor following further discussion. It gave Mr D all the relevant risk warnings and talked him through the advantages and disadvantages associated with the pension transfer. He gave no indication that he didn't understand the recommendation or that he thought Wealthmasters had misunderstood his requirements. Mr D willingly signed the client declaration to confirm his understanding and acceptance of the information and recommendation outlined in its suitability report. It was therefore satisfied that its recommendation was in line with Mr D's risk profile and that he made an informed decision to transfer regarding the risks associated with the transaction; and*

- ***FCA rules and guidance:** It remain satisfied that it adhered to the FCA's rules and* *guidance in COBS. This included following the guidance contained in the video on the FCA's website regarding pension transfers published in August 2019.*

Our investigator's assessment

Our investigator thought that the pension transfer advice Wealthmasters gave to Mr D was unsuitable and that his complaint should therefore be upheld. His findings can be summarised as follows:

- ***Importance of safeguarded benefits:** Mr D's safeguarded benefits amounted to 10 years and 6 months' pensionable service and so represented most of the retirement provision he had built up by that point in time. And so he'd be heavily reliant on the benefits to provide secure retirement income. While Mr D was building up additional retirement provision in his Tata Steel defined contribution pension plan, it was the case that he had limited other investments and savings upon which he could rely to support his desired standard of living in retirement. This meant he had limited capacity for loss to absorb financial loss in connection with the value of his safeguarded benefits;*

- ***Mr D's concerns about Tata Steel and the PPF:** He thought that Wealthmasters ought to have done more to allay Mr D's misapprehensions about the security of his safeguarded benefits and explained that, in the worst case scenario, he'd still receive 90% of his pension entitlement if the BSPS2 ended up being transferred to the PPF;*

- ***Mr D's circumstances:** Mr D was 29 and single without anyone financially dependent on him which meant that the spouse's pension offered by the BSPS would've likely been of less importance to him at the time. However, his circumstances, including marital status, would likely change over the following 30-year period before he retired which may have increased the relevance of the spouse's pension. There wasn't any evidence that Wealthmasters had recorded Mr D's plans including whether he intended to get married or have children to help support its recommendation that it was suitable to relinquish the spouse's pension and dependants' benefits;*

- ***Critical yield:** The critical yield figures shown in the TVAS report were likely unachievable. The required rate of investment growth to match the relinquished benefits was higher than the relevant discount rate of 4.7% per year for a 35-year investment time horizon published by this service and at the higher end of the FCA's projection rates for pensions. The TVAS report showed that a fund of £535,747.06 would be required to match the safeguarded benefits and showed that income would run out at the medium rate of return by 79. As a result, he concluded that the pension transfer would likely lead to Mr D receiving lower overall retirement benefits under the personal pension;*

- ***Tata Steel defined contribution plan:** Mr D was already building up additional retirement provision in a defined contribution plan through his employment with Tata Steel. By transferring to a personal pension, it meant all of his retirement provision would be on the same defined contribution basis, unnecessarily reducing his diversification and increasing his exposure to risk. There wasn't any evidence to suggest that Mr D had become more speculative to support the increased risks associated with a pension transfer to the personal pension;*

- ***Mr D's risk profile:** Wealthmasters initially assessed Mr D as having a 'moderately adventurous' risk profile but changed this to a 'moderate' risk profile following a* *discussion with him. But the investigator questioned whether Mr D had a more cautious risk profile bearing in mind the importance of his safeguarded benefits and investment inexperience;*

- ***TVAS report:*** *The assumed charges included in the TVAS report were understated because it didn't account for the initial and ongoing advice charges. As a result, the critical yield figure stated in the suitability report, and upon which Mr D made the decision to transfer, was understated. Notwithstanding this point, he noted that the TVAS report wasn't provided to Mr D. Rather, he was invited in the suitability report to request a copy. Our investigator thought that this was odd because TVAS reports are technical documents and something most people wouldn't understand. So to invite a client to request a copy to read rather than the adviser going through the document with the client in person was inappropriate;*

- ***Personal pension illustration:*** *The illustration produced by the pension provider showed that the estimated annual pension was £5,870 at 60 based on mid-rate growth of 1.8%. However, as at the date of leaving the BSPS on 31 March 2017, Mr D's annual scheme pension was £4,848.34 which, with guaranteed revaluation in deferment over the 30 to 35 year period until retirement under the BSPS2, would've likely exceeded the projected pension provided by the personal pension at 60 and also continued escalating in payment;*

- ***Mr D's early retirement objective:*** *Wealthmasters stated that an early retirement quote wasn't available from the BSPS but hadn't provided evidence to show that it was requested. Wealthmasters didn't produce any comparative analysis to support its conclusion that early retirement under the BSPS2 or PPF wouldn't have been in Mr D's best interests. Our investigator stated that Mr D was only 29 at the time and most people would prefer to retire earlier. But with 30 to 35 years to retirement and a likely change to Mr D's personal circumstances, transferring at that time for potential earlier access to benefits wasn't a reasonable action to take. If Mr D had transferred to the BSPS2 then he would've retained the right for a transfer out of that scheme at a later date, if then deemed suitable. Furthermore, our investigator wasn't convinced that Mr D had a genuine need at that time for flexibility and control of his safeguarded benefits;*

- ***Mr D's death benefit objective:*** *He wasn't convinced that Mr D had an overriding desire to secure improved death benefits under a personal pension. This was because he was 29, unmarried and didn't have any children. The nominated beneficiary under the personal pension was his sister. While he accepted that Mr D wouldn't have wanted death benefits to 'be retained by the BSPS', as stated by Wealthmasters, he thought it likely that he may have wanted to retain the spouse's and dependants' benefits for a future potential need had he understood how valuable they were;*

- ***Charges:*** *The charges associated with the pension transfer meant that the potential for investment growth on a moderate risk basis would be constrained. This was because the pension provider's illustration showed that the projected annual growth rate on the recommended fund was 0.7% after charges. This contrasted with the critical yield figures which indicated that the pension transfer wasn't in Mr D's best interests;*

- ***Rushed approach:*** *He was concerned that Mr D was given just one day to consider the suitability report before signing the transfer paperwork the following day. He thought that Mr D had limited time to properly consider the information given to him to* *enable him to make an informed decision regarding one of the biggest financial decisions he'd likely ever have to make; and*

- ***Suitable advice:*** *He concluded that suitable advice would've been for Mr D to transfer to the BSPS2 so that he could maintain safeguarded benefits. He thought it more likely than not that had Wealthmasters recommended the BSPS2 that Mr D would've accepted it.*

To put things right, our investigator recommended that Wealthmasters carry out a redress calculation in line with the FCA's 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' on the basis that Mr D transferred to the BSPS2 and would be a 20% income tax payer in retirement.

Despite several emails requesting its response, Wealthmasters didn't reply to our investigator's assessment and recommendation to resolve this complaint. Therefore, this complaint has been referred to me for 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.

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. Having considered the evidence, I agree with the conclusion reached by our investigator and for much the same reasons. I've set out below my reasons why.

<u>The genesis of this complaint</u>

Wealthmasters said that Mr D, through his Representative, only made this complaint in response to the negative media attention about BSPS pension transfers. It believes that the media coverage and solicitors advertising claims management services has led to many former BSPS members wrongly making claims for redress.

My view is that there could be any number of reasons why Mr D complained about Wealthmasters' pension transfer advice. I'm aware that in recent years the FCA identified that many steelworkers received unsuitable pension transfer advice and may have made poor financial choices, losing significant sums of money as a result. It therefore wrote to individuals, like Mr D, who transferred out of the BSPS to encourage them to revisit the advice that they received and to complain if they had concerns. The fact that Mr D made this complaint through his Representative doesn't mean it's without merit, as I think is implied by Wealthmasters, or that he's acted unreasonably. Wealthmasters will, I hope, agree that, regardless of how his concerns materialised, Mr D is entitled to complain about its advice if he's concerned it was unsuitable.

<u>Mr D's Representative</u>

Wealthmasters is unhappy about the way in which Mr D's Representative handled and presented his complaint. It's also concerned that the Representative isn't qualified to assess the suitability of its recommendation and that the basis of this complaint is therefore without foundation.

I'd like to assure Wealthmasters that my decision will be based on the contemporaneous documentary evidence. And where the evidence is incomplete, inconclusive or contradictory, I'll 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 hope this eases Wealthmasters' concerns.

The FCA's suitability rules and guidance

Mr D was introduced to Wealthmasters by a separate business, Firm L. Wealthmasters then provided the pension transfer recommendation to Mr D. Following the pension transfer, Firm L provided ongoing advice and servicing to Mr D in connection with his personal pension that received the transfer value from the BSPS.

There's no dispute that Wealthmasters advised Mr D to transfer and that it therefore remains responsible for the suitability of the pension transfer advice that's been complained about.

I'm going to set out below my impartial view on the suitability of Wealthmasters' recommendation. I'd like to make clear that the purpose of this decision isn't to address every point raised by the parties. So If I haven't commented on any specific point, it's because I don't believe its relevant or that it affects what I think is the right outcome.

What follows isn't a comprehensive list of the rules and regulations which applied at the time Wealthmasters advised Mr D but provides useful context for my assessment of its actions here.

The FCA sets the rules and guidance that businesses must follow when advising clients on pension transfers. Businesses are required under COBS 2.1.1R to "act honestly, fairly and professionally in accordance with the best interests of its client".

The suitability rules and guidance that applied are set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*

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

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

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

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

COBS 19.1.7G also stated:

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

And COBS 19.1.8G stated that:

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

(1) a summary of the advantages and disadvantages of its personal recommendation;
(2) an analysis of the financial implications (if the recommendation is to opt-out); and
(3) a summary of any other material information."

Businesses are required to adhere to these rules and guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers must start by assuming that the existing defined benefits scheme is suitable and only to recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests. The FCA requires businesses to consider alternative, viable options to achieve the client's objectives to enable them to maintain their safeguarded benefits.

The important point to make here is that the FCA refers to "clearly" in its rules. In my view, borderline cases – those which appear evenly balanced as to whether to transfer or not – don't meet the "clearly" requirement, as required by the FCA. Therefore, if I conclude that alternative options could've met Mr D's objectives and enabled him to maintain his safeguarded benefits, then it's likely I'll find the advice to transfer unsuitable given the FCA's default position. I'd also like to highlight that the FCA refers to "contemporaneous evidence" in its rules. This means that any further analysis carried out by Wealthmasters after its recommendation in response to this complaint is essentially irrelevant to my consideration of the advice given in 2018. In line with the FCA's rule, to determine suitability when the advice was given, I must base my decision on the evidence from the period leading up to and including February 2018 to decide whether Wealthmasters' pension transfer recommendation was suitable and clearly in Mr D's best interests.

Mr D's situation

Mr D's situation at the time Wealthmasters advised him was somewhat unusual for the reasons set out in the background above. To recap, after the BSPS closed in March 2017, Mr D was given in October 2017 three options regarding his safeguarded benefits in that scheme:

1. *Transfer to the PPF;*
2. *Transfer to the BSPS2; or*
3. *Transfer to an alternative pension plan such as a personal pension.*

Members had to choose which option they wanted by a deadline in December 2017. I recognise that Wealthmasters advised Mr D in February 2018 which was after the deadline. But I understand that there was still time up until March 2018 for Mr D to inform the BSPS of his decision.

Based on the above considerations and for the purposes of my decision, I'll work on the basis that Mr D had the three options listed above at the time Wealthmasters advised him in February 2018. I'd like to acknowledge that the FCA's default position that advisers must start by assuming the existing defined benefits scheme is suitable didn't quite apply here. This is because maintaining safeguarded benefits in the BSPS wasn't an option for Mr D. But he could transfer to the BSPS2 and maintain safeguarded benefits in that scheme or opt for the guaranteed benefits offered by the PPF.

In line with the FCA's default position, it's my view that Wealthmasters should've only considered a pension transfer to a personal pension if it could demonstrate, on the contemporaneous evidence, that it was clearly in Mr D's best interests rather than the alternative options to either maintain safeguarded benefits in the BSPS2 or the guaranteed benefits offered by the PPF.

I'll now go on to consider the suitability of the pension transfer advice Wealthmasters gave to Mr D.

<u>Critical yield, discount rates and risk profile</u>

The TVAS rules applied at the time Wealthmasters advised Mr D. This required it to carry out a transfer value analysis and to calculate the 'critical yield' applicable for the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the defined benefits scheme (and at a different age, if selected) on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the safeguarded benefits under defined benefits scheme, which in this case was the BSPS.

The TVAS isn't a precise tool or personalised to reflect individual circumstances and objectives. But a TVAS has a role to play where it's likely the individual would use the accumulated fund at retirement to provide steady, secure income. So a TVAS was likely useful for a client, like Mr D, that intended to use their safeguarded benefits towards achieving a minimum retirement income objective – in his case, it was recorded that he required annual retirement income of £15,000 (in 2018 terms) from 60. As I've explained below, it's my opinion that Mr D would likely be heavily reliant on the value of his safeguarded benefits towards achieving this income need.

The critical yield also gives an indication of the value offered by the transfer value and the ability to secure comparable benefits on the open market. So it's useful in that regard.

Wealthmasters' recommendation to Mr D was provided to him after the FCA gave instructions in its 'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers' as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 was 4.7% based on Mr D taking benefits early at 60 or at the BSPS normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

In contrast, using the TVAS rules, Wealthmasters calculated the critical yield figures in the table below based on a transfer value of £104,252.28 being invested in a personal pension. This showed the average annual investment return required by the personal pension to provide benefits of equal value to either the BSPS or PPF, as follows:

	At age 60 based on a full pension	***At age 60 based on a reduced pension and maximum tax-free cash***	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*5.48%*	*4.59%*	*5.13%*	*4.33%*
PPF	*4.36%*	*4.18%*	*3.92%*	*3.73%*

I note that the suitability report stated that the critical yield figure at 65 based on Mr D taking the full pension was 5.73%. It's not clear where this figure came from or if it was a typo because the TVAS report stated the figure as 5.13%. However, even the figure of 5.13% appears to be incorrect. I say this because the TVAS report doesn't appear to include Wealthmasters' initial adviser charge of £2,500 to be deducted from the transfer value (or that the calculation was based on a transfer value of £101,752.28 to account for this) or the ongoing adviser charge of 0.5% of the fund value payable to Firm L. The absence of these charges in the TVAS report meant that the critical yield figures in the table above were understated, implying less investment growth was required to match the relinquished safeguarded benefits than was actually the case. I haven't seen evidence that the difference between the assumed and actual investment charges and the impact it would have on the critical yield figures was explained to Mr D before he accepted the recommendation to transfer.

Had the additional charges been included in the TVAS report, the critical yield figures for the BSPS would've likely been higher than the discount rate of 4.7% and mid-growth rate of 5% stipulated by the FCA, implying that Mr D would need to accept a medium to high degree of investment risk in the personal pension just to match the relinquished safeguarded benefits, let alone exceed them.

I'm also conscious of the fact that Mr D was building up additional retirement provision in his Tata Steel defined contribution plan and the expectation was that this would, over time, grow to a significant pot of money upon which he could rely to help meet his retirement income need from 60. But by transferring to a personal pension it meant that he would concentrate his retirement provision on a defined contribution basis where the benefits received aren't guaranteed but instead based on investment performance. Had he maintained safeguarded rights in the BSPS2 or the PPF, if necessary, he'd have received guaranteed income from that source and benefitted from a more diversified approach, reducing the overall risk in *achieving his retirement income need. This blended approach – utilising both defined benefits and defined contribution pensions to meet Mr D's retirement income need – doesn't appear to have been considered by Wealthmasters, which I'll come on to later in my findings below.*

*Based on the above considerations, I think it was highly likely that Mr D would receive benefits from the personal pension of a lower overall value than the alternative option of the BSPS2 and even the PPF, if required, at retirement. And it seems Wealthmasters agrees because in its suitability report it stated, "We have discussed these figures in great detail to ensure you fully understand the implications of yield requirement in excess of 5% per annum and the likelihood your portfolio **may not** consistently reach this annual performance level (even after taking high investment risks) and therefore not provide you with a comparable annuity income at retirement". So based on this alone, it's my view that a transfer wasn't in Mr D's best financial interests.*

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

Wealthmasters' rationale for transferring

In accordance with COBS 9.2.2R, Wealthmasters undertook its fact finding for Mr D and then set out its assessment of his circumstances and objectives regarding his safeguarded benefits. The latter, as set out in the suitability report, may be summarised as follows:

- *To retire early at 60 without reduction or penalty and to receive a desired annual income of £15,000 (in 2018 terms) with the ability to vary the level of income so that it could be withdrawn as tax-efficiently as possible;*

- *To provide a death lump sum benefit to his nominated beneficiary rather than the 50% spouse's pension provided by the safeguarded benefits because he was unmarried; and*

- *To control his safeguarded benefits due to concerns about his future employment with Tata Steel and to remove the risk that his benefits might be transferred to the PPF.*

Therefore, I've considered Mr D's objectives and concerns as stated in the three bullet points above. To make my findings easier to follow, I've set them out under separate headings.

Early retirement, flexibility and income objectives

Wealthmasters stated the following in its suitability report regarding Mr D's early retirement, flexibility and income needs:

- *"As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 60 without penalty. As you may require your pension income sooner than the British Steel pension schemes normal retirement age of 65, to hopefully enjoy a longer period of retirement.*

- *As you cannot accurately predict how much of your income you will need at age 60, you anticipate requiring an annual of circa £15,000 per annum (in todays' terms) in* *retirement and you would like to have the flexibility to vary your level of income and not have to take all of tax free cash in one go, as you would like to make use of any personal tax allowances to minimise the effect of income tax on your pension income.*

And that his objective was as follows:

- *"To retire at age 60 and have the ability to receive a tax efficient income and have the ability to vary your pension income to make use of personal tax allowance and where possible phase your tax free cash by taking it piecemeal, to further maximise tax efficiency. You are concerned that the British Steel will not meet this objective and you wish to consider an alternative pension arrangement to provide the flexibility you desire."*

Wealthmasters said that the flexibility to draw varying levels of income and tax-free cash at different points in time from 60 onwards without penalty wasn't available through the alternative options of the BSPS2 and PPF. And that the only way to achieve this objective was by transferring to a personal pension. It said that the lack of penalty free and flexible income under the BSPS2 and PPF rendered those options unsuitable.

I'm concerned about the way in which Wealthmasters established Mr D's early retirement objective and annual income need of £15,000. I say this because it's unclear to me why Mr D intended to retire earlier than 65, how the figure of £15,000 was determined or if it was realistic that he could retire at 60. It seems that £15,000 was a notional figure put forward by Mr D rather than being based on a proper analysis carried out by Wealthmasters. There's no reference to this income need increasing in payment to counter the effects of inflation. Rather, it appears to be a fixed income requirement. This approach to determining a client's income need concerns me because if a client's objective is early retirement, then, in my view, it's necessary to carry out adequate analysis to establish if this is achievable in order to support a recommendation to transfer.

Many people might want to retire early. But this can only happen if they have the financial means to support themselves in retirement. Financial planning generally involves managing client expectations and a need for compromises. Mr D may have wanted to retire at 60 and be in receipt of annual income of £15,000. But it was for Wealthmasters to establish if this was feasible and to manage his expectations and, where applicable, help him modify his objectives to reflect the reality of his circumstances. Mr D was relying on Wealthmasters to provide expert advice in this regard.

In my view, where a client has a retirement income need at a specific age, 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 income required to cover the expected expenditure from the target retirement age. But in Mr D's case, Wealthmasters didn't establish how he intended to spend his time in retirement or what his expected expenditure was likely to be based on an analysis of his outgoings. Rather, the analysis was on the basis that he required a notional annual income of £15,000 in 2018 monetary terms. The further away from retirement an individual is, the harder it is to establish a realistic figure. And in Mr D's case, being 29 at the time of the advice, I think it would've been difficult to predict with a degree of certainty what his expected expenditure during retirement would be – and therefore what realistic level of income he would need from 60 onwards to cover this. With such a substantial time horizon until pension benefits could be accessed, it makes the case for a pension transfer – for the sake of achieving early retirement – more difficult to justify. It may well have been the case that a proper analysis showed that his income need was lower than £15,000 and could've *been comfortably met by the estimated income paid by the BSPS2 or PPF options in conjunction with his Tata Steel defined contribution plan and State pension.*

Wealthmasters didn't establish the estimated pension payable by Mr D's Tata Steel defined contribution plan or his estimated State pension. It needed to carry out an analysis of Mr D's estimated income streams from all sources during retirement so that it could determine what level of reliance would apply to his safeguarded benefits. If it was the case that the analysis showed that Mr D would be reliant on his safeguarded benefits to meet his income needs in retirement then it would seriously weaken the case for a pension transfer. This is because, where there is a need to generate a minimum level of retirement income as there appears to be in Mr D's case, it's difficult to justify relinquishing benefits that provide a guaranteed, minimum level of income in exchange for flexible income that doesn't have any guarantees. That is, unless the prospect of an alternatively secured guaranteed income, by way of a transfer and then annuity purchase, was likely to have produced a higher level of guaranteed income. But as illustrated above, and as also acknowledged by Wealthmasters, this wasn't the case here.

<u>Could Mr D retire at 60?</u>

It's my view that Mr D's expectations around his target retirement age ought to have been better assessed and managed by Wealthmasters, for the reasons explained above.

Things would become clearer the closer Mr D got to 60 and his plans could be modified in response to this, but at 29 I think it would've been difficult to predict with any reasonable degree of confidence that he'd be able to retire at 60. Due to this uncertainty, I don't think it was necessary to consider a pension transfer for the sake of early retirement at that time when the option of maintaining safeguarded benefits under the BSPS2 was available, which I'll come on to shortly.

But if it's accepted that Mr D would retire at 60 and required an annual income of £15,000 from that point onwards, then I make the following observations, largely on the basis that Wealthmasters said no option other than the pension transfer would've enabled Mr D to retire at 60. But I disagree, as I've explained below.

Mr D had been an active member of the Tata Steel defined contribution pension scheme since April 2017 after the BSPS had closed to further benefit accrual. He and Tata Steel were, in total, contributing 16% of his pensionable salary into that plan. Despite concerns about the security of his employment, it appears Mr D intended to continue working full-time for Tata Steel for the foreseeable future. Wealthmasters recommended that he remain a member of that scheme and suggested in its suitability report that the value of this plan would contribute towards meeting his income need. It included the estimated value of the plan in its cashflow modelling. So I think it's fair to say that the value of Mr D's plan should be included in the analysis and what its estimated value would be on the basis that he remained an active member until his planned retirement at 60.

I think Wealthmasters could've reasonably expected that, based on Mr D's salary, contribution rate and 31-year time horizon, about £174,000 in contributions would've been invested in his plan by the time he reached 60. Considering likely investment growth over that time and increases in contributions linked to rises in Mr D's pensionable salary, I think it's fair to say that the plan value would likely be higher than £174,000 at 60. Wealthmasters' cashflow modelling indicates that the value of the plan would be greater than £250,000 so I think my assumption is a fair one.

It's my view that access to the plan at 60 would easily cover Mr D's income need for the five-year period to his 65th birthday. Then, at 65, he could take an unreduced pension income from either the BSPS2 or PPF.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. In my view, the BSPS2 was likely the better option for Mr D given that it was clear he could delay drawing benefits until 65, as I've set out above, and that his marital status may have changed during the following 36-year period. In terms of what income would be payable by the BSPS2 at 65, the following information is relevant.

The estimated revalued annual scheme pension payable by the BSPS and PPF was as follows:

Scheme	***At age 65 based on a full pension***	***At age 65 based on a reduced pension and maximum tax-free cash***
BSPS	*£11,741*	*£7,781 plus tax-free cash of £51,876*
PPF	*£8,995.02*	*£7,202.11 plus tax-free cash of £48,014.12*

At the time Wealthmasters advised Mr D, it was generally known that at 65 the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS. So the income and tax-free cash available under the BSPS2 likely fell somewhere between the figures above. I think Mr D would likely choose to commute some of his scheme pension in exchange for tax-free cash. Based on the figures above, I think it's fair to say that at 65 he could expect to receive from the BSPS2 a reduced pension of about £7,500 (which was broadly between £7,202.11 and £7,781) and tax-free cash of about £50,000 (which was broadly between £48,014.12 and £51,876).

In my view, he could then use, from 65, a combination of the annual scheme pension of £7,500 and either some of the tax-free cash of about £50,000 or any surplus money in his Tata Steel defined contribution plan over the three-year period from 65 to 68 to continue meeting the annual income need of £15,000 until he could start drawing his State pension.

Given Mr D's employment history by 2018, and expectations for the future, I think it's fair to say that he'd be entitled to the full State pension at 68. The full State pension in 2017/18 was £8,296.60. It increases each year in line with changes to the CPI. So, in 2018 terms, Mr D's combined BSPS2 and State pension would provide total, combined annual income of about £15,796. So, it seems probable, that his core income need could've been met from 68 onwards by two guaranteed, escalating sources of income. The guaranteed escalation would've offered some protection against the effect of inflation. This contrasts with the alternative course of action recommended by Wealthmasters which assumed a fixed annual income of £15,000 for the rest of Mr D's life with no account for the effect of inflation or the likelihood that he'd need to increase his withdrawals to maintain his standard of living.

So, by adopting a blended approach of utilising his Tata Steel defined contribution plan, BSPS2 and State pension, I think it's reasonable to conclude that Mr D could've maintained safeguarded benefits in the BSPS2 and likely met his annual income need of £15,000 between 60 and 68 and, based on Wealthmasters calculations, probably still retain surplus money in his defined contribution plan to meet any additional ad-hoc flexible income or lump sum needs. If receipt of the guaranteed and escalating BSPS2 and State pensions provided excess income over and above Mr D's income need, this could've been reinvested for future *use. It's my view that in the above scenario Mr D would be heavily reliant on the BSPS2 to meet his core income needs during his retirement from 65 onwards.*

In the event Mr D left the employment of Tata Steel, I think it's likely that he'd find alternative employment, albeit perhaps outside of the steel industry, and, with the legal requirements of auto-enrolment, would build up additional defined contributions elsewhere over the period to 60. So I think it's fair to say that at 60 he'd likely have access to significant defined contribution pension savings which could be used to meet his income need for the five-year period between 60 and 65.

This alternative course of action I've set out suggests that Mr D could've maintained safeguarded benefits in the BSPS2 and potentially achieve his early retirement objective. I haven't seen any evidence that Wealthmasters properly considered this alternative option and presented it in a fair and balanced way to Mr D.

The pension transfer was portrayed by Wealthmasters in its suitability report as allowing for early retirement without the "penalties" which would be applied to the BSPS2 or PPF if benefits were taken before 65. It stated, "As you intend to retire earlier than expected, you wish to have the facility to draw your pension benefits from age 60 without penalty" and "A personal pension would not penalise you or apply a reduction in benefits should you elect to retire early and take pension benefits from age 60".

The reality was of course that the personal pension would've had less time to grow if accessed before 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr D so he could understand that accessing the BSPS2, PPF or personal pension early would likely lead to reduced retirement income during his lifetime compared to taking benefits at 65.

In conclusion, it's my view that Mr D made the decision to transfer from an uninformed position regarding achieving his early retirement and income objective. I'm not satisfied that Wealthmasters demonstrated, on the contemporaneous evidence, that it was clearly in Mr D's best interests to relinquish his safeguarded benefits because it failed to carry out adequate analysis of Mr D plans, expected expenditure in retirement and his other sources of retirement income to meet his income need. In the absence of this analysis, I think suitable advice would've been to recommend the BSPS2 because, while the income provided was inflexible, it was guaranteed and escalated in payment. The pension transfer option offered no guarantees and exposed Mr D's money to inflation, investment and longevity risk with no guarantees about how much income it would provide during his retirement.

<u>Death benefit objective</u>

Wealthmasters stated the following in its suitability report regarding Mr D's death benefits objective:

- *"The death benefits offered by the British Steel pension are of key importance to you, as you are not married, and one of your main concerns is that should you die your pension benefits would be retained by the British Steel Pension Scheme and you would prefer for them to pass to your next of kin."*

The recommended personal pension offered flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, death lump sum or income drawdown or any combination of these. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately *following the transfer to the personal pension and for the period until Mr D could draw any benefits from 55 onwards, the death benefits available would be significant (subject to investment performance) due to the simple fact he couldn't access and deplete the fund value for at least 26 years.*

But Mr D was recorded as being in good health. So he could expect normal life expectancy into his late 70s or early 80s. The value of his safeguarded benefits represented the backbone of his retirement provision built up by that time. And as I've concluded above, I think Mr D would be heavily reliant on these benefits to meet his core income needs in retirement. Withdrawing money from the personal pension at 60 to help meet his recorded annual income need of £15,000 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

In demonstrating that the pension transfer was clearly suitable and in Mr D's best interests, Wealthmasters was required, under the FCA's rules, to consider alternative options to meet his death lump sum objective. As I've noted above, Mr D had the alternative option to maintain safeguarded benefits in the BSPS2 which offered a 50% spouse's pension which may have been a valuable feature in the future if he married before retirement. Wealthmasters was required to consider this and any other viable options. It said that Mr D wanted to leave his sister a lump sum from his personal pension. But, as I've noted above, it's questionable as to what death lump sum benefit might be available from the personal pension based on his life expectancy and the uncertainty about what money might remain in his personal pension on his death.

If it was a genuine objective for Mr D to provide a lump sum on his death, as asserted by Wealthmasters, then life cover could've achieved the same objective of providing a lump sum to his sister while enabling him to maintain safeguarded benefits in the BSPS2. I note that Mr D had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr D given he was 29 and recorded as being in good health. However, I cannot see evidence that Wealthmasters adequately investigated the life cover option. For example, I haven't seen evidence that Wealthmasters quantified Mr D's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision.

It's my view that Mr D had no health issues at the time Wealthmasters 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 sister. So I'm not convinced there was any real merit in Mr D transferring to a personal pension at that time to provide a lump sum death benefit. There's no real evidence that a death lump sum was required for Mr D's sister.

But, in any case, I note that through his employment, Mr D had life cover based on a multiple of four times' his salary, meaning a lump sum of about £140,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a personal pension. In addition, the value of his Tata Steel defined contribution plan would be paid as a lump sum to his nominated beneficiary(ies). So, it seems to me that in the immediate future, certainly while Mr D remained employed by Tata Steel, that a lump sum of at least £140,000 would be paid on his death. In addition, it's likely that any equity released upon the sale of Mr D's house following his death, which was then about £30,000 based on the outstanding mortgage relative to the value of his house, would be payable to his beneficiary.

So I think it's fair to say that there wasn't any immediate need to transfer at that time to provide death benefits bearing in mind the cover already in place while Mr D remained employed by Tata Steel. With no immediate health concerns, this existing cover enabled Wealthmasters and Mr D enough time to properly investigate obtaining additional life cover so that he could maintain safeguarded benefits in the BSPS2.

Therefore, based on the above considerations, I disagree with Wealthmasters' view that the only way to achieve Mr D's death benefits objective was by transferring to a personal pension at that time. Given Mr D's circumstances, I consider that the BSPS2 and even the PPF, if required, would likely offer better death benefits to his beneficiaries over the longer term compared to the personal pension taking into account the likely level of income withdrawals and Mr D's life expectancy.

<u>Mr D's concerns about the PPF</u>

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of defined benefit schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr D could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with a personal pension where there's no promise of a minimum level of benefits payable. In its 2016/17 annual report, publicly available at the time of Wealthmasters' recommendation, the PPF stated that its overall financial position as at 31 March 2017 remained robust, with an increase in its surplus funds to £6.1bn. There wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Wealthmasters stated the following in its suitability report regarding Mr D's objective to remove the risk that the value of his safeguarded benefits might ultimately be transferred to the PPF:

- *"You are a deferred member of the British Steel Pension Scheme (Final Salary) and you wish to review the benefits options of the scheme and you are also concerned about the stability of the scheme going forward, in light of the proposed sale of the British Steel business by its parent company Tata Steel. You have stated that you have informed the British Steel scheme administrators that you have elected for your British Steel pension rights to migrate to the British Steel 2 (BS2) pension scheme. However, you stated that you do not want your pension to transfer to the BS2 pension under any circumstance as you said in your own words, 'You Don't Trust British Steel', and you are concerned about the long term future of the scheme given the current outlook for the Tata business and the steel industry in the UK."*

In other sections in the suitability report it stated that Mr D was concerned that all of his options relating to control and flexibility would "disappear" if the value of his safeguarded benefits were transferred to the PPF which would leave him with a reduced pension which he felt was "grossly unfair".

Had Wealthmasters advised Mr D to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a personal pension 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 greater accuracy than at 29. A transfer to the BSPS2 would've also removed any immediate concerns Mr D had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term defined benefits scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a private *plan before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr D or that there was an urgency to transfer to a personal pension at that time to avoid a transfer to the PPF.*

In my view, Mr D was reliant on Wealthmasters to provide a fair and balanced assessment of the PPF and to act in his best interests in this regard. This ought to have involved discussing with Mr D the features, risks and benefits of the PPF and allaying his misapprehensions. But I don't think Wealthmasters did this given the lack of reassuring comments in its suitability report and instead allowed him to continue to believe that the PPF was an outcome to avoid at all costs.

If Mr D was apparently concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I have to also question why he would accept the risk of transferring to a personal pension which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. It seems odd to me that Mr D wasn't prepared to accept the 10% reduction of his benefits under the PPF yet was apparently content to accept the unlimited downside risks associated with the pension transfer. This suggests to me that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on Wealthmasters to provide expert advice on this point but I think it failed to do this.

It's therefore my view that Wealthmasters failed to adequately allay Mr D's misapprehensions and that he therefore made the decision to transfer from an uninformed position regarding the PPF.

<u>Did Mr D have enough time to consider Wealthmasters' recommendation?</u>

The evidence indicates that Mr D first met Wealthmasters in early February 2018. The suitability report was dated 12 February. On 13 February the personal pension application form was completed and signed by Mr D before being sent to the pension provider ahead of the deadline of 16 February to complete the transfer. So it seems that Mr D was required to make a complex decision, and possibly one of the most important financial decisions he'd need to make during his lifetime, in a couple of days. I acknowledge that there was a deadline to complete a transfer. But this doesn't mean Mr D should've been rushed into making a complex decision. Overall, it's my view that Wealthmasters didn't give Mr D enough time to consider the suitability report and other information to reflect upon his options.

<u>What should Wealthmasters have done – and would it have made a difference to Mr D's decision?</u>

During 2017, the situation was rapidly evolving and there were serious concerns relating to Tata Steel and the BSPS at the time Wealthmasters advised Mr D – and I fully acknowledge this. It's undeniable that it was a period of great uncertainty for individuals such as Mr D. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice where a regulated advisory business was appointed. Any concerns Mr D had about the security of his benefits should've been addressed and appropriately managed by the professional party in the transaction, Wealthmasters.

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

Wealthmasters believes that a pension transfer was necessary at that time and that it fulfilled Mr D's wishes. Financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it's incumbent upon them to explain this – and why.

I acknowledge that this may misrepresent Wealthmasters' position, and it was referring to Mr D's expressed objectives, in that it wouldn't be up to an adviser or indeed this service to tell Mr D that he shouldn't have the aim of, for example, retiring early. That aside, however, it was nevertheless the responsibility of Wealthmasters to explain to Mr D why he didn't need to make any irreversible decision on relinquishing valuable safeguarded benefits at that time and that consideration of a pension transfer was a decision that could be delayed until his plans and expected expenditure in retirement could be determined with greater clarity than at 29.

As I've said above, there was no imminent prospect of the BSPS2 entering the PPF, which would've ruled out a later transfer. On the contrary, the indication was that the BSPS2 would be successfully implemented. I've also thought very carefully about whether the service provided to Mr D was a balanced appraisal of the options available to him, coupled with a robust and candid discussion about his own concerns relating to the BSPS.

Mr D, amongst many others in a similar position, may have been concerned by developments relating to his employment and the BSPS, but he was nevertheless entitled to an impartial review of his options. And looking at those options, one of the key recorded objectives – early retirement – was, in my view, likely achievable within the BSPS2. For the reasons given above, I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2, and I'm satisfied that Mr D's income need likely could've been met by a blended and well-planned access to his different types of accrued benefits by the time he came to retirement. The available evidence simply doesn't support the position as to why control or flexibility would've been sufficiently compelling reasons for Mr D to relinquish valuable benefit guarantees – especially at 29.

My further view is that, if properly discussed, Mr D's concerns about the BSPS2 could've been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income flexibility which he simply didn't need or could in any case access in other ways, such as through his defined contribution plan, and a future pension which would be entirely dependent upon investment returns – rather than being partially dependent upon them as would otherwise have been the case through the defined contribution plan.

Death benefits were also payable from the BSPS2, albeit in a different format from those available from the personal pension. But for the reasons set out above, I don't think these should've been a more important consideration than Mr D's own retirement guarantees which he'd be relinquishing through the transfer.

The critical yield is usually a telling indicator of the value of the benefits being relinquished. Notwithstanding my comments about the critical yield likely being understated due to an incorrect assumption about the underlying advice charges, the critical yield was in any event higher than the discount rate and the mid band growth rate set out by the FCA, I think it was *unlikely to be achievable, year on year, to even simply match the relinquished safeguarded benefits. This position is supported by Wealthmasters' own analysis at the time. The justification for transferring was that it was nevertheless suitable in view of Mr D's stated objectives and the concerns about the BSPS. And whilst I accept that the critical yield isn't the only factor to consider when weighing the suitability of a transfer, I'm unconvinced by what Wealthmasters considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.*

Wealthmasters' view is that Mr D was intent on effecting the transfer. But he was relying on Wealthmasters to provide expert advice and advise him what to do. I think the advantages of Mr D maintaining his safeguarded benefits in the BSPS2 coupled with his misapprehensions about the PPF being suitably assuaged, would've persuaded him to do just that.

Wealthmasters said that it gave Mr D all the necessary risk warnings and that he was required to take responsibility for his decision to transfer. I accept that Mr D was given risk warnings and was more likely than not capable of understanding them. But it's important to note that disclosure isn't the same as suitability. If the recommendation to transfer was fundamentally unsuitable then the provision of risk warnings doesn't transform it into a suitable one. I don't disagree that properly informed, correctly advised individuals would be able to take that kind of responsibility and decide for themselves if they wanted to transfer their safeguarded benefits. The problem here is that this was a complex matter involving many factors with which Mr D, as a layman, wouldn't have been familiar – hence his reliance on a professional party to take those factors into account and provide suitable, balanced advice.

For the reasons given above, my view is that Mr D simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility. His decision to proceed may well have been borne of wider concerns relating to the financial viability of the BSPS2, but as I've said above, this was due to the absence of a detailed and balanced assessment of the scheme's attributes and prospects in the advice process. Taking account of Mr D's circumstances, risk profile, objectives and the guarantees provided by the BSPS2 and even the PPF, if required, my view is that Wealthmasters should've advised against the pension transfer. And I think that, had this happened, Mr D would've followed that advice and likely transferred to the BSPS2.

Conclusion

In its final response letter to this complaint, Wealthmasters said that the pension transfer was the only option available to meet Mr D's objectives. I disagree. For the reasons explained above, I'm not satisfied Wealthmasters demonstrated, on the contemporaneous evidence, that it adequately considered alternative options to meet Mr D's early retirement or death benefits objectives or why it was clearly in his best interests to relinquish his safeguarded benefits to achieve these. I'm also concerned that it appears to have misrepresented the true critical yield to match the relinquished benefits which meant Mr D made the decision to transfer from an uninformed position, further undermining the case for a pension transfer.

The key contributing factors here relate to inadequate consideration of alternative options to achieve Mr D's stated objectives, likely understatement of the true critical yield required to match the relinquished benefits, the unbalanced and misrepresentative portrayal of the value of Mr D's safeguarded benefits compared to the recommended pension transfer, exposing his significant retirement provision to more risk than he was likely willing and able to tolerate – all of which are a failure to adhere to COBS 2.1.1R, COBS 4.2.1, 9.2.2R, 19.1.2R, 19.1.6G, 19.1.7G and 19.1.8G."

In summary, my provisional decision was that it was fair and reasonable to uphold this complaint based on the available evidence. I went on to set out what I considered was fair compensation on the basis that Mr D had instead opted for the BSPS2. I asked both parties to this complaint to provide any further comments or evidence that they wanted me to consider before I made my final decision. I gave the parties until 29 March 2022 to respond.

<u>The Representative's response to my provisional decision</u>

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

<u>Wealthmasters' response to my provisional decision</u>

Wealthmasters didn't accept my provisional decision and provided substantial comments in response on 31 March 2022. Most of its comments repeated points previously made. It said that before making my final decision it wanted me to reassess all the available evidence and take into consideration several additional points. These additional points can be summarised as follows:

- When it advised Mr D, it adhered to all relevant FCA rules and guidance. And it treated him fairly throughout and always acted in his best interests;

- The situation concerning British Steel wasn't sudden. There had been discussions about the ongoing viability of the BSPS since 2016. So it was a topic of discussion amongst members long before it advised Mr D. Members were well informed about what was happening to the BSPS and their options. Therefore, it didn't agree that Mr D made the decision to transfer from an uninformed position;

- I had failed to consider a fourth option for Mr D which was to do nothing and remain a member of the BSPS. It would like me to explain why I didn't take this into account;

- It agreed that at 29 it was difficult for Mr D to predict with certainty what his retirement needs would be but the decision to transfer was forced upon him due to the changes happening to the BSPS;

- While it accepted my points about the incorrect critical yield figure presented to Mr D, it didn't believe this should in any way undermine its advice to transfer. It thought that I placed too much weight on the significance of the critical yield figure and discount rate applicable to Mr D's case. This was because the critical yield doesn't take into account member circumstances, objectives, health, income needs, lump sum needs, taxation position, financial dependants, financial knowledge, experience and attitude to investment risk. Furthermore, the FCA issued an alert in January 2017 which warned businesses on attaching too much weight to the critical yield figure;

- It cannot be proven at this time that Mr D is or will be in a financially worse off as a result of the pension transfer. Fund performance figures outperformed CPI over the past 25 years, suggesting that Mr D won't suffer a financial loss. In it opinion, the position cannot be established with certainty until Mr D takes benefits from his personal pension;

- The British Steel situation was unique. Mr D had felt betrayed by his employer and lost all faith in the steel industry. Nobody forced him to transfer to the personal pension. The decision he made to transfer at the time was his own and right for him based on his circumstances. It was satisfied that he could understand the documentation given to him. He didn't express any concerns with the pension transfer at the time;

- The FCA told it at a seminar that it accepted members had a deep mistrust of Tata Steel and so recognised transferring to obtain control of pension benefits was a valid reason to transfer. Mr D's objectives and concerns about the future of the steel industry couldn't be met or alleviated by transferring to the BSPS2 or PPF. It still believed that the only viable option was a pension transfer;

- It referred to Caroline Rookes' report titled *'Independent review of communications and support given to British Steel Pension Scheme members'* published in January 2019 and provided several excerpts from this that it considered to be relevant in deciding Mr D's complaint. It said that this report proved members were forced to make a decision but were well informed about what was happening to the BSPS and their options; and

- In the event that this complaint is upheld, it requested that the enhanced transfer value Mr D received be taken into account in the loss assessment calculation. Notwithstanding this point, it questioned how the Financial Ombudsman Service can direct it to assess Mr D's financial loss now when he hasn't yet retired, and the future value of his personal pension is unknown. In its opinion, the loss assessment should be delayed until such time as Mr D retires. And if this shows he's made a financial gain, as a result of the transfer to the personal pension, that the surplus be assigned to it because it doesn't consider it's done anything wrong.

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. I've carefully considered Wealthmasters' comments in response to my provisional decision. Generally, what Wealthmasters has said isn't new information. In deciding this complaint, I don't think it's necessary to respond to every point it's made but I consider it appropriate to make the following points.

In response to my provisional decision, Wealthmasters said that it adhered to all relevant FCA rules and guidance when it advised Mr D. I disagree. As explained in my provisional decision, it's my opinion that Wealthamsters failed to adhere to several FCA rules and guidance. To briefly recap:

- Wealthmasters' TVAS report didn't include the full range of charges applicable to the recommended pension transfer including the initial and ongoing adviser charge, meaning the critical yield figure disclosed to Mr D was understated, and therefore implying less investment growth was required to match the relinquished safeguarded benefits than was actually the case. In my view, the provision of an incorrect and understated critical yield figure to Mr D didn't adhere to the FCA's rules and guidance; and

- Wealthmasters continues to assert that a pension transfer was the only viable option for Mr D. It mentioned that in discussions with the FCA it was accepted that members had a deep mistrust of Tata Steel and so recognised transferring to obtain control of pension benefits was a valid reason to transfer. But for all the reasons previously given, I disagree – a pension transfer simply wasn't Mr D's only viable option here. It also failed to demonstrate, on the contemporaneous evidence, that it was clearly in Mr D's best interests to transfer rather than the alternative options to either maintain safeguarded benefits in the BSPS2 or the guaranteed benefits offered by the PPF. Therefore, he made the decision to transfer from an uninformed position. In my view, the inadequate assessment of alternative options to meet Mr D's objectives didn't adhere to the FCA's rules and guidance;

In summary, I concluded that Wealthmasters failed to adhere to COBS 2.1.1R, COBS 4.2.1, 9.2.2R, 19.1.2R, and didn't have sufficient regard for 19.1.6G, 19.1.7G and 19.1.8G when it advised Mr D. Nothing Wealthmasters has said in its response to my provisional decision changes my opinion on this.

With regard to the situation with Tata Steel and the BSPS, I acknowledged in my provisional decision that it was unique and a period of great uncertainty for individuals such as Mr D who were essentially forced to make a decision as part of the *'Time to Choose'* exercise. And I also recognised that he felt let down by his employer which led him to seek advice on whether to transfer out of the BSPS. I acknowledge that Mr D was provided information about his options before he met Wealthmasters. But, for the reasons explained, I thought Wealthmasters failed to provide a balanced assessment of the options available and ultimately the provision of suitable advice, as it ought to have done. Nothing Wealthmasters has said in its response to my provisional decision changes my opinion on this.

Wealthmasters has also said that there was a fourth option for Mr D which was to do nothing and remain a member of the BSPS. It would like me to explain why I didn't take this into account in my provisional findings. But on the first page of my provisional decision I explicitly stated that members that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. So I was aware of the outcome had Mr D decided to do nothing and took this into account. In my provisional findings I explained my reasoning about why I thought that, with suitable advice, the BSPS2 and not the PPF would have been the better option for Mr D.

Wealthmasters said that I placed too much weight on the importance of the critical yield in my provisional findings. I disagree. It was a regulatory requirement to calculate the critical yield at that time. Notwithstanding the fact that Wealthmasters produced and disclosed an incorrect and understated critical yield figure to Mr D, I explicitly stated that financial viability isn't the only consideration when giving pension transfer advice, as set out in COBS 19.1.7B (G). And that there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I then went on to look at those other considerations before provisionally deciding Wealthmasters' advice was unsuitable because it didn't clearly demonstrate – on the contemporaneous evidence – that it was in Mr D's best interests.

As for the proposed redress methodology, Wealthmasters requested that the enhanced transfer value Mr D received be taken into account. I can confirm that the transfer value paid to the personal pension should be used in the calculation. Wealthmasters believes that Mr D should be required to assign to it the surplus money in his personal pension if the loss assessment shows he hasn't suffered a financial loss. As previously explained, Mr D wouldn't be required to pay money to Wealthmasters in the event of a 'no loss' scenario; that simply isn't part of the FCA's redress methodology for unsuitable pension transfers. As for the timing of the loss assessment, it isn't appropriate, as suggested by Wealthmasters, to delay this until such time as Mr D draws benefits at 65 to align with the scheme normal retirement age under the BSPS2. The regulator's redress methodology makes no provision for delaying a calculation until the member's normal retirement date. This is in order to bring finality to such matters, without the member needing to wait until they retire. I also consider that it's fair and reasonable for a loss assessment to be carried out as soon as possible and on the basis I've set out below.

Putting things right

My aim is to put Mr D, as closely as possible, into the position he'd be in but for Wealthmasters' unsuitable advice. Reinstatement of Mr D's safeguarded benefits isn't possible. Therefore, Wealthmasters should undertake a redress calculation in line with the pension review guidance as updated by the FCA in its *Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.*

My view is aligned with that of our investigator in that, had Mr D been properly advised, he would've opted to transfer to the BSPS2 rather than the PPF. I'll explain why.

There would be a 10% reduction in the starting pension entitlement within the PPF, whereas the BSPS2 wouldn't reduce the starting entitlement for deferred members. The reduction for early retirement under the PPF was lower and the commutation factors for tax free cash entitlement were also more favourable than the BSPS2. And so, on the basis of prospective early retirement, both the starting income and the tax-free cash would likely have been higher with the PPF. But for the reasons set out above, I think it's likely that, properly advised, Mr D would've envisaged accessing his Tata Steel defined contribution plan in the first instance to make up any income shortfall in the period between 60 and 65 before starting to take his safeguarded benefits, which could then have been deferred until normal scheme retirement age of 65 (or as close as possible to 65, reducing the impact of an early retirement reduction). In terms of death benefits, if it later became relevant for Mr D, under the BPSP2 the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no tax-free cash was taken at retirement. Furthermore, Mr D had actually elected to transfer to the BSPS2 before he met Wealthmasters. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr D takes benefits at the scheme normal retirement age of 65. Wealthmasters may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D'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 BSPS on Mr D's SERPS/S2P entitlement.

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

If a payment into the personal pension isn't possible or has protection or allowance implications, it should be paid directly to Mr D as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr D's 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.

The compensation amount should where possible be paid to Mr D within 90 days of the date Wealthmasters receives notification of his acceptance of any final decision.

Further interest should be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 90 day period, that it takes Wealthmasters to pay Mr D.

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.

I think that this matter will have caused Mr D trouble and upset. He would naturally have been very concerned about a potential reduction in his pension benefits as a result of the unsuitable advice given to him. So I think Wealthmasters should pay £300 to Mr D in respect of this.

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

Determination and money award: I require Wealthmasters to pay Mr D the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount does not exceed £160,000, I would additionally require Wealthmasters to pay Mr D any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require Wealthmasters to pay Mr D any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Wealthmasters pays Mr D the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr D.

If Mr D were to accept this final decision on the above basis, the determination and money award would be binding on Wealthmasters. My recommendation wouldn't be binding on Wealthmasters. Further, it's unlikely that Mr D could accept this final decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept this final decision.

The loss assessment calculation must be provided to Mr D's Representative in an easy to understand format.

My final decision

I uphold this complaint. Wealthmasters Financial Management Ltd must redress Mr D as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 July 2022.
Clint Penfold
Ombudsman