DRN-3520242

The complaint

Mr T has complained that jch investment management limited (JCH) gave him unsuitable advice to transfer his defined benefits from his occupational pension scheme (OPS) – the British Steel Pension Scheme (BSPS) – to a self invested personal pension (SIPP).

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T's employer would be set up – the BSPS 2.

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 The main defined benefit OPS had been replaced by a new defined contribution scheme.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

A deadline was set for members to notify the scheme administrators as to their choice by December 2017.

Mr T was introduced to JCH by a colleague in June 2016. JCH completed a "fact find" document in July 2016, in which Mr T's circumstances were recorded as follows:

- He was 53, in good health and living with his partner. He had two financially independent children.

- He was employed by British Steel, earning £34,000 pa, and his partner was employed, earning £13,000 pa.

- He had £6,000 in cash savings, and outstanding loans and credit card debts amounting to around £25,500, for which his monthly repayments were approximately £600.

- Mr T's partner owned their home, valued at around £130,000, with an outstanding repayment mortgage of around £50,000 – this was paid for by his partner.

- Mr T had death in service life cover of six times' his salary, equating to approximately

£204,000.

- After expenditure, Mr T had approximately £1,000 left over each month.

- Mr T had completed over 20 years' service with the BSPS. He'd recently joined the defined contributions scheme, into which a total of 6% of his salary was being paid.

- Mr T's attitude to risk was recorded as being "balanced".

In terms of Mr T's deferred benefit entitlement, he had a normal retirement age of 65, at which point the transfer value analysis (TVAS) - required as a part of defined benefits transfer assessments at the time - said that he could expect an annual income of £24,475, or tax free cash of £113,000 and a reduced income of £16,945 pa.

If Mr T retired at age 57, the TVAS estimated that he would receive £12,298 pa, or a tax free lump sum of £57,000 and a reduced income of £8,514 pa.

Mr T had recently received a cash equivalent transfer value (CETV) from the BSPS for his deferred benefits of around £230,000. This was guaranteed until 12 October 2016.

Within a suitability report dated 3 August 2016, Mr T's objectives were recorded as follows:

- To control his pension fund. Mr T was concerned about the future of both his employer and the pension scheme.
- Flexibility with the level of income he would receive in retirement. Mr T wanted to semi-retire at age 57, working part time until his state pension began at age 67.
- To clear his debts by taking a tax free lump sum at age 55 – but not an income, which he'd need to take with the BSPS benefits.
- Although the amount of income he'd need was unclear, he planned for around £15,000 pa, consisting of £7,500 part time income and the remainder from pension funds.
- To maintain financial security, and avoid the possible scenario of the BSPS entering the PPF.
- The facility to manage the investment of his pension funds.
- He wanted the death benefits from his pension to be passed to his partner, and not be "lost" in the form of a 50% spouse's pension (should he marry his partner) from the BSPS. He also wanted to be able to leave his children an inheritance, should any pension funds remain.

The transfer value analysis (TVAS) indicated the amount of growth required by the transferred funds to match those being relinquished in the scheme – the critical yield. It concluded that the SIPP would need to grow by 13% pa to match the BSPS benefits at a retirement age of 65 on a tax free cash and reduced joint life pension basis. On a full joint life pension basis, this would be 14.7% pa.

At a retirement age of 57, the SIPP would need to grow by 27.9% pa to match the BSPS benefits on a tax free cash and reduced joint life pension basis. On a full joint life pension basis, this would be 37% pa.

A projection was also made of the required yield to match the PPF benefits. This showed that, for age 65, the SIPP would need to grow by 9.7% pa to match the PPF benefits on a tax free cash and reduced joint life pension basis. On a full joint life pension basis, this would be 10.1%

At a retirement age of 57, the SIPP would need to grow by 36.3% pa to match the PPF benefits on a tax free cash and reduced pension basis. On a full joint life pension basis, this would be 37.9% pa.

It was noted within the suitability report that, some years previously, Mr T had been advised to transfer his BSPS defined benefits away and that, following an internal investigation, the advising company had conceded that its advice had been poor and had reinstated Mr T's pension benefits in the scheme. But as Mr T was now a deferred member of the scheme, and following the introduction of pension freedoms, he wished to revisit the possibility of a transfer.

JCH recommended that Mr T transfer his deferred benefits in order for him to achieve his objectives, and Mr T accepted the recommendation. It further recommended that Mr T invest his pension funds in the "jch Balanced Investment Portfolio".

The fee to complete the transfer was 3% of the transfer value, which would be taken from the pension fund. There would be an ongoing adviser fee of the higher of 1% of the portfolio value, or £2,500.

Mr T's representative complained to JCH in March 2020, saying that Mr T was approaching retirement and that it was very likely that the recommended SIPP would have provided a lower income than he would have received from the BSPS2 or the PPF. It further said that Mr T's main objective was to ensure a secure income in retirement, which would have been met by retaining his defined benefits.

It didn't consider the stated objectives to have been genuine or personalised to Mr T and it didn't think Mr T's concerns about the BSPS and the PPF had been appropriately managed. It considered that suitable advice would have been for Mr T to remain in the scheme.

<u>*JCH's response to the complaint*</u>

JCH responded to Mr T's complaint as follows:

- The option of moving into the BSPS2 wasn't available until September 2017, and so as Mr T's transfer took place in October 2016, this wasn't relevant. A portfolio restructuring had been announced in May 2016, but unless the scheme was modified, the most likely outcome was that it would move into the PPF.

- It reiterated Mr T's stated objectives and that, due to concerns about his employer and the scheme, he chased JCH in July 2016 to learn of the transfer's progress – a testament to his keenness to proceed.

- As Mr T wasn't married at the time of the advice, neither his partner nor his children would benefit from the scheme death benefits. By contrast, the post transfer death benefits were available to all of them.

- When considering the suitability of the transfer, it considered Mr T's personal circumstances and it followed all the FCA's guidelines at the time, including the starting assumption that it wouldn't be in Mr T's best interests to transfer.

- Given Mr T's national insurance contribution record, he was likely to receive a high percentage of the basic state pension, which would cover his rental costs, but also the bulk, if not all, of his additional core expenditure. He would also benefit from his membership of the employer's defined contribution scheme, along with the associated death in service benefits.

- It was therefore clear that Mr T wouldn't be fully dependent upon the income from the BSPS.

- Mr T was paying his partner £300 pm for living expenses, which it was judged would be sufficient to rent a small flat/house in the same area should they separate.

- Mr T's attitude to risk was comprehensively reviewed, along with his capacity for investment loss. Whilst the latter wasn't high, on balance and taking into account all the relevant factors, Mr T remained keen to transfer his BSPS benefits.

- The differences between a defined benefits and defined contribution scheme were clearly explained to Mr T and he signed a replacement policy questionnaire to confirm his understanding of these.

- Although Mr T was a member of the defined contribution scheme, he didn't want to transfer his defined benefits into that scheme due to his mistrust of his employer.

- Due to the review of the previous advice given by another party to transfer his defined benefits, which led to their subsequent reinstatement, Mr T was fully aware of the guaranteed nature of the benefits he was relinquishing.

- Cashflow projections demonstrated that, if Mr T saved 50% of his surplus income, he would have a fund of around £106,000 at age 99, and £212,000 if all of it was saved.

Dissatisfied with the response, Mr T's representative referred the complaint to this service, and JCH provided further comments as follows:

- It wasn't Mr T's main objective to ensure a secure income in retirement. Flexibility was a key driver in his decision to transfer – and this was personalised to him rather being a "stock objective".

- Mr T wasn't told that he couldn't retire early if his pension entered the PFF, as had been suggested by Mr T's representative.

- It considered that Mr T wouldn't have accepted advice to not transfer, such was his mistrust of his employer and his desire to control his pension funds.

- The critical yields made it obvious that securing a better income in retirement was unlikely. And so if this had been the main objective, the transfer wouldn't have been recommended – and neither would Mr T have accepted it.

- Flexibility was key to Mr T, not just in terms of income, but also in accessing capital sums at age 55 to improve his overall financial position – for example repaying his unsecured debts.

- In September 2017, Mr T withdrew £7,500 to be supplemented by part time work. By September 2018 Mr T said he was now likely to retire at age 60, and had cleared the bulk of his debt using the tax free lump sum withdrawn in 2017, with only £2,000 outstanding. Mr T had also used the lump sum to boost his cash savings, and to pay for his wedding and holidays. So Mr T's objectives had been met.

- Mr T's recollection that he didn't require flexibility wasn't therefore consistent with what actually happened. Nor was his objective to match or better his BSPS pension through the transfer. He required £7,500 pa to supplement his planned part time income and state pension.

- Although Mr T was able to meet the pre-existing monthly debt repayments of £500 pm, he also wanted the peace of mind of reducing his overall debts – as in fact happened.

- Although Mr T had said that he might get married in the future, this wasn't a certainty at the time of the advice. He was, however, very concerned that his partner would receive a payment in the event of his death.

- Ironically, the transfer may have been the reason that he did then marry as he used the pension lump sum to pay for the wedding and honeymoon.

- The importance of Mr T's previous experience of a pension transfer had been underplayed by his representative. Mr T wasn't a naïve individual who had been taken in by sharp practice. His investment experience, including losses in bank shares and gains in others, had been discussed and he was comfortable with the prospect of investing in financial markets.

- The conversation around the previous defined benefit transfer was not only a reminder for Mr T of its associated negative aspects, but also a precursor to highlighting the risks and pitfalls of making a decision to transfer a second time. But these were compared to his objectives and needs.

- Mr T only needed £7,500 pa once his debts had been repaid, and taking into account part time working. Mr T was unconcerned that, by transferring and spending large capital sums early on, he would have lower pension benefits in retirement. He was aware that this was the "cost" for being able to spend money in a discretionary manner in his mid-fifties.

- The representative's assertion that the transfer wasn't necessary to meet Mr T's objectives was incorrect. It enabled Mr T to repay a large amount of his debt and pay for his wedding and honeymoon, buy a car, and still leave money to provide the income he needed in retirement.

- The recommendation considered more than just the stark comparison of the critical yield – it was holistic advice and followed the subsequently introduced Appropriate Pension Transfer Analysis (APTA). This recognised that pension transfer advice was more than just a financial comparison, and that a transfer could provide a client with choices they didn't have within the scheme. Mr T made it clear he wanted those choices and, since the transfer, he'd been able to meet his objectives.

- The last time it had met Mr T as a client, the pension fund had been able to provide his income of £7,500 pa.

One of our investigators considered the matter and thought that the complaint should be upheld. In support of this position, they said the following in summary:

- Mr T had accrued over 20 years' service with the BSPS. These benefits were relatively secure and would form a significant part of his retirement provision. This meant that the security of his defined benefits, which were at low cost to him, would have been important.

- The regulator's guidance when considering a transfer of defined benefits was that it should be presumed to be unsuitable unless it could be clearly demonstrated that it was in an individual's best interests.

- In determining whether this was the case, he first considered the required critical yield to match the scheme benefits.

- The advice had been given during the period in which this service was publishing information with which businesses could calculate future "discount" rates for complaints about transfers which were being upheld.

- Whilst businesses weren't required to use these when giving advice, they nevertheless provided a useful guide as to the kinds of returns deemed feasible at the time of the advice.

- The investigator noted that the discount rate was 2.8% pa for the period up to Mr T's semi-retirement, compared to a required critical yield to match the BSPS benefits of 37% (for the full joint life pension figure at age 65). The mid growth projection in the SIPP illustration document was 1.4% pa.

- This meant the potential to improve on the BSPS benefits was compromised – the critical yield was too high.

- So the investigator considered it unlikely that the SIPP would be able to return sufficient growth to improve upon the relinquished benefits. And to do so would have meant exposing Mr T's pension funds to a higher level of risk than the "balanced" risk rating recorded for him.

- Mr T had recently joined his employer's defined contribution plan, which would be dependent upon investment performance to produce the ultimate pension benefits. There were no guarantees with this plan, but it was to this type of arrangement which Mr T's defined benefits were also transferred, which increased his overall exposure to investment risk.

- The investigator considered the position with the consultation at the time, what JCH had said about his objectives and a discussion which was held about the alternative of the BSPS entering the PPF. With particular regard to the latter, the investigator said that they would expect a balanced discussion to have taken place, given Mr T's lack of trust in his employer and the pension scheme. It should have been explained to Mr T that he PPF was independent of his employer, and so his concerns in that regard could have been managed.

- Mr T had said that financial security was important to him, and although there would have been a 10% starting reduction in his pension income within the PPF, he would still have received a secure annual income in excess of £11,000 pa if he'd taken his pension at age 57.

- Whilst uncertain as to how much he would need as an income, it was agreed that this would be in the region of £7,500 pa. So a pension derived of the PPF would have amply covered this requirement. By contrast, the SIPP would have needed to grow at 37.9% pa to match the (full joint life pension) benefits which would be provided by the PPF.

- Mr T didn't in any case need to make any decision to transfer at that time. There was an ongoing consultation, and as no decision had yet been made on the future of the

BSPS, Mr T should have been advised to wait until the outcome was known.

- The investigator nevertheless looked at the other reasons as to why the transfer was recommended. They noted that Mr T withdrew approximately £59,000 in October 2017, which he allocated towards paying for his wedding and honeymoon. He also withdrew a further £21,500 to repay unsecured lending, buy a new car, fund holidays and top up his emergency savings.

- But the investigator didn't think that Mr T needed to use his tax free lump sum to fund this expenditure. Holidays weren't a necessity, and Mr T had disposable income of over £1,000 pm. He could have used this to fund non-essential spending and although he accepted that debt repayment would have been a priority, this could have been funded from the tax free lump sum arising from the BSPS benefits.

- In terms of death benefits, Mr T was due to get married and so his wife would have benefited from the scheme death benefits. Whilst the lump sum would have been higher with the SIPP, this would in any case be dependent upon the time of Mr T's death. Mr T was recorded as being in good health.

- With regard to the objective of flexibility rather than a fixed income, the investigator noted that Mr T had been recorded as wanting £7,500 pa from his pension at age 57 to help him semi-retire, and it was envisaged that he'd receive a further £7,500 pa from part time work. It had since transpired that Mr T hadn't in fact taken an income from his SIPP, and had continued to work full time.

- The investigator expressed concern that Mr T had relinquished a valuable pension which would have grown in real terms by way of yearly revaluation. But it was also a secure income, which Mr T had said he wanted, and the investigator wasn't persuaded by the rationale for relinquishing the BSPS benefits.

- The investigator set out the description of the balanced investor Mr T was recorded as being, and also noted that Mr T had some experience of direct shareholdings. Taking into account the actual asset allocation of the subsequent investments, the investigator didn't think that they were necessarily unsuitable for him, as a balanced risk investor.

- But the investigator nevertheless considered that JCH shouldn't have advised Mr T to transfer his BSPS benefits, as it wasn't in his best interests. Mr T was now in a worse position than he would've been but for the unsuitable advice, and if Mr T had retained his scheme benefits, the investigator said that he would have opted to join the BSPS2.

The investigator therefore recommended that JCH undertake a redress calculation in accordance with the regulator's guidance, on the basis that Mr T would ultimately have transferred into the BSPS2.

Mr T's representative agreed with the investigator's conclusions. But JCH didn't, saying the following in summary:

- When advising a retail client such as Mr T on whether to transfer defined benefits, it began by assuming that it wouldn't be suitable. It would only consider a transfer if it could clearly be demonstrated that it was in its client's best interests.

- The BSPS2 didn't exist until 12 months after the transfer recommendation, and the PPF wouldn't have fulfilled Mr t's objectives, taking all the risks into account, with which Mr T was fully conversant.

- Mr T already had full awareness of the risks and possible advantages of such a transfer before dealing with JCH from him having completed the same strategy – having previously transferred out of the BSPS and being compensated by another financial company. JCH referred to its response to the complaint and cashflow analysis which it said provided the full picture of the specific recommendation and how it achieved Mr T's goals.

- The point about Mr T having monthly disposable income of £1,000 was based on the difference between core expenditure and income. If that income wasn't being spent every month, Mr T wouldn't have had the debt he did, along with limited savings.

- It could only base its recommendations on Mr T's stated objectives – and he'd confirmed that it was his intention to use his pension funds to achieve his immediate and wider life goals.

- It fully outlined that the transfer wouldn't match the guaranteed benefits Mr T would be relinquishing but would provide the flexibility he needed then and the required income in retirement.

- JCH provided a holistic financial planning service for its clients rather than just looking at the numbers.

As agreement couldn't be, the complaint was referred to me for review.
I issued a provisional decision on the matter dated 4 May 2022, in which I set out my reasons as to why, in my view, the complaint should be upheld. My provisional findings are set out below:
"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

The applicable rules, regulations and requirements

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

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

The FCA's suitability rules and guidance that applied at the time JCH advised Mr T were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like JCH, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements COBS 9.2.2R, JCH needed to gather the necessary information for it to be confident that its advice met Mr T's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

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

COBS 19.1.2 required the following:

"A firm must:

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

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

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

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

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

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

COBS 19.1.7 also said:

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

And COBS 19.1.8 set out that:

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

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

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

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

I've therefore considered the suitability of JCH's advice to Mr T in the context of the above requirements.

JCH's rationale for transferring

JCH's advice pre-dated the outcome of the consultation on the future of the BSPS, and so Mr T hadn't yet received information relating to the "time to choose" exercise which began in late 2017. It's JCH's position that Mr T was sufficiently concerned about the future of the BSPS to make him keen to transfer (which I address below). But Mr T was nevertheless seeking advice on his options for meeting his objectives in terms of the potential transfer. Mr T wasn't categorised as an insistent client, and so JCH could be confident that he would be acting upon, or at least taking into account, its advice.

In accordance with COBS 9.2.2R, JCH undertook its fact finding for Mr T and then set out its assessment of his circumstances and objectives.

As set out above, in its suitability report JCH summarised Mr T's objectives as follows:

- *To control his pension fund. Mr T was concerned about the future of both his employer and the pension scheme.*
- *Flexibility with the level of income he would receive in retirement. Mr T wanted to semi-retire at age 57, working part time until his state pension began at age 67.*
- *To clear his debts by taking a tax free lump sum at age 55 – but not an income, which he'd need to take with the BSPS benefits.*
- *Although the amount of income he'd need was unclear, he planned for around £15,000 pa, consisting of £7,500 part time income and the remainder from pension funds.*
- *Maintain financial security, and avoid the possible scenario of the BSPS entering the PPF.*
- *He wanted the facility to manage the investment of his pension funds.*
- *He wanted the death benefits from his pension to be passed to his partner, and not be "lost" in the form of a 50% spouse's pension (should he marry his partner) from the BSPS. He also wanted to be able to leave his children an inheritance, should any pension funds remain.*

However, before I assess these, I think it would be prudent to assess the transfer from the perspective of any purely financial benefit – so in terms of actual likely payments to Mr T.

JCH obtained a TVAS report for comparison purposes to determine the viability of the transfer to meet Mr T's objectives from a financial perspective.

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

The discount rate deemed achievable for the years left to Mr T's proposed part time working age of 57 was 2.8% pa.

The critical yield for retirement at age 57 with the BSPS, at 27.9% pa for tax free cash and residual joint life pension, and that required to match the PPF benefits, at 36.3% pa, was therefore considerably higher than both the discount (or growth) rate deemed achievable over the same period, and the mid-band growth rate used by the regulator – 5% pa. JCH itself said that it considered the critical yields to match the scheme benefits to be unachievable.

And I agree. As with both JCH and the investigator, I'm not persuaded that the critical yields were in fact achievable, even at the scheme retirement age of 65, year on year, and certainly not for the proposed point of accessing benefits at age 57. And as a reminder, these growth rates were required to just match the scheme benefits.

To make the transfer suitable from a financial perspective, there needed to be a realistic chance that the benefits of the scheme could be bettered through transferring. And, in line with the DB transfer guidance at the time, it needed to be clearly demonstrated that the transfer would be in Mr T's best interests. JCH has said that it took this into account when assessing the suitability of a defined benefit transfer. As such, my view is that the transfer couldn't be justified from a purely financial perspective, especially given the valuable guarantees which Mr T would be relinquishing. But the feasibility of achieving a critical yield alone wouldn't in any case indicate suitability of a transfer, as set out in COBS 19.1.7B.

My understanding of JCH's position is that the basis of the recommendation was the benefit to Mr T in terms of other objectives being met - including flexibility of income and control, along with the different format of death benefits with a SIPP. It also said in the suitability report that the amount of income which would be produced by the scheme wasn't needed on a yearly basis – an income of £7,500 pa was deemed sufficient for Mr T's needs, which I acknowledge would require a lower critical yield to achieve.

On that particular point, I would say that, unless there was good reason – or reasons - to do so, it wouldn't be suitable to recommend a transfer which would reduce an individual's future income, simply because they might be able to afford to live on the lower amount. This would, for hopefully obvious reasons, be some way removed from providing a recommendation which was clearly in that individual's best interests. And there would be little point in taking a financial risk for the sake of it if the no-risk option could in any case address the individual's requirements.

But before I assess those other reasons to transfer in greater detail, I think it's firstly fair to say that JCH did provide warnings on the guarantees which would be relinquished. However, as JCH will be aware, risk warnings alone wouldn't render unsuitable advice suitable. And irrespective of the detail contained in a suitability report, this also wouldn't make otherwise unsuitable advice suitable. JCH needed to be satisfied, before providing its recommendation, that relinquishing the guarantees and taking the investment risk was a suitable course of action for Mr T.

<u>The requirement for flexibility</u>

As I've said above, JCH's reasoning for the recommended transfer was that Mr T required flexibility of income and capital lump sums due to his particular circumstances and objectives. And so I've given this argument careful consideration.

As a preliminary comment, I do acknowledge that Mr T was likely to have understood the principle of needing to take some risk to achieve the required reward, along with the discussions around such concepts that he may have had with colleagues – I note in that regard that Mr T had been referred to JCH by a colleague. Furthermore, Mr T had some experience of investing through shareholdings. And so I think Mr T may have had a reasonable understanding of the concept of risk/reward.

But I don't think that the experience with his shares would have imbued Mr T with knowledge or experience of pension investment matters, especially with such a specialised area as defined benefit transfers.

I've also thought about Mr T's capacity to take financial risks with his pension funds. My understanding is that Mr T had joined his employer's defined contribution scheme, but even so, given the limited amount of time until either age 57 or the scheme retirement age of 65, other than the state pension which wouldn't be payable until his late 60s, the defined benefits accrued through the BSPS would have been his only source of guaranteed income. Any reduction in the benefits payable from them would therefore have had an impact on his financial security in retirement. And this was a notable objective for Mr T.

Mr T had some savings, but also debts which would need to be repaid, and so in the absence of other notable resources, it's unlikely that he would have been able to sustain losses in his pension funds. But I've also in case thought about whether he needed to take such risks in the first place.

It's JCH's position that, given the unachievable critical yields, replacing one source of guaranteed income with another (eg an annuity) wasn't the objective here – rather, it was the facility for Mr T to withdraw income and access capital sums for various purposes, including debt repayment, flexibly. But the very likely incapacity of the transferred fund to match the scheme benefits is representative of the overall financial loss to Mr T here. And that would read across into the performance required of a flexi-drawdown fund within the SIPP to do the same. The only way of Mr T maintaining his pension funds to a reasonable age would be to withdraw less than he could have received as guaranteed income from the scheme.

I'm also concerned about inconsistencies in JCH's analysis of the scheme benefits which he might receive from the scheme at ages 57 and 65. In the suitability report, JCH said that, Mr T could expect a tax fee lump sum of £55,059 and a reduced pension of £19,686 pa at age 65. At 57, it said that Mr T could expect a lump sum of £27,671 with a reduced pension of £10,307 pa.

But according to the TVAS, the tax free lump sum at age 65 was projected to be close to £113,000, with a reduced income of £16,945. At age 57, the tax free lump sum was projected to be close to £57,000, with a residual income of £8,514 pa.

I note that JCH said that the figures it stated were approximations, according to the "online British Steel Pension Guide", and that the guide was out of date. But I've also seen email correspondence in July and August 2016 between JCH and the BSPS administrators in which figures for immediate retirement indicated that Mr T would receive a tax fee lump sum of £45,769, in addition to a residual pension of £6,865 pa.

This ought to have clearly demonstrated that the figures it obtained from the online guide were highly likely to be incorrect and that the TVAS was likely to be a much more accurate indication of the tax free lump sums and residual pension amounts which Mr T could expect from the scheme. I do note that the suitability letter did then refer to immediate retirement figures similar to those quoted above, and in a later section entitled "TFC Lump Sum at Retirement" said that the current lump sum available to Mr T would be £43,000, as opposed to the amount of £57,717 which would be available from the SIPP (albeit not until age 55).

But JCH didn't address the clear discrepancy between these figures and those quoted from the online guide in its communication with Mr T, or point out why the figures it had quoted for accessing scheme benefits at age 57 from the online guide were very likely to be incorrect. And I think that, in the absence of this being pointed out to Mr T, it's more likely than not that the figures for age 57 would have been those upon which he would have focused.

If Mr T was working on the basis that, at age 57 he would only receive £27,000 as a tax free lump sum from the scheme (and slightly less at age 55 if this was when he took the tax free lump sum), but he wanted to repay debts and pay for a wedding, holidays and a new car, *then I might understand why he would have considered the transfer to be the only way of doing so.*

But the reality was somewhat different. Mr T could in fact expect a tax free lump sum of somewhere between £45,769 (at age 54) and £57,000 (at age 57) at age 55 – say something in the region of £50,000. And I think from a financial perspective this means he could certainly have achieved much of his capital expenditure objective without needing to transfer. The additional £8,000 he took from the SIPP, if needed, could have been sourced from a combination of the defined contribution scheme pension funds and disposable income. Alternatively, given that Mr T had no difficulty in servicing the much higher debt of around £25,500 (at around £600 pm), he could have simply continued to pay down the much lower debt figure.

But even if a different interpretation of the above was possible, and Mr T understood the tax free lump sum available from the scheme would be higher than JCH had earlier quoted from the online guide, my view is that the availability of the higher lump sum is in any case significant, given that JCH's position seems to be that the only way of Mr T achieving his objectives – particularly the capital expenditure - was to transfer to the SIPP.

It's entirely possible that, on the basis of taking benefits one year later than the quote given by the administrators in August 2016, the annual income Mr T would receive from age 55 if he withdrew the tax free lump sum at that point would be in the region of £7,500 pa – the same amount which it was agreed he would need from age 57 to sustain him in conjunction with part time working. And by age 57, this would also have escalated to a higher amount – and indeed would have continued to do so until he died.

I also need to emphasise that these were guaranteed income amounts. And there's a clear follow on point here relating to Mr T's apparent keenness to have flexibility in income and access to capital sums. To sacrifice these guarantees for the sake of flexibility in an income which could never reasonably achieve the same value as that offered by the scheme, would not in my view be a suitable course of action. Mr T would effectively be swapping a higher guaranteed income for the sake of flexibility in withdrawing a lower overall income. And as Mr T would in any case have been able to access an approximate £50,000 capital sum from age 55 onwards to fund his other desired goals, I can't see that there was an advantage in terms of this objective from transferring.

It's fair to say that Mr T would have needed to withdraw the income from the scheme at the same time. But as I've said above, this would have begun at an escalating figure of something similar to what he said he would need by age 57. And if Mr T found himself in a position of receiving more income than he required, then he could have gifted this immediately to avoid it being subject to IHT if that was likely to have been an issue, used it to repay any remaining debt, or reinvested it for later access as he saw fit.

And so, without even needing to consider whether it was suitable for Mr T to take the investment risks associated with the transfer and subsequent reinvestment, I just can't see sufficient justification for him needing to do so in the first place. Even a high level of investment risk, for example primarily in equities with which JCH has said that Mr T was familiar through his prior shareholdings, would be highly unlikely to produce the returns required, year on year, to match the benefit of the scheme income. Quite apart from which, combining a guaranteed source of income with a measure of risk/reward investment through his defined contribution scheme membership would seem to me to represent a well diversified means of retirement provision which might have been suitable for someone like Mr T.

<u>Mr T's concerns about the scheme benefits entering the PPF</u>

JCH has said that Mr T was concerned about the prospect of the scheme entering the PPF. But Mr T's concerns should have been addressed and appropriately managed. I appreciate that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme, as appears to have been the case here, but as the professional party, the IFA is tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

I don't think this happened here. The extent to which Mr T's concerns were discussed and managed appears to have been as follows in the suitability report:
"You are aware there has been a lot of 'bad press' about the British Steel pension recently. The inadequate funding, talk of potentially reduced benefits and the possibility of entering the Pension Protection Fund (see below) has caused you considerable concern and you feel that you would be more comfortable holding your funds in an individual plan that is under your own control, rather than leave them with your ex-employer 'just in case' any of the issues come to fruition and benefits are reduced.

This having been said you should remember that given the required critical yield of 13% it is possible that the benefits that could be paid from the PPF may potentially be greater than those that could be paid from the transferred fund value."

JCH did then set out the particular features of the PPF, but this was fact based rather than offering reassurances in terms of the guaranteed benefits offered. And had such reassurances instead been given about the protections which would still be available, even in the "worst case" scenario of the scheme benefits needing to enter the PPF, I think Mr T would have viewed things differently.

It's also fair to say that the detail of any potential successor scheme, as an alternative to the PPF, is likely to have been lacking at this point in time. As I've said above, this advice predated the announcement in May 2017 relating to the RAA, but even if the BSPS entered the PPF, many important guarantees would remain. And my view is that, notwithstanding the particular features of Mr T's subsequent decision to access some benefits at age 55, which I address below, if Mr T had wanted to retire early or become part time and it was deemed feasible, he would in fact have been better off by transferring to the PPF rather than the BSPS 2. A reduction of 10% would apply to the benefits payable, but as illustrated by the critical yields for accessing pension benefits at age 57, the figure for the PPF was in fact higher than the BSPS, indicating a higher early retirement benefit within that scheme. And even on the basis of a 10% starting deduction, it's possible that those benefits would still have met his income needs.

But Mr T also didn't need to make any decision about whether to transfer until more details were known about the options which might later be available. My understanding is that there was no imminent prospect of the BSPS entering the PPF. And the consultation was geared towards the opposite outcome. But even once the options were known, members still had the choice of transferring out of the scheme, rather than being forced into the PPF.

So I don't think that these concerns, if appropriately managed, would have been sufficient justification to transfer at this time.

As it was, Mr T began accessing his SIPP benefits in 2017, before the "time to choose" exercise had completed. And so, on the basis that he would instead have begun accessing his scheme benefits, this would have been within the existing BSPS scheme rather than the BSPS2 or PPF.

Death benefits

Improving on this position was recorded as being an objective for Mr T. The death benefits offered by the transfer would be more beneficial to Mr T, his partner and his family – specifically his children. After the transfer, a lump sum would be payable to his beneficiaries, rather than in the form of spouse's pension from the scheme. I also appreciate that, although Mr T's partner would have benefitted from the spouse's pension provided by the scheme once they'd married, there was no certainty of this happening at the time of the advice.

But I have several concerns about this as a reason for transferring Mr T's benefits. Firstly, he had no particular health issues which would mean that death benefits, or any likelihood to not benefit from a pension income derived of the scheme for a reasonable amount of time, were of concern at that point.

The second is that, unless there are significant other resources on which an individual could rely upon in retirement, which wasn't the case here, accrued pension provision is primarily intended to provide for an individual's retirement rather than a desire to leave a legacy for a partner or family members. The recommendation needed to be given in the context of Mr T's best interests.

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

I've also seen no detail as to why a death benefit payment to his partner or children from his pension was so important to Mr T - for example, financially straitened circumstances or some kind of financial dependence. Mr T's partner seemed to be financially independent, with there being evidence in the form of him paying "rent", along with his partner not being included in the financial planning discussions, that their finances were to an extent in any case separate. And there was no record of Mr T needing to provide for his children as part of his normal outgoings – they were independent. I therefore think that it was more likely than not an entirely understandable desire to leave some kind of financial legacy, but not essential, and certainly not of sufficient importance to justify Mr T compromising the security of his own financial future.

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

The previous transfer of defined benefits

I think this is an important point which merits its own consideration. JCH has referred to a prior transfer of benefits which was recommended by a third party, and following a review of that advice, it was deemed to be unsuitable and Mr T's benefits were reinstated in the scheme.

JCH has pointed to this as being evidence that Mr T was familiar with the dangers and risks of a defined benefit transfer. And this is quite an attractive position with which I have some sympathy. Mr T can surely have been in no doubt that transferring defined benefits might not be the suitable course of action for him – it had after all been previously demonstrably against his best interests.

But I've also thought carefully about the proposition here, and how that differed from the transfer when it occurred some years prior to the advice being considered in this instance. The circumstances were by 2016 quite different, and as noted by JCH in the suitability letter, Mr T was by then a deferred member and pension freedoms had since been introduced.

And JCH also said in the suitability report that, although Mr T had some prior experience of investing, "you feel you are still not knowledgeable enough to make your own investment choices and that you would much prefer to "leave the financial decisions to experts".

And so, on balance, whilst I accept that Mr T would have been aware that there were risks associated with the transfer, he would have reasonably considered the situation to be quite different from that which he'd been in before – and he was nevertheless reliant upon JCH to provide him with a suitable recommendation. I don't therefore think that this particular factor mitigates my overall findings on the suitability of the advice.

<u>What should JCH have done – and would it have made a difference to Mr T's decision?</u>

There were understandably concerns relating to the BSPS at the time of the advice - and I fully acknowledge this. It's undeniable that this was a period of great uncertainty for individuals such as Mr T. But this only serves to emphasise the need for a balanced assessment of the options available and, ultimately, suitable advice.

Furthermore, as I've said above, there was no imminent prospect of his scheme benefits entering the PPF, which would have ruled out a later transfer. It would have been better for him to await further detail as to the prospects for the BSPS, whether this was a transfer into the PPF, or as was ultimately the case, the further option of transferring into the BSPS2.

I've also thought very carefully about whether the service provided to Mr T 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 T, 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 any case achievable within the BSPS2, and would have remained so even in the "worst case" scenario of entering the PPF. And it's likely that, on the basis of early retirement, Mr T would in fact have been better advised to enter the PPF. But as set out above, Mr T began accessing his SIPP benefits in 2017, before the end of the "time to choose" exercise, and so I think he would in fact have simply accessed the scheme benefits in their existing format.

For the reasons given above, I don't think the perceived advantage of flexibility of income and capital sums outweighed the guaranteed benefits in the scheme. Given that the lump sum which would have been produced by the scheme would have largely met his capital expenditure objective and the income would also have met his estimated requirement, the available evidence simply doesn't support the position as to why flexibility within a SIPP would have been a sufficiently compelling reason for Mr T to relinquish valuable benefit guarantees. And he would have needed to invest in a manner which exceeded even his recorded balanced risk rating to try to achieve the required returns to replace the scheme benefits. Put simply, transferring placed him an overall financially worse position.

My further view is that, if properly discussed, Mr T's concerns about the existing scheme could have been successfully allayed, such that he appreciated the important guaranteed benefits, even under the PPF, which he would be relinquishing for the sake of income and *capital access flexibility which I don't think he needed, and a future pension which would be diminished as a result of losing the scheme guarantees.*

As I've said above, tax free cash for the intended purposes would have been available from his defined benefit pension funds. Death benefits were payable from the defined benefit scheme in a different format from those available from the SIPP. But for the reasons set out above, I don't think this should have been a more important consideration than Mr T'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. And as the critical yields to just match either the PPF or BSPS benefits were considerably higher than the discount rate, the regulator's mid (and indeed higher) rate growth assumptions, I think it was unlikely to be achievable, year on year, to even simply match the scheme benefits. This position is supported by JCH's own comments on that point.

The justification for transferring has been that it was nevertheless suitable in view of Mr T'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 JCH considers to have been the overriding justifications for proceeding with the transfer, for the reasons given above.

JCH's view is that Mr T was keen on effecting the transfer, and that he would in any case have proceeded even if advised not to. And I accept that, prior to meeting with JCH, Mr T may have considered that transferring was his best option, especially if he had been referred by a colleague who may have done the same. But this was JCH's opportunity to take proper account of Mr T's circumstances and objectives and advise him not to do so, for all the reasons set out above.

I certainly acknowledge that it wouldn't be straightforward to effectively "undo" any preconceptions held by Mr T about what he considered to be the benefits of transferring. But I think the advantages of Mr T retaining his scheme benefits, if set out in terms similar to those above, would more likely than not have persuaded him to do just that. And I think any concerns about the pension scheme, especially relating to the prospect of it moving into the PPF, would have been assuaged if properly managed.

In terms of the responsibilities of Mr T in deciding whether to still proceed (and as I've said above, I accept that Mr T was given risk warnings and was more likely than not capable of understanding them), I don't disagree that properly informed, correctly advised individuals would be in a position to take that kind of responsibility and decide for themselves if they wanted to transfer their defined benefits. The problem here is that this was a complex matter involving many factors with which Mr T, as a layman on pension matters, wouldn't have been familiar (even taking account of his experience in shareholdings and the prior transfer) – hence him seeking the services of a professional party to take those factors into account and provide suitable, balanced advice.

For the reasons given above, my view is that Mr T simply wasn't placed in a properly informed, or suitably advised, position to be able to take that kind of personal responsibility.

Mr T's decision to proceed may well have been borne of wider concerns relating to the financial viability of the BSPS, and as asserted by JCH, his mistrust of his employer, 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 T's circumstances, including his attitude to risk, his objectives and the guarantees which the BSPS offered and would have persisted with either the BSPS2 or the PPF, my view is that JCH should have advised against the transfer.

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

Summary

For the reasons given, my view is that a fair and reasonable assessment of this case leads to a conclusion that the recommendation to transfer wasn't suitable for Mr T, nor was it in his best interests. The key contributing factors here are: Mr T's attitude to risk and its incompatibility with the type of investment risk which would have been required to match the scheme benefits – a failing under COBS 19.1.7; and the lack of a comprehensive and balanced portrayal of Mr T's options and the future benefits available from both the BSPS defined benefits and defined contributions – a failure to adhere to COBS 19.1.2 (2) and 19.1.8.

Furthermore, at least two of the key benefits sought by Mr T were available without needing to transfer – early retirement and a tax free lump sum for his planned expenditure, which would have been available to him through the BSPS (or indeed through the PPF).

It follows that my view is that, taking account of those critical yields, Mr T's balanced attitude to risk with regard to his pension funds and matching that with the likely corresponding investment returns, it was unlikely that the benefits available from the BSPS, or a successor scheme, could be bettered through the transfer. As the other reasons for transferring were in my view insufficiently compelling, when considered against the valuable benefits being relinquished, as required by COBS 2.1.1R and COBS 19.1.6, JCH would - or should - then have drawn, and conveyed, the conclusion that transferring wasn't in Mr T's best interests.

Putting things right

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

As set out above, my current view is that, had Mr T not transferred his pension funds to the SIPP, he would have begun taking his benefits from the existing BSPS scheme in 2017, rather than from the successor BSPS2 or the PPF.

As such, the calculation on the basis of Mr T starting to withdraw his BSPS benefits at the same time as he began accessing those within his SIPP, with full tax free cash withdrawal at the outset, should be carried out using the most recent financial assumptions at the date of any final decision along these lines.

JCH may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr T's SERPS/S2P entitlement.

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T 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 have been taken as tax free cash and 75% would have been taxed according to Mr T'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 must where possible be paid to Mr T within 90 days of the date JCH receives notification of his acceptance of any final decision.

Further interest must 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 JCH to pay Mr T.

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.

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

Determination and money award: In the event that I uphold this complaint, I would require JCH to pay Mr T 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 JCH to pay Mr T any interest on that amount in full, as set out above.

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

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

If Mr T were to accept a final decision on the above basis, the money award would be binding on JCH. My recommendation would not be binding on JCH. Further, it's unlikely that Mr T could accept my decision and go to court to ask for the balance. In the event that the complaint is ultimately upheld, Mr T may want to consider getting independent legal advice before deciding whether to accept any final decision."

In response, JCH commented on my findings, saying that it understood the financial reasoning within the provision decision, but wished the following points to be taken into account:

- The advice allowed Mr T to achieve all of his financial and life requirements, whilst still providing the income required in the future.
- The advice clearly demonstrated that the critical yield couldn't be attained, but this wasn't the driver for his lifestyle/debt or emotional needs.
- The requirement to leave benefits for his beneficiaries was a major factor in Mr T's decision making, whilst also facilitating the income he needed in retirement.
- The diversity in his portfolio ensured that his risk tolerance was met and it continued to do so to date.
- That Mr T was in good health at the time of the advice was no guarantee that he would continue to be in the future.
- Accessing his BSPS income at the same time as taking the tax free cash would have resulted in an unacceptable actuarial reduction of around 50%.
- The PPF was discussed in meetings and in the suitability report.

Mr T's representative also submitted further comments, saying the following:

- In October 2017, Mr T accessed approximately £59,000 tax free cash to repay his outstanding loans, credit card debts and to pay for his wedding, with the remainder being placed on deposit as he'd witnessed his SIPP funds decline in value by around £8,000 over the year since transferring.
- Mr T has continued to work for British Steel, but on a part time basis since April 2022. He's been drawing around £1,000 pm from the SIPP to supplement his part time income.
- Mr T had no pressing need to access his tax free lump sum in 2017. He had some cash savings and was managing his debts with an income/expenditure surplus of £1,000 pm.
- Mr T was therefore able to manage his debt and finance his wedding without accessing his tax free lump sum, and had he not transferred his defined benefits, he wouldn't have needed to access his BSPS early, or at least not as early as he did.
- The aim of the redress was to place Mr T as close to the position he would otherwise have been but for the business' error. It was inappropriate to assume that, had Mr T retained his defined benefits, he would have taken the same actions as he did in relation to his SIPP.
- The representative therefore requested that it be made explicit that Mr T's losses should be calculated to age 65.
- On the basis that, had Mr T not transferred he wouldn't then have accessed his pension benefits in 2017, the representative requested that separate redress calculations be performed assuming that he would have entered the BSPS2 and the PPF, and that the higher redress sum be paid to Mr T. This would, the representative said, reflect the choice Mr T would have made in accordance with whichever produced the greater benefit.
- The calculation for a hypothetical transfer into the PPF should also take into account the proposed "buy out" which would remove the pension funds from that scheme.
- The representative requested that when the redress calculation was performed, a breakdown of the figures be sent to it.

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.

To firstly address the points made by JCH, I note that it's said that the advice enabled Mr T to achieve his financial and life requirements, whilst still providing the required income. But for the reasons given in the provisional decision, other than the lump sum death benefit which I'll address further below, Mr T was also able to meet his key objectives, including the tax free cash and estimated required income, through taking his scheme benefits.

JCH said that it made it clear that the critical yield couldn't be attained, with which I agree, but again, for the reasons given in the provisional decision, my view is that the other reasons given wouldn't justify the transfer.

In that regard, JCH has focussed on the death benefits for Mr T's beneficiaries, but for the reasons set out in the provisional decision, I didn't think that the prospect of a financial legacy for his family should have subjugated his own financial security in retirement. My view on this remains the same, and whilst I take the point that good health in 2016 didn't mean that this would endure in the future, the advice needed to be given based on Mr T's contemporaneous circumstances and objectives.

Had Mr T been in particularly poor health, such that a limited life expectancy and lump sum death benefit would more likely than not have provided an overall great financial return for both him and his beneficiaries, my view may have been different. But this wasn't the case here, and as far as I'm aware, Mr T continues to enjoy good health.

As to the actuarial reduction in Mr T's income if he took benefits at the same time as the tax free cash, this reflects the fact that Mr T will ultimately have been paid the scheme income for longer. As I said in the provisional decision, that starting income would nevertheless have met Mr T's estimated retirement needs and was both guaranteed and escalating – for life. As I also said, if Mr T didn't need the income, he could have gifted it away, or invested it for future access, but it seems that Mr T has since begun part time work and is regularly withdrawing from his SIPP – and so the income which could have been provided by the scheme is in any case likely to have been of significant benefit before Mr T began to receive his state pension.

JCH has also said that the PPF was discussed in the meetings held and detailed in the report. But my view on that aspect is unchanged from that set out in the provisional decision. Turning then to the points raised by Mr T's representative, I'm afraid I don't agree that it should be assumed that, but for the transfer, Mr T would have deferred accessing his scheme benefits until age 65. Mr T's objective in terms of repaying his not insignificant unsecured borrowing – at around £25,000 and consisting of both loans and credit card debt, the former, if not both, of which is very likely to have been charging interest - was clearly set out in the suitability report. And I think this was an entirely reasonable and likely key objective – this wasn't expenditure on a whim which might well have been deferred until later. And whilst I also acknowledge that Mr T was able to service the debt from his income, being able to service a debt and wanting to either significantly reduce or eliminate the interest payable on that debt are two different considerations.
This debt repayment couldn't have been covered by the £6,000 which Mr T was recorded as having on deposit, and so he would have needed to access his tax free cash to meet this objectives. This in itself would have required Mr T to begin taking scheme benefits.

But there's the additional expenditure on Mr T's wedding and subsequent holidays which also needs to be taken into account. It's difficult for me to definitively determine whether Mr T married *because* he had access to the tax free cash after the transfer, or whether this was something which he would in any case have done. But I think it's just as likely as not that marriage was an emotionally led decision, rather than being financially led. And so he would have needed to access cash to pay for it. By September 2018, Mr T was recorded as having around £10,000 on deposit, which is consistent with what his representative has said about him placing the remaining tax free cash on deposit as a result of witnessing declines in the value of his SIPP.

But assuming that Mr T had spent around £25,000 on unsecured debt repayment, if there was only an excess tax free sum of £10,000, his wedding and subsequent holidays are likely to have cost significantly more than the £6,000 Mr T was recorded as having on deposit in 2016.

My view remains, therefore, that it would be fair and reasonable for an actual loss calculation to be undertaken on the basis that Mr T would have begun to receive scheme benefits at the same time as he began receiving them from the SIPP. This would have been before the "time to choose" exercise concluded to determine whether a member wished to transfer to the BSPS2 or the PPF. And so considerations relating to these latterly available options don't apply here.

Summary

My view on this complaint remains the same as that set out in the provisional decision and for the reasons set out in that decision and expanded upon above. On a fair and reasonable basis, I consider that Mr T would have suitably advised to retain his benefits in the BSPS and that he would then have begun to access them as he did in 2017 – and thereafter.

Putting things right

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. jch investment management limited must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of this final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of the decision.

As set out above, my view is that, had Mr T not transferred his pension funds to the SIPP, he would have begun taking his benefits from the existing BSPS scheme in 2017, rather than from the successor BSPS2 or the PPF.

As such, the calculation on the basis of Mr T starting to withdraw his BSPS benefits at the same time as he began accessing those within his SIPP, with full tax free cash withdrawal at the outset, should be carried out.

jch investment management limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a ‘SERPS adjustment’ in the calculation, which will take into account the impact of leaving the occupational scheme on Mr T’s SERPS/S2P entitlement.

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

If a payment into the pension isn’t possible or has protection or allowance implications, it should be paid directly to Mr T 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 have been taken as tax free cash and 75% would have been taxed according to Mr T’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 must where possible be paid to Mr T within 90 days of the date jch investment management limited receives notification of his acceptance of this final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of that 90 day period, that it takes jch investment management limited to pay Mr T.

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.

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 jch investment management limited to pay Mr T 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 additionally require jch investment management limited to pay Mr T any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require jch investment management limited to pay Mr T any interest as set out above on the sum of £160,000.

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

If Mr T accepts this decision, the money award will be binding on jch investment management limited. My recommendation would not be binding on jch investment management limited. Further, it’s unlikely that Mr T could accept my decision and go to court to ask for the balance. Mr T may want to consider getting independent legal advice before deciding whether to accept this final decision.

My final decision

My final decision is that I uphold the complaint and direct jch investment management limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 July 2022.

Philip Miller
Ombudsman