Grant Thornton

Pension Transfer Advice to British Steel Pension Scheme ("BSPS") members by FCA-authorised firms

Report dated 18 March 2022

Contents

1 Introduction

INSTRUCTIONS

1.1 We have been instructed by the Financial Conduct Authority ("FCA") to prepare a report which analyses the information available to pension transfer specialists ("PTS")/advisers and British Steel Pension Scheme ("BSPS") members during the "Time to Choose" period, and which sets out the steps a competent and reasonable PTS should have taken, in this period, when advising BSPS members and identify any changes that occurred during that period.

1.2 For the purposes of this report, we consider a competent PTS to be one who meets the criteria laid out in Appendix II in respect of relevant qualifications and experience, as required by the FCA.

1.3 In preparing this report, we have considered and relied upon the documents and correspondence listed in Appendix III.

1.4 Specifically, we have been instructed to address the following questions:

Risks of a transfer

Question 1: What steps should a reasonable pension transfer specialist have taken to assess the specific risks of transfer from BSPS? Please do this by reference to the information available about:

- a the (general) risks of a pension transfer
- b the (general) risks of a DC scheme
- c the specific risks of remaining in the BSPS scheme (PPF option) and
- d the risks of transfer to the BSPS2 scheme.

Question 2: In particular:

- a What information or documents should have been obtained, in order to properly understand the risks of transfer (in general) from BSPS to BSPS2, the PPF or to a DC scheme
- b (Having regard to the information required by COBS 9.2.2R(2) and (3)), what further information should a reasonable PTS have obtained in order to advise a member, depending on their financial situation and investment objectives?
- c What should a reasonable PTS have said or done, in the absence of information (whether because the information was unavailable or contradictory or uncertain) about the options available at the time of the advice?

Question 3: On the basis of having the information identified above in question 1 please explain:

- a What particular risks (other than the general risks of a transfer you have identified in response to Q 1 above) of transfer to a DC scheme should a reasonable adviser have identified?
- b What particular risks of (i) staying in the scheme and moving into the PPF or (ii) moving to BSPS2 should a reasonable adviser have identified?
- c What particular risks (if any) might arise depending on the member's circumstances (eg age, state of health, vulnerability)?

Assessing suitability

Having regard to the FCA's guidance in COBS 19.1.6G, COBS 19.1.7G, 19.1.7AG, 19.1.7B and the suitability requirements in COBS 9 and industry standards as in force at the time, when giving a personal recommendation:

- a **Question 4:** What reasonable steps should a PTS have taken to comply with the requirement in 9.2.2R(1) to ensure that the recommendation is suitable, and that:
  - i the firm has a reasonable basis for believing that the client has the necessary knowledge and experience to understand the risks involved in the pension transfer
  - ii the firm has a reasonable basis for believing that the client can financially bear the risks of transfer to achieve their investment objectives
- b **Question 5:** What reasonable steps a PTS should have taken to assess the suitability of the BSPS2 or PPF options for the client.

Examples of suitable personal recommendations

Question 6: Having regard to the suitability requirements in COBS 9 and COBS 19 and industry standards as in force at the time, and taking into account your experience carrying out BSPS file reviews, when giving a personal recommendation, provide illustrative examples of:

- a The range of client types (taking into account age, marital and employment status and explaining attitude to transfer risk, financial experience, their financial situation, plans for retirement income and expenditure and knowledge and experience) to whom a reasonably competent PTS would (absent special circumstances) have recommended transfer out of the BSPS to a DC scheme;
- b The range of client types to whom a reasonably competent PTS may <u>not</u> have recommended to transfer out of the scheme.

Please explain why transfer is suitable for clients referred to in (a) but not those in (b) and where the line may be drawn between the clients in each paragraph.

Communications with the client

Having regard to any relevant guidance including COBS 19.1.7AG and COBS 19.1.7BG at the time

Question 7: What should a PTS have told a client in relation to the risk of transfer:

a to comply with the requirement in COBS 19.1.2R to provide the client with information about the specific benefits and options under the ceding scheme and the effect of replacing them with the benefits and options in the proposed scheme to ensure that the client understands the comparison between the benefits of both PPF and BSPS2 and transferring to a DC scheme; and

b What additional information would you expect to be included in a suitability report to explain the advantages and disadvantages of transfer (COBS 19.1.8G) to a DC scheme vs the PPF/BSPS2 options.

Question 8: What other material information would you have expected to have been disclosed in relation to the Time to Choose options and the circumstances surrounding BSPS at the time?

Change over the relevant period

Question 9: Taking into account the timing of member communications during the Time to Choose period:

a What impact would any new information from BSPS trustees have had on your analysis above?

b What impact would any new information from the FCA or other regulators had during the time period?

c Please indicate what information would likely have a substantive impact and the relevant time period.

1.5 If further information is produced and brought to our attention after publication of this report, we reserve the right to revise our opinions as appropriate.

2 Background

THE BRITISH STEEL PENSION SCHEME ("BSPS")

2.1 The BSPS, established after the privatisation of British Steel, was a defined benefit ("DB") pension scheme, which provided members with a safeguarded inflation proof income for life. The income level from a DB pension scheme is a prescribed amount, calculated by reference to the member's number of years' service and final salary (at the date of taking benefits or leaving the scheme). In 2007, Tata Steel UK Limited ("TSUK") became the owner of British Steel and sponsor of the BSPS, which was one of the largest DB schemes in the UK, with c.130,000 members. According to December 2015 figures, the scheme had assets of £13.3 billion and liabilities of c.£14 billion, so had an estimated deficit of around £700 million on a technical provisions basis.[1]

2.2 In March 2016, in the face of adverse conditions in the global steel market, the TSUK board announced that it would explore strategic alternatives for its UK business, including the potential sale of the business as a whole or in parts.[2] This announcement attracted responses from many different stakeholders and public bodies, and the Government launched a consultation in May 2016 to explore what might be done to help the BSPS. Following agreement between TSUK and trade union representatives, in March 2017 the BSPS was closed to future accrual, meaning that no new members could join and existing members could no longer build further benefits.

2.3 In May 2017, the Pensions Regulator ("TPR") and the Pension Protection Fund ("PPF") announced that they had agreed, in principle, to the key terms of a Regulated Apportionment Arrangement ("RAA") in relation to BSPS. Following TPR clearance in August 2017, it was publicly announced in September 2017 that TPR had granted formal approval for the BSPS to enter into a RAA. TSUK agreed to establish a new pension scheme ("BSPS2"), and to pay £550 million; to be divided between PPF and BSPS2.

REGULATED APPORTIONMENT ARRANGEMENT ("RAA")

2.4 In the event that a sponsoring employer of a DB pension scheme is at serious risk of insolvency (as was the case with TSUK), the Pensions Regulator will typically work closely with the employer, scheme trustees and PPF to identify and achieve the best available outcome for the scheme. Under pensions law, an RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme. Usually this will result in the scheme's controlled entry into PPF assessment, however the scheme may be sufficiently funded to buy out members above PPF provision levels; or members may be offered the opportunity to transfer to a new scheme which offers benefits lower than those of the old scheme, but higher than PPF compensation.[3]

RAAs are only appropriate in rare circumstances and require a stringent set of criteria to be met, including the inevitability of the sponsoring employer's insolvency. The PPF has its own set of entrance criteria, very similar to those of the Pensions Regulator, which includes a requirement that the scheme or the PPF receives equity in the restructured employer. Once the link between the sponsoring employer and the pension scheme has been severed, the liabilities of the scheme usually pass to the PPF.

"TIME TO CHOOSE"

2.5 On 11th September 2017, the BSPS announced[4] to its members that the separation of BSPS from TSUK, agreed under the terms of the RAA, was complete. It set out that: "BSPS members now have two options: to switch to a new scheme (the New BSPS) providing the same benefits as BSPS but with lower future increases, or to remain with the current BSPS and move into the Pension Protection Fund".

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[1] Department for Work and Pensions BSPS public consultation May 2016
[2] Tata Steel Europe Corporate News July 2016 https://www.tatasteeleurope.com/corporate/news/tata-steel-announces-developments-of-strategy-for-european-businesses
[3] quick-guide-raas.ashx (thepensionsregulator.gov.uk)
[4] https://www.bspensions.com

At that time the BSPS stated that "the benefits offered by New BSPS are expected to be better than PPF compensation for the vast majority of current pensioners and for many other members. The New BSPS will go ahead only if certain qualifying conditions are met."

2.6 Members were sent newsletters outlining the proposals and the timetable for consultations, and the BSPS established a dedicated website to provide information and answer FAQs, to assist members with their choice. Members were also invited to attend meetings at locations across the country, where they were given the opportunity to discuss their options in more detail.

2.7 Members were sent option packs, detailing personal information and illustrations, by October 2017 and were told that they had until December 2017 to make their choice. This choice was presented to all BSPS members in the form of the "Time to Choose" campaign, which effectively ran from October 2017 to December 2017.

2.8 Relevant information and correspondence with members is listed at Appendix III.

OPTION 1: BSPS2

2.9 Under the terms of the RAA, TSUK agreed to establish a new pension scheme: BSPS2. BSPS2 is a closed DB pension scheme in which members cannot build up future benefits beyond those already accrued. Sponsored by TSUK, it offers members the same benefits that they had in BSPS with the exception of future annual increases (relating to both deferred pensions and pensions in payment), which are less generous than the BSPS.

2.10 Details of the proposed modified benefits were outlined in the Trustees' letter to members of 26 May 2016. This explained that pensions in payment would still have increases at least equal to those required by law. Deferred pensions would have future increases calculated by reference to the Consumer Prices Index rather than the Retail Prices Index.

2.11 The Time to Choose packs issued in early October 2017 confirmed the increases to pensions in payment to be at least as generous as the PPF, depending on service dates, and pension increases in deferment to be more generous in most cases

OPTION 2: THE PENSION PROTECTION FUND

2.12 The PPF was founded as part of the Pensions Act in 2004 and acts as a 'lifeboat' for DB pension schemes, effectively acting as a single pension scheme. It pays compensation to members of eligible DB pension schemes, for their lifetime. The compensation levels are 100% for pensions in payment and 90% for deferred pensions, which until July 2021 was subject to an overall cap.

2.13 The PPF is funded by levies on DB pension schemes subject to its protection, assets of funds it takes over and returns on its investments.

2.14 As part of the move to the PPF following an RAA, a valuation is carried out that will take account of the funding position of the scheme. This is known as the "PPF assessment period". If the scheme does not have enough funds to secure the future benefits for all members at a minimum level, it will transfer to the PPF completely and the PPF will assume responsibility for pension payments. If the scheme is sufficiently funded to secure the future benefits for all members at a minimum level, it will go through an insurance buyout to secure members compensation that is equal to or higher than the level of compensation that the PPF would pay.

A THIRD OPTION: A DB PENSION TRANSFER

2.15 Whilst not presented by BSPS as a formal third option, it was highlighted in the Time to Choose documentation that members with more than one year until reaching pensionable age could (instead of opting for BSPS2 or the PPF) transfer out of the scheme. This would involve requesting a transfer quote, known as a Cash Equivalent Transfer Value ("CETV"), choosing another pension arrangement and making a valid transfer request. The CETV could be transferred into a Defined Contribution ("DC") pension scheme and, in line with the Pension Schemes Act 2015, members wishing to transfer were required to obtain advice from an FCA-regulated PTS if the transfer value was more than £30,000,.

2.16 Information about this third option could be found on the BSPS website and in Information Packs issued to members. Some unions also presented pension advice services to their membership.

2.17 From April 2017 the transfer value basis changed to reflect a revised investment strategy which was explained at the time as due to 'developments in connection with the future of the scheme'[5].. For members more than two years away from retirement this meant that the calculated CETV would increase. The increases became more significant the further away a member's age was from the BSPS Normal Retirement age. This means that members who had requested a CETV in 2016 might have seen a significant uplift in the CETV if requested again after April 2017.

2.18 Throughout 2016 until 25 August 2017 an 8% reduction was applied to calculated CETVs to help address underfunding in the scheme. In August 2017 this was changed to a 5% reduction[6].

2.19 At the same time the early retirement factors and cash commutation factors were revised to be more favourable.

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[5] Letters sent out to members in receipt of a CETV statement advising that changes were being made to the calculation methodology (March 2017)

[6] Transfer Values - Important Update 25 August 2017

3 Response to questions

RISKS OF A TRANSFER

Question 1: What steps should a reasonable pension transfer specialist have taken to assess the specific risks of transfer from BSPS? Please do this by reference to the information available about:

a the (general) risks of a pension transfer

b the (general) risks of a DC scheme

c the specific risks of remaining in the BSPS scheme (PPF option) and the risks of transfer to the BSPS2 scheme.

d the risks of transfer to the BSPS2 scheme.

3.1 We would expect a reasonable and competent PTS to have obtained and considered all relevant information available in relation to the benefits which would be available under the existing BSPS scheme (PPF option), compared to the benefits which could be available under the new BSPS2 scheme or upon transfer to a DC scheme. Whilst this information would have enabled the PTS to become generally aware of the proposed changes to the member's DB benefits should the member remain in the scheme or transfer to BSPS2, we consider that most of the subsequent steps in assessing the risks of transfer from BSPS (either to BSPS2 or a DC scheme) would be with reference to the specific circumstances of the member, and how the BSPS situation and options could impact them personally.

3.2 However, there are general risks associated with the transfer of benefits from a DB pension scheme, which we consider a PTS should be aware of, and take into consideration, when giving pension transfer advice to members:

a. The (general) risks of a DB pension transfer

Loss of safeguarded benefits (transfer risk)

3.3 Upon transfer, the member's pension moves from an environment where the benefits paid are safeguarded, with reference to the scheme accrual rate, their length of service and final salary – irrespective of how the scheme's investments perform – to an environment where the benefits payable are not guaranteed and may fluctuate. The member takes on the risk, previously borne by the DB scheme, that the value of their pension assets may fall, and, depending on the nature of the receiving DC product and investments, they may face the risk of running out of money during their lifetime.

3.4 It should be noted that a transfer of assets out of a DB scheme to a DC arrangement is almost certain to be irrevocable, ie the ceding scheme is extremely unlikely to accept a reinvestment of previously transferred out monies. This exacerbates the inherent transfer risk.

Investment risk

3.5 Transferring out of a DB pension scheme to a DC scheme also transfers investment risk from the DB scheme to the member. The value of benefits available in a DC environment is largely dependent on the investment performance of the underlying funds. The member therefore bears the risk of the receiving DC scheme not performing sufficiently to match the benefits that would be available from the DB scheme. This could result in the member being financially worse off in retirement than they would have been had they remained in the scheme.

Mortality risk

3.6 Where a member takes benefits from a Defined Benefits scheme, the income is generally guaranteed until the member's death at which point it would cease. There is a risk that if the member dies within a certain time period of the income commencing, they may not have survived long enough to receive the full capital value of their benefits from the scheme. This risk can be mitigated somewhat as most Defined Benefit schemes also incorporate dependants' benefits which would be paid after the member's death which could include:

- a spouse/partner income set at a percentage of the member's initial benefits and paid until the spouse's death or (in some cases) remarriage.
- children's benefits, set at a percentage until their age of financial independence usually 21, or 23 if the children remain in full time education. Children with special needs may qualify for additional support.
- a guarantee period, set at the point the member commences benefits, during which the member's benefits would be paid, at the original level, for the total of the guaranteed term (typically 5 or 10 years), regardless of whether the member survived for that time period. In the absence of dependants, any residual monies owing after the member's death would be paid to the member's estate.

3.7 It is noteworthy that dependants' benefits would generally only be payable where the member has an eligible spouse or other dependants. Therefore, the degree of mortality risk is typically greater for a member without a spouse or other dependants.

Inflationary risk

3.8 The benefits payable from a DB scheme are usually inflation proofed to some extent and will benefit from at least statutory inflationary increases over the member's lifetime (in deferment and in payment). Upon transfer, any increases in future income payments, to keep pace with inflation, may not be sustainable if investment returns are insufficient to maintain the fund value required to generate the increased level of income. This increases the risk that the member's income may not keep pace with inflation, or that the fund value will be depleted over the member's lifetime.

Loss (or depletion) of dependants' benefits

3.9 Dependants' benefits are usually safeguarded within the DB scheme, but this guarantee is irrevocably lost on transfer. Upon transfer, any future dependants' benefits are dependent on the investment performance and terms of the receiving DC scheme. There is a risk that a spouse/partner and/or dependants may be left without any benefits if the value of the fund is depleted within the member's lifetime, as a result of insufficient investment growth and/or excessive withdrawals.

Costs and charges

3.10 In a DB scheme, administration and investment charges are borne by the scheme and/or trustees and will have no impact on the member's benefits. On transfer to a DC scheme, any adviser charges, fund charges or management charges, will be deducted from the member's pension fund.

b. The (general) risks of a DC scheme

Investment risk

3.11 Any future income and/or lump sum payments will be entirely dependent on the investment performance of the underlying funds within the receiving DC scheme (together with the impact of charges). If the performance of the selected investment strategy is insufficient, there is a risk that the value of the pension fund will deplete. The member may need to amend their future income/quality of life expectations or reduce their withdrawals from the scheme in order to preserve the fund value; or risk the fund value being depleted during their lifetime and leaving them with an income shortfall.

3.12 It is possible to mitigate investment risk somewhat by selecting a receiving arrangement or investment strategy which incorporates some form of guarantee. Alternatively, a transfer to an arrangement with the intention to immediately vest benefits by purchasing an annuity would significantly mitigate any investment risk. In these examples, where the aim of the transfer is to access arrangements which provide some element of guarantee, we would expect the PTS to clearly demonstrate why it is more beneficial for the member to give up the guarantees provided by the DB scheme, when it appears that guarantees would be appropriate for the member.

Mortality Risk

3.13 Where a member uses the transferred benefits to purchase an annuity, a similar mortality risk applies to that associated with benefits paid from a DB scheme – ie if a member dies in the early years of retirement there is a risk that they may not receive in income the full capital value of the annuity benefits. This risk could be mitigated by incorporating additional guarantees into the annuity contract, for example:

- Spouse/partner benefits which would continue to pay a percentage of the annuity income for the remainder of the spouse/partner's life in the event of the member's death.
- A guarantee that the original level of annuity income will be paid for a selected period, typically 5 or 10 years, even if the member dies during that time.
- Capital protection, which guarantees that a proportion of the original capital used to purchase the annuity would be returned to the member's estate/dependants in the event of their death.

Longevity risk

3.14 The longer the member lives, the greater the financial burden on the DC scheme, which means the greater the risk of the fund running out within the member's lifetime – especially if investment performance is insufficient to sustain the member's withdrawals. This risk is not present if an individual remains in a DB pension scheme and takes a scheme pension, because the scheme is obligated to pay the member an income for life.

3.15 It is possible to mitigate longevity risk with careful consideration, and monitoring of, the member's investment strategy, withdrawal levels and evolving circumstances, to ensure, as far as possible, that withdrawals are sustainable over the long term.

Cost (and charges) risk

3.16 A DC scheme generally incurs costs for which it levies charges, which could include product charges, administration charges and investment charges, and these charges are borne entirely by the member. Over time the cumulative effect of these charges can become materially significant and could result in depletion of the fund value if the performance of the scheme is insufficient to offset the impact of the charges. Where a member engages a financial adviser, initial and ongoing adviser charges (for ongoing support and advice), may also be paid out of the scheme, which could further impact the value and sustainability of the DC scheme.

3.17 Legislation requires that consumers take advice from an FCA-authorised adviser where the CETV is above £30,000. The FCA requires that DB transfer advice is given or checked by a PTS. In our experience, PTSs advising on DB pension transfers often charged an initial fee for their advice which was contingent on a transfer proceeding. We consider that where a contingent fee was charged (or where ongoing adviser charges applied), this posed a potential conflict of interest and consequently gave rise to the risk that unsuitable recommendations to transfer were made by some PTSs.

c. The specific risks of remaining in the BSPS scheme (PPF option)

3.18 Following the assessment period, if the scheme was to transfer to the PPF, deferred members could see a reduction of their benefits to 90% of the pension payable. In late 2017, when the Time to Choose exercise was taking place, PPF benefits were also subject to an overall cap (although following a court hearing[7] in July 2021, the cap no longer applies). Pensions already in payment continue at the same level although the future increases may be reduced.

3.19 If the scheme entered the PPF, members would be unable to transfer their benefits out. Therefore, the member would be unable to subsequently transfer to a DC scheme with flexible benefits if this was deemed a suitable course of action in the future.

3.20 Whilst it was stated, in documents from BSPS, that the process to assess whether the scheme would enter the PPF (known as the assessment period) would commence in March 2018, there was uncertainty at the time regarding the timing and duration of the process. Any members who were anticipating retiring around that time period would therefore have had some uncertainty as to how and when benefits could be accessed. If the scheme did not enter the PPF, then any restriction on member's transferring their benefits out would cease.

d. The risks of transfer to the BSPS2 scheme

3.21 Whilst initial benefits would not be reduced by transferring to BSPS2, it was proposed that future increases would be less than those offered by the existing BSPS scheme, although it is noted that any future increases would be at least as generous as those offered by the PPF[8]. We have addressed issues regarding the timing of when PTSs could reasonably have become aware of details regarding the BSPS2 scheme in our responses to Questions 8 and 9.

3.22 The BSPS2 scheme was not certain to go ahead unless there was a certain level of take-up amongst the members, and therefore there was a risk that insufficient take-up would lead to the proposed scheme not proceeding.

3.23 As a result of the RAA, it was agreed that the proposed scheme would take a significant equity stake in TSUK[9]. Consequently, there was a risk to the future funding of the scheme if the financial difficulties of TSUK continued, and therefore a possibility that the BSPS2 scheme could move to the PPF at some point in the future.

3.24 Any future transfer out request from BSPS2 would likely result in a lower CETV when compared to that offered by the BSPS scheme, to reflect the fact that the overall benefits, particularly future increases, would likely be lower in the new scheme[10].

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[7] Hughes Judgement

[8] Time to Choose document p2

[9] Parliamentary Research Briefing 5 June 2020

[10] http://bspensionschoose.com/faq.html

Question 2: In particular:

a. What information or documents should have been obtained, in order properly to understand the risks of transfer (in general) from BSPS to BSPS2, the PPF or to a DC scheme;

BSPS

3.25 It is noteworthy that around the Time to Choose period there was significant media attention regarding the BSPS scheme, and therefore the PTS should reasonably have been aware that there were additional considerations in relation to the funding of the scheme and potential future changes to it. As with any possible DB pension transfer, the PTS should have obtained general information about the scheme, including scheme rules, to understand generally how benefits such as income, Pension Commencement Lump Sum "(PCLS", or 'tax free cash') and dependants' benefits and future inflationary increases were calculated. Given the well-publicised concerns around the financial viability of the BSPS, the PTS should also have obtained funding information in the form of trustee documents and updates, as well as the various press releases from the trustees and the website updates.

BSPS2

3.26 The information required in relation to BSPS2 would be similar to that required for the BSPS scheme as outlined above, in order for the PTS to establish how the member's benefits could change if they opted to move to the new scheme. This would enable the PTS to understand the general risks involved in this, such as the potential for lower inflationary increases in the future, which could impact the benefits which the member would receive in retirement. The PTS should also have gathered information, as and when it was released from the trustees in the form of letters to members or updates in the media or on the BSPS pension website, in relation to the likelihood and possible timescales of BSPS2 going ahead. In particular, the PTS should have carefully noted the deadline by which the member needed to make a choice between PPF and BSPS2 (22 December 2017).

PPF

3.27 We consider a PTS should have had a general working knowledge of the benefits available under the PPF, and detailed information regarding how benefits are payable from the PPF would have been available on the PPF website. It would also be useful for the PTS to understand the process and timescales involved in cases where there is potential for a scheme to enter the PPF. In particular, a PTS should understand the impact of any reductions to a member's benefits on entering the PPF, as well as information regarding inflationary increases, details regarding early retirement factors and dependants' benefits, and how these factors differ from the BSPS scheme in general.

DC scheme

3.28 As the recommendation of a specific DC scheme should not be made until the PTS had considered the member's specific circumstances, we would not expect the PTS to gather any information regarding a specific DC scheme at this point. However, a PTS should be aware of the general features of a DC scheme, including that eventual benefits are dependent entirely on the performance of the investment funds/strategy used and the impact of charges, and that underperformance of this strategy could lead to a depletion of the fund value, and the possibility of the member running out of monies in their lifetime, or of experiencing an enforced decline in their quality of life to prevent this. Consideration should also be given to the potential impact on any dependants who may require income or capital sums after the member's death. The PTS should also be aware of the general methods by which benefits can be paid from a DC scheme, and how these are taxed.

Question 2: In particular:

b. (Having regard to the information required by COBS 9.2.2R(2) and (3)), what further information should a reasonable PTS have obtained in order to advise a member, depending on their financial situation and investment objectives?

Essential Facts

3.29 In addition to information regarding the ceding scheme, we consider essential facts about a member to include:

- Details regarding the member's marital situation and, for both member and spouse/partner (if applicable), the following:
- Date of birth
- Employment status
- Residency status
- Tax status
- Health status and/or details of vulnerability, including anticipated reduced life expectancy
- Details of financial dependants
- Details regarding the proposed receiving scheme including charges and investment strategy (obtained from the introducing adviser if a two-adviser model is to be used where the introducing firm is providing advice on the receiving scheme and/or investment strategy to be used).

Information requirements for transfer analysis

3.30 The FCA's requirements and guidance in relation to a transfer analysis comparison are set out at COBS 19.1.4R to COBS 19.1.4BR, COBS 19.1.2R(1) and 19.1.3G(2), and COBS 19.1.3G(1)). Of particular note is the requirement that the firm must collect information on the benefits payable and options available under the ceding arrangements and the benefits payable and options available under the proposed arrangement, and the effect of replacing the former with the latter. We outline below examples of the nature and type of information which, in our opinion, the firm would need to obtain in order to prepare a transfer analysis which meets these requirements.

- Member information - In order to run an accurate comparison of the scheme and what would happen on transfer the firm would, at a minimum, need the member date of birth, marital status and preferred retirement age.
- Ceding scheme information - In addition to the cash equivalent transfer value and the pension at date of leaving (split into service tranches), any PTS running a comparison would need to know the format of benefits from the scheme. Such information would include but is not limited to; the normal retirement age and the spousal benefits on death, how the pension would increase both before retirement and in payment, any commutation factors. If the member wanted to retire early or draw a lump sum then the scheme early retirement and commutation factors, if available, would be needed.
- Depending on the timing of advice for BSPS members, a PTS may not have had access to all information. If the PTS did not have the full facts we consider it reasonable to have assumed that BSPS2 would provide statutory minimum increases in line with the Pensions Act 1995[11]. This would be the equivalent to the PPF increases but without any cap or reduction.

[11] Pensions Act 1995 (legislation.gov.uk)

- Receiving scheme information - The PTS should have obtained the costs and charges for both the product and the underlying investments within the proposed arrangement including making allowance for any ongoing adviser charges.

Investment objectives

3.31 In order for a PTS to accurately assess a member's investment objectives, we would expect them to gather the following information:

- the likely income and lump sum requirements throughout retirement, with reference to the member's overall financial needs and objectives. In circumstances where the member is some way from retirement, we would expect a PTS to take steps to make a reasonable estimation of these.
- Anticipated/preferred retirement age if earlier (or later) than the scheme's Normal Retirement Date (NRD).
- Any expectation of reduced/part time working hours over the term to retirement, which may indicate a requirement for flexibility.
- Details of the member's objectives in relation to providing income or lump sum benefits to any dependants on death.
- The member's attitude to investment risk. Whilst there are no specific regulatory requirements regarding how this is ascertained, in our experience, many PTSs use risk profiling tools and/or software to assist with this process. In line with FG11/5, where a PTS chooses to use risk profiling software, the outputs of this software should not be relied upon in isolation. We consider it best practice for the PTS to discuss the outputs with the member and have robust and detailed discussions to challenge any discrepancies or inconsistencies and to validate the member's understanding. These should include personalised, client-specific conversations about the volatility of investment returns, the effects of investment under performance and the impact of adverse market conditions or a stock-market crash, and the extent to which the member is willing and able to accept these risks in return for the potential of higher returns.
- Although the explicit requirement to assess Attitude to Transfer Risk ("ATTR") did not come into force until 2018, we consider the requirements at COBS 9.2.2R, to obtain information regarding the member's preferences regarding risk taking, effectively obliged a PTS to establish the member's attitude to the risks inherent in a pension transfer as outlined in our responses to Q1 (a).

Knowledge & Experience

3.32 The PTS should gather information regarding the member's previous experience in financial matters, including:

- The number and type of financial transactions, whether any advice was received in relation to these (including experience or advice on DB transfer).
- Any relevant employment/industry experience. We note that many members of the BSPS scheme had been in the same employment for the majority, if not all of their working life. We would expect a PTS to consider this context when assessing the member's attitude to transfer risk and weigh up how much value the member attaches to a regular, guaranteed, secure income. We would expect the PTS to take this into account when determining client specific characteristics, which may indicate a more cautious approach to taking risk.
- Experience of managing investments (including other DC pensions) and/or receiving advice from a professional adviser in relation to this.

Financial Situation

3.33 We consider that it is rarely possible for a PTS to demonstrate the suitability of a pension transfer by only taking into account the DB scheme under review, without any consideration of the member's wider financial circumstances. We consider a rare exception to this could be where a member is in very poor health and their death is anticipated in the short term. In such circumstances the member may wish to urgently alter the shape of the death benefits which their dependants would receive and therefore the member's wider financial situation may not be considered not relevant to this point. In accordance with FCA rule COBS 9.2.2R(3), to be able to demonstrate that the transfer is in the member's best interests, we would expect a PTS to gather the following information regarding the member's financial situation:

- Information regarding the member's income at the point of advice, including the sources of this income and any potential future changes.
- Details of the member's expenditure at the point of advice, including a consideration of essential and non-essential expenditure, and an assessment of how this could reasonably change in the term to, and throughout, retirement. This could include, for example, a consideration of likely reductions in expenditure as a result of the redemption of debt (eg mortgage repayment), lifestyle changes or because children may become non-dependent over time. Where the expenditure information indicates that the member has a surplus of income, we would expect the PTS to consider the member's other assets (such as savings) to establish whether this amount is truly surplus, or is used for other purposes, such as lifestyle or discretionary expenditure; and to what extent this might continue into retirement.
- Details of the member's liquid and non-liquid assets, including values, any regular contributions and investment fund details where relevant. We would also expect a PTS to make reasonable assumptions regarding how these assets could contribute to the member's future objectives, alongside pension income, including projected future values of investments where relevant.
- Where a member is married or cohabiting, we would expect the PTS to start with an assumption of a degree of financial interdependence. As such, the PTS should be cognisant of the fact that the spouse/partner may also have a degree of reliance on the DB scheme under review and seek to obtain similar information in relation to the spouse/partner's financial situation. This is particularly relevant where flexible or lump sum death benefits for dependants are noted as an objective of the transfer. The PTS must obtain financial information relating to the spouse/partner to be in a position to verify the nature and importance of these objectives. We do not consider it appropriate for the PTS to proceed with a personal recommendation (to transfer or remain) without being in possession of pertinent information pertaining to the spouse/partner. The rare exception to this is where the member specifically states that there is no financial interdependence with their spouse/partner and confirms that the spouse/partner has sufficient retirement provision of their own. It is not sufficient for the member to merely state that they wish to keep their finances separate from their spouse/partner, just for the purposes of the DB scheme under review.

Question 2: In particular:

c. What should a reasonable PTS have said or done, in the absence of information (whether because the information was unavailable or contradictory or uncertain) about the options available at the time of the advice?

3.34 We consider FCA rule COBS 9.2.6R to be particularly relevant here. It provides that if a firm does not obtain the necessary information to assess suitability, it must not make a personal recommendation to the client.

3.35 The guidance issued by the FCA, in force during the Time to Choose period (and remaining in place now), setting out that the starting position for pension transfer advice is that a transfer is unlikely to be suitable, is also very relevant. As outlined at the time in COBS 19.1.6G, the onus was (and is) on the PTS to demonstrate that a transfer, as opposed to remaining in the DB scheme, was in the member's best interests. In our opinion this is very difficult if the PTS is not in possession of all the relevant information noted above.

3.36 We acknowledge that BSPS members, and their PTSs, were under a certain amount of time pressure during the Time to Choose period. However, we note that the scheme updated the FAQs on its website on 29 November 2017, confirming that members in receipt of CETVs with an expiry date after 1 December 2017 would automatically receive an extension of their CETV guarantee period to 26 January 2018. In our view, this extension is likely to have provided the PTS with valuable additional time to obtain the necessary member and scheme information to provide a suitable personal recommendation.

3.37 Where information was unavailable at the point the PTS was preparing to give a personal recommendation to the member, we would expect the PTS to consider and document the following points and questions, as regards the member's position:

- Is the missing information material to providing a personal recommendation to the member in relation to their BSPS DB benefits? If the information is deemed non-material, we consider it reasonable, in principle, for the PTS to have proceeded with a personal recommendation to the member. An example of non-material information could be details of a spouse's modest DC pension benefit, where it has already been demonstrated that the member and spouse have sufficient other guaranteed pension provision to cover their expenditure in retirement, and where other factors, such as attitude to risk and a need for income flexibility, support a transfer. In our view the additional DC pension benefit, held by the spouse in this example, would serve only to reinforce the suitability of a recommendation to transfer.
- If the missing information is deemed material, we would expect the PTS to ascertain whether and how the information could become available at some point in the near future, and, therefore, whether the advice could/should have been delayed until this point.
- Could the missing information be reasonably inferred or estimated based on reasonable assumptions? For example, if the member and/or spouse held other DB benefits where a benefits statement was delayed, could these benefits be reasonably estimated by reference to salary, length of service and publicly available scheme details?

3.38 We would expect the PTS to take reasonable steps to obtain or clarify any contradictory or unknown material information. Reasonable steps could include:

- The firm speaking with the member and/or spouse to clarify contradictory information.
- Requesting additional relevant documentation from, for example, the member, spouse, ceding scheme or proposed receiving scheme.

Two-adviser Model

3.39 In some instances, a firm may not hold the necessary permissions to provide Pension Transfer Advice and may therefore refer the member to another firm who is able to do so. The referring firm may retain responsibility for the investment advice, including selecting and recommending the receiving scheme. The FCA's rules do not prevent this; however, it expects the two firms to work with the same information about the member and have in place robust processes to ensure this happens.

3.40 Where a two-adviser model is used, each firm should make the arrangement clear to the member, who should be able to understand the roles and responsibilities of each firm, as well as their respective charging structures, and how to make a complaint about the services provided by either firm.

3.41 We also consider that although the responsibility for providing advice regarding the receiving scheme and investment strategy may lie with the introducing firm, the PTS should have knowledge of the proposed arrangement in order to assess the suitability of the pension transfer in line with the requirements at COBS 9. We consider it is rarely possible for a PTS to provide compliant pension transfer advice without this information; the rare exceptions could include where the member is intending to fully encash their pension benefits following the transfer and therefore the features of the receiving scheme, apart from allowing this course of action, would be less relevant.

3.42 In cases where the member has been introduced to the PTS by another regulated adviser, in our experience, it is common for the introducing adviser to provide member details to the PTS in the form of a 'fact find', meeting notes and other documents recording the member's financial circumstances. We consider it reasonable for the PTS providing the recommendation on the pension transfer to be able to rely on this information, but to revert to the introducing adviser to clarify any inconsistencies or contradictions in the information provided. However, we consider that it may also be helpful for the PTS to contact the member directly where this is deemed necessary.

3.43 We have observed instances where the PTS providing the pension transfer advice has no direct contact with the member throughout the advice process. In our opinion, the inability of the PTS to clarify inconsistencies, verify information or validate objectives increases the possibility of unsuitable transfer advice being presented to the member.

3.44 Where a PTS and introducing adviser are working together, we consider it good practice to have a clear agreement in place to determine how and by whom any missing or contradictory information should be obtained, and/or clarified. This agreement should include a requirement for the introducing adviser to inform the member of the pension transfer advice process, the importance of having all relevant material information and to manage the member's expectations.

Question 3: On the basis of having the information identified above in question 1 please explain:

a What particular risks (other than the general risks of a transfer you have identified in response to Q 1 above) of transfer to a DC scheme should a reasonable adviser have identified?

b What particular risks of (i) staying in the scheme and moving into the PPF or (ii) moving to BSPS2 should a reasonable adviser have identified?

3.45 We consider the particular risks of transfer to a DC scheme would best be considered by an adviser as part of their client-specific advice process, which are addressed in the responses to Q4 and Q6. The particular risks which an adviser should have identified regarding staying in the BSPS scheme and moving into the PPF assessment, or moving to BSPS2 are addressed, in addition to the information outlined in Q1, in, Q2(a), and Q5.

Question 3: On the basis of having the information identified above in question 1 please explain:

c. What particular risks (if any) might arise depending on the member's circumstances (eg age, state of health, vulnerability)?

Age – Significant term to retirement

3.46 We note that at present, (in the absence of any retained protected retirement age) an individual is unable to access their pension benefits prior to 55 years of age, increasing to age 57 from 6 April 2028. Therefore regardless of the member's preferred or anticipated retirement age, where a transfer is made prior to age 55, there will be an absolute minimum number of years before they are able to access either lump sums or income from their pension schemes.

3.47 Where a member is a significant number of years from their preferred or anticipated retirement age, there may be a risk that the member and/or PTS could take a view that the DB benefits are not likely to make a significant contribution towards the member's retirement, and therefore may not place sufficient emphasis on preserving any guarantees which have been accrued. Depending on the member's circumstances, it is possible that future accrual of pension benefits may not materialise, meaning that any benefits accrued to the point of advice could constitute the majority of the member's specific retirement provision.

3.48 We consider it likely, in principle, that the further a member is from retirement, the less definite their plans for retirement may be, and the greater risk that their stated objectives may change in the term to retirement. There is also a greater risk of significant changes to the member's circumstances including, but not limited to, marital status, financial dependants, financial situation, or even anticipated inheritances. As such, there is a risk that any irrevocable decisions made in relation to retirement provision, such as the transfer of a DB scheme to a scheme with flexible benefits, may adversely impact the member's future retirement plans.

3.49 There is a risk that over the term to retirement, the member may not be afforded the opportunity to join another scheme which accrues guaranteed benefits. Instead, all subsequent pension accrual (apart from state pension benefits) may be in the form of DC scheme benefits, exposed to the associated risks and reliant on future investment performance, as detailed in Q1 (b).

3.50 Where a relatively young member also has a cautious attitude to investment risk and invests in funds commensurate with this cautious attitude, this could increase the member's exposure to inflation risk. If investment performance is insufficient to keep pace with inflation, the transferred funds will lose value in real terms. This impact of this loss will be compounded over the long term. This risk would likely be lower if the member had a balanced or adventurous attitude to investment risk, which, whilst over the longer term may lead to returns above inflation, may also expose the member to greater investment return volatility.

3.51 A longer term to retirement, coupled with insufficient or poor investment performance, can also compound the impact of any charges (eg product, investment, or adviser) deducted from the DC scheme.

3.52 There is also the risk to the member of unknown or unforeseen changes to legislation or taxation, in the period to retirement, which could impact retirement benefits available from either a DB or DC scheme. For example, new legislation could increase the minimum age required to access pension benefits, which could mean that the member is unable to access their pension benefits as planned. It is also possible that the member may not be able to access pension benefits as planned if legislation in relation to minimum or maximum PCLS and income is changed, or the method by which these are calculated or taxed. There could also be amendments to contributions limits, withdrawal limits and overall benefit limits, including the Lifetime Allowance and associated charges. The further a member is from the point at which they wish to retire, the greater the risk that there may be a change in legislation which could impact their retirement planning.

Age – short term to retirement

3.53 Where a member has a short period of time to retirement, the member's DC fund would be much more sensitive to any market movements or investment underperformance, as there is less time for any underperformance to recover, increasing the possibility that the critical yield – ie the required annual rate of increase in the value of the investments needed to match the (relinquished) benefits of the DB scheme – would not be met. In addition, the critical yield itself is likely to be higher given the shorter term to retirement, when compared to an individual with a longer term to preferred retirement date.

3.54 Although there is less risk that the member's circumstances could change significantly over the term to retirement, an older member has a greater risk of changes to their health status, which could necessitate changes to their retirement planning. It is possible that additional lump sums or income could be required in an unplanned way, for example for home modifications or to pay for care if serious health issues arise.

Health

3.55 Where a member is in good health, longevity risk is increased, as there is a greater possibility that the member could live long enough to exhaust transferred monies in retirement.

3.56 Where a member is in poor health and has not yet reached their preferred retirement age, there is a greater possibility that the member's objectives could change, for example if their health deteriorates and they wish to retire earlier than planned, or there is a need to access PCLS, for example to fund home modifications or pay for in-home or residential care. These changes could increase the risk of the member's fund running out of money in their lifetime if the lump sum or income requirements are more than anticipated.

3.57 Similarly, the poor health of a dependant may result in the need to access monies in an unplanned way, which could have a significant impact on the sustainability of the fund. The sustainability of the fund could also be placed at risk if the member (or dependant) is in poor health, but the prognosis does not impact life expectancy. If the poor health places a greater degree of dependence on the income and/or lump sums from the scheme and is expected to continue to the normal life expectancy and potentially beyond, the risk of running out of money over the member's lifetime is exacerbated.

3.58 Upon transfer, where a member is in serious ill health, there is a risk that if the member dies within two years of the transfer, the monies may be deemed liable to Inheritance Tax.

3.59 The PTS should also consider whether a member in ill health, or with a spouse/partner in serious ill health, should be classified vulnerable.

Vulnerability

3.60 A vulnerable client may be at greater risk of harm if their vulnerability means that they are unable, or less equipped, to fully understand, or appreciate all the complexities and risks associated with a DB pension transfer. Examples of vulnerability may include, but are not limited to:

- Poor health – in addition to the points outlined above, depending on the diagnosis, members in poor health may place greater emphasis on factors such as the death benefits available upon transfer, rather than focussing on how the DB scheme could meet their income and lump sum needs in retirement. Some members' poor health may not affect life expectancy; however their objectives may disproportionately focus on passing monies to dependants, rather than providing for their own potential needs in retirement.
- Cognitive impairment – this could be as a result of a medical diagnosis such as dementia, or other lifestyle factors such as learning or development difficulties. These factors could mean there is a greater possibility that the member is not able to understand the risks associated with a pension transfer, or cannot be placed in a position, by the PTS, to make an informed decision.
- Knowledge and experience – similarly, where a member has no or limited previous investment experience, and/or poor literacy or numeracy skills, there is a greater risk that the member may not be able to understand the risks associated with a pension transfer, or make an informed decision.

3.61 It is possible that a member may be temporarily vulnerable where they are dealing with a recent significant change to their circumstances, such as a recent diagnosis of a health problem, bereavement, relationship breakdown, or other stressful situation.

3.62 Where a member is vulnerable, there is a greater risk that they may not be in a position to understand the potential implications of a pension transfer, including the risks involved. In principle, this risk can be particularly acute regarding pension transfer advice, given its inherent relative complexity and the likely profundity of its implications for the member's quality of life in retirement. There is also a greater risk of the member being pressured by third parties into making a decision that may not be suitable for them. This pressure could be in the form of coercion from family members, peer-pressure from colleagues, or alarmist or speculative media reports. We expect advisers and PTSs to take steps to accurately identify vulnerable members, and/or to take appropriate action to assess the impact of any vulnerability, and where necessary, adapt their advice approach and processes accordingly, to mitigate the risks of a poor outcome.

3.63 In the case of members of BSPS during the Time to Choose exercise, we would consider a PTS should have taken into account the additional stress and uncertainty which this may have caused. Many of the members of the scheme had been employed with British Steel/Tata for most or all of their working life and would therefore be significantly reliant on the benefits they had accrued within the scheme. Due to the significant media coverage of the scheme's financial difficulties, as well as the uncertainty regarding whether BSPS2 would proceed, members may have been more likely to wish to proceed with a transfer without fully understanding the implications of this, rather than accept the perceived risk, however unlikely, of losing their retirement benefits. Members may have felt distrustful of the scheme and its future, which may have influenced their own views on the merits of transferring out their CETV. We would expect a PTS to recognise this but to consider the facts of the member's situation and options dispassionately. Although such members may not have met the above mentioned criteria for vulnerable clients, we consider that nonetheless a reasonable PTS should have taken these factors into consideration and been cognisant of the additional pressures which members may have felt to protect their scheme benefits.

ASSESSING SUITABILITY

Having regard to the FCA's guidance in COBS 19.1.6G, COBS 19.1.7G, 19.1.7AG, 19.1.7B and the suitability requirements in COBS 9 and industry standards as in force at the time, when giving a personal recommendation:

a **Question 4:** What reasonable steps should a PTS have taken to comply with the requirement in 9.2.2R(1) to ensure that the recommendation is suitable, and that:

i the firm has a reasonable basis for believing that the client has the necessary knowledge and experience to understand the risks involved in the pension transfer?

ii the firm has a reasonable basis for believing that the client can financially bear the risks of transfer to achieve their investment objectives?

3.64 The FCA guidance at COBS 19.1.6G states that an PTS must only recommend a transfer where it can clearly be demonstrated that it is in the client's best interests. We consider it unlikely to be possible for suitability to be clearly demonstrated unless the PTS has gathered all relevant information to make a recommendation, as outlined in the response to Q3.

3.65 We consider that demonstrating the advice to be in the client's best interests would incorporate explaining in detail how the recommended course of action meets the client's needs and objectives. This could include demonstrating how the client's financial needs will be met by the transfer, in the form of cashflows or other calculations which show how the client's funds will last for a reasonable lifetime, as well as demonstrating how the transfer meets the client's other objectives such as flexibility in taking retirement benefits (in a way not available from the DB scheme) or restructuring of death benefits. The recommendation should take account of the client's risk profile and preferences regarding risk taking and be supported by evidence of trade-off conversations between the client and PTS. These justifications should also be clearly documented on the file and personalised for the client, with relevant information included and explained in the suitability report using balanced language.

3.66 Where a two-adviser model is being used, the introducing firm may take on the responsibility for the majority of information gathering, and then provide this information to the firm/PTS providing the pension transfer advice. Where there is insufficient information provided by the introducing firm for the PTS to ensure that the recommendation is suitable for the client, we would expect both firms to liaise to obtain such additional information as necessary. This could include engaging with the client to undertake and clearly document any necessary discussion to clarify such points as the client's understanding of complex financial matters, objectives and attitude to investment risk and the risks inherent on transfer.

We would expect a PTS to consider the information they have obtained (the necessary information to assess suitability is outlined in Q3) in relation to the client's knowledge and experience, with reference to the client's previous investment experience, products and investments purchased, whether the client has previously worked with an adviser and/or whether the client possesses any relevant industry or employment experience, in order to ascertain whether the client is able to understand the risks associated with a pension transfer.

3.67 The wording at COBS 9.2.2R(1) requires that the firm has a reasonable basis for believing the client has the necessary knowledge and experience to understand the risks involved in the pension transfer (our emphasis). To establish the client's understanding of these matters, we consider it good practice for the PTS to discuss this knowledge and experience with the client, and we would expect a detailed and, as necessary, candid conversation to take place between the PTS and client, so that the PTS can be assured of the client's understanding of complex financial matters. This also provides the PTS with the opportunity to challenge or correct any misconceptions that the client may have about the pension transfer, for example if the client has unfounded concerns regarding the financial stability of the scheme.

3.68 When making a suitable recommendation, we would also expect the PTS to demonstrate that there is a reasonable basis for believing that the client can financially bear the risks of transfer to achieve their investment objectives.

Attitude to Investment Risk and the Risks of Transferring to a DC scheme

3.69 The PTS should consider the information gathered in respect of the client's attitude to investment risk and acceptance of the risks inherent with a transfer. Where the client is not prepared or able to accept investment risk, or where the client prefers guaranteed returns or the security of guaranteed income, it is unlikely that they would be a suitable candidate for a DB pension transfer. In addition, if the client cannot tolerate uncertainty of income throughout their retirement, or does not have the appetite to engage with, or pay for, ongoing advice and management to review their pension arrangements, it is more likely that the guaranteed benefits from a DB scheme would be more suitable for them.

3.70 When establishing the client's attitude to investment risk, where there are inconsistencies in the client's responses, or the PTS is not certain as to whether the client fully understands the risks involved, the PTS should initiate a detailed conversation to clarify the client's position. The PTS should clearly document the nature and outcome of these discussions and confirm the contents with the client. Before making a recommendation to transfer, the PTS should have a reasonable basis for believing that the client is emotionally able to tolerate, and willing to accept, the risks associated with a transfer.

3.71 A dispassionate analysis of income needs and a lack of reliance on DB pension income may indicate the suitability of a transfer, but this is undermined if, by transferring, the client loses the peace of mind they would otherwise have had by remaining in the scheme. Therefore, if the PTS does not have a reasonable basis for believing the client is willing and able to tolerate the risks associated with a transfer, the recommendation should be for the client to remain in their DB scheme.

Retirement Objectives/Income and Expenditure

3.72 With reference to the client's current income and expenditure details (including secured and unsecured debt and any other relevant information) the PTS should consider the client's objectives up to and throughout retirement, concerning both lump sum and income requirement objectives.

3.73 The PTS should consider whether the client's objectives are reasonable and achievable (when considered alongside their attitude to investment risk) and ensure that they clarify any inconsistencies or discrepancies in the information provided by the client. For example, a client may claim that they are intending to reduce their expenditure in retirement, and therefore require a much lower level of income throughout retirement than they are currently receiving. This, of course, may be entirely reasonable if, for example, the client's mortgage is due to be repaid before retirement, or the client's existing financial dependants will no longer be financially dependent.

3.74 However, we would expect the PTS to fully understand the client's current financial situation and how this may, or may not, change in retirement. In our view, the PTS should be prepared to challenge the client where objectives appear unattainable or unreasonable or would require a level of investment risk the client is unwilling or unable to take. We acknowledge that the nature of these conversations may be uncomfortable for both the PTS and client, but they are invaluable to ensure that a suitable recommendation can be provided by the PTS.

3.75 Given that the primary purpose of a pension is to provide income for the client when they cease to receive earned income, the client's own income and lump sum requirements throughout retirement should be considered as an absolute priority, before other objectives, eg death benefits for dependants, are brought into consideration.

Meeting objectives

3.76 Once the amount and shape of the client's lump sum and income requirements, up to and throughout retirement, have been established, the PTS should then consider what part the DB scheme will play in meeting these objectives. In the case of BSPS members, the PTS should also have considered what part the PPF or BSPS2 could pay in meeting these objectives. Further information on this is outlined in our responses to Q5, Q7, Q8 and Q9.

3.77 The PTS should also determine the level of reliance the client will have on the scheme benefits throughout retirement. This should be ascertained, in the first instance, with reference to other sources of potentially guaranteed income such as other DB schemes and state pension entitlement.

3.78 We consider that it is acceptable for a PTS to make reasonable assumptions in relation to future accrual of benefits. For example, where a client expects to continue in employment until retirement, it is reasonable to expect, unless there is specific information to the contrary, that the client would continue to accrue state pension entitlement throughout that period. The PTS should also take into account other sources of income or lump sums that the client may have access to, including monies from DC schemes, rental incomes, investment accounts and potential windfalls such as inheritances or the sale of assets.

3.79 The PTS can and should make reasonable assumptions as to the future values of these other assets and how they could contribute to meeting the client's retirement objectives, whilst being mindful that these asset values are not guaranteed. For example:

- Whilst the client may expect to receive an inheritance, the amount and timing of this may not be certain.
- The client may be a member of their (current) employer's group personal pension or other DC scheme at the time of advice and anticipate remaining so, however there is no guarantee that they will continue to accrue employer and employee contributions to the point of retirement. In addition, any value accrued in DC benefits is not guaranteed and could be affected by adverse market conditions in the term to retirement.
- Rental income may form a more secure income base than other sources of non-guaranteed income, however rental income is not guaranteed and is subject to rental void periods, property maintenance costs, potential illiquidity risk and buy-to-let mortgage interest rate increases.

3.80 We would expect an PTS to consider all relevant information, when ascertaining the level of reliance which the client may have on the DB scheme up to and throughout retirement.

3.81 We are aware, given the uncertainty surrounding Tata and the British Steel pension scheme, that members may also have been concerned about the overall security of their employment, and therefore the security of their income over the remaining term to retirement. We would expect the PTS to carefully consider the client's concerns, however, in our view uncertainty of future income would not generally serve to increase the suitability of a transfer. If future accruals were to reduce or cease, this could potentially increase the client's reliance on the DB scheme income in retirement. An exception to this could be if a redundancy/loss of income was imminent and was likely to cause significant financial hardship, and it could be demonstrated that it was necessary for the client to access their pension flexibly in order to meet these urgent financial needs. We would expect a PTS to consider this option as a last resort, exploring all other alternatives including using other assets, and raising monies via debt.

Reliance on income from DB scheme

3.82 Once the extent of the client's likely reliance on the DB scheme has been established, the PTS should then determine whether this information suggests that the client is able to bear the risks of transfer. Where the client is likely to be mostly or entirely reliant on income from the DB scheme in retirement, it is less likely that they would be able to bear the risks of transfer and, as such, a guaranteed income throughout retirement may be more suitable for them. Where an PTS believes that the transfer is suitable for the client even though the client is likely to be reliant on the scheme, we would expect the PTS to clearly demonstrate and document why the transfer is nonetheless suitable.

3.83 Alternatively, it may be demonstrated that the client is unlikely to be heavily reliant on income from the DB scheme to meet their anticipated expenditure needs in retirement. This could be because the client (and/or the spouse if applicable) has other sources of guaranteed income in retirement, perhaps accrual from another DB scheme, state pension entitlement, annuity income or other secure arrangements.

3.84 It may also be the case that reliance on the DB scheme is relatively immaterial if the client's income and lump sum requirement is relatively modest when compared to the size of the CETV and it can be demonstrated that the client is unlikely to run out of funds in retirement. This latter example would require the PTS to consider different possible scenarios within a DC scheme environment, including higher than anticipated withdrawals, below expected investment performance or adverse market conditions, to demonstrate that the client is able to tolerate the risks associated with a transfer.

3.85 Once the extent of reliance on the scheme has been established, the PTS should also consider any other objectives which the client may have, to determine whether these objectives could be met by remaining in the scheme, or whether it would be in the client's best interests to give up the safeguarded, inflation proofed benefits from the scheme in order to achieve them.

Flexible benefits

3.86 The client's retirement objectives may indicate that it would be beneficial for them to access their benefits flexibly, which would support a need to transfer. They may, for example, wish to retire early and require a certain level of income over the term to when state pension benefits commence, at which time the income requirement from their personal pension arrangements would reduce. Or the client may wish to access a greater proportion of their total fund earlier in retirement. Such flexibility is not available from a DB scheme, which pays a set (inflation-proofed) income for life. Alternatively, there may be a requirement for a larger PCLS than that offered by the DB scheme, for example to redeem an outstanding mortgage at the point of retirement. In these situations, the PTS should carefully weigh up the validity and relative importance of these other objectives and whether there are alternative ways of meeting them, for example whether an existing DC pot could be used to redeem the outstanding mortgage. In each case the PTS should consider the benefits that would be available from the DB scheme, in order to establish whether the client's objectives could be met whilst remaining in the scheme.

Inheritability / Death benefits

3.87 Similarly, a client may have a desire to transfer in order to achieve greater flexibility in allocating death benefits; either because they would prefer to leave a more flexible lump sum to their spouse/partner rather than a fixed income for life, or because they wish to leave any residual benefits to individuals who would not otherwise be entitled to benefits under the DB scheme, such as non-dependent children or other relatives. The PTS should carefully consider these objectives in order to establish whether it would be in the client's best interests to give up their guaranteed, inflation-proofed DB benefits in order to meet these. The PTS should seek to confirm whether the proposed beneficiaries have a genuine, quantifiable need to receive benefits in the event of the client's death, and if so, whether this objective could be met by alternative means, eg effecting a life assurance policy or the gifting/use of other assets.

Viability of the scheme

3.88 The client may wish to explore the merits of transfer as a result of real or perceived concerns over the financial viability of their DB scheme or having lost faith in their employer or the scheme trustees. These concerns may or may not be founded. We would expect the PTS to carefully and impartially research and investigate the reality of the situation, by gaining a full understanding of the scheme funding levels, including any deficit reduction plans, potential rescue arrangements or possible transfer to PPF. In doing so, the PTS should correct any misconceptions that the client may have.

3.89 Where there is a genuine concern about the financial viability of the scheme, as was the case with BSPS, and a real possibility that the scheme may enter the PPF, the PTS should consider whether the PPF would nevertheless provide sufficient benefits to meet the client's identified objectives. This is of particular relevance where the client intends to retire early, as it may be the case that early retirement factors under the PPF are more generous than those applicable under the DB scheme. We would expect a PTS to calculate the benefits which could be available under both options, as well as the amount which could reasonably be drawn from a DC scheme in the event of transfer, in order to make a direct comparison between the options.

Transfer Analysis

3.90 Until October 2018, the PTS was required to undertake a transfer analysis in order to compare the benefits available from the DB scheme with those which would reasonably be provided by a scheme with flexible benefits post transfer. This was in the form of a Transfer Value Analysis (TVAS) as outlined at COBS 19.1.2R.

3.91 One of the main outputs of the TVAS is an indication of the value of the CETV relative to the income and benefits provided under the scheme. The TVAS provides the level of investment return which would be required to replicate, under a DC scheme, the benefits available from the DB scheme (also known as the critical yield).

3.92 The FCA's stance (and we agree) is that a PTS should not base their recommendation on the outputs of this critical yield alone[12]. Instead, the PTS should consider this analysis when forming their recommendations, taking into account the client's overall circumstances and retirement objectives.

3.93 The transfer analysis may or may not support a recommendation to transfer, for example:

- The critical yield[13] indicated in the TVAS is likely to be unattainable, factoring in the term to retirement and the client's established attitude to investment risk.
- The capitalised value of death benefits (where this is a significant consideration in relation to the client's objectives) is significantly higher under the DB scheme than that available from a DC scheme.

3.94 Most PTSs will use a TVAS tool, often from an outsourced provider, to calculate and compare the benefits available from a DB scheme and that of a DC scheme. The accuracy and provenance of the information that is input into these tools is crucial; seemingly minor inaccuracies could be enough to incline the advice in one direction or another, perhaps to the client's detriment. The transfer analysis should be based on accurate data, including correct adviser and product charges, to ensure that the outputs are accurate and can be relied upon. Where the transfer analysis does not appear to support the recommendation, but the PTS recommends a transfer nonetheless, we would expect the PTS to clearly explain and demonstrate why the transfer is nonetheless suitable for the client.

3.95 The client's overall circumstances and retirement objectives may support a recommendation to transfer, notwithstanding the transfer analysis, where it can be demonstrated that the benefits of transfer outweigh the potential financial disadvantages of transfer indicated by the transfer analysis. For example, it is possible for a PTS to demonstrate that a transfer recommendation is suitable for the client where there is little or no reliance on the monies from the DB scheme (as expenditure throughout retirement is covered in whole or part by other sources of income) and the client has no requirement to replicate the amount and/or shape of the DB scheme benefits. We would expect the PTS to present,

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[12] FCA Newsletter 24/01/2017 Advising on pension transfers – our expectations | FCA

[13] See paragraph 3.42

discuss and explain the outputs from the transfer analysis with the client, placing particular emphasis on the relevant details in cases where the analysis does not support a recommendation to transfer.

3.96 Considering the situation for BSPS members, we accept that until full details of the proposed benefits available under the BSPS2 scheme were released, it would have been difficult for the PTS to produce a transfer analysis which accurately compared the situation following transfer with that of remaining in the scheme/BSPS2. Therefore we would have expected a PTS to take a considered and consistent approach to preparing the transfer analysis. Before full details of the BSPS2 benefits were available, a comparison against the existing BSPS benefits could have been undertaken. Given that BSPS2 was likely to provide less generous benefits than BSPS, the PTS could have had some confidence that if a comparison using the existing scheme details supported the transfer, then the same would likely be true of a comparison against BSPS2 benefits. Before full details were released, it could have been possible for a PTS to make certain assumptions in relation to the likely benefits available from BSPS2 – in particular it had been frequently signposted in the scheme's updates and press releases that BSPS2 would likely have less generous future increases. In these circumstances we would expect the PTS to be mindful of the potential disadvantages in this approach; for example, the further a client is from their preferred retirement date, the greater the impact of any inaccuracies in the future inflationary assumptions would be. We have addressed in greater detail our opinion regarding how we consider a reasonable PTS should have acted during this time period in Question 9.

Use of cashflow modelling

3.97 Although not a specific FCA requirement, in our experience, many PTSs choose to use cashflow modelling tools and software to depict the clients' changing income and capital requirements during retirement. The use of these tools has become increasingly commonplace, and in our experience were commonly used (to a greater or lesser extent) during the Time to Choose period. Often, a PTS will produce multiple cashflow models for the client. These may reflect different scenarios, in terms of income and/or capital requirements, using different sources of income, or demonstrating a comparison between transferring or remaining in the DB scheme.

3.98 When used correctly, we consider cashflow modelling to be a useful tool in depicting and describing to the client the financial impact of either transferring or remaining in the scheme. They can also be used to effectively demonstrate safe withdrawal rates, the consequence of excessive withdrawals, the impact of adverse market conditions or the effect of poor investment performance. As such, where a PTS chose to use cashflow modelling, we consider it more likely that the PTS would be able to refer to the outputs to clearly demonstrate that the advice provided was in the best interests of the client. For example, to show that, on transfer, the funds are unlikely to be depleted during the client's lifetime.

3.99 However, the reasonable outputs of any cashflow modelling tool are wholly dependent on the accuracy and veracity of the inputs used by the PTS and we would expect a PTS to be mindful of various factors, including:

- The underlying assumptions used in the cashflow, such as inflation rates and investment returns, should be reasonable and relevant to the client's circumstances. We would expect the assumed investment return to be set with consideration to the client's attitude to investment risk, and with reference to the FCA's guidelines in terms of illustrative investment returns.
- The client's objectives, in relation to lump sum and income requirements. These should be sense checked and realistic and reflect detailed conversations between the PTS and client.
- The automatic assumptions used within the cashflow software; the PTS should be sufficiently experienced with the software to override these where appropriate. For example, some cashflow programmes automatically assume that any surplus income over and above expenditure is automatically saved, thus increasing the client's potential cash or investments which could be used in the future. In reality, this is often not the case, especially where a client has shown no previous

propensity to save excess income. Where future or regular savings are assumed, these should be explicitly discussed and agreed with the client.

- The possibility of the client’s survival past normal life expectancy and potential impact this may have on the client’s situation.

3.100 In our view, it can be useful for a PTS to produce multiple cashflow models to demonstrate the effect of a range of various scenarios, including:

- The effect of a significant market event such as a market crash immediately after transfer, or at the point of retirement.
- The effect of consistent underperformance relative to the anticipated investment return.
- The impact of a higher level of income or lump sum withdrawals than that initially anticipated.
- Any other scenarios which could reasonably occur based on the client’s objectives; for example the client may choose to retire at an earlier or later date.

3.101 We also consider it to be good practice for a PTS to produce an analysis which considers the scenario of remaining in the scheme, as this can then be directly compared against the transfer scenarios. Again, where there is the possibility of a change to the client’s objectives such as retirement age or the size of PCLS required, multiple reports to enable direct comparisons can be useful.

3.102 Where a PTS is relying on cashflow modelling to support the recommendation, we would expect the PTS to discuss the inputs and outputs of the analysis with the client, clearly explaining the potential advantages and disadvantages of each course of action. The PTS should also explain the limitations of cashflow analysis, and that the assumptions used cannot be guaranteed. The PTS should discuss, for example, that a relatively modest difference between the assumed investment return and the actual investment return achieved could have a significant impact on the client’s future financial situation, particularly where this difference is compounded over a number of years. These discussions with the client should be clearly documented, along with a clear explanation as to how the cashflow demonstrates that the recommendation meets the client’s needs and objectives.

3.103 All inputs used in any cashflow modelling used to support the recommendation should be recorded on the client file.

In general

3.104 It should be noted that whether the PTS’ recommendation is to remain in the scheme or transfer, they are obliged to clearly demonstrate that the recommendation is in the best interests of the client. Although the client may have strong opinions as to the course of action that they might prefer, the PTS has a responsibility to provide dispassionate and demonstrably suitable advice, taking into account the full fact and circumstances of the client’s situation.

3.105 The PTS should always be prepared to challenge the client where one or more objective appears to be based on a “nice to have” rather than an actual, genuine need. Whilst ‘flexibility’, ‘control’ or ‘inheritability’ may, on the face of it, appear attractive to the client, in our experience this may not be borne out of a genuine need. It is incumbent on the PTS to demonstrate what is meant by ‘flexibility’, ‘control’ or ‘inheritability’, specifically to the client in question, and how their recommendation meets these needs.

If necessary, the PTS should be prepared to make a recommendation which goes against the client’s wishes, if they consider it to be in their best interests. Where a client wishes to transfer against advice, the PTS should use an FCA compliant insistent client process.

> b **Question 5:** What reasonable steps a PTS should have taken to assess the suitability of the BSPS2 or PPF options for the client

3.106 When considering a pension transfer, a reasonable PTS should have been mindful of the FCA guidance that the starting point is that a transfer is unlikely to be suitable, and in order to make a recommendation to proceed with the transfer, the PTS must demonstrate, on contemporary evidence, that it is in the client's best interests (COBS 19.1.6G). Apart from members within one year of their Normal Retirement Date, all BSPS members had three options for their benefits: They could remain in the BSPS scheme and therefore accept the subsequent transfer of their benefits to the PPF, they could transfer to the proposed new BSPS2 scheme, or accept the transfer value and move to a scheme with flexible benefits. Members within one year of Normal Retirement Date were unable to move their benefits to an alternative scheme.

3.107 In our experience, it is not unusual for a scheme to close to future benefit accrual, and the industry has seen many large DB scheme make the decision to do so. As such, the closure of the BSPS scheme to future accrual should not, in itself and in isolation, have been viewed as a reason for a client to transfer their benefits away from the scheme. In the specific case of the BSPS scheme however, it became apparent that the scheme would not survive in its current form, as documented in many media and press pieces from 2016. There was also concern regarding the future of the sponsoring employer itself. Accrual closed to all members from March 2017 and this, along with the well-publicised financial troubles of the scheme and employer, would have naturally led many clients to seek advice in relation to their BSPS scheme benefits.

3.108 In our view, retaining benefits in the form of a guaranteed or safeguarded income (offered by the PPF or BSPS2) was more likely to be suitable for most members, rather than a transfer to a DC scheme with flexible benefits and its associated risks and uncertainty. We would therefore expect a PTS to have given serious consideration to the option of the client retaining their guaranteed benefits under either the BSPS2 or PPF. Without careful due consideration of these two options, we do not consider it possible for a PTS to have been able to demonstrate that a transfer to a scheme with flexible benefits was suitable.

3.109 Having already established the client's retirement objectives and income and capital requirements, the PTS should have assessed the benefits available under PPF and/or BSPS2, taking into consideration the client's desired retirement age and any other sources of income or capital (guaranteed or flexible). Although not obligatory, cashflow modelling would have enabled the PTS to more easily compare the likely outcome of the various options available, as well as assisting in clearly demonstrating that the final chosen course of action was in the client's best interests. This assessment would enable the PTS to determine whether the client could meet these income and capital requirements by remaining in the scheme, either via PPF or BSPS2, and would also provide an indication of the level of reliance the client was likely to have on the scheme benefits throughout retirement, as outlined in our response to Question 4.

3.110 Where the client could meet their retirement objectives by remaining in the scheme, either via PPF or BSPS2, and is likely to have some level of reliance on the monies from the scheme, it is likely that retaining their guaranteed benefits would have been more likely to be suitable.

3.111 The PTS should also be mindful of the client's attitude to guarantees and certainty of income, investment risk, and the other risks associated with transfer. Where the client places a high value on guarantees and would prefer the peace of mind of knowing that their income throughout retirement is secure, then the PPF or BSPS2 were more likely to be suitable options.

3.112 The PTS should also consider any other objectives that the client may have, such as flexibility of income or lump sums, greater PCLS amounts, flexibility of death benefits and inheritability of benefits, and whether it would be possible for these objectives to be met by other means.

3.113 For example, the client may have accrued other DC benefits, or be accruing benefits in an employer or personal DC scheme at the time of advice. It may therefore be possible for the client to use these non-DB assets to meet these other objectives (eg access to lump sums, flexibility, inheritability), whilst retaining the DB scheme benefits to provide a guaranteed income underpin. We would expect a PTS to consider the client's financial situation holistically and assess how the DB scheme fits into the client's overall retirement planning, rather than viewing the scheme and a transfer decision in isolation.

3.114 Where a PTS has established that it is in the client's best interests to retain safeguarded benefits, the next step would be to determine whether these benefits are more suitable in their existing BSPS form with subsequent transfer to PPF after March 2018, or to move their benefits to the proposed BSPS2. We are also aware that some clients approached a PTS for advice only relating to this decision, having already decided or been previously advised not to transfer to a scheme with flexible benefits.

3.115 When making a personal recommendation to the client, having compared the existing scheme/PPF with BSPS2, we would expect a PTS to have been aware and taken account of the following:

- It was confirmed as early as January 2017 in a letter to all members that it was likely the existing BSPS scheme would be closed to future accrual and would enter the PPF. The possibility of a new scheme to provide modified benefits was raised, and the letter stated *"(…) for the vast majority of members and pensioners, these modified benefits would be better than PPF compensation although the extent of the improvement will depend upon a member's personal circumstances and retirement preferences"*[14]*.*
- In August 2017 it was confirmed in an update on the BSPS website that the Time to Choose exercise would commence in October 2017 and that members would be provided with detailed information regarding their options.
- The Time to Choose pack, issued in October 2017, included FAQ wording which confirmed that members would be able to transfer out of BSPS2 in the future, whereas no transfers out would be permitted from PPF. It also included member specific details about the likely benefits available to them under the PPF and BSPS2, and how these were calculated.
- The early retirement factors which would be applied if a member chose to retire before NRD were different for the PPF and BSPS2, and therefore the member could receive higher initial benefits under the PPF on early retirement.
- In certain circumstances where a member wished to commute pension income for a cash lump sum at retirement, the PPF provided more generous commutation factors meaning that a member could be better off in the PPF, although this could mean that subsequent dependants benefits were reduced.
- In relation to the PPF, early retirement factors, lump sum commutation factors and information regarding future inflationary increases were all available on the PPF website.

3.116 As such, we consider a PTS would have had sufficient information, at the very latest by October 2017 when the member received their Time to Choose document, to reasonably estimate the benefits which could have been payable to the member from the PPF and BSPS2, and to assess these benefits in line with the member's retirement objectives. The PTS would be able to consider the age at which the member wished to retire, and assess the level of early retirement factors, if any, which would be applied under either option. The PTS would also be able to compare the impact on the member's pension income of drawing the desired level of PCLS under either option, given the difference in commutation factors.

3.117 We do not consider a PTS would always have had to wait until the Time to Choose documents were made available in October 2017 to provide advice where it could be clearly demonstrated that a transfer

[14] B.S Pension Fund Trustees letter to members 27 January 2017

could be justified when compared against the benefits available from the existing BSPS scheme. Our further comments on the timing of the information available to the PTS is covered under Question 9.

3.118 Where the client's retirement objectives were uncertain or not clearly defined, perhaps because retirement was some years in the future, we would expect the PTS to have given due consideration to the fact that transfers were not permitted from the PPF. By transferring to BSPS2, the member could retain their safeguarded benefits under BSPS2, whilst deferring the option of transfer to a scheme with flexible benefits, should that be an appropriate course of action in the future. It therefore follows that, where it could not be clearly demonstrated which option was most suitable for the client, as a result of unknown retirement objectives, the best course of action in most cases was likely to have been a transfer to BSPS2, in order to retain maximum flexibility for the future. Given that it was known that the benefits from the BSPS2 scheme were likely to be less generous that those available from the BSPS scheme, a PTS should also have considered the fact that any future CETV available from the BSPS2 scheme would likely have been less than that available from the BSPS scheme. However, we would not expect a PTS to use this point, in isolation, to justify a transfer.

EXAMPLES OF SUITABLE PERSONAL RECOMMENDATIONS

Question 6: Having regard to the suitability requirements in COBS 9 and COBS 19 and industry standards as in force at the time, and taking into account your experience carrying out BSPS file reviews, when giving a personal recommendation, provide illustrative examples of:

1. The range of client types (taking into account age, marital and employment status and explaining attitude to transfer risk, financial experience, their financial situation, plans for retirement income and expenditure and knowledge and experience) to whom a reasonably competent PTS would (absent special circumstances) have recommended transfer out of the BSPS to a DC scheme
2. The range of client types to whom a reasonably competent PTS may not have recommended to transfer out of the scheme.

Please explain why transfer is suitable for clients referred to in (1) but not those in (2) and where the line may be drawn between the clients in each paragraph.

1. The range of client types (taking into account age, marital and employment status and explaining attitude to transfer risk, financial experience, their financial situation, plans for retirement income and expenditure and knowledge and experience) to whom a reasonably competent PTS would (absent special circumstances) have recommended transfer out of the BSPS to a DC scheme.

Reliance on income from the DB scheme

3.119 A key factor in assessing the suitability of a transfer, in the context of the FCA's COBS 9 rules and guidance. is the extent of reliance which the client may have on the monies from the DB scheme throughout retirement. The client may not be reliant on the income from the DB scheme in question if they have other sources of guaranteed income in retirement, such as other DB schemes, other investments, or state pension entitlements. Rental income from other property, either commercial or residential, could also form a lower risk alternative income in retirement. However, we would expect the PTS to consider the effect that this may have on the client's retirement income, given the potential unreliability and/or illiquidity associated with rental income.

3.120 Another relevant factor, when considering reliance on income from the DB scheme, is the size of the CETV relative to the client's income requirement. Reliance on income may be less material where the value of the CETV is sufficiently large that, although the client has no or little other guaranteed income, it is highly unlikely to be exhausted (even in unfavourable market conditions) during the client's lifetime.

3.121 A lack of reliance on the DB scheme benefits may indicate that the client is more likely to be able to tolerate the risk of a transfer, and as such, further weight and attention can then be given to the client's other objectives, or to other benefits of transfer including:

- Death benefits: Where the client is single, divorced, or widowed, or has a long-term partner with no intention to marry, in the event of premature death, it is unlikely that the client's dependants will benefit from income or capital from the DB scheme. In other words, the client is effectively paying for these death benefits, because they are provided by the scheme, whilst the client has no need for them. It follows, therefore, that death benefits from the scheme (which cannot be amended or foregone) may be less attractive to the client than the flexible benefits that may be afforded them under a DC scheme. We have seen this in instances where income from the DB scheme is surplus to the client's requirements in retirement and the client wishes to provide for their children in the event of their death; but the children are unlikely to receive any benefits from the scheme due to their age or lack of dependency. In such cases we would nevertheless expect the PTS to challenge and verify the strength or importance of these objectives, and explore alternative means of meeting them, for example, with gifts of other assets or life insurance.

- Flexibility: The client may have a desire/need to access income or PCLS flexibly (eg at different levels or frequencies), or to access a greater PCLS than available from the scheme, for example:
  - The client wishes to retire early and would like to access flexible income in order to bridge an income gap until other guaranteed income commences, such as the Normal Retirement Date of other DB schemes, or state pension age.
  - The client has no need for PCLS, and it is demonstrated that the client's overall financial position would benefit from drawing PCLS over a period of time in order to generate a tax efficient income.
  - The client may have a desire or need to pay off/reduce debt prior to its planned redemption date, and it can be demonstrated that this would be in the financial interest of the client, for example where the client holds an interest only mortgage with no other means of repaying this, and the PCLS from the scheme would be insufficient to meet the objective. It should be noted however that we consider the transfer of a DB scheme for the sole or primary purpose of repaying debt to be a last resort course of action, eg where the client is in considerable financial difficulty or facing serious financial hardship. We expect a PTS to consider and discount the financial impact of all possible alternatives, in order to sufficiently demonstrate that the repayment of the debt, by means of a transfer, is in the client's best interests.
  - The client may intend to reduce their working hours or take alternative work which may produce a lower income, prior to retiring fully, and it can be demonstrated that the CETV is of sufficient value to support this objective without the risk of running out of money in the client's lifetime.

3.122 In order to be a suitable candidate for transfer, with a real need/driver for transfer, we expect clients to display some or all of the following traits:

- The necessary attitude to investment risk and to the risks of transferring to a DC scheme:
  - The client is comfortable with uncertainty of income in retirement, supported by the fact that they are not reliant on the income from the scheme, and therefore fluctuations in income from the scheme would have no impact on their standard of living.
  - The client is willing to accept that the value of the pension fund will fluctuate and is willing to accept a risk to their money.
  - The client accepts and understands that the funds will need to be managed throughout their life, and either has the relevant skills to do so, or is willing to work with a professional adviser to achieve this and accepts that this will likely incur charges.
  - The client is willing to give up the guarantees inherent in the DB scheme in return for access to flexible income, access to a greater PCLS, and/or flexible or enhanced death benefits.
- The necessary Knowledge & Experience. It is preferable that the client has some knowledge and experience in relation to financial matters and products, particularly investment products and experience of the volatility which can be associated with risk-based investments. Relevant knowledge could include a previous DB transfer, holding other risk-based investments such as DC pensions, ISAs, shares, or other collective investments. The client's employment or education history may also be pertinent if the client has obtained experience or expertise in a relevant field.
- A lack of knowledge and experience would not, in and of itself, be a reason not to recommend a transfer, where a transfer would otherwise be considered suitable. The PTS is able to impart the relevant knowledge to the client during the advice process through robust, detailed, and challenging

discussions, as well as through clear disclosure in the form of suitability reports, Key Features documents, Transfer Value Analysis (TVAS) reports, and cashflow analysis documentation.

- Consideration of client age and term to retirement. A client may have a significant term to retirement, and it appears likely the DB scheme will not form a significant part of their retirement provision. Where a client has a significant term to retirement, we would expect the PTS to explain in detail why it was suitable for the client to transfer at the time of advice, when his future circumstances could not realistically be known, he had no immediate or imminent need of the benefits and could not access them potentially for many years before minimum pension age.

3.123 There may be other circumstances where a reasonable PTS may recommend the transfer of a DB scheme, even if the client may be significantly or wholly reliant on the scheme in retirement. These could include:

- Where the client is in serious ill health with a shortened life expectancy, and it is reasonable to conclude that the client's dependants would be financially better off by transferring and benefiting from the flexible death benefits available from a DC scheme, rather than the fixed dependant pensions from the DB scheme. It may be that the dependants have their own pension provision and have no need for a fixed regular income.

- In circumstances of ill health, it may also be that the client is able to obtain a greater level of income than that available from the scheme, via an enhanced or ill-health annuity, thereby increasing their quality of life over the shorter life expectancy.

- Where the client is unable to meet their objectives by remaining in the scheme; for example the benefits from the scheme would not be sufficient to meet the client's basic income requirements at selected retirement age. In these circumstances we would expect the PTS to explore all other alternatives, including a potential change to the client's objectives, before recommending a transfer of the DB scheme.

- The client may be in significant financial hardship, and the PTS determines that there are no other means to meet the client's immediate financial needs than by drawing monies from their pension scheme. Such circumstances could include a sudden and/or serious change in circumstances meaning that the client is unable to meet ongoing financial commitments with serious implications such as property repossession or legal consequences. It may be demonstrated that the benefits available from the DB scheme would be insufficient to meet the client's immediate and pressing objectives, and that a transfer would better enable them to do so. It may be that in such circumstances neither option would provide sufficient benefits.

3.124 We consider it to be unusual for a reasonable and competent PTS to recommend a transfer based on only one of the circumstances above. In our view, a combination of factors indicating a transfer is suitable would be required to overcome the starting assumption (as outlined in FCA guidance) that a transfer is unlikely to be suitable. Where a client has no or low reliance on the DB scheme, they are more likely to be able to bear the risks of transfer, however it does not necessarily follow that a client with little or no reliance would automatically be considered a suitable candidate for transfer. We expect a client with no reliance on the DB scheme to also possess the necessary attitude to transfer and investment risk, as outlined above, as well as other clear objectives in relation to eg flexibility of income and/or death benefits.

2. The range of client types to whom a reasonably competent PTS may <u>not</u> have recommended to transfer out of the scheme.

3.125 Reliance on income: As outlined at 3.82 and 3.119, the reliance which a client may have on the benefits from the DB scheme in retirement is highly relevant to the overall assessment of suitability. Therefore, where a client is deemed likely to be mostly or entirely reliant on scheme benefits in retirement, it is unlikely that they would be able to tolerate the risks of a transfer and could be considered an unsuitable candidate for transfer.

3.126 Low attitude to investment risk: A client with no or low tolerance for investment risk, who is likely to be uncomfortable with any fluctuations in the value of their monies or income, is unlikely to be a suitable candidate for transfer. The client may prefer the security of guaranteed income or returns and cannot tolerate the additional risks to their security which a transfer would entail. An exception to this point would be where the PTS recommends a solution to receive the transfer proceeds which incorporates a guaranteed return or income, and it can be clearly demonstrated that this would put the client in a more favourable financial position.

3.127 Age: There may be a significant period to the client's minimum or selected retirement age, and the DB scheme is likely to be material to the client's retirement planning. Although a client may have the potential to accrue further pension provision in the future, we would expect a PTS to consider the possibility that this cannot be guaranteed and therefore an irrevocable transfer at the time of advice would reduce the client's options at retirement, as the option of a guaranteed scheme pension would be lost. A reasonable and competent PTS would be expected to address why a transfer is suitable at the point of advice, rather than waiting until nearer the potential retirement age, when the client's retirement income needs, retirement objectives and personal circumstances are likely to be more certain. Where an PTS is unable to demonstrate the need to transfer at the time of advice, we would expect them to recommend that the client remain in the scheme.

3.128 Insistency: A client may have a strong desire to transfer to obtain (eg) flexibility and control, or where they have real or perceived concerns regarding the financial viability in the scheme. In the case of the BSPS scheme, it seems reasonable that the significant media attention surrounding the scheme, alongside with the Time to Choose exercise, would likely have encouraged a greater than usual proportion of members to seriously consider the option of transferring out, which may in turn have led to an increased occurrence of insistent clients. However, this does not absolve the PTS from their responsibility to only recommend a transfer if it is clearly and demonstrably in the client's best interests. We consider that a client is entitled to rely on its professional adviser to provide personalised, suitable advice, based on their understanding of the client's full circumstances, rather than simply 'order-taking' and recommending a course of action in line with the client's wishes. We also expect the firm to correct any misconceptions, or appropriately allay any fears, that the client may have regarding their DB scheme, for example, where the client is concerned about the financial viability of the scheme, but the scheme is not at significant risk, or PPF benefits would be appropriate for the client's circumstances. The client is unlikely, unless they have relevant experience and qualifications in pension transfers, to have a full understanding of the factors which contribute to the suitability or unsuitability of a transfer, and therefore in circumstances where it cannot be demonstrated that the transfer is in the client's best interests, a reasonable and competent PTS should recommend the client remain in the scheme, even if this does not align with the client's wishes.

Please explain why transfer is suitable for clients referred to in (1) but not those in (2) and where the line may be drawn between the clients in each paragraph.

3.129 As outlined above, certain circumstances would immediately render the client an unlikely candidate for a suitable transfer including:

- Little or no tolerance for investment risk
- A desire for guaranteed income and/or returns
- A reliance on the safeguarded income from the DB scheme, in the absence of other materially significant retirement income sources.

3.130 Considering the client's likely level of reliance on the income from the scheme throughout retirement is a vital starting point in assessing the suitability or otherwise of a transfer. If the client has low or no reliance on the scheme benefits, then they are more likely to be able to tolerate the risks inherent in transfer. The primary purpose of a pension is to meet the client's income needs in retirement, and if these needs are met, other objectives such as providing flexible death benefits for dependants or accessing monies flexibly can be given greater weight.

3.131 We do not consider that a lack of relevant knowledge and experience, in isolation, would necessarily be a reason not to transfer. Where it can be demonstrated that a transfer would be in the best interests of the client, the PTS can improve the client's knowledge by robust and informative discussions during the advice process, as well as clearly documenting the relevant risks, advantages and disadvantages of a transfer in the suitability report, along with a clear explanation as to how the firm arrived at the conclusion that the transfer was suitable for the client. For these types of clients, the requirement for firms to ensure that its communications are clear, fair and not misleading (COBS 4.2.1R) is of particular relevance. In our view, these types of clients would also benefit from a clear recommendation for the client to receive an ongoing advice and service to assist them in managing the transferred monies, both in terms of investment approach and withdrawal strategy.

COMMUNICATIONS WITH THE CLIENT

Having regard to any relevant guidance including COBS 19.1.7AG and COBS 19.1.7BG at the time **Question 7:** What should a PTS have told a client in relation to the risk of transfer: 1. to comply with the requirement in COBS 19.1.2R to provide the client with information about the specific benefits and options under the ceding scheme and the effect of replacing them with the benefits and options in the proposed scheme to ensure that the client understands the comparison between the benefits of both PPF and BSPS2 and transferring to a DC scheme; and 2. What additional information would you expect to be included in a suitability report to explain the advantages and disadvantages of transfer (COBS 19.1.8G) to a DC scheme vs the PPF/BSPS2 options.

3.132 A firm is required to make a personal recommendation when giving advice on conversion or transfer of pension benefits, and before doing so to carry out a comparison of the benefits in the existing scheme with the benefits they would have available on transfer. This comparison must be run in accordance with COBS 19.1.2R and requires the PTS to undertake pension transfer analysis, the results of which should be presented and explained to the client.

Transfer Analysis

3.133 Prior to 30 September 2018 this would mean completion of a TVAS unless the member was both at the retirement age of the scheme and wishing to crystallise benefits immediately after transfer.

3.134 The output of a TVAS includes a critical yield, which is the gross estimated investment return, that must be achieved in order to purchase an annuity at retirement age to provide benefits at least as good as those being offered by the ceding scheme, taking into account initial and ongoing charges.

3.135 TVAS providers may also include a comparison to a drawdown option and analyse how long the funds might last based on different investment returns. This enables a member considering a transfer to clearly see the risk of the funds running out in their lifetime.

PPF

3.136 When assessing the suitability of a transfer, the PTS must include a comparison of the projected benefits available from the DB scheme to the possible benefits available under the proposed arrangement using reasoned and reasonable assumptions. For BSPS members, where members faced the option of entering the PPF, we would have expected a PTS to base the comparison on the benefits available from the PPF.

3.137 The description of benefits and features from the scheme or PPF should be an accurate summary of each arrangement based on information available at the time. This must make allowance for any actuarial reduction or enhancement to the scheme benefits of members planning retire at an age different to the normal retirement age of the scheme. The PTS must present the potential or perceived risks of the PPF (detailed at 3.18 to 3.20), to the client in a balanced and factual manner, using neutral and unbiased language.

Costs and charges

3.138 The TVAS should be consistent with product-related documents such as the Key Features Illustration (KFI). Where they diverge, the PTS should provide an explanation so that it is clear to the client what benefits may be available.

3.139 We expect the PTS to consider inflation in any comparison as well as ongoing charges, including the product and any anticipated ongoing adviser charges so that the member is in an informed position about charges. The PTS should also recommend that, if a transfer proceeds, the client subscribes to an ongoing advice service to monitor the pension until it is annuitised or depleted.

3.140 The PTS should include all the charges associated with the transfer and these charges must be included in both the analysis and the KFI, which must be provided to the client free of charge and in good time before the firm carries on the relevant business (COBS 14.2.14R).

3.141 Where the member is likely to breach the Lifetime Allowance (£1,000,000 in the 2016/2017 and 2017/2018 tax years) on transfer, the PTS should clearly explain the impact or disadvantages of any additional tax charge on the client. We would also expect a PTS to discuss and recommend, where appropriate, the use of any suitable Lifetime Allowance protection available at the point of advice.

Suitability Report

3.142 The suitability report must specify the client's demands and needs (COBS 9.4.7R) and include consideration of whether these can be met from the DB scheme or from a DC pension on transfer. Any demands that cannot be met, or there is a possibility they will not be met, should be clearly presented as a risk.

3.143 The suitability report must explain any possible disadvantages of a transfer so that the client can fully understand the associated risks. This includes the following:

- Loss of guarantees (as described at 3.3) and where the member wishes to draw an income there should be particular focus on the risk that the fund may become depleted in the member's lifetime.
- Investment risk (as described at 3.5) and consideration of the potential anxieties that a client with low knowledge and experience may experience.
- Inflationary risk (as described at 3.8).
- Loss (or depletion) of dependants benefits (as described at 3.9) particularly when transferring to take a greater sum than that offered by the scheme.
- Annuitisation risk – that even if the fund achieves the critical yield calculated that it may not be possible to secure the same pension as the scheme if annuity rates are not in line with assumptions. That it is unlikely that an annuity purchased would exactly replicate the scheme.

3.144 The suitability report must include a personal recommendation and should be presented in a way that the recommended course of action is clear and supported by evidential rationale. The advantages and disadvantages associated with the recommendation should be described in a way that is balanced, accurate and likely to be understood. The PTS should communicate in a way that facilitates the client's decision-making process.

3.145 Example of good practice: Although not a regulatory requirement, we consider that the provision of cashflow analysis, which includes an element of stress testing, can be useful to enable the client to understand the impact of poor performance or a market crash. Where cashflows are provided they must be clearly explained and based on reasonable assumptions.

3.146 Example of good practice: Recording all discussions held between the PTS and the client, including concept checking to reflect that the client understands the comparisons and risks. In particular, that the client understands that on transfer the value of investments may fall, that there may be a lifetime allowance charge, or loss of any protections, and that the impact of this has been explained and understood.

Question 8: What other material information would you have expected to have been disclosed in relation to the Time to Choose options and the circumstances surrounding BSPS at the time?

3.147 Given the level of publicity surrounding the BSPS scheme at the time, we consider it reasonable to expect that a PTS, engaged in providing advice to a member of BSPS, to have been informed and up to date with the various communications from the scheme and trustees, over the period of time they were engaged with the member. We acknowledge however that a PTS would not necessarily have any special insights into the internal workings of BSPS over and above what could be discerned from information available from the scheme and in the public domain. Equally, in general, we do not consider it necessary for a PTS to have specialist knowledge akin to a pension trustee or actuary, in order to be able to provide suitable pension transfer advice.

3.148 Much of the material information was available to members, either via direct letters from the scheme, or on the BSPS Time to Choose website. Although information available on the BSPS website was not client specific, we consider it reasonable that the PTS would view this information as a useful insight into the general options available to their client. We consider that PTSs had a responsibility to obtain the necessary information required to make a personal recommendation, and the updates and FAQs available on the website would have formed part of this information gathering process. In hindsight, it would be understandable for a PTS and scheme member to place lesser weight on this non-specific information, however this does not negate their obligation to obtain this information, nor the FCA's requirement that where they cannot obtain the necessary information, they must not make a recommendation (COBS 9.2.6R). We consider it to be PTS' responsibility, as the member's professional adviser, to be generally aware of, and to highlight the following information where relevant:

- Where PTSs were working with members prior to the Time to Choose period commencing (October 2017), PTSs should have been notifying members that further specific details regarding their options were due to be issued, and that this could impact the advice which they would receive.
- Whilst BSPS2 was not guaranteed to proceed until after the Time to Choose period had finished, the scheme and trustees had been clear in their communications for some time that their preferred course of action was to proceed with the new scheme with modified benefits as this was anticipated to be in the best interests of members. In addition, the FAQs on the BSPS Time to Choose website confirmed that it was expected, albeit not guaranteed, that the new scheme would proceed. As such, we consider PTSs should have informed clients that it was likely the new scheme would go ahead, rather than referencing any uncertainty regarding the new scheme proceeding as a justification for placing disproportionate weight on the suitability of a transfer.
- If the client chose to transfer their benefits to BSPS2, they would be able to request a transfer value, and transfer to a scheme with flexible benefits, at some point in the future, if it was deemed appropriate. The PTS should also have advised the client that it was likely the CETV of a transfer out of BSPS2 would be lower than that on offer from BSPS as a result of the reduction in the capital value of likely future pension increases. If BSPS remained in the PPF, future transfer to a scheme with flexible benefits would not be available.
- The transfer of benefits to the PPF could have been favourable for some members, particularly those who wished to retire before their Normal Retirement Date, wished to commute their pension income to receive a cash lump sum or were in a same sex marriage/civil partnership and required a spousal pension benefit. The PPF was a valuable safety net which warranted careful consideration. It should have been positioned accordingly, rather than being positioned as a largely negative outcome.
- If applicable, the PTS should have informed members with CETVs which expired between 1 December 2017 to 25 January 2018 that the guaranteed date had been extended to 26 January

2018, which would serve to relieve some of the time pressure imposed on the advice and application process.

- The PTS should have highlighted to members going through the advice process during the Time to Choose period (October 2017 to December 2017) that they should still make a choice between the BSPS2 and the PPF, in case a transfer did not proceed, and that the deadline for doing so was 22 December 2017.
- In relation to comparing BSPS2 and PPF, the PTS should have confirmed to the member, if relevant, that retirement before Normal Retirement Date would be available under either option.
- Where a member expressed concern regarding the security of the new BSPS2 scheme, particularly in relation to it taking an equity stake in TSUK, the PTS should have advised the member that the scheme had been designed so as to be financially viable, but that members would continue to have the protection of the PPF, which would likely be suitable for the majority of members where guaranteed/safeguarded future benefits were deemed suitable.

Question 9: Taking into account the timing of member communications during the Time to Choose period:

1. What impact would any new information from BSPS trustees have had on your analysis above?
2. What impact would any new information from the FCA or other regulators had during the time period?
3. Please indicate what information would likely have a substantive impact and the relevant time period.

3.149 Prior to the Time to Choose period (October 2017-December 2017) the scheme/trustees issued a number of communications, both via letter to the members as well as updates on the BSPS Pension website that we consider would have had an impact on the actions of members and PTSs during the relevant period.

3.150 As early as January 2017, the scheme issued a communication to members which confirmed that rather than allowing the scheme to transfer to the PPF, the trustees believed it would be in the member's best interests if a new scheme with "modified benefits" was established, which although likely to not be as generous as the existing BSPS, would provide more generous benefits than the PPF for most members. It was confirmed that further information would follow in due course.

3.151 We therefore consider that PTSs who were engaged in the advice process with members around this time should have been highlighting these factors to members and suggesting that any decisions in relation to their pension benefits be delayed until further information was available.

3.152 Exceptions to this would be members who had an urgent need to access benefits in the short term, or where the PTS was able to clearly demonstrate that it was in the member's best interests to transfer away from the scheme based on the existing BSPS scheme. Given that the BSPS scheme was likely to be more generous than either the BSPS2 or PPF alternatives, the PTS could have reasonable confidence that if a transfer from the BSPS scheme could be justified, the same would apply when considering a comparison with BSPS2 or PPF. Therefore, in these circumstances, it would not have been necessary to wait until full details of the BSPS2 scheme became clearer before providing advice.

3.153 In March 2017, a member letter was issued by the scheme administrators which confirmed that CETV transfer values were likely to be increased for any members with more than two years to retirement and that the further away the member was from retirement, the greater the potential increase. There was no corresponding announcement on the BSPS website, and therefore it is possible that PTSs may not have been aware of this development, unless the member shared it with them.

3.154 Where a PTS was aware of this information, we would consider that if they were engaged in the advice process with a member who could reasonably have been affected by this change, any advice should have been halted until new, revised CETVs were issued in May 2017, unless there was a specific urgent need to proceed before this date. Members who had already submitted paperwork to transfer, but where the transfer had not yet been processed, should also have been advised to select the option to wait for a new, revised CETV.

3.155 In August 2017 an update was added to the BSPS website which confirmed that the Time to Choose exercise would take place later that year, and that members would receive further details regarding their options by October 2017. Again, we consider that unless it could be clearly demonstrated that a transfer was in the client's best interests when compared to the existing BSPS scheme, PTSs should have delayed completion of their advice process unless further information was known.

3.156 Time to Choose documents were issued in October 2017 and, along with the FAQs added to the BSPS website, confirmed the following relevant points:

- Members should still make a choice between PPF and BSPS2 in case they don't proceed with a transfer – the deadline for this was 22 December 2017.
- A transfer out would be allowed in the future from BSPS2, but not from PPF. Transfer values from BSPS2 would likely be lower than those available from the existing BSPS scheme.
- For members who received a CETV with an expiry date between 1 December 2017 and 25 January 2018, the deadline would be extended to 26 January 2018.

3.157 On receipt of the Time to Choose information, PTSs would then have had sufficient scheme information to compare the options of a transfer with the likely benefits available from PPF or BSPS2. As mentioned earlier, we consider that given it was known that PPF and BSPS2 benefits were unlikely be as generous as those available from the existing BSPS scheme, if a transfer was deemed suitable from the existing scheme, it would likely also be suitable when compared against PPF and BSPS2. In these cases, we therefore do not consider that any new information received in relation to the BSPS2 would have had an impact on the recommendation to transfer from BSPS.

3.158 The above notwithstanding, we note that despite the scheme communicating to members that it anticipated BSPS2 going ahead, this would not have been confirmed until after the Time to Choose period had ended. Some members may have been concerned that if they did not take the opportunity to request a transfer out at this point, they may lose the opportunity to do so if BSPS2 did not subsequently proceed and their benefits transferred to PPF. However, although it was possible that BSPS2 would not proceed, as outlined above, we consider that if a transfer was suitable for the member, calculated against the existing BSPS scheme, then it would likely be suitable regardless of whether the BSPS2 scheme went ahead or not.

3.159 The uncertainty surrounding whether or not BSPS2 would proceed presented PTSs at the time with certain challenges when providing advice to clients, and they should have explored all of the potential options available to the client. Given that it was not possible for a client to retain their benefits in the BSPS scheme, the PTS should have compared the likely options available under PPF with BSPS2, and each of these options against the possibility of transferring to a scheme with flexible benefits. We consider a PTS should have taken care to present the PPF as a valid option for consideration if BSPS2 did not proceed, rather than giving the impression that the client's benefits transferring to PPF was the worst of all possible scenarios.

3.160 We consider that for the majority of clients, where BSPS2 was deemed to be the most suitable option, the PPF would also likely have provided benefits suitable for the client's needs and objectives. Therefore, a client would have been better off choosing to transfer to BSPS2, even if it subsequently did not proceed, as their benefits would then automatically transfer to PPF. It's possible that there may have been scenarios where it could be clearly demonstrated that whilst BSPS2 could have been suitable, the client was unlikely to be able to meet their objectives if BSPS2 did not proceed and their benefits were instead transferred to the PPF. Given the uncertainty around whether BSPS2 would proceed, it's understandable that in these circumstances a transfer could seem more attractive to the client, however the PTS should still have carefully weighed the PPF option against that of a transfer in order to establish the "least worst" scenario for the client. The PTS should have considered whether the PPF option, whilst not being the preferred outcome over BSPS2, could still have been the most suitable outcome for the client, and presented this to the client in a balanced way, rather than placing unnecessary weight on the perceived drawbacks of their benefits entering the PPF which, for a great number of members, would have been a suitable outcome. We consider this to be an unlikely scenario, however where the risks to the client of their benefits transferring to PPF as a result of BSPS2 not proceeding were greater than the risks of transfer to a scheme with flexible benefits, then a recommendation to transfer would likely be suitable. In this scenario, we would expect a PTS to clearly demonstrate that the transfer is in the client's best interests based on their overall financial situation, and document this accordingly.

3.161 In June 2017 the FCA issued a Consultation Paper[15] (CP17-16) which a) reconfirmed the regulatory requirements for pension transfer advice, in place at the time, and b) outlined and invited comment on proposed changes to this. Whilst the proposed changes may have given PTSs information as to possible changes to rules and guidance in the future, no changes came into effect until April 2018. Therefore, we consider that PTSs should have been following the guidance and rules in place at the point of advice and referred to in this document.

3.162 We are aware of advice models (two-adviser models) where an introducing, regulated adviser refers a client to a PTS for pension transfer advice but provides and retains responsibility for the associated proposed investment advice. In January and October 2017, the FCA issued updates on its website in relation to its expectations regarding pension transfer analysis, reconfirming that a PTS should have knowledge of the proposed receiving scheme and investment strategy, even if they were not providing the investment advice[16] [17]. The guidance also reconfirmed that any pension transfer analysis should be based on the client's specific circumstances and the proposed schemes, rather than using generic defaults. Although these updates were useful reminders, we consider that PTSs should already have been aware of these requirements through the existing rules and guidance in force at the time.

[15] CP17/16: Advising on Pension Transfers (fca.org.uk)
[16] January 2017 – https://www.fca.org.uk/news/news-stories/advising-pension-transfers-our-expectations
[17] October 2017 – https://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers

Appendix I
Extracts from COBS

COBS 9.2.1R (version 01 November 2007 until 30 September 2018)

1 A *firm* must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

2 When making the *personal recommendation* or *managing* his *investments*, the *firm* must obtain the necessary information regarding the *client's*:

   a knowledge and experience in the investment field relevant to the specific type of *designated investment* or service

   b financial situation; and

   c investment objectives

   so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for him.

COBS 9.2.2R (version 01 November 2007 until 30 September 2018)

1 A *firm* must obtain from the *client* such information as is necessary for the *firm* to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

   a meets his investment objectives

   b is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

   c is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

2 The information regarding the investment objectives of a *client* must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

3 The information regarding the financial situation of a *client* must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

COBS 9.2.3R (version 01 November 2007 until 30 September 2018)

The information regarding a *client's* knowledge and experience in the investment field includes, to the extent appropriate to the nature of the *client,* the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved, information on:

1. the types of service, transaction and *designated investment* with which the *client* is familiar
2. the nature, volume, frequency of the *client's* transactions in *designated investments* and the period over which they have been carried out
3. the level of education, profession or relevant former profession of the *client.*

COBS 9.2.4R (version 01 November 2007 until 30 September 2018)

A *firm* must not encourage a *client* not to provide information for the purposes of its assessment of suitability.

COBS 9.2.5R (version 01 November 2007 until 30 September 2018)

A *firm* is entitled to rely on the information provided by its *clients* unless it is aware that the information is manifestly out of date, inaccurate or incomplete.

COBS 9.2.6R (version 01 November 2007 until 30 September 2018)

If a *firm* does not obtain the necessary information to assess suitability, it must not make a *personal recommendation* to the *client* or take a decision to trade for him.

COBS 9.2.7G (version 01 November 2007 until 30 September 2018)

Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see *COBS 10*, Appropriateness (for non-advised services)).

COBS 19.1.1R (version 08 June 2015 until 31 March 2018)

If an individual who is not a *pension transfer specialist* gives advice or a *personal recommendation* about a *pension transfer,* a *pension conversion* or *pension opt-out* on a *firm's* behalf, the *firm* must ensure that the recommendation or advice is checked by a *pension transfer specialist.*

COBS 19.1.2R (version 08 June 2015 until 31 March 2018)

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 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.

COBS 19.1.2AR (version 08 June 2015 until 31 March 2018)

A *firm* need not carry out the comparison described in *COBS 19.1.2R* if:

1. the *retail client* wishes to crystallise benefits immediately after the *pension transfer* or *pension conversion*; and
2. the *retail client* is at normal retirement age under the rules of the ceding scheme.

COBS 19.1.3G (version 08 June 2015 until 31 March 2018)

In particular, the comparison should:

1. take into account all of the *retail client's* relevant circumstances
2. have regard to the benefits and options available under the ceding scheme and the effect of replacing them with the benefits and options under the proposed scheme
3. explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up
4. be illustrated on rates of return which take into account the likely expected returns of the assets in which the *retail client's* funds will be invested; and
5. where an immediate crystallisation of benefits is sought by the *retail client* prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

COBS 19.1.6G (version 08 June 2015 until 31 March 2018)

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 19.1.7AG (version 08 June 2015 until 31 March 2018)

When giving a *personal recommendation* about a *pension transfer* or *pension conversion*, a *firm* should clearly inform the *retail client* about the loss of the *safeguarded benefits* and the consequent transfer of risk from the *defined benefits pension scheme* or other scheme with *safeguarded benefits* to the *retail client*, including:

1 the extent to which benefits may fall short of replicating those in the *defined benefits pension scheme* or other scheme with *safeguarded benefits*;

2 the uncertainty of the level of benefit that can be obtained from the purchase of a future annuity and the prior investment risk to which the *retail client* is exposed until an annuity is purchased with the proceeds of the proposed *personal pension scheme* or *stakeholder pension scheme*; and

3 the potential lack of availability of annuity types (for instance, annuity increases linked to different indices) to replicate the benefits being given up in the *defined benefits pension scheme*.

COBS 19.1.7BG (version 08 June 2015 until 31 March 2018)

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

Appendix II
Competency of Pension Transfer Specialists

A Pension Transfer is defined by the FCA as a transaction, resulting from the decision of a retail client who is an individual:

(a) to transfer deferred benefits (regardless of when the retail client intends to crystallise such benefits) from:

(i) an occupational pension scheme;

(ii) an individual pension contract providing fixed or guaranteed benefits that replaced similar benefits under a defined benefits pension scheme; or

(iii) (in the cancellation rules (COBS 15)) a stakeholder pension scheme or personal pension scheme,

to:

(iv) a stakeholder pension scheme;

(v) a personal pension scheme; or

(vi) a deferred annuity policy, where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment; or

(vii) a defined contribution occupational pension scheme; or

(b) to require the trustees or manager of a pension scheme to make a transfer payment in respect of any safeguarded benefits with a view to obtaining a right or entitlement to flexible benefits under another pension scheme.

A Pension Transfer specialist is defined as an individual who has passed the required examinations as specified in TC; and is employed by a firm to give advice on pension transfers, pension conversions and pension opt-outs or to check such advice in accordance with the provisions of COBS 19.1.

A firm is responsible for assessing and maintaining the competence of their employees as outlined in the Training & Competence sourcebook at TC 2.1. For example, we would expect a pension transfer specialist to undertake ongoing Continuous Professional Development (CPD) in order to ensure that their industry and market knowledge is up to date as part of maintaining competence.

Appendix III Documents and correspondence relied upon

	Documents and correspondence
	Letter from Trustee Chairman to all Scheme members to update them on recent developments in connection with the Scheme (January 2017)
	Letters sent out to members in receipt of a CETV statement advising that changes were being made to the calculation methodology (March 2017)
	CETV Technical note for IFAs available for issue in response to technical queries from IFAs (May 2017)
	Website update to inform members of a potential revision to the underfunding reduction (from 8% to 5%) in anticipation of receipt by the scheme of £550m, due from Tata Steel as part of the RAA (August 2017)
	Letter to members in receipt of an unexpired transfer quotation providing an amended quotation on a non-statutory basis reflecting the change in the underfunding reduction (as above) (September 2017)
	Member Option Packs issued under Time to Choose exercise (October 2017)
	FAQ Wording added to the Time to Choose website relating to transfers (October 2017 to December 2017)
	Re-tranching technical note for IFAs added to Time to Choose website (November 2017)
	Flowchart ‘You think you might want to transfer out of the BSPS’ added to the scheme website (December 2017)
	CETV Technical Note for IFAs added to the Time to Choose website (December 2017)
	FCA/TPAS/tPR joint letters issued to all BSPS members with an unexpired CETV statement with covering letter from BSPS Trustee (December 2017)

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