

The complaint

Mr S complains about the advice given by an appointed representative of PrisWM Limited to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a personal pension. The BSPS is a defined benefit ('DB') occupational pension scheme. Mr S says the advice was unsuitable for him and has caused a financial loss.

Mr S is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr S.

PrisWM Limited is responsible for answering the complaint on behalf of its appointed representatives. So, to keep things simple, I'll largely just refer to 'PrisWM' in my decision.

What happened

In March 2016, Mr S' employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr S approached PrisWM around June 2016 to discuss his BSPS pension. His initial enquiry recapped the situation with the BSPS and said *"In light of this I want to take control of my finances, pay off my mortgage now and secure a future for myself and my wife that is not built on ifs and buts. Can you help?"*

PrisWM met with Mr and Mrs S a few days later on 21 June 2016. The meeting notes it recorded say that Mr S had worked for his employer and in other heavy industry all of his life. And he felt this was likely to impact his long-term health and could mean he had a lower-than-average life expectancy. He was unhappy with, and had significant concerns about, the BSPS, including the prospect of the pension moving into the PPF. And he wanted to take tax-free cash ('TFC') immediately to clear the remainder of his mortgage and give he and Mrs S the security of knowing their house was paid for in full. The meeting notes say that PrisWM's fee structure was discussed – there was a set fee to carry out analysis with a further fee if PrisWM recommended a transfer. And a fact-find document was given to Mr and Mrs S to complete if they decided to go ahead.

I've seen a copy of an email sent to PrisWM the next day in which Mr and Mrs S asked, in the event the analysis suggested a transfer wasn't in their interests, whether PrisWM would refuse to help or would advise them not to transfer but leave the decision to them. To which PrisWM responded saying that while the analysis was important, its advice would take into account Mr and Mrs S' circumstances as a whole as well as their preferences and objectives.

PrisWM has provided a copy of the fact-find, completed and signed by Mr and Mrs S to confirm it was accurate, outlining their circumstances and objectives. It noted that Mr S was 56, married and employed full time. He and Mrs S owned their own home with an

outstanding mortgage of approximately £63,000 and monthly repayments of £744. It was recorded that they had outstanding loans with a balance of approximately £3,000 and credit cards with an outstanding balance of roughly £16,000. Mr and Mrs S indicated they were making combined repayments of £800 per month towards these other debts. But their income was sufficient to meet their outgoings.

The fact-find recorded that they were both in good health and that their expected retirement ages were undecided. But there was a section for them to set out their circumstances and goals in their own words in which it was again stated that, due to Mr S' employment history, he was likely to have a below average life expectancy and so he wanted to retire before 65. They said the original intention was for Mr S to retire and take tax-free cash and an income from the BPS at age 60. But due to the ongoing issues with the BPS he said he wasn't now able to take his benefits from the scheme until age 65. He was extremely concerned about the status of the BPS and its future prospects. It was noted that Mrs S also had a DB scheme pension that provided guarantees. Mr S again said that paying all of their mortgage off now would greatly increase their quality of life and allow them to increase their savings. And accessing the pension now would allow Mr and Mrs S to be debt free at retirement, whenever they chose that to be.

There was a further section where Mr S answered questions about his attitude to risk. Based on these answers PrisWM recorded that Mr S had a 'very low' willingness to take risk (attitude to risk) or a two on a scale of one to ten. But PrisWM has said that, after discussion with Mr and Mrs S, it was agreed that three out of ten or a 'cautious' attitude to risk more reflected their opinions.

A transfer value quotation was obtained from the BPS trustees in July 2016. This said Mr S' benefits had a cash equivalent transfer value ('CETV') of £288,071.93.

PrisWM then arranged for a transfer value analysis ('TVAS') report to be carried out. The TVAS included calculations of critical yields – the growth rates required of a new pension to allow Mr S to purchase equivalent benefits to those he was due under his DB scheme. The amount required to purchase equivalent benefits was also provided in monetary terms.

The TVAS said that if Mr S retired at age 57 (within one year) and didn't take TFC it was estimated it would cost approximately £650,145 to purchase equivalent benefits to those he was due under the BPS. If he retired at 65 taking no TFC, it'd cost approximately £942,581 to purchase equivalent benefits to those the BPS was scheduled to provide. Or, in other words, his pension would have to grow by 16.6% per year (the critical yield) between transferring and retiring to match his existing benefits.

Similar calculations were provided for how much a personal pension would need to increase by to match the benefits Mr S would be entitled to if his pension moved to the PPF. To purchase equivalent benefits at age 57, without taking TFC, it was estimated he'd need a fund value of £591,803. And to purchase equivalent benefits to the PPF at age 65, without taking TFC, he'd need a fund of £610,134, or to achieve a critical yield of 11% per year.

PrisWM's notes indicate a follow up meeting then took place in August 2016 where this was discussed and that it indicated a transfer didn't make sense financially. But it says Mr and Mrs S said they still didn't trust the BPS and what was going on and wanted control of their pension to avoid uncertainty, even if this meant accepting less. The notes also state the concerns about Mr S' life expectancy were reiterated, and Mr and Mrs S believed they were unlikely to get value for money in the existing scheme because of this. It was also noted that they were concerned the pension would also die with them and not give the option of leaving a benefit to their children. The notes say it was agreed that a transfer would proceed, and that Mr and Mrs S would provide a declaration confirming they understood the risks.

On 7 September 2016, PrisWM sent Mr S a written summary of its recommendations – advising him to transfer his pension benefits into a personal pension. The suitability report recapped the growth that would be required to match the benefits of the BSPS and the PPF and said this was unlikely to be achievable, particularly based on Mr S' attitude to risk. It also said that PrisWM's analysis suggested that the CETV being offered by the trustees of the BSPS was low. But Mr and Mrs S were aware of this and had indicated their other objectives outweighed this – in particular to take control of the pension and release 25% of the value as TFC to clear their mortgage.

So, a transfer was recommended as it allowed access to sufficient TFC to clear the mortgage and some of Mr and Mrs S' other debts, gave Mr S control over the pension and flexibility in respect of how an income was eventually drawn. It was also stated that the remaining fund within the personal pension provided a higher level of death benefits than provided by the DB scheme – again addressing one of Mr S' concerns. A pension provider, and fund, were also recommended, which PrisWM said it felt best met Mr S' needs and attitude to risk. And PrisWM would also provide ongoing servicing of the pension, at a cost.

The covering letter that accompanied the suitability report requested that Mr S provide the statement in his own words about his reason for transferring, which he'd agreed to send during the earlier meeting.

I've seen a copy of a 'pension transfer statement' signed by Mr and Mrs S and dated as having been received by PrisWM on 15 September 2016. This confirmed information that had already been well documented. It said Mr S had looked to retire at age 55 and been turned down, he didn't expect to be in a position to continue working until age 65, but changes had been made to the BSPS which meant he wouldn't be able to draw the benefits he wanted too before then. It also said he was concerned about what had happened to that point with the BSPS and that further changes could be forced on members. And mentioned he'd made contributions in good faith and wanted to enjoy them.

It said that he was aware the transfer value was lower than he thought it should be but he still felt taking charge of his own future was better than leaving the money in the scheme. And confirmed he would be looking to take the maximum available TFC to pay off his mortgage and some other debts and continue to work until age 60, at which time he'd take an income. The statement also talked about being concerned the BSPS wouldn't provide for Mr S' children and that Mrs S had other pension arrangements. And in summary said they'd decided it was in their best interests to act now.

I understand the transfer went ahead in line with the recommendation in October 2016, with Mr S drawing 25% of the fund as TFC. PrisWM then became servicing agent for the new personal pension.

In June 2017, PrisWM raised concerns, on behalf of Mr and Mrs S, with the trustees of the BSPS. They felt that the CETV they'd been provided was unfairly low and said that scheme members who were looking into transferring at that time were now being quoted much greater transfer values for their benefits. The trustees said that the transfer value had been calculated correctly when it was requested.

PrisWM continued to provide ongoing servicing in respect of Mr S' pension for the next several years. And, when Mr S retired in 2019, and began to draw an income from the personal pension, PrisWM gave advice, including in relation to what level of income he planned to take and provided forecasts to assist with that decision.

Mr S complained, via his representative, in September 2020 to PrisWM. He said he thought the advice he'd been given to transfer his pension benefits was unsuitable as the benefits he

would receive through the private pension were unlikely to match those he could've obtained by moving to the BSPS2.

PrisWM didn't uphold Mr S' complaint. It said, when Mr S approached it, he had a clear intention to transfer. It felt transferring had been suitable, based on the circumstances and objectives he had explained and recapped consistently at the time. And it noted that taking benefits under the DB scheme at that time wouldn't have achieved these aims. PrisWM also said Mr S was aware of the value of the guaranteed benefits available through his DB scheme and those that the PPF would provide. And he'd understood the risks but had wanted to proceed.

Mr S referred his complaint to our service. PrisWM noted that details of the BSPS2 were not released until mid-2017, so felt the argument made by Mr S' representative in respect of this was not applicable here.

An Investigator upheld the complaint and recommended PrisWM pay compensation and £200 for the distress caused. In summary, he said he didn't think PrisWM had done enough to address any misunderstanding Mr S had at the time of the advice about his options. And he didn't think the goals discussed justified the transfer or Mr S accepting what in all likelihood would be significantly lower retirement benefits. So, he didn't think Mr S should've been advised to transfer and believed he would ultimately have moved his benefits to the PPF had correct advice been given.

PrisWM disagreed. It said when it advised Mr S he and Mrs S were under a great deal of stress because of their position. In addition to the uncertainty and worry regarding the BSPS, Mr S was also worried he could lose his job. Given their outstanding debts, including the mortgage, this was having a heavy impact on them. The climate at the time of the advice was one of significant uncertainty and there was very little optimism amongst Mr S' colleagues. And given Mr S' concerns about his long-term health, he wanted a solution. PrisWM reiterated that Mr S wanted to clear his mortgage for the peace of mind that would bring. It said this wasn't irrational and, as advisers, its role was to assist clients in meeting their objectives. It believed Mr S could not have met his objectives by remaining in the BSPS or moving to the PPF and it felt the advice it provided was suitable. It also said it felt the Investigator's opinion was based on a significant degree of hindsight. And, if it had not advised Mr and Mrs S to transfer, PrisWM felt they would've still sought to do so on an insistent client basis.

The investigator wasn't persuaded to change his opinion. He said while he didn't doubt Mr S had concerns and might've thought that a transfer would achieve things he was interested in, it was PrisWM's role to advise him on what was in his best interests. And he remained of the opinion that transferring was not. He also didn't agree that he felt Mr S would always have insisted on transferring. He said he felt with sufficient explanation and reassurance, Mr S would've accepted the advice not to transfer. As agreement could not be reached though, the complaint was referred to me for a final decision.

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely

than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of PrisWM's actions here.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, PrisWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S' best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the BPS benefits, without taking TFC, at age 65 was 16.6%. And to match the benefits the PPF would've given on the same basis was 11%. This compares with the discount rate of 3.5% per year for 8 years to retirement, as would be the case if Mr S retired at 65.

For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

PrisWM has made the point that Mr S did not intend to retire at 65 and was looking to retire sooner. And it said that Mr S was always looking to take TFC. So, on that basis the comparisons to what would've happened at age 65 aren't particularly useful in this case. But the regulator requires such comparisons to be made and provided. And these were the only critical yields calculated in the TVAS.

I can see that retiring at age 60 was talked about in the documents that have been provided. And it does appear that retiring early was something Mr S was considering, as was taking TFC. The TVAS report didn't though include a calculation of the critical yield that would be

required for retiring at age 60 or details of the pension or amount of TFC Mr S could expect to be able to draw at that age under either arrangement. There isn't really an explanation why. And I think this would've been appropriate given this was discussed.

There was also no calculation of the various critical yields at any retirement age in the event TFC was taken. The correspondence suggests this was because the trustees of the BSPS were not forthcoming with information that PrisWM asked for, in order to assist with those calculations. And it considered that this could not be calculated accurately and was why it felt it wasn't therefore appropriate to include. But as this wasn't included, and I think critical yield figures are still a useful consideration, I have to look at the figures that were included.

I've taken the listed critical yields and relevant discount rate into account, along with the composition of assets in the discount rate, Mr S' 'cautious' attitude to risk and also the term to retirement. There would be little point in Mr S giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the figures I've referenced I think Mr S was always likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF.

While comparisons weren't included to age 60, the TVAS reports did estimate that, in order to purchase equivalent benefits to those Mr S would be due at age 57 under the BSPS, if he didn't take TFC, he'd need a fund worth in excess of £650,000. And to purchase equivalent benefits to those the PPF would provide at age 57, a fund of in excess of £590,000 would be required. Critical yield figures were not calculated but given the CETV was just over £288,000, achieving this level of growth within a year seems practically impossible – even though the amounts needed were likely to be lower if taking TFC. And I think this further reinforces that Mr S was unlikely to be better off, in terms of overall pension benefits, as a result of transferring.

So, from a financial viability perspective, I don't think a transfer was in Mr S' best interests.

But from what I can see PrisWM didn't argue that it was. The suitability report acknowledged that the required returns were likely unachievable, particularly given Mr S' attitude to risk. And that the CETV seemed to be particularly low. But PrisWM said there were other issues that were of concern to Mr S, which it felt meant a transfer was still suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

PrisWM says Mr S wanted access to TFC straight away to pay off his mortgage for peace of mind. But didn't want to begin drawing an income until he retired and wanted to be able to control what level of income he took. And he wanted to retire early, because of health concerns. And this is reflected in the correspondence I've seen.

Mr S' initial enquiry to PrisWM said *"...I want to take control of my finances, pay off my mortgage now and secure a future for myself and my wife that is not built on ifs and buts."* This was noted, before he'd spoken to PrisWM.

The fact find, completed and signed by Mr and Mrs S a couple of weeks after their initial enquiry, said, in the section in their own words, that it was always Mr S' intention to retire early and take a lump sum to repay the mortgage. And this repeated that he still wanted access to a lump sum now for that purpose but said Mr S didn't want an income at that time because of the tax he'd be liable for. It did though acknowledge he didn't intend to work until the normal scheme retirement age of 65.

And the statement they completed after they'd received the suitability report repeated that taking a sum to pay of their mortgage and other debts immediately, then taking an income on retirement, which was likely to be around age 60, was their intention.

The meeting notes recorded by PrisWM also reflected that this was what Mr S intended to do.

Mr S therefore was consistent throughout the advice process about what his intentions and aims were. So, I'm satisfied that PrisWM is correct when it says this was something Mr S wanted.

But under the BSPS and the PPF, Mr S was able to take his benefits early – and take TFC. These would've likely been subject to actuarial reductions when compared to the benefits available at age 65. Although it doesn't appear that PrisWM researched whether retiring on the basis of ill health would limit those reductions. But regardless, Mr S didn't need to transfer in order to access his benefits early.

PrisWM has said in response to the Investigator's opinion that wanting TFC to clear the mortgage went further than being just an objective. It says when Mr and Mrs S contacted it they were very distressed about their situation. They had a lot of debt – the mortgage and other lending – and Mr S was not just worried about losses to his pension but also his job security due to what was going on with his employer. It says the prospect of this coupled with the indebtedness meant they were *"losing sleep"* and *"really needed some kind of solution"*.

The information from the point of sale though doesn't necessarily reflect this. The meeting notes were clear that Mr S was unhappy with the BSPS for a number of reasons. And that they *"really wanted"* to take TFC to clear their mortgage. The section Mr and Mrs S completed in the fact find said that this is what they wanted and that they felt paying off the mortgage would improve their quality of life. And the statement they gave after the suitability report was issued reiterates this was their plan and that they worried about the BSPS. But none of it goes as far as to support the urgency that PrisWM is now saying there was.

The income and expenditure information noted does indicate that payments towards the mortgage and other debts made up the significant majority of Mr and Mrs S' expenditure. But it doesn't suggest that this was unaffordable. PrisWM has said that in the years since clearing the mortgage, Mr and Mrs S have told them they'd taken on additional debt. But I don't think that necessarily means the payments at the time were unaffordable and is more likely because of their changed situation once the mortgage was repaid.

PrisWM has also said that the notes cannot be expected to reflect everything that was discussed in such detailed meetings as those that took place. But I think the urgency and impact on Mr and Mrs S' mental state that PrisWM says the situation was having is an important piece of information. And if it informed the advice to the extent that PrisWM now argues, I'd have expected it to be recorded somewhere or for Mr and Mrs S to have made such comments in their own written explanations of why they were seeking advice.

I don't doubt that Mr and Mrs S might have thought about, and even been concerned by, how they might pay back their outstanding debts if their situations changed. And I think being mortgage free probably appealed to Mr and Mrs S. I think it, and the reassurance that would bring, would appeal to most customers. And, as I've said, I'm satisfied that they entered into discussion with PrisWM with this as a goal. But I don't think it was necessarily a genuine *need*. And contrary to what PrisWM said in response to the Investigator's opinion, I don't agree it was PrisWM's role as the adviser to help Mr and Mrs S meet their objectives. While understanding objectives is important, these must be separated from what a customer

needs. And it was PrisWM's role to provide unbiased and independent advice on what was in Mr S' best interests. And the primary purpose of a pension is to provide income in retirement.

Again, Mr S was also able, because of his age at the time, to take retirement benefits early under the BPS – even straight away. I've seen an early retirement quote saying he could've taken a starting annual pension of £12,376.08 or TFC of £57,969 and a reduced starting pension of £8,695.44 at the time of the advice. Both of the annual pensions would've increased while in payment.

That TFC amount would not have cleared Mr S' mortgage in full. But could've reduced the outstanding balance to approximately £5,000, if taken straight away. But there was no indication it needed to be taken straight away – because Mr S intended to continue working for several years and the mortgage appears to have been affordable. So, if he had waited, he could've continued to make payments to the mortgage to reduce its balance in the meantime. And the amount of TFC he'd have been entitled to would've likely increased in that time too as the actuarial reduction would've been reduced by waiting a couple of years and revaluations of the benefit value would've taken place. Meaning when he did retire early, I think Mr S would have had enough TFC to then clear the mortgage in full. This would've meant potentially paying more interest over the course of the mortgage. But the information on file suggests there was an early repayment charge for clearing the mortgage anyway – which would've likely been reduced somewhat by waiting, offsetting at least some of the interest cost. And again, by transferring Mr S was always likely to receive lower retirement benefits. And I can't see that a meaningful comparison between these reductions and the interest costs was calculated for Mr S to consider.

The TFC that would've been available through the PPF is unclear. PrisWM didn't include any calculations of how the TFC available through the BPS or the PPF would compare or what these amounts were likely to be. Again, PrisWM indicated this was because information was not forthcoming from the trustees. But, without this information, Mr S wasn't really in an informed position. And under COBS 9.2.6, PrisWM should not have made a recommendation to Mr S if it didn't have the necessary information to assess suitability. So arguably, PrisWM ought not to have proceeded without this information as I think it was crucial to assessing the suitability of transferring out of the DB scheme.

Generally, benefits under the PPF are reduced by 10% compared to those available through the DB scheme. But the PPF does tend to have more generous early retirement factors. And the benefits would've continued to escalate, albeit at a lower rate than the BPS, if transferred to the PPF. So, it seems likely that the TFC Mr S would've been able to take under the PPF within a couple of years of this advice would've been at worst roughly equivalent of that in the early retirement quote I've mentioned. Which would likely have been enough to clear his mortgage, if he had retired early, given the balance would've continued to be reduced while he continued working.

I know that clearing his mortgage immediately might have appealed to Mr S. And not transferring would've meant not doing so. But while different to what Mr S might've thought he wanted, he doesn't appear to have *needed* to pay the mortgage off at the time. And it does appear that Mr S was always likely to be in a position where his mortgage could be cleared by the TFC accessible through the DB scheme benefits. And he would've then received a guaranteed escalating pension.

So, while I know having a mortgage to think about while approaching retirement was likely concerning, I don't think transferring was the only way that Mr S could pay this off. And given he was likely to achieve materially lower retirement benefits through transferring, I don't think it was in his best interests to transfer to address this mortgage balance when he did.

On the point of wanting flexibility in respect of future income, again I'm satisfied this was something that Mr S expressed an interest in. But I don't think there was enough information recorded at the time around this.

The fact-find didn't include any information about what Mr and Mrs S expected their retirement income needs to be. And the suitability report didn't cover this either – it just said that Mr S wanted flexibility in retirement. Without knowing his income needs, it couldn't have been established whether a flexible income would provide what Mr S required in retirement, or that it was more appropriate than the guaranteed escalating income he was due under the DB scheme – particularly when estimates of what the BPS or the PPF were likely to provide on early retirement weren't provided for comparison or consideration. So, I don't think transferring to achieve this was in his best interests, particularly given, as I've already explained, he was likely to receive benefits of a lower overall value.

PrisWM has said that Mr S retired at age 58 and began drawing an income in 2019, of approximately £1,300 per month (net of tax) from his pension. Which the BPS and the PPF would not have matched. But again, these income needs were not known at the time of the advice and there was nothing recorded to indicate they were explored. Mr S would've been able to take benefits (albeit actuarially reduced) under the BPS or the PPF at age 58. And there weren't any estimates of what these amounts were for him to consider or to decide if he felt these might potentially be sufficient when combined with Mrs S' income and pension benefits. They might've been less than he ultimately decided to draw from the personal pension. But as they were guaranteed and escalated, he could've decided a different level of income would've been acceptable.

I've also seen information from around the time the personal pension income began to be drawn that it was acknowledged that the level of income being taken was likely unsustainable. And a forecast indicated that, even if the income was reduced when Mr S began to receive his state pension, the pension fund is likely to now be exhausted by age 83. Whereas the income under the DB scheme was guaranteed for life.

Again, I accept that the goals and objectives PrisWM has referred to were expressed by Mr S. But I don't think they were genuine *needs* at the time of the advice, or that transferring was the only way to address what appears to have been the most pressing of them – being secure in the knowledge the mortgage could be repaid. So overall, I don't think addressing these meant transferring was in Mr S' best interests, when it was always likely to result in him receiving benefits of a lower overall value.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr S. But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr S about what was best for his retirement provisions. Again, a pension is primarily designed to provide income in retirement. And transferring was always likely to result in Mr S receiving lower retirement benefits than he would've through either the BPS or the PPF.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr S drew in his lifetime.

I can see that Mr S expressed concerns about his potential life expectancy – and how this might've been impacted by his profession. And it was mentioned in a lot of the

correspondence that he was already affected by some health issues. But Mr S not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr S' pension would need to last longer. If Mr S transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the income he needed and any death benefits. And even if he didn't live until his average life expectancy, given the plan was for him to retire early and draw benefits flexibly from the personal pension – apparently drawing more in the early years of retirement – it was likely that the pension pot would've been significantly depleted by the time that it came to be passed on to his beneficiaries. So, the pension may not have provided the legacy that Mr S may have thought it would.

And the BPS, and the PPF, would've provided a spouse's pension if Mr S predeceased Mrs S. This was guaranteed for her lifetime and it escalated – it was not dependent on investment performance or how much had been taken from the pension plan to that point. PrisWM has said that Mrs S had a DB scheme of her own. But even so, the spouse's benefit from Mr S' pension was still likely to be useful to her. And I also understand, in addition to the spouse's pension, the DB scheme pension would also, in certain circumstances, provide a lump sum on Mr S death as well – representing a return of his contributions.

In any event, PrisWM should not have encouraged Mr S to prioritise the potential for higher death benefits through a personal pension over his security in retirement. And overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr S.

Concerns over financial stability of the DB scheme

I think it is clear from all of the information I've seen that Mr S had concerns regarding the BPS and what may happen to it. And I also don't doubt he was concerned about what entering the PPF would mean for him. His employer had been consulting on its plans for the scheme and it was clearly an uncertain time. And there also appears to have been a general mistrust and lack of optimism regarding the likelihood of a solution and towards his employer in general. And I think it's clear from what Mr S said and wrote at the time that he was leaning towards transferring his benefits before even speaking to PrisWM.

Contrary to what Mr S' representatives have said, there was very little that had been confirmed at the time in relation to the BPS2 either. So, I don't think this would've brought much reassurance.

I'm also conscious, as I've said, that PrisWM noted in the suitability report that Mr S was likely to be worse off by transferring and that the CETV appeared to be of poor value. And that Mr S acknowledged these things. So, it's clear to me Mr S felt rather strongly about the uncertainty affecting his pension.

That being said I think that PrisWM should've reassured Mr S that the scheme moving to the PPF wasn't as concerning as he might've thought. It looks like Mr S was apparently concerned that the BPS could impact the ability of the PPF to function. And one of the meeting notes PrisWM has provided said its adviser agreed this would put stress on the PPF. But given the purpose and set up of the PPF, I don't think there was anything to support this and I think PrisWM should've done more to reassure Mr S about this.

While I accept Mr S was likely to retire early, his income needs were not recorded at the time of the advice and don't appear to have been discussed. And as I've explained, I don't think transferring was the only way to meet his other objectives. The information in my view was clear that he was unlikely to exceed the overall benefits he'd be due through the PPF by transferring. And although the increases in payment in the PPF were lower than under the

BSPS, the income was still guaranteed and was not subject to any investment risk. So, I don't think that Mr S' concerns should've led to PrisWM recommending he transfer out of the DB scheme altogether.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr S. But PrisWM wasn't there to just transact what Mr S might have thought he wanted. The adviser's role was to really understand what Mr S needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr S was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr S was very likely to obtain lower retirement benefits. PrisWM says his concerns about other issues outweighed this and that Mr S indicated as much. And I don't doubt he had other concerns, in particular in relation to clearing the mortgage. But as I've explained I don't think he needed to transfer his pension. He should've been reassured that his guaranteed provisions under the DB scheme were likely sufficient to address his outstanding mortgage and shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable. And in my view, although Mr S might've thought the other things that would be achieved by transferring were a good idea, there were no other particular reasons that justified a transfer.

So, I think PrisWM should've advised Mr S to remain in the BSPS.

At the time of the advice Mr S, was considering retiring early retirement and taking this within a few years. And he subsequently did retire at age 58. And he was looking to take the maximum available TFC when he did retire. The PPF would've involved a 10% reduction in starting pension for members. But the reduction for early retirement under the PPF was lower than the alternative BSPS2. The commutation factors for TFC were also more favourable under the PPF when compared to the BSPS2. So, given Mr S' circumstances and intentions, I think if PrisWM had advised him not to transfer, he'd have retained his BSPS benefits and moved with it to the PPF when the time came to make a choice about this.

Of course, I have to consider whether Mr S would've gone ahead anyway, against PrisWM's advice. PrisWM argues that he would've done so. And I've considered this carefully.

As I've already explained, I'm satisfied that Mr S approached PrisWM with an intention in mind – as his initial email talks about his goal of clearing the mortgage using proceeds from the pension. But I don't think that means he would've been unwilling to accept advice.

I'm conscious that the day after the first meeting with PrisWM, an email was sent to PrisWM by Mr and Mrs S asking whether, in the event the analysis done by PrisWM suggested they shouldn't transfer, it would refuse to assist or just advise them but leave the decision to them. Which could suggest that at that point, they were thinking of proceeding, whatever the analysis suggested. But I also think this question was likely to have been influenced by the fee structure discussed during the first meeting. PrisWM said there'd be a fee of £2,500 to complete the analysis alone with a further fee if transferring was recommended and proceeded. So, this question I think was more likely to be around whether the fee would be lost entirely if the analysis didn't support a transfer, or whether there were options still available.

When completing the fact find, Mr S repeated his aims and concerns about the BSPS. But that was restating what had already been discussed in conversation with PrisWM. And again, I don't think putting those things in writing means Mr S was unwilling to take PrisWM's advice, once the relevant analysis was completed.

Mr S did provide a further written statement (typed and signed) after the suitability report had been produced, re-affirming his reasons for wanting to transfer. Which is something I might expect to see where a business had advised against a transfer but the consumer was proceeding on an insistent client basis. But here PrisWM had advised Mr S to transfer. So, he understood at that time that his professional adviser thought transferring was suitable. And the reasons he listed for wanting to transfer, and the acknowledgment of the risks involved, largely mirrored information from the suitability report and that had been discussed previously. I don't think this is evidence that he would've transferred no matter what. Rather this seems to me just to show that Mr S had read the advice provided and was relying on it.

And as I've indicated previously, I think there was information lacking from the analysis and suitability report that meant Mr S wasn't in a fully informed position at that time. There were no estimates of the benefits either the BSPS or the PPF would provide on retirement around 60 (a suggested intention) or that the PPF would provide at any time for that matter. There also wasn't any information about the TFC that either would provide – other than what the BSPS would provide immediately. So, not only do I think this shows Mr S was relying on the advice provided, but he was also relying on incomplete information when doing so.

Based on what I've seen, I understand Mr S was an inexperienced investor. He had a low tolerance for, and cautious attitude to, risk. The attitude to risk questionnaire supports this and indicates he was risk averse. And this pension accounted for the majority of his retirement provisions – and its main purpose was to provide an income in retirement. Although I know he had concerns about the BSPS and what had happened thus far and it appears he hoped to clear his mortgage, if PrisWM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr S' concerns or his commitment to the course of action he'd thought about before advice was taken were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If PrisWM had explained that Mr S didn't need to be overly concerned about the prospect of the pension entering the PPF and that this would still have left him in a position, through the guaranteed benefits available to him, to clear his mortgage when the time came, I think that would've carried significant weight. So, I don't think Mr S would have insisted on transferring out of the DB scheme.

In light of the above, I think PrisWM should compensate Mr S for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that PrisWM also pay Mr S £200 for the distress caused by the unsuitable advice. I don't doubt that Mr S has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr S, as far as possible, into the position he would now be in but for PrisWM's unsuitable advice. I consider Mr S would have remained a member of BSPS and subsequently moved with it to the PPF. So, calculations should be undertaken on this assumption.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance

and set out its proposals in a consultation document - [CP22/15-calculating redress for non-compliant pension transfer advice](#).

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance - <https://www.fca.org.uk/publication/policy/ps22-13.pdf>. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr S whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance / rules to be published. Mr S has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr S.

PrisWM must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr S retired at 58, and I think he wouldn't have taken benefits from this pension until that age if he hadn't been advised to transfer, so this should be the basis for the calculations.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S's acceptance of the decision.

PrisWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr S's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr S's SERPS/S2P entitlement.

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

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr S within 90 days of the date PrisWM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes PrisWM to pay Mr S.

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

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect PrisWM to carry out a calculation in line with the updated rules and / or guidance in any event.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late April 2023.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

Mr S has retired and I think he would've done the same if he'd had gone into the PPF. Retiring early was something that Mr S was thinking about at the time of the advice, largely for health reasons. And this seems to have been what resulted in him taking this decision in 2019. As the benefits he'd have been entitled to under the PPF, including TFC, would've likely allowed him to address his main concern of clearing the mortgage based on retiring at the same time, I think this is what he would've done.

Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr S. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason, while I know Mr S' representative disagrees, I require PrisWM to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

If Mr S accepts this decision, he will be doing so on the basis of my understanding as set out above. It's important that Mr S is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

In addition to the calculation described above, PrisWM should pay Mr S £200 for the distress caused by the disruption to his retirement planning.

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

My final decision

Determination and money award: I uphold this complaint and require PrisWM Limited to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require PrisWM Limited to pay Mr S any interest on that amount in full, as set out above.

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

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

If Mr S accepts this decision, the money award becomes binding on PrisWM Limited.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my decision and go to court to ask for the balance. Mr S may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 January 2023.

Ben Stoker
Ombudsman