DRN-3587568

The complaint

Mr S complains about the advice given by The Prudential Assurance Company Limited ('Prudential') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS2') to a personal pension plan ('PPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

By way of background:

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.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr S chose to opt-into the BSPS2.

In March 2020 Mr S says that because he was concerned about the future of his employer and how it might affect his pension, he sought advice.

Mr S met with Prudential in March 2020 and it completed a fact-find to gather information about Mr S' circumstances and objectives. Amongst other things it noted that Mr S was aged 57; he was divorced; his ex-wife had received a share of his DB pension; he had three non-dependent children; he owned his own home; other than a few hundred pounds in the bank, he had no other assets to speak of; and his objective was to retire at age 60, have access to around £50,000 as a lump sum, to have an income of £757 per month, which was broadly what his expenditure needs were at the current time and to pass any of his unspent pension monies to his children. Prudential also carried out an assessment of Mr S' attitude to risk, which it deemed to be 'high'.

On 4 June 2020, Prudential issued a suitability report advising Mr S to transfer his BSPS2 benefits into a personal pension and invest the proceeds in an investment fund that it deemed matched Mr S' attitude to risk. The presentation of this was carried out during a video meeting. Unfortunately a recording of this meeting isn't available.

In summary, the suitability report said the reasons for this recommendation were: to permit access to an immediate cash lump sum; to leave the remaining fund invested until Mr S reached 60 when he could draw a further lump sum to meet his capital expenditure needs; to enable Mr S to determine what income he took according to his needs; because its modelling showed that with stress testing using a higher income and tax-free cash, Mr S' fund would last beyond age 120; and a transfer would enable Mr S to create a legacy for his children.

Mr S accepted the recommendation and sometime afterwards, around £339,000 was transferred to his new personal pension.

In 2021 Mr S complained to Prudential about the suitability of the advice. Mr S said that he felt he'd received unsuitable advice to transfer his BSPS2 benefits and didn't feel his circumstances and the advice were reviewed thoroughly or in-line with regulatory standards.

Prudential didn't uphold Mr S' complaint. In summary it said, the advice paperwork documented the reasons why it believed the advice was suitable – it provided flexible access to income when needed and the residual monies would remain invested for potential growth; it allowed Mr S' children to benefit in the event of his death; and the pension offered a number of investment funds, to choose from / change if needed. It said it was satisfied from reviewing the file that the advice to transfer was in Mr S' best interests.

Dissatisfied with its response Mr S referred his complaint to our Service. An investigator upheld the complaint and required Prudential to pay compensation. In summary, they said the transfer wasn't suitable . They said they weren't persuaded the assessment of Mr S' attitude to risk as 'high' was accurate given his documented experience and his current assets; the fact his DC pension was invested in a medium risk fund, which he'd likely be accessing at the same time as this pension; and because in their view, true high-risk investors are relatively rare. They said that, while the adviser was right to question the assessment, they should've done more. They said there wasn't much scope for investment returns in excess of the critical yield. And because they thought Mr S would've placed more value on the guarantees of his DB scheme than Prudential's assessment would suggest, the fact he was giving up the guarantees with little or no chance of replicating them represented an appreciable disadvantage – notwithstanding the analysis which showed that if Mr S accessed the same income from a personal pension at age 60 or 65 as his DB scheme would provide, it was likely sustainable.

They went on to say that Mr S didn't need to access a cash lump sum immediately – it wasn't essential expenditure. And death benefits shouldn't have been prioritised over providing an income for him in retirement. While they acknowledged Mr S received advice and transferred long after the general concerns about the scheme following the announcement about the BSPS2 in 2017and the 'Time to Choose' exercise – and the file refers to Mr S having seen other members transfer and regret it - on balance they thought Mr S would have likely followed advice not to transfer.

Prudential disagreed. It said it remained of the view that the recommendation to transfer was suitable. It summary it said, it agreed with the observation of the investigator about the timing of Mr S' complaint. It said Mr S spoke with the adviser in 2021 and he said he was happy with the advice. While Mr S received a letter from the FCA telling him to complain, he was not complaining.
It said its risk profiling exercise was thorough – the balance of information in the risk questionnaire and the more detailed discussions in the fact-find confirm Mr S was prepared to accept a high level of risk. It said Mr S had prior experience of investing in shares (these were sold to support his family over time), which is a clear indication of his risk appetite – investing in shares is high risk. It said while Mr S' DC pension was invested in a medium risk fund, the key objective for this transfer was to provide for his children. It said, at state pension age, Mr S' state pension would provide most of his income needs, providing scope for this investment to be of real benefit to his children.

It disagreed with the investigator about Mr S placing more value on the guarantees – the advice paperwork referred to the risks of giving up guarantees on multiple occasions and it was satisfied Mr S understood and was comfortable with the loss of guarantees. It said a key reason for transferring was to enable his family to benefit from his pension upon his death. It said the cost of providing life cover as an alternative was prohibitive at £500 a month. It said it acknowledged it was more of a want rather than a need of Mr S', but he said he valued this more than obtaining a secure income from the fund.

In a separate submission, Prudential also questioned our use of discount rates as a means of assessing the likely achievable returns a typical investor could expect – it said the primary purpose of these is to allow firms to carry out redress calculations. It said this methodology is more cautiously designed (it assumes a life-styling / de-risking approach) and so using this approach is more likely to result in cases not being able to meet financial viability tests. It said this method adopted by our Service is flawed.

It also said it wanted to explain its methodology of expected future investment returns and wanted to clarify some points about its cash-flow modelling (what it believes is a better indication of financial viability). It said it does not project historic returns forward but uses expected growth rates using extensive research and scenario modelling by in-house experts; its modelling does take into account charges; its policy is to demonstrate sustainability beyond normal life expectancy; and it uses stress testing to account for a significant market fall immediately after transfer.

The investigator wasn't persuaded to change their opinion, so the complaint was passed to me to make 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 Businesses ('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 Prudential'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. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Prudential 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

Prudential carried out a Transfer Value Comparator ('TVC') report (as required by the regulator) showing the estimated cost of providing the same benefits as the DB scheme – essentially what sum of money Mr S would need now to invest at a risk-free return to provide equivalent benefits to the DB scheme at retirement.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr S was 57 at the time of the advice and it was recorded in the advice paperwork that he wanted to retire at 60. The TVC report dated 4 June 2020 showed that Mr S would need £667,000 to obtain a comparable level of income as his DB scheme at 65 – i.e.it would cost him £328,000, or around 50% more by transferring. The report also produced a critical yield figure, which was 10.4% per year based on Mr S taking a full pension at 65.

I'm mindful here that Mr S indicated his preferred retirement age was 60, but the analysis Prudential produced was based on the scheme's normal retirement age of 65. It strikes me as a little odd that Prudential didn't carry out analysis based on a retirement age of 60, after all this was the target retirement age the advice was based on. I think this would've been more helpful and meaningful for Mr S and would've enabled him to make a properly informed decision.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.4% per year for seven years to retirement (age 65) – it was 2.7% for two years to retirement (age 60.) I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr S' assessed 'high attitude to risk and also the term to retirement. In my view, 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, the critical yield was 10.4%. And this was based on a retirement age of 65. If Mr S wanted to take his benefits at age 60 as he indicated was his likely intention, I think the critical yield would likely be higher given the shorter term to retirement. But even based on a retirement age of 65, the return was significantly higher than the discount rate and more than two percent above the regulator's upper projection rate.

I think it was therefore clear that Mr S likely to receive benefits of a substantially lower overall value than those provided by the BSPS2 at retirement, as a result of investing in line with the recommended investment risk approach.

I can see Prudential has questioned our reference to discount rates as being an appropriate measure of the likely investment return a typical investor could expect. I haven't based my findings solely on this - but I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. And the discount rate was considered a reasonable assumption of the likely returns. So Prudential was free to use the discount rate for this reason. In any event, I've considered this in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr S' recommended investment risk approach, which leads me to be believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

Despite my finding that even by adopting a high-risk investment approach Mr S was likely to be worse off in retirement as a result of transferring, I have some concerns about Mr S being classified as a high-risk investor. And even if he was, I'm not persuaded he really needed to take this level of risk with his pension benefits to achieve his objectives.

Prudential carried out an assessment of Mr S' attitude to risk by asking him a series of questions about his attitude to investing including his past financial decisions. I understand Prudential also provided risk descriptors which it says Mr S read – both the high-risk descriptor and the ones either side of it. I'm also mindful that the advice paperwork records the adviser challenged Mr S on his high-risk attitude, given his lack of investment assets and the fact his DC pension was invested in a medium risk fund. Nevertheless, the adviser appears to have placed weight on the fact Mr S had past experience with investing in shares – both in a company share save scheme and individual share investments – and his apparent desire to start share dealing again to support the overall assessment.

But I don't think Mr S' investment experience was particularly current – notwithstanding the fact that investing in a company share save scheme wouldn't in my view typically be considered a high-risk investment given the nature of how these work. The advice paperwork records that Mr S sold his investments to help support his family during their upbringing. So given his children were aged between 20 and 31, it seems likely Mr S' experience was many years ago. So I'm not persuaded this prior experience and the fact Mr S might have previously invested in individual company shares, is a clear indication of his risk appetite several years later as Prudential argues.

At that time Mr S was younger with greater scope to absorb losses because of his future earnings capacity. But at the time of the advice, Mr S was 57 years old, he was approaching the end of his working life and he had no investment or cash-based assets – his only asset, other than his pension, was his property. I accept Mr S might have wanted to '*continue share dealing again'* - but I think any intentions he had around this were on a small scale given it's recorded he said the only real source was from his surplus income, but that was already being directed towards renovating his property. I don't think it was appropriate for Mr S to use his pension monies instead as a way of continuing share dealing again by adopting a high level of risk with this significant asset.

That said, I can see the adviser documented that, Mr S felt that with the market where it was, investing in a high level of equities would present him with the opportunity for growth and the potential to make up some of the pension he shared with his ex-wife following his divorce. I've thought carefully about this.

On the one hand, I accept this might have been a motivating factor for Mr S – the income he could expect from his DB scheme would be less as a result of the pension sharing arrangement. But on the other hand, just because Mr S might have though the market represented good value, doesn't mean it was appropriate for Mr S to invest in a high equity-based investment or that the adviser simply ought to have facilitated what Mr S thought was a good idea. Furthermore, and crucially in my view, Mr S' documented income need was not significantly greater than his expected DB scheme income. It was recorded that Mr S liked the simple life, so I have no reason to question the assessment. So I don't think Mr S had a compelling need to invest his pension monies for capital growth to attempt to generate a higher level of income for his retirement. And I think this ought to have been made clear to Mr S at the time.

I can see Prudential says that Mr S had a key objective of wanting to build a fund to pass on to his family, suggesting this is why he was prepared to take a high-risk approach. But not only as the adviser recorded, was this was a 'want' and not a 'need' of Mr S', in any event and as I will go on to explain later on, I don't think Prudential should've encouraged Mr S to transfer out of his DB scheme and adopt a high-risk approach to achieve this particular objective.

The adviser also recorded that Mr S had made a conscious decision to invest in a medium risk-based fund for his DC pension because he understood he was likely to access it within the medium term and so chose to not have too much risk exposure. But I'm not persuaded a distinction can be drawn between Mr S' risk attitude towards this pension and his DB scheme benefits because Mr S would also likely be accessing this within the medium term. So I don't think this is a reasonable justification for Mr S adopting a different and greater attitude to risk with his DB pension than his DC pension. I think a similar approach would appear to make more sense. That said, if Mr S did want to adopt a high-risk approach because he thought there was value to be had, it strikes me he could've done so with his DC pension instead.

But ultimately as I will also go on to explain, I don't think Mr S needed to adopt a high-risk investment approach to achieve his objectives. And I think this ought to have been evident to Prudential at the time (in fact it appears it was evident given the adviser noted in the suitability report that Mr S' DB scheme benefits *would "not be entirely unsuitable when attempting to meet your capital and income needs."*) So for these reasons, I'm not persuaded Mr S was truly prepared to accept a high-level of risk with his pension or that it was appropriate or necessary for him to do so to meet his objectives. And I think Prudential should have done more to explain this to Mr S.

I can see that Prudential also carried out cashflow analysis or modelling to demonstrate how Mr S' income and capital needs could be met by accessing his benefits flexibly through a personal pension. I've considered these, but firstly these were based on Mr S taking not much more income than I believe his DB scheme would likely provide at his target retirement age. So as I said earlier on, there seems little point in Mr S giving up the guarantees of his DB scheme only to achieve the same result but accepting investment risk in doing so. Secondly, while I can see Prudential stress tested the modelling, which showed that Mr S' fund would last well beyond his life expectancy, the analysis was based on the assumption that Mr S would reduce the income taken from his fund by almost 70% when his state pension became payable relying on this instead. I'm not sure how realistic that would be – I think it's possible that Mr S would continue to draw the same amount, so it would've been useful to see the impact this would've had on the sustainability of the fund.

As modelled, I think its purpose was to demonstrate how Mr S could achieve his objective of building a fund as a legacy for his children. And as I've already said, I'm not persuaded this should've been prioritised over Mr S' security in retirement.

Overall, based on financial viability alone a transfer out of the DB scheme wasn't in Mr S' best interests. But I accept that financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility, access to tax-free cash and income need

A key reason for Prudential recommending the transfer was to permit access to an immediate cash lump sum leaving the remaining fund invested until Mr S reached 60 when he could draw a further lump sum to meet his capital expenditure needs.

But I'm not persuaded Mr S really needed this flexibility or that there was a compelling need for him to access an immediate cash lump sum and leave his funds invested until a later date.

In the fact-find document it was recorded that Mr S intended to make some larger capital expenditure when he retired at 60 – around £50,000. Part of this was completing the renovations on his house. It said this would give Mr S something to do when he retired. Yet in the suitability report it said Mr S needed immediate access to a cash lump sum. But I don't think this was the case - there wasn't a compelling need for Mr S to access a lump sum at this time. Mr S originally indicated he would wait to spend the money until he retired and the intended renovations were something that could wait – it was not for example a priority to make Mr S' house habitable. I can see that Mr S liked the idea of having access to a further capital sum in the future, which his DB scheme couldn't offer. But it was also recorded that he had no other known capital needs – so I think this was simply a 'nice to have' rather than a firm objective of Mr S'.

I've also not seen anything to suggest that Mr S had a strong need for variable income throughout retirement. Mr S' expenditure needs were recorded as being broadly the same as they were now and were unlikely to change. I accept that transferring to a personal pension would allow Mr S to control the level of income he took and based on his likely expenditure he could reduce it once his state pension became payable. But just because Mr S' DB scheme income plus his state pension would mean he might ultimately have surplus income, this is not, in my view, a compelling reason to justify a transfer out of the scheme.

Mr S' income need was recorded as being £757 a month. While I think this is low, as I've already said it appears Mr S' income need was not high due to his lifestyle. I can see that in the suitability report, Mr S' income need was recorded as being below the Joseph Rowntree Foundation's minimum income standard for a single person, which was £871 a month. Based on this, I think Mr S could've met his income needs by remaining in the DB scheme.

Unfortunately Prudential didn't produce analysis to show what income Mr S' DB scheme would provide him with at age 60. But it did record that based on immediate retirement at age 57, Mr S could take the £50,000 cash lump sum he needed and a reduced pension of £793 a month. So at age 60, taking the same £50,000 lump sum would likely result in a slightly higher initial income because of lower early retirement reduction factors. And while this might not have met Mr S' needs in full, I still think he could've met his retirement income needs by remaining in the DB scheme until his state pension became payable.

I think this could be achieved by Mr S supplementing his income from his DC scheme. It was recorded that this had a current value of around £26,000 and it had a combined employer/employee contribution rate of 20% of Mr S' salary. And while there was only around three years' contributions until Mr S' intended retirement, based on Prudential's assumptions, it had the potential to be worth around £56,000 (Prudential noted that Mr S could likely take £14,000 from this pension as a 25% tax-free cash lump sum if he chose to do so.) I think Mr S could've taken lump sums as and when required and adjusted the income he took from it according to his needs. And by taking part of his intended capital expenditure from his DC scheme rather than all from his DB scheme, this would've likely meant Mr S' starting income would be higher and so the funding gap smaller. I think Mr S would've had sufficient funds in his DC scheme to support his income needs at least until his state pension became payable.

Overall, I think Mr S could've likely met his income and capital expenditure needs in retirement by remaining in his DB scheme. I don't think it was in Mr S' best interests for him to transfer his pension just to have flexibility that I'm not persuaded he really needed.

Death benefits

What seems to have been the primary reason for Prudential recommending Mr S transfer out of his DB scheme was to enable him to provide a legacy for his children. It was recorded that he wanted to give them a helping hand in life. That said, I'm mindful it was also recorded that this was a want and not a need of Mr S'.

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 – particularly given Mr S' circumstances at the time and the fact he was now single. 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. A pension is primarily designed to provide income in retirement – not as a legacy planning tool.

I accept that Mr S was single at the time and it was recorded he had no intentions of getting married again, so the spouse's pension provided by the DB scheme might not have seemed important or of value to him. But it was possible that Mr S might marry again in the future – just because he felt this was now doesn't mean he wouldn't feel differently in the future. So I think the death benefits attached to the DB scheme could've been useful in the future. In any event, Prudential should not have encouraged Mr S to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful that Mr S already had lump sum death benefits available – he had death-in-service benefit and his DC pension - so his children stood to benefit from these. Mr S' children would also likely inherit his unencumbered property. But if Mr S genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Prudential should've instead explored additional life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured equivalent to the transfer value – this was discounted because of the cost (in excess of £500 per month). But I don't think that this was a balanced way of presenting this option to Mr S.

Basing the quote on the transfer value of Mr S' pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr S wanted to leave whatever remained of his pension to his children, which could be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr S how much he would ideally like to leave to his children, taking into account what they already potentially stood to gain from, and this could've been explored on a whole of life or term assurance basis.

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. And I don't think that insurance was properly explored as a viable alternative.

Break ties with employer

While not referred to as reason for the recommendation to transfer, it was recorded that Mr S wanted to cut ties with his employer and this was something he wanted to do as quickly as possible. But Mr S was still intending to continue working for his employer and he was also contributing to its new DC pension scheme. So he was tied in other ways – he wasn't going to achieve a separation from his employer by transferring. I think Prudential should've explained this to Mr S.

Suitability of investments

Because I'm not persuaded Mr S was truly a high-risk investor, I think Prudential's investment recommendation for Mr S was unsuitable. But, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme overall wasn't suitable for Mr S, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr S should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I accept that Mr S was likely motivated to transfer out of the BSPS2 because of his concerns about his employer. And 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 Prudential 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 and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

Mr S did not have a compelling need to access a cash lump sum immediately and keep the remaining funds invested until later, so he shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed. And I don't think the potential for higher death benefits was worth giving up the guarantees associated with his DB scheme.

So, I don't think it was in Mr S' best interests for him to transfer his DB scheme benefits to a personal pension at this time. I think Prudential should've advised Mr S to remain in his DB scheme.

Of course, I have to consider whether Mr S would've gone ahead anyway, against Prudential's advice.

I've considered this carefully, but I'm not persuaded that Mr S would've insisted on transferring out of the BSPS2 against Prudential's advice. I say this because, while as I've already said I accept Mr S was likely motivated to transfer when he approached Prudential, on balance, I still think Mr S would've listened to and followed its advice if things had happened as they should have and Prudential had recommended he not transfer out of the scheme. While Mr S might have invested in the past, he was not in my view someone who could reasonably be described as an experienced investor, or someone who possessed the requisite skill, knowledge or confidence to against the advice they was given - particularly in complex pension matters. Mr S' pension accounted for almost all of his private retirement provision at the time and despite Prudential's assessment of him as being a high-risk investor, I'm not persuaded that Mr S truly was in relation to this pension or that he needed to adopt this approach with it.

So, if Prudential had provided him with clear advice against transferring out of the BSPS2, explaining this and why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that any concerns Mr S had about his employer 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. So if Prudential had explained that Mr S could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr S would've insisted on transferring out of the BSPS2 if Prudential had given suitable advice that he not do so.

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

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr S. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish Prudential – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr S. Taking everything into account, including that I consider Mr S' retirement provision is of great importance to him given his circumstances, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

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 the unsuitable advice. I consider Mr S would most likely have remained in the occupational pension scheme (BSPS2) if suitable advice had been given.

Prudential must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13

and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Prudential should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr S and our Service upon completion of the calculation.

For clarity, Mr S has not yet retired, and he has no immediate plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. 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' acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Prudential should:

- calculate and offer Mr S redress as a cash lump sum payment,
- explain to Mr S before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr S accepts Prudential's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr S for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr S' end of year tax position.

Redress paid to Mr S as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, Prudential may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr S' likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Prudential should also pay Mr S £300 for the distress and inconvenience the unsuitable advice has caused.

Where I uphold a complaint, I can award fair compensation of up to £355,000, 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 £355,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require The Prudential Assurance Company Limited to pay Mr S the compensation amount as set out in the steps above, up to a maximum of £355,000.

Recommendation: If the compensation amount exceeds £355,000, I also recommend that The Prudential Assurance Company Limited pays Mr S the balance.

If Mr S accepts this decision, the money award becomes binding on The Prudential Assurance Company 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 14 September 2023.
Paul Featherstone
Ombudsman