

## **The complaint**

Mr H complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

PrisWM Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "PrisWM".

## **What happened**

In March 2016, Mr H's former employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, 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 personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H's employer would be set up – the BSPS2.

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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr H was concerned about what some of the early announcements by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to PrisWM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr H had accrued around 28 years of pension benefits with the BSPS. He was 45 years old, married with a teenager and also a young adult child.
- He and Mrs H lived in a home worth £150,000. They also owned rental properties worth around £150,000. It seems they were making good progress in reducing their total mortgage costs, with a mortgage remaining on only one property.
- Mr H earned around up to £42,000 per year in the steel industry. After all their monthly household expenses, he and Mrs H had some modest disposable income left over. Mr and Mrs H had existing savings of around £30,000.
- The cash equivalent transfer value (CETV) of Mr H's BSPS was approximately £417,685. The normal retirement age (NRA) was 65. Mr H had told the adviser he'd like to retire earlier than this if possible.

- Mr H had joined the new defined contribution (DC) TATA Steel pension as a consequence of the BSPS closing to ongoing contributions.

PrisWM set out its advice in a suitability report on 16 August 2017. In this it advised Mr H to transfer out of the BSPS and invest the funds in a type of personal pension plan. PrisWM said this would allow Mr H to achieve his objectives. Mr H accepted this advice and so transferred out. In 2021 Mr H complained to PrisWM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr H then referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. PrisWM didn't agree.

As the complaint couldn't be resolved informally, it's come 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 also 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'). 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.

I have further considered that 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 H's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a personal pension was in Mr H's best interests.

Having done all this, I'm upholding Mr H's complaint.

### Introductory issues

PrisWM was gathering information and ultimately advised Mr H at a time when there was significant uncertainty and updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice.

It was also explained that the expected payment into the BSPS by Mr H's employer was likely to result in an improvement to transfer values and that members with unexpired transfer values would be sent updated valuations – probably improved ones – which would be guaranteed until at least December 2017. A strategic lump sum payment to the BSPS was also confirmed just before PrisWM gave Mr H advice.

However, PrisWM proceeded with the advice to Mr H without really accounting for any of this. It didn't delay providing the advice so there were no comparisons carried out of the benefits the BSPS2 would potentially provide. And the advice was based on the CETV Mr H had received in June 2017, which was due to expire in September 2017.

So, all the ongoing announcements indicated there would be forthcoming information available. In my view this meant that in order to give Mr H enough information to make a fully informed decision about what was in his best interests, I think PrisWM should have told him to defer making a final decision on possibly transferring away until further details of the BSPS2 were known and revised transfer values received. Transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever.

The announcements indicated thus far were that Mr H would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. And waiting would've allowed PrisWM to carry out an analysis of the BSPS2 benefits, and to properly compare these to the alternatives, and base its advice on this. Without doing this, PrisWM was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr H's best interests.

### Financial viability

PrisWM referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, PrisWM used the existing scheme (BSPS) for the critical yield comparisons, rather than the 'new' BSPS2.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr H was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

In my view, PrisWM could also have been clearer in its suitability report about the critical yield rates. For example, we know the critical yield required to match the benefits at the age of 65 in the BSPS, was 6.8% if Mr H took a pension without a tax-free lump sum. If taking a tax-free lump sum, the critical yield was 5.6%. However, it was the latter (and lower) figure that was more emphasised and promoted to Mr H within the suitability report. And whilst I accept it's possible he may well have elected to take a tax-free lump sum upon retirement, this was still many years away for him. I've also noted that in the *Cashflow Planning*

*Questionnaire* Mr H said he was unlikely to need a cash lump-sum upon retirement. So I think PrisWM should have given the two critical yields equal emphasis within the report.

PrisWM also calculated the critical yield rates for an earlier retirement, at the age of 55. It did this because Mr H had apparently expressed a desire to retire early. However, as I'll explain more about later, retirement was still a long way off for Mr H and so I very much doubt whether retiring at 55 was anything more than something he just aspired to, rather than being part of a real plan. For the age of 55, the critical yields came out at 9.1% (no tax-free cash) and 6.5% (with tax free cash) respectively. Again, in my view PrisWM emphasised and promoted the lower of these two figures which was somewhat misleading. And I don't think there was credible evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be achievable. I say this with the following in mind.

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 only 4.4% per year for 19 years to retirement (age 65), which is below all of the critical yield figures I've referred to above. But for a retirement at 55, the discount rate was only 3.7%; this is substantially below the critical yield figures I've referred to above.

I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

At the time, PrisWM assessed Mr H's attitude to risk (ATR) as "medium". I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's projections and also to the discount rate were most relevant here in my view. So, I think annual growth assumptions of around 3½-to-5% were much more realistic. These were substantially below the critical yield figures for the BPS at the age of 55, on which PrisWM's advice was largely predicated. And it was also below the critical yield for a retirement at the NRA.

So I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was unlikely. I also think that PrisWM underplayed the relevance of this by focussing on the apparent flexible advantages of transferring.

I've also noted that using the age of 55, the amount required to replace the existing scheme's benefits at retirement was £620,991. Again, the importance of this was understated in the advice, in my view. To reiterate, these figures are found in PrisWM's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far above Mr H's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr H could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, PrisWM also made mention of the PPF, which it described as a compensation scheme providing a "*safety net*" for pension schemes when the sponsoring employer becomes insolvent. PrisWM said the critical yields to match the benefits available through the PPF were lower. But these yields related to the *reduced* benefits available with the PPF and PrisWM itself says Mr H wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr H, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, PrisWM's own figures, shown in its suitability report and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr H would likely receive lower pension benefits in the longer term, when compared against the BPS. But as I've said, PrisWM should have recalculated the comparisons for Mr H when the situation with BPS2 became clear.

I've also considered some projections PrisWM used to help show that if he transferred out to a personal plan, the funds could last Mr H into retirement. I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What PrisWM was showing Mr H were comparisons with plans which lacked the guarantees and benefits of a DB scheme. One such scenario, for example, assumed an annual growth rate of 6.2% which I can see no basis for. It also assumed drawing a pension from his transferred funds *without* any annual increases. And even this would last Mr H only until he was 75 years old whereas his DB pension lasted for the whole of his life with annual increases and a spouse's pension if he died.

Of course, according to PrisWM, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, PrisWM said Mr H also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

#### Other needs and objectives

I've considered with care everything PrisWM has said about the rationale for transferring. And I think it's fair to summarise the reasons it set out as being around greater flexibility. It said Mr H wanted increased income between the ages of 55 and 70 so he could retire early. It basically implied the only way a retirement at the age of 55 could be achieved comfortably was to transfer to a personal pension plan and then draw down increased levels of income. By the time he'd reached the upper age in this range, Mr and Mrs H would be drawing their state pensions.

I have therefore used all the documents we have from the advice sessions to summarise the following themes as supporting PrisWM's recommendation to transfer away:

- *"The increased flexibility to retire early at age 55 and [you] would like a higher income in early retirement if possible.*
- *The use of higher tax-free cash is also appealing to you.*
- *You are concerned about the fund entering PPF and stopping transfers. Also, the potential cap of 90% on your pension if the scheme entered PPF before you retired. You are also unsure about how the benefits will be changed under the [BPS2].*
- *You require an increased income between 55 and 70, where it will be reduced by the amount of state pension. You do not think you will be able to achieve this from the scheme.*
- *The increased death benefits to your wife and children. The [personal pension plan] can offer better death benefits for your beneficiaries to provide full flexibility on death to help with estate planning".*

I have considered all these issues with care.

- *Retiring early*

I've taken into account that Mr H approached PrisWM for advice because of the uncertainties he faced with the BSPS. He clearly didn't want to enter the PPF.

However, overall I think the adviser focused heavily on transferring away, rather than starting by assessing whether BPS2 could meet Mr H's retirement needs and objectives. I think the adviser just promoted the more flexible arrangements which Mr H would find with a personal pension plan.

I think it's important to specifically focus for a moment here on Mr H's comparatively young age by pension standards. He was only 45 and in good health. The evidence I've seen here is that Mr H – understandably - had no concrete plans for his retirement. He had only referred to the possibility of retiring at 55, which was clearly aspirational rather than a definite plan. I've noted, for instance, that Mr H also referred to retiring at the age of 57 and also around or between the ages of 55-to-57. So, in my view this is demonstrative of the uncertainties of retirement planning whilst still relatively young.

Not much information about Mrs H's situation was collected at the time although I think her job, salary and whether she had a pension of her own should all have been part of the planning process. But we do know Mr and Mrs H had a mortgage and a dependent child and a non-dependent child who was a young adult. So, I think that things like financial support, housing security and education for the respective children would all have been important family considerations over the next few years. I also think Mr H could fairly be described as only being 'mid-career'. So, I think it's very reasonable to say here that Mr and Mrs H's overall family circumstances still provided a lot of uncertainty about when retiring realistically might be possible for Mr H. In short, life still had a lot of permutations to present to them.

In my view, this underscores that any formal retirement plans, viewed from the age of 45, were probably still some way off. The adviser should have known this. There was still over 19 years left to when Mr H would be actually contemplating retiring if using his NRA of 65. And even if I did use the age of 55, this was around a decade away and there's simply no way he should have been advised to irreversibly move away from a DB scheme just yet. Doing so involved an investment risk which I don't think Mr H was comfortable with – and as I've shown above - would likely mean lower overall financial benefits at retirement.

PrisWM implied that working in a heavy industry such as steel would inevitably mean a reduced life expectancy. But this wasn't based on any analysis or data that I can see. Even if I were to consider the unlikely scenario that Mr H's retirement hopes were more fixed than the mere aspirations set out by PrisWM - and he really did comprehensively plan to retire early - I think PrisWM should have assessed the possibility of achieving this goal whilst being a member of the BPS2 for example. Early retirement under the BPS2, or indeed the PPF, would still have been an option for Mr H and PrisWM should have awaited the details of the new scheme which were being progressed at the time. Retiring early from a DB scheme, such as BPS2 would simply have meant Mr H's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer.

I think it's likely PrisWM also promoted to Mr H that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But PrisWM should have been telling Mr H at the time that extra tax-free lump

sums being removed from a personal pension, potentially in his mid-fifties in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of retiring early and / or accessing tax-free cash might have been appealing, this needed to be considered against the other viable options Mr H faced; in my view this included opting for the BSPS2.

- *Flexibility*

In a similar vein, PrisWM basically said he'd be able to select the timing and type of benefits taken at retirement and also vary his retirement income.

However, I can't see that Mr H required flexibility in retirement in the way the adviser suggested. For example, I've seen nothing that showed Mr H required changing how his retirement benefits ought to be paid. I don't think this was necessary.

I say this because I think it's fair to say that if taking a full pension at the NRA, Mr H could have received around £25,000 per year. But I think PrisWM promoted the scenario whereby Mr H would only receive £9,134 per year or thereabouts. However, this was for a retirement some ten years sooner (at the age of 55) and it also assumed him taking a full tax-free lump sum of £60,895 even though, as I've explained above, Mr H had said he might not take a tax-free lump-sum upon retiring.

However, even if using these figures, PrisWM still didn't clearly set out why these amounts wouldn't meet Mr and Mrs H's retirement income needs. He'd estimated he might need £2,000 per month by retirement to fund a comfortable lifestyle but as this was still so far off, I think this could only ever be an educated guess. However, Mr and Mrs H already had substantial cash savings. We also know Mr and Mrs H had rental properties and the information from the time shows they were confident of soon being mortgage free, allowing for the rents to become part of their unreduced income. The evidence suggests this could be over £1,000 per month.

Mr H also had started a new and more flexible DC pension with his job. I accept this DC pension was only a few months old, but it was being substantially contributed towards by both Mr H and his employer. Mr H would have been able to increase contributions in the years ahead if he felt this was warranted and of course, he still had over 19 years left to run this DC fund and build it up (if retiring aged 65). If using the age of 57 there were still over 11 years' worth of contributions and growth that could have gone in. And over 9 years if using 55. So, this secondary pension would certainly have contributed towards Mr H obtaining any flexibility he might have needed in the years ahead.

All this means I've seen nothing explaining why Mr H wouldn't want to continue with membership of a DB scheme and to use that scheme in exactly the way it was originally intended. Mr H already had reliable flexible income streams which could easily meet what he'd speculated he and Mrs H might need in retirement.

Indeed, I think that by retirement, whenever it eventually came, Mr H could have been in an agreeable position. On one hand he'd have an existing DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. It's fair to say that significant indexation guarantees were going to exist within BPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a new DC scheme over a still significant period of time – up to 19 years. So, if Mr H ever found he needed flexibility, then he'd be able to use the latter, rather than transferring away from the former. He also

had what appeared to be another reliable income source in the form of soon to be mortgage free rental housing.

So, I don't think there's anything showing Mr H's pension entitlements wouldn't have met his and Mrs H's anticipated income requirements, without any need to transfer away from the DB scheme. These were BPS figures, but that doesn't really matter because current members were given similar estimates about the new scheme (BPS2) just after the time this advice was being sought. I don't think PrisWM adequately explained these things to Mr H as its advice simply focussed on him transferring away and into a personal pension arrangement to obtain flexibility which was poorly defined and which he didn't need.

I therefore think Mr H's circumstances here were much more aligned to him transferring to BPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to potentially retire earlier than 65 if he felt he really needed to. Doing this from the position of BPS2 was possible – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, and rental income, this supported that strategy in my view.

- *Control of funds*

I've seen no credible evidence that Mr H had either the capacity or genuine desire to exercise control over his funds. I don't think there's any doubt that Mr H was 'financially aware'. But there's no evidence he had any experience of managing pensions or money market funds. There's no evidence his and Mrs H's savings, although meaningful amounts, were kept in anything other than deposit type savings accounts. Nor is there any evidence Mr H had wider investment experience to call upon.

With his DB scheme, Mr H was being offered the opportunity to transfer to the new BPS2. It's true there were some differences in this scheme when compared to the original BPS, but it remained a DB scheme nonetheless and was run for him by trustees. And I think he would have found the complexity, scale and responsibility of managing around £417,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr H would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

- *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 BPS and BPS2 contained certain benefits payable to a spouse if Mr H died. Mr H was married and so in my view this represented a good benefit. Conversely, the adviser told Mr H that he'd be able to pass on the *whole* value of a personal pension if he died, potentially tax-free, to anyone he nominated.

But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer the BPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think PrisWM explored to what extent Mr H was prepared to accept a lower retirement income in exchange for different death benefits.

Mr H was only 45 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr H had lived a long life there could be much less left in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still so young, there's no real doubt that retiring at 55 was at least mentioned – PrisWM's defence of this complaint is effectively predicated on this. The adviser should have therefore additionally known that a healthy male retiring at 55 would likely have many years ahead in which he would be drawing down his pension funds thus leaving very little left to pass on to someone.

I think life insurance was probably discussed in this case and I've noted that whilst employed, Mr H had some death in service protection. But again, the adviser failed to present all the relevant options about insurance to Mr H, because they were wholly focussed on transferring him away from a DB scheme and into a personal pension plan. I don't think this was good advice or advice that was in Mr H's best interests.

I say this because if Mr H died, the spouse's pension with BSPS2 was guaranteed for Mrs H's whole life. Also, at 45 years old, a modest 'term' life insurance policy may have still been a reasonably affordable product for Mr H if he really did insist on leaving a lump-sum (rather than an annual pension) legacy for Mrs H, or indeed anyone else such as a child. It also doesn't appear that PrisWM took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his 'new' DC scheme. Therefore, to that end, Mr H already had plenty of options ensuring part of his pension wouldn't die with him.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr H's situation.

#### Concerns over financial stability of the DB scheme

PrisWM said Mr H wanted to break ties with British Steel and it provided this as part of the rationale for recommending a transfer away. I can understand that when Mr H met with PrisWM he may have been concerned about the overall financial stability of the BSPS pension. Lots of his former colleagues at the time were considering transferring out of the scheme and he may have worried that his pension could end up in the PPF. If the scheme did end up moving to the PPF, I think the adviser should have explained that this was not as concerning as Mr H thought. He was still unlikely to match, let alone exceed, the benefits available to him through the PPF if he transferred out to a personal pension plan. I don't think that this was properly explained to him. So, I don't think that these concerns should have led to PrisWM's recommendation to Mr H to transfer out of the DB scheme altogether.

#### Suitability of investments

PrisWM recommended that Mr H invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised not to transfer and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

#### Summary

I don't think the advice given to Mr H was suitable.

I accept that Mr H entered into this advice worried about the future and to a degree, he portrayed the BSPS and BSPS2 in a negative way. However, as a regulated adviser being paid for this advice, PrisWM's job was to provide information and advice that was in Mr H's

best interests. Instead of assessing whether Mr H might meet his retirement objectives by becoming a member of BSPS2, the adviser focussed wholly on transferring away.

This meant Mr H was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows he was likely to obtain lower retirement benefits.

I also don't think there were any other particular reasons which would justify the transfer and outweigh this. The implication that Mr H was certain to retire early wasn't borne out by the evidence. Neither was his apparent needs for flexibility and control of his funds, moving forward. These things weren't properly defined and like the advice around death benefits, they represented nothing more than 'stock' objectives used to justify the transfer-out recommendation.

So, I don't think it was in Mr H's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity soon of opting into the BSPS2. I also don't think that it was in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF. Doing this wouldn't be offset by the more favourable reduction for early retirement. By opting into the BSPS2, Mr H would have retained the ability to transfer out of the scheme nearer to his retirement age if he really needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think PrisWM should have taken a short time to consider all the changes in the BSPS and then duly advised Mr H to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr H would have transferred to a personal pension in any event. I accept that PrisWM disclosed some of the risks of transferring to Mr H, and provided him with a certain amount of information. But ultimately it advised Mr H to transfer out, and I think Mr H relied on that advice.

I'm not persuaded that Mr H would have insisted on transferring out of the DB scheme, against PrisWM's advice. I say this because Mr H was an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, 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 have accepted that advice.

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

### **Putting things right**

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for PrisWM's unsuitable advice. I consider Mr H would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. PrisWM should use the benefits offered by BSPS2 for comparison purposes.

PrisWM 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>.

PrisWM 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 H and our Service upon completion of the calculation together with supporting evidence of what the business based the inputs into the calculator on.

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 H'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, PrisWM should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H 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 the redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts PrisWM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, PrisWM 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 H'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.

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.

This pension at the time represented nearly all of Mr H's retirement provision. I believe the uncertainty and worrying impact of this unsuitable advice caused him distress and inconvenience. I therefore also order PrisWM to pay an additional £250 to Mr H.

### **My final decision**

Determination and money award: I am upholding this complaint and I now direct PrisWM Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

If Mr H accepts my final decision, the money award becomes binding on PrisWM Limited.

My recommendation would not be binding. Further, it's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H 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 H to accept or reject my decision before 25 October 2023.

Michael Campbell  
**Ombudsman**