DRN-3661494

The complaint

Mr I complains about the advice PrisWM Limited (PL) gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr I to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr I's.

What happened

In March 2016, Mr I'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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the 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 I's employer would be set up – the BSPS2.

In July 2017 Mr I emailed PL. He said he'd like to transfer out of the BSPS and had requested the cash equivalent transfer value ('CETV') from the scheme administrators. He asked to make an appointment to seek advice about transferring.

PL met with Mr I in July and August 2017. It gathered information about Mr I's entitlement under his current DB scheme and obtained a transfer value analysis (TVAS) report. It completed a fact-find with Mr I and an assessment of his risk appetite. Amongst other things, it noted that:

- Mr I was 47 years old and in good health.
- He was divorced with two dependent children.
- He earned around £35,000 a year.
- He owed around £35,000 on an interest only mortgage on his home, which was worth £200,000.
- He had investments in a stocks and shares ISA of £30,000, an endowment maturing in April 2018 of £20,000 and other savings of £3,000.
- He was paying £400 a month into a group money purchase pension scheme which had a current value of about £4,000.
- He had regular outgoings of around £930 a month.
- He had a medium – high attitude to risk with a score of eight out of ten.

---

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- His BSPS pension had a CETV of £421,680.
- At age 65 the BSPS scheme would pay him a yearly pension of £26,172 if he didn't take TFC, or a pension of £17,345 together with TFC of £115,634.
- The critical yields (the growth rates required) to match the benefits from the BSPS were 6.8% and 5.4% respectively.
- If Mr I were to retire at age 55 then the BSPS would pay him a full yearly pension of £13,086 or a reduced pension of £9,254 and TFC of £61,654.
- The critical yield to match the benefits from the BSPS at age 55 were 9.6% and 6.4% respectively.
- Mr I said he would need an income of around £25,000 a year in retirement.

On 22 August 2017 PL sent Mr I its Financial Summary & Recommendation report. Such reports are commonly referred to as suitability reports, so I have used that term in the rest of this decision. It recommended Mr I transfer his DB benefits to a named personal pension. It said Mr I's three main priorities were:

1. Control of his pension funds.
2. Flexible access to benefits and to vary the amounts of income taken to suit his needs and circumstances.
3. Provide for his children if he should die without depleting the fund.

Amongst other things this suitability report also said:

- After applying charges PL didn't think the critical yields could be met by transferring out of the DB scheme.
- Mr I was aware of the guarantees he would be giving up but felt a transfer was best for him because of the control it would give him.
- Mr I wanted the maximum TFC lump sum available at age 55.
- Concerning early retirement it said:

  "*Should you take early retirement, your pension would be greatly reduced, and this is not an advisable course of action. Your occupational scheme would offer much better benefits if you did retire at this earlier age*."

- Its cashflow models showed that if Mr I took early retirement at age 57 and an income of £25,000, reducing when his state pension became payable at age 67, his fund could last him until age 106.
- By transferring out of the DB scheme Mr I could benefit from increased death benefits for his children and have a higher income in early retirement
- He wanted to avoid his benefits transferring to the PPF or the BSPS2 as the revaluation benefits weren't as attractive
- He didn't think he could afford to take early retirement from the DB scheme.
- After discussion Mr I had agreed to reduce his risk score to six out of ten.

After receiving the report Mr I emailed PL. Amongst other things he said he'd heard that his employer had paid £550 million into the DB scheme and that this would affect the transfer values. He asked if he should defer signing the papers to go ahead with the transfer until more was known. PL replied; it said it had tried to contact the DB scheme administrators without success.

Subsequently the DB administrators paid a revalued CETV sum of £435,431 into Mr I's newly set up named personal pension.

In January 2018 Mr I told PL that he no longer needed its ongoing advice service.

In 2021 Mr I complained to PL, In brief he said the advice to transfer out of his final salary scheme wasn't suitable for him and not in his best interests.

PL replied, it didn't up hold Mr I's complaint. Amongst other things it said that transferring allowed Mr I to achieve his objectives of flexible access to his funds allowing early retirement and increases to the death benefits available for his children.

Mr I referred his complaint to our service. An investigator upheld the complaint and required PL to pay compensation, including redress of £250 for the distress and inconvenience Mr I experienced. In brief our investigator didn't think that the transfer was suitable for Mr I and thought instead that PL should have recommended he moved his benefits into the BSPS2.

PL didn't reply to our investigator's assessment of the complaint, so it was referred 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 regulator's 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 PL'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 broadly the same reasons as those given by the investigator.

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

Distrust and uncertainty

I'm aware that many BSPS members like Mr I had serious concerns about the security of their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr I. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And I've noted that, in his first contact with PL Mr I said that he wanted to transfer out of the BSPS. So he was clearly leaning towards transferring when he sought advice. But PL was tasked with rationally addressing Mr I's concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr I should transfer out of his DB scheme PL needed to be able to clearly demonstrate that doing so was in his best interests.

When Mr I approached PL there was still the possibility that his pension could move to the PPF. And the BSPS2 had still not been confirmed. But, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr I's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently, on 28 August 2017 – around a week after PL provided its advice – the BSPS administrators provided scheme members, including Mr I, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr I's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr I, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr I's employer had made the payment referred to was announced on 11 September 2017.

In the meantime Mr I had contacted PL as he'd heard about the pending payment by his employers and asked PL if he should defer making a decision. Initially at least, seemingly through no fault of its own, PL wasn't able to verify things with the DB scheme administrators. The administrators did revalue Mr I's CETV before arranging the transfer. But, PL didn't provide any further advice or guidance in terms of what the BSPS2 might be worth for Mr I. And in order to ensure that Mr I had all the information he needed in order to make an informed decision before transferring I think it should have done that.

Further, even if Mr I remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think PL should have addressed that concern. A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But the 10% reduction didn't necessarily mean Mr I would be worse off as for those taking early retirement the PPF could have been more beneficial to them. But, PL didn't give Mr I all the information he needed in order to see if that was something that might be suitable for him.

It's notable that the TVAS said that if Mr I's benefits were to transfer to the PPF then in order to match those the personal pension would need critical yields of 4.4% if Mr I took a full pension without TFC at age 65 and 4.1% if he took TFC. Similarly it said the critical yields to match the PPF benefits if Mr I chose to retire at age 55 were 9.3% without TFC and 8.7% after taking it. But neither the TVAS nor the suitability report explain what the actual amount of yearly pension, or the TFC sum payable from the PPF was. So, Mr I didn't have a clear reference to what the PPF would have paid him in retirement had his DB benefits moved into that. And while I don't know what the actual PPF figures would have been it's likely that the reduction in benefits wasn't as significant as many BSPS scheme members believed it would be.

Also it's possible that Mr I could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF. Although, given the lack of information on PL's file, I can't say to what extent that's the case. But, I'm not persuaded that the uncertainty that Mr I experienced when he entered into the advice process was sufficient reason to recommend that he should transfer his safeguarded benefits from a DB scheme, even with the possibility of that going into the PPF. That's because, to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have led to PL recommending Mr I transfer out of the DB scheme altogether.

PL's advice process

PL carried out a TVAS (as the regulator required) showing how much Mr I's pension fund would need to grow by each year (the critical yield) in order to provide the same benefits as his DB scheme. But, this was based on his existing scheme benefits and Mr I didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

The timing of PL's advice was somewhat unfortunate. At the time it drafted its suitability report the details from BSPS2 weren't known. So there was little it could do by way of an analysis of those likely BSPS2 benefits at that time. But, shortly after it issued its suitability report it became clear that the BSPS2 would very likely go ahead, And, in order to give Mr I enough information to make a fully informed decision about what was in his best interests, I think PL should have told Mr I to defer making a decision on the transfer until further details of the BSPS2 were known. And that would have given PL the opportunity to provide an analysis of the comparison between the BSPS2 benefits, the PPF and the named personal pension. But PL didn't provide any advice or guidance about what the likely benefits from the BSPS2 were. In fact its analysis of that scheme was limited to saying that it would have lower revaluation and pension increases than the BSPS. But without any reference to actual figures, this was somewhat meaningless to Mr I.

The BSPS2 was thought to be of greater benefit than the funds going into the PPF for the scheme's normal retirement age of 65. So, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. And PL should have updated its advice to include, in one place, a comparison of the relevant benefits of moving to the PPF, moving to the BSPS2 or transferring to the named personal pension. Had it done so Mr I would have been in a better place to make an informed decision.

As I've said above, I understand that the timing was unfortunate for PL. It thought it had completed its evidence gathering and advice process only to, almost immediately, learn that the BSPS2 was all but confirmed. But 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. So, regardless that PL might have felt that its advice process was at an end, it should have ensured that Mr I had sight of all the information he needed in order to make an informed choice before making that decision. And that included the information about the likely benefits of the BSPS2, even though this information didn't become available until after it had drafted its suitability report. But PL didn't do that.

Further, there are other gaps in PI's evidence gathering and advice process. For example it said that Mr I wanted £25,000 a year income in retirement. But it didn't challenge him as to how he'd arrived at that sum, especially as it recorded that his outgoings were less than £1,000 a month. Also, it recorded that Mr I was "overpaying" into a money purchase pension scheme at £400 a month. As this scheme was sponsored by his employer, it's likely his employer was also paying into that scheme. But PL didn't find out how much the employer was contributing or make any estimate of what these funds were likely to be worth when Mr I retired. Nor did it provide any analysis of whether those funds could have supported Mr I in early retirement while taking his guaranteed income from the DB scheme. So I don't think it gave Mr I all the information he needed in order to make a fully informed decision.

Financial viability

Looking at the information PL did provide shows the relevant critical yields at age 65 for Mr I taking a full pension from the BSPS without TFC was 6.8% and 5.4% with TFC. The critical yields required to match the benefits provided through the PPF at age 65 were 4.4% and 4.1%, TFC dependent. While PL didn't know at that time what the BSPS2 figures would be we can assume the lower annual increases under the BSPS2 would have likely decreased the critical yields compared to the BSPS. But, I think those would have been higher than the critical yield matching the PPF benefits at age 65 (which I've already set out above).

PL gave its advice *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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The discount rate to the time of the transfer was 4.4% a year for 17 years to retirement. 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% a year. And it's notable that the discount rate would drop to 3.7% when adjusted for Mr I retiring at age 57, and 3.4% at age 55.

I've taken these figures into account, along with the composition of assets in the discount rate, Mr I's medium attitude to risk and also the term to retirement. I note that a discount rate of 4.4%, for retirement at age 65, is higher than the critical yield of 4.1% required to match the PPF benefits if Mr I took TFC. But as I've already said, it's likely that the BSPS2 benefits would have been higher than the PPF at age 65. So I think the critical yield would likely have been nearer to the BSPS than the PPF figure. And in those circumstances it's unlikely that the discount rate or the regulator's middle growth rate would have met or exceeded the critical yield required to match the benefits from the BSPS2. So it seems unlikely that investing in the named personal pension could match the benefits from the DB scheme.

Further, there would be little point in Mr I giving up the guarantees available to him through a DB scheme only to achieve, at best, similar levels of benefits outside the scheme. The critical yield to match the BSPS at age 65 was 5.4% after taking TFC. So it would likely have been slightly lower to match the BSPS2 benefits. But that still would almost certainly have been above the discount rate of 4.4%. It was also above the regulator's mid-level projection of 5%, which is the level of growth Mr I could reasonably expect with his attitude to risk. So, I think Mr I was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension and took benefits at age 65, as a result of investing in line with his attitude to risk. And if retiring earlier than this, I think the benefits would've been substantially lower than the DB scheme.

In addition, if there was a sustained period of poor performance then there was a very real chance that Mr I's fund would grow at a much slower rate or could suffer losses. And while PL did point out some of these risks to Mr I, as I've said above, I believe it should have deferred providing its advice until more was known about the BSPS2. And then it should have advised Mr I that opting into the BSPS2 (the benefits under which would be guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs.

Also, it's notable that PL has itself identified that the critical yields were unlikely to be met by transferring. And given Mr I was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests.

Of course, financial viability isn't the only consideration when giving transfer advice. And PL has argued that, as a result of its recommendation, Mr I could achieve his other objectives. So I've gone on to consider whether PL has clearly demonstrated that the advice to transfer was in Mr I's best interests. When doing so I've been mindful that PL's role was to find out what Mr I's wants and needs were and why. Its role wasn't simply to do what Mr I wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility, early retirement and income requirement

It seems a key reason PL recommended Mr I transfer was for the flexibility it offered him. Having considered the evidence, I don't think Mr I had a genuine need to access his pension funds earlier than the normal scheme retirement age.

Mr I told PL that his preference was to retire at 55 but he was happy to continue to work for a few more years if needed. I understand Mr I's wish to retire early. In fact I think most people would say that they would like to retire early if given the chance. I also think most people would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their retirement for. It seems to me that this is something Mr I was likely to reassess once he reached age 55. And as such, I think early retirement was something that was – most likely – nice to have rather than a genuine need for Mr I.

It's notable that PL itself identified that early retirement wasn't in Mr I's best interests when it said:

"Should you take early retirement, your pension would be greatly reduced, and this is not an advisable course of action. Your occupational scheme would offer much better benefits if you did retire at this earlier age."

But. despite this clear warning that it wasn't in Mr I's best interests to transfer out of the scheme and retire early, it went on to provide a recommendation is said allowed Mr I do exactly that. To support its advice it said that it had produced a cashflow model which said that if Mr I retired at age 57, and took an income of £25,000 a year, then his transferred pension fund could last him until he was 106 years old. But I don't think that model stands up to close scrutiny. In the first place, the model assumes early retirement at age 57, rather than 55 which is the retirement age it refers to in its TVAS and suitability report. Also it assumes that Mr I's personal pension fund would grow by 6.5% gross year-on-year. And that compares to a discount rate, for Mr I retiring at age 57 of 3.7%. So that level of consistent growth seems unlikely. Further the model isn't stress tested to allow for periods of poor performance or a market crash, which could show the funds being depleted much sooner.

In addition, although the suitability report says that Mr I wanted to take the maximum TFC at age 55, the model doesn't make any allowance for Mr I taking TFC at all. And, if it had, then that would have reduced his fund by 25%. So, using the same figures from PL's model, allowing for TFC from age 57 would equate to a reduction in the fund of £155,055 overnight. And, once those funds are removed and the subsequent reduction in growth is factored in – to account for the smaller remaining investment pot – then that would have a fairly dramatic impact on the model. As a result I don't think the model is reliable. I note that PL said in its suitability report that it urged "*caution*" about relying too heavily on the figures. So I think it recognised that they were most likely unrealistic, yet PL still referred to those figures to support its decision to justify a recommendation to transfer from the DB scheme.

Further, if Mr I did have a genuine need for early retirement then he might have been better off by opting for a transfer to the PPF. It was well-known that the manner in which PPF calculates its early retirement factors, including TFC sums, are more generous than in many DB schemes, including the BSPS. In this case PL hasn't presented the information needed in order to see what Mr I might have been entitled to from the PPF at any age. But its TVAS shows that critical yields required to match the PPF benefits at age 55 are 9.3% and 8.7% depending on whether or not Mr I took TFC. Those critical yields are extremely high and not something that transferring to a personal pension was likely to match. And given that the PPF's early retirement reduction factors were more generous than the BSPS, it's likely the PPF would have paid Mr I a handsome TFC amount at age 55. But there's little evidence that PL made this clear to him.

In any event I don't think Mr I had a concrete need to take early retirement. As I've said above I can understand why Mr I would want to retire at age 55. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that's seems to be a more likely prospect for Mr I. But there's no evidence that PL seriously challenged Mr I's objective of early retirement at age 55. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Mr I was still over seven years away from 55 and nine from 57. So he had no need to make an urgent decision to transfer out of his DB scheme, as – if PL had deferred completing its advice process – he could have opted to move into the BSPS2. And, if he still felt that he wanted to retire when he reached 55, and thought that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he was still only 47 years old. But it doesn't appear that PL put that option to him.

That said, it's true to say that Mr I couldn't have had the same level of flexible access to his DB funds. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow him to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr I had any concrete need to take TFC at all or to vary his income throughout retirement. So while the option of drawing his income flexibly might seem like something that would be nice to have, I can't see that Mr I had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that PL gave its advice. So I don't think it was in his best interests to transfer.

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 I. That's because whatever was left within Mr I's personal pension at the date of his death would be passed on to his children. But whilst I appreciate death benefits are important to consumers, and Mr I 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 I about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr I was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for children that they may not need for many years to come. And by that time, the fund could have been depleted by Mr I's withdrawals from it in the meantime.

PL said Mr I's pension fund would be depleted by age 106 if he retired at 57. So Mr I might have thought that guaranteed a significant lump sum for family on his death. But, as I've said above, that model was based on assumptions that don't stand up to close inspection. And if the fund grew by less than PL expected, or suffered losses, then there would be less available as a death benefit.

Further, the fund would reduce as Mr I drew down money from it. And if Mr I drew down heavily from it in the early years of his retirement, then those deductions would reduce the lump sum benefit available in the event of his death. In fact every time Mr I took a withdrawal he would be reducing the amount available as a legacy for his children.

If Mr I genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, then life insurance might have been a better solution for him. Mr I already had a significant death in service benefit through his employer. It's also notable that he had significant equity in his home with only a relatively small mortgage outstanding and an endowment plan that would cover the majority of that sum. So his home would in itself provide a legacy for his children. But if he wanted an extra sum to cover his retirement years, that wasn't tied into his property then he could have taken extra cover out on a whole of life basis. PL did raise this prospect with Mr I. Its suitability report says he discounted this as it didn't make sense to pay for additional life cover when "*this could be achieved*" by transferring his pension. But that ignores the fact that the fund would be depleted as Mr I took sums from it. So, by the time of his death, there could be very little, if in fact anything, left for his children. But it doesn't appear that PL made this clear to him.

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 I.

Summary

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

PL was in a good position to have analysed, tested, challenged and advised Mr I about what was in his best interests for retirement planning. It knows valuable pension pots like Mr I's DB scheme were paid into with the intention of providing for retirement. And ultimately, I don't think the advice PL gave to Mr I was suitable. He was giving up a guaranteed, risk-free and increasing income within BSPS2 (or the PPF). By transferring to a personal pension Mr I was, in my view, likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr I’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn’t been confirmed when PL gave its advice, but it became clear to all parties that it was likely to be going ahead. Mr I had at least seven years to his preferred retirement age and 17 years to the scheme’s normal retirement age. So his needs in retirement could have changed in the meantime. And by opting into the BSPS2 Mr I would have kept the ability to transfer out of the scheme nearer to his retirement age if he needed to. So, I think PL should have advised Mr I to opt into the BSPS2.

Of course, I have to consider whether Mr I would have gone ahead with the transfer anyway if it wasn’t for PL’s advice. And while I've noted that Mr I was most likely leaning towards a transfer when he started the advice process, after thinking about this carefully, I'm not persuaded he would have done so but for PL’s advice.

That’s because, Mr I’s BSPS pension accounted for a significant portion of his retirement provision at the time. So, if PL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice. I’m also not persuaded Mr I’s concerns about the future of the DB scheme was so great that he would have gone against PL’s advice. That’s because PL had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. And that the future of the pensions scheme was in the process of being taken out of the employer’s hands. So PL could have allayed Mr I’s concerns about the uncertainty of the scheme. So I don't think those would have been sufficient reason for Mr I to insist on a transfer.

It follows that I don't think PL’s advice to Mr I to transfer out of his DB scheme was suitable for him. And I think it should have advised Mr I to opt into the BSPS2 instead. So, I think PL should compensate Mr I for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Mr I, I think PL should also pay him £250 to address that.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA has 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 I whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

Mr I would like his complaint to be settled in line with new guidance/rules. So, I consider it's fair that PL calculates Mr I's redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for the business to put Mr I, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have opted to move his benefits to the BSPS2.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr I.

PL must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, while PL recorded that Mr I wanted to retire at age 55 he's told us that he has no concrete plans to take early retirement. So, compensation should be based on his normal retirement age of 65.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr I'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 I 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.

Mr I's representatives said that a 15% deduction from any redress payable is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representatives feel this may unfairly reduce the redress payable, I'm mindful that it's not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr I into the BSPS2 as if the transfer to the personal pension hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr I for the impact of the unsuitable advice PL gave.

The compensation amount must where possible be paid to Mr I within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and PL has received notification of Mr I's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes PL to pay Mr I.

Income tax may be payable on any interest paid. If PL deducts income tax from the interest, it should tell Mr I how much has been taken off. PL should give Mr I a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate. PL should also pay Mr I £250 compensation for the distress and inconvenience he experienced because of PL's unsuitable advice.

PL should provide details of its calculations to Mr I and his representative in a clear, simple format.

My final decision

Determination and money award: I uphold this complaint and require PrisWM Limited to pay Mr I 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 I 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 I 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 I the balance. I would additionally recommend PL pay Mr I any interest calculated as set out above on this balance.If Mr I accepts this decision, the money award becomes binding on PrisWM Limited .My recommendation would not be binding. Further, it's unlikely that Mr I can accept my decision and go to court to ask for the balance. Mr I 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 I to accept or reject my decision before 16 February 2023.

Joe Scott
Ombudsman