DRN-3719487

The complaint

Mr S complains about the advice given to him by Prism Financial Advice Limited ('Prism') to transfer the benefits from a defined benefit ('DB') occupational pension scheme, an accompanying additional voluntary contribution ('AVC') policy and a self-invested personal pension ('SIPP') he held to a personal pension plan ('PPP'). He says the advice was unsuitable for him and has caused him a financial loss.

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

What happened

Mr S was a member of a DB scheme while working for a previous employer. He was made redundant in 2013 and Prism has said it was engaged by his former employer to provide independent financial advice to those affected. This was when Prism says Mr S was first introduced to it. Prism has provided evidence that it gave financial advice to Mr S in 2013 and 2015, mainly relating to savings and investments, and that it managed investments on his behalf in the years after this advice.

In 2018 Mr S contacted Prism with a view to discussing his pension and retirement needs. Prism has said that Mr S was interested in transferring his DB scheme benefits to an alternative arrangement that better suited his needs and objectives.

Prism completed a fact find to gather information about Mr S' circumstances and objectives. It recorded that Mr S was 54, divorced and in good health. He had two grown children who were not financially dependent on him. He owned his own home, with no outstanding mortgage and also had a rental property with a mortgage of approximately £38,000 outstanding. But this mortgage wasn't due to be repaid until 2038 and Mr S indicated he intended to potentially sell this rental property in the near future, clearing the amount outstanding and leaving a surplus. He had no other significant debts.

Mr S' monthly total income (including rental income) was recorded as exceeding his outgoings by £1,385. Mr S had savings and cash reserves of approximately £58,000, ISAs and other investments totalling £222,500 and an endowment policy, maturing in August 2019, worth approximately £28,000.

Mr S held his DB scheme, which had a cash equivalent transfer value ('CETV') of £272,482.60, an accompanying AVC policy, with a transfer value of £32,829, and a SIPP, with a transfer value of approximately £27,700. The AVC and SIPP being defined contribution ('DC') arrangements.

The fact find recorded that Mr S planned to retire at age 55 as his job involved a lot of travelling. And he expected to need an income of £2,000 net of tax, per month from his provisions. It also said though that Mr S would at least reduce his hours to part time from his 55th birthday and that no final decision had been made about retirement.

The notes detailed that Mr S was aware of the benefits offered by the DB scheme which he'd be giving up but was interested in looking at more flexible alternatives, in particular phased drawdown. This would allow him to retire at his target age and take the pension he needed - noting the pension the DB scheme would provide at that time would be insufficient at age 55.

It also said he had no use for the spouse's benefits offered by the DB scheme, as he was single, but an alternative would allow him to potentially leave a lump sum for his children, which was his preference. And I can see Mr S wrote in one of the questionnaires he completed that his primary concern for leaving the DB scheme was *"the loss of the pension fund in the event of my death and my children would not benefit".*

Prism also recorded that Mr S had no need to release capital from his pension at that time but that he could require an unknown amount of capital from his total provisions if he moved home in the future, which he was considering doing in the next 2 – 4 years.

Prism also carried out an assessment of Mr S' attitude to risk ('ATR'). This concluded that Mr S' attitude to risk was 'moderate / adventurous'. But, the documents indicate, after discussions between Prism and Mr S, whilst it was agreed this was an appropriate approach in respect of his investments, Prism suggested, and Mr S agreed, that a 'cautious' approach to the pension was more appropriate, given he intended to retire under a year later.

On 29 October 2018 Prism advised Mr S to transfer the benefits due under the DB scheme and Mr S' two DC schemes to a personal pension. The suitability report explained in summary that the reasons for recommending the transfer of the DB scheme were that it would provide Mr S the flexibility he needed to take income in line with his requirements, allowed the full remaining fund to be left to his children in the event of his death and gave him the opportunity to be more proactive in how the money was invested. So, Prism said it met Mr S' objectives and needs. In terms of the transfer of the DC schemes, it acknowledged that similar freedoms were already available under the existing arrangements. But said that consolidation of pension benefits had been desired as part of the process.

I understand that the transfers were completed in line with the recommendations made.

Prism has provided evidence that around January 2020 Mr S chose to transfer his investments and pension to the control of another financial adviser. But the evidence suggested he did so on good terms.

In July 2021, Mr S' representatives complained to Prism on his behalf about the advice it had provided to transfer his pensions. In summary they said the advice was negligent and unsuitable, particularly for someone with no investment experience or capacity for loss, which his representatives indicated they thought applied to Mr S. They also said Prism hadn't properly taken into account Mr S' circumstances and had led him to believe he'd receive a better return by transferring than he would have by remaining invested in his existing pensions.

Prism rejected the complaint. It said that the allegations were untrue and not supported by the facts and documents available and it considered that the advice given was appropriate.

Mr S referred his complaint to our service. An investigator upheld the complaint and said she felt Prism should be required to pay compensation. She felt that the available information indicated that the level of return that would've been needed for the new arrangement to provide equivalent benefits to the DB scheme in retirement was unrealistic. So, Mr S was always likely to receive benefits of a substantially lower overall value in retirement. She didn't think Mr S needed the flexibility provided by transferring as he had other provisions available to meet his income needs – also noting that his retirement plans were not confirmed. And in any event, she noted Mr S would've been able to take benefits early under the DB scheme.

Prism did not accept the Investigator's opinion. It said that Mr S had been very clear he intended to retire at age 55 and what his income needs were. It said that the Investigator had ignored the fact that retiring early under the DB scheme would not have met these income needs and that Mr S had indicated a potential need to use some of his other provisions to help with a house purchase in the short term after the advice. It also said the Investigator had ignored Mr S' preference to leave the pension as a lump sum to his children in the event of his death. So, it remained of the opinion that the advice it had provided was suitable as it had allowed Mr S to meet his needs and objectives, which he couldn't have done had he not transferred.

The complaint was subsequently passed to me to decide.

I issued a provisional decision in August 2022 explaining that I also intended to uphold Mr S' complaint. Below are extracts from my provisional findings, explaining why.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

<u>The DB scheme transfer</u>

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Prism should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S's best interests (COBS 19.1.6).

Prism said in response to our Investigator's opinion that Mr S had no interest in remaining in the DB scheme or purchasing an annuity, was determined to retire at age 55 and was going to do this and that he was determined to transfer to secure a financial legacy for his children. And Prism said that the transfer allowed Mr S to meet these objectives, so it thought the advice was suitable. And given Mr S' objectives Prism has suggested that comparisons to what Mr S could've received at age 65 are irrelevant as he was always going to retire before this. And also that comparisons to what he could've taken at age 55 under the DB scheme are largely meaningless as well, since he never intended to purchase an annuity and would not accept the actuarial reduction the DB scheme would apply if he took benefits at that point.

Firstly, I don't agree that the comparisons are not important as they demonstrate the value of the benefits Mr S was due under his existing scheme. So, I will be considering these.

I'm also not sure that I agree with Prism that Mr S' objectives were set in stone to the extent it has now suggested – which is bordering on that he would always have insisted on transferring, regardless of what it said.

I'm satisfied it is true Mr S had experience with investments – contrary to what his representatives have suggested. I've seen evidence of the previous advice he'd taken in relation to this and that he held a number of investments at the point of the transfer advice. So, he wasn't inexperienced. But the information also shows that Mr S sought and took advice in relation to these investments. This doesn't strike me as someone unwilling to accept advice – in fact I think it shows the contrary, that he valued advice before making decisions. And he sought advice from Prism here about his retirement planning.

In the fact find document the adviser made notes. These said that Mr S had been "considering and planning for retirement for some time". The notes did say that Mr S "planned to retire at 55" but they also go on to say that he would "reduce to part time hours as a minimum" and that he'd made "no final decision" with 'final' underlined. And it said that Mr S "wished to consider alternatives available" for his pension arrangements. The notes are clear that no final decision had been taken on retirement. They suggest Mr S was intending to reduce his hours, but not, in my opinion, that he was always going to retire at age 55 or that he would not entertain any discussion around alternatives, if those alternatives were in his best interests.

I acknowledge that Mr S wrote, in his own words, that his primary concern for potentially leaving the DB scheme was "the loss of the pension fund in the event of my death and my children would not benefit". But making his concern clear isn't the same, in my view, as being determined to take a course of action regardless of the consequences – as Prism again suggested in its response to the Investigator's opinion.

I don't doubt that Mr S was interested in retiring early and in potential alternative death benefits. But the information I've seen doesn't lead me to think that he was unwilling to consider alternative solutions. Particularly given that he sought advice from Prism on this subject. So, I think relevant comparisons of alternatives were still important here, despite Prism's arguments to the contrary.

And in any event, Prism wasn't there to just transact what Mr S might have been interested in or thought he wanted. The adviser's role was to recommend what was in his best interests. So, I'll now consider the advice with that in mind.

Financial viability

Prism has said that Mr S was aware of the benefits he was giving up and that the transfer wasn't recommended on the basis he'd be better off financially. And it has said that his other provisions gave him the capacity to accept this loss.

Overall, I agree it appears Mr S was broadly aware of the risks involved with transferring from his DB scheme and that the suitability report doesn't suggest that the investment returns received by transferring would exceed those required to provide benefits equivalent to the DB scheme. So, improving the overall value of the benefits doesn't appear to have been a driving reason for the advice. But Mr S being aware of the risks isn't a substitute for appropriate advice.

I would also add that I think Prism did make a statement that may've led Mr S to think he'd potentially be better off. It said one of the advantages for transferring was that the "transfer value takes into consideration the value of a spouse's pension which is not applicable to you, so by transferring you are gaining value in your pension funds". But I don't agree that by transferring Mr S was 'gaining value' to his pension funds. The benefits under the DB scheme were guaranteed, at no risk or additional cost to Mr S. The CETV was the transfer offer the scheme administrators were willing to make but, as I'll explain, this wasn't the cost of equivalent benefits. Taking the CETV meant Mr S had to achieve growth in his fund just to provide equivalent benefits. So, to say he gained value was in my view misleading.

And ultimately while improving the benefits may not have been the key reason for the advice, the benefits under the DB scheme were guaranteed. Mr S may've been considering or even drawn to alternatives, but it was still important that the value of those benefits was made clear and that consideration was given to whether giving those up was in his best interests – even if he may've had capacity to lose some of the benefits.

Within the suitability report Prism included a transfer value comparator ('TVC'). This compared the CETV with the estimated cost to Mr S of acquiring a policy that would provide the same guaranteed benefits as the DB scheme, at the scheme retirement age of 65. The suitability report from October 2018 said that the same benefits were likely to cost Mr S £411,516.36 which was £139,033.76 more than the CETV. So essentially, he'd need to increase his fund size by that amount by age 65, to purchase the same benefits.

The suitability report also included the critical yield ('CY') – the annual investment return needed from the new arrangement to allow Mr S to purchase a policy providing benefits of equal value to his existing scheme. The report said that to purchase equivalent benefits at age 65, assuming Mr S took the maximum available tax-free cash ('TFC') and a reduced pension, the rate needed was 5.69%. And to purchase equivalent benefits at age 55 – again assuming he took maximum TFC and a reduced pension – the CY was 9.81%. No CY was included for either retirement age option to show what return would be needed if Mr S opted against TFC and took the full pension available under the DB scheme. But it is reasonable to assume that those required returns would've been even higher.

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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017 and is 3.8% for 10 years to retirement – the case if Mr S retired at 65. And the relevant rate was 2.3% for less than one full year to retirement – as would've been the case if Mr S retired at 55. The share returns that were used to compile these discount rates wouldn't have been significantly different by the time of transfer and, if anything, the bond returns would have got lower. So, I think it still gives an approximate guide to the upper end of potential future returns.

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%.

I've taken this into account, along with the composition of assets in the discount rate, the 'cautious' attitude to risk Prism recorded for Mr S in relation to his pension arrangements and the relevant terms to retirement. And, having done so, I think the TVC and critical yields demonstrate that Mr S was always likely to receive benefits of a materially lower overall value than the DB scheme at retirement, be that age 65 or 55, as a result of transferring and investing in line with that attitude to risk. So, from a financial viability perspective, I don't think transferring was in Mr S' best interests.

Of course, 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 – which Prism has suggested here. So, I've considered these below.

Flexibility and income needs

Prism has said that Mr S needed an income of £2,000 net of tax per month in retirement and that he was going to retire at age 55. While he could've taken benefits under the DB scheme at age 55 this would only have given him a maximum starting pension of £6,847 per year, if he didn't take TFC. So that wouldn't have been enough to meet his needs. And it has said that Mr S intended to move home in the next two to four years which would require some additional capital. So, it has suggested he needed to keep his savings and investments for that purpose. And so, it says he needed the flexibility provided by transferring, to drawdown income, from age 55.

I've thought carefully about this. But I don't think Mr S needed to transfer his DB pension at the point of the advice.

As I've already said, the fact find indicates that, while Mr S was considering retiring at age 55, he was also considering reducing his hours and continuing to work part time. If he'd done the latter, he'd have continued to receive a wage, albeit at a reduced level. That would've provided at least some of the income that he needed. So, it wasn't known with certainty how much Mr S would need to draw at age 55.

But whether this was the full £2,000 a month or not, Mr S had significant other assets available, from which he could potentially have drawn the income he needed. He had savings, an endowment that was shortly due to mature and several hundred thousand pounds in investments. Given the size of these assets and Mr S' apparent income needs, which were modest in comparison, drawing an income from these assets ought to have been possible until he reached the normal retirement age of the DB scheme. At which point he could've taken a full pension, quoted in the suitability report as starting at £14,132 per year, which would've continued to escalate in retirement. And when supplemented by his state pension at age 67, would've met his retirement income needs. And this would've been guaranteed for his entire life, not dependent on investment performance.

Prism has said that Mr S intended to move home and has suggested he wanted to retain his other provisions for that purpose, in case he needed additional capital. But drawing an income from his other provisions, for several years until a definitive decision about a move was made, wouldn't have depleted them. And a house move wasn't guaranteed. Nothing had been set in motion, from what I can tell. There was no definitive timescale for this. And, the total cost was entirely unknown as well. So, I don't think the potential of a future house move meant he could not have used some of his other provisions, outside of the DB scheme, to fund his income needs, at least to begin with.

Had he then gone ahead with a move, and felt he needed additional resources, Mr S could've revisited either accessing his DB scheme – as the actuarial reduction would not have been as much several years later – or transferring. But given his overall financial situation, in particular the other resources available to him, I don't think Mr S had a genuine need for flexibility in his pension arrangements at the time of the advice as I think this was a decision that could've been postponed at least until the potential house move.

And again, the DB scheme provided valuable guaranteed benefits – an income that was guaranteed and would continue to escalate. So overall I don't think surrendering these benefits for flexibility was in his best interests at the time of the advice. And the level of uncertainty around these income needs makes it difficult, in my view, to overcome the starting assumption that transferring was unsuitable.

Death benefits

As I've mentioned I can see that Mr S expressed concerns that, in the event of his death, the pension fund would be lost and would not benefit his children. And that this had led him to consider transferring his pension.

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

I understand that the spouse's pension provided by the DB scheme was no longer of use to Mr S as he was divorced. And his children were not due a dependent's pension. But the benefits due to him under the DB scheme were still guaranteed and extremely valuable. I don't think surrendering these to obtain alternate death benefits was necessarily appropriate.

Also, the sum remaining on death under the personal pension would've been dependent on investment performance and would be reduced by any income Mr S drew. And given Prism's recommendation was based around Mr S drawing an income from the pension from age 55, this was an important consideration.

At the very end of the suitability report, Prism included a 'future retirement income analysis.' This showed, what would happen to the total pension fund if Mr S began drawing £24,000 per year (his target income), increasing in line with the retail price index, from the personal pension from age 55 onwards. And what this demonstrated was that, if Mr S began doing so and was able to achieve investment growth within the pension of 5%, that the pension fund would be entirely exhausted by age 69. Given the discount rates I've referred to and the fact that Mr S was considered 'cautious' in respect of his pension investment, it's entirely possible that 5% wouldn't have been achieved, so the fund would've been depleted even earlier.

The fact find recorded that Mr S was in good health. And I've seen nothing to suggest his life expectancy was likely to be lower than normal. So, given what the 'future retirement income analysis' showed, it seems that the pension fund was likely to be entirely depleted, even if Mr S passed away several years prior to his average life expectancy. In which case it wouldn't have provided a legacy to Mr S' children. And wouldn't have met this apparent objective. And I find it interesting to note that this wasn't mentioned in the section regarding the disadvantages of transferring within the suitability report.

In any event, Prism should not have encouraged Mr S to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

And, if Mr S 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 Prism should've instead explored life insurance. But I can't see that this was discussed at the time of the advice to transfer.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the loss of guaranteed benefits, and the likely decrease of overall retirement benefits for Mr S – particularly as it may not have left the legacy that Mr S was apparently concerned with. So, I don't think that transferring for this reason was in his best interests. And I don't think that insurance was properly explored as an alternative.

Control

Another reason indicated for the transfer being suitable was that it allowed Mr S to be more proactive and have greater control over how his pension was invested. But while I acknowledge that Mr S had some investment experience, again the information I've seen indicates that he tended to depend on financial advice in relation to this. So overall I'm not sure that greater control was a genuine objective for Mr S – rather it was simply a consequence of transferring away from his DB scheme.

Suitability of investments

Prism recommended a specific pension provider and fund to Mr S. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable, it follows that I don't need to consider the suitability of the investment recommendation. This is because I think 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 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 S. But again Prism 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 to transfer his DB scheme benefits was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr S was always likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

I don't think Mr S needed flexibility to meet his income needs at the point of the advice as he had other provisions available and at the very least a decision about this could've been delayed several years to coincide with a potential change in circumstances (house move). I also don't think the alternate death benefits meant that the transfer was in Mr S' best interests, particularly given what I've seen about when the fund was likely to be depleted and that this meant the legacy Mr S was concerned about may not have been achieved.

So, I think Prism 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, even if Prism advised him not to transfer.

As I mentioned earlier, Prism has indicated it considered Mr S had already largely decided his course of action. But for the reasons I've already covered I don't agree. And having considered this carefully I'm not persuaded that Mr S would've insisted on transferring out of the DB scheme, against Prism's advice.

I accept that Mr S had investment experience and that his starting point may even have been that he thought transferring was potentially appropriate. But the evidence also shows he had a history of taking and acting on advice in relation to his finances. And given that he sought Prism's advice here – a professional adviser he had experience with, and trusted and accepted advice from previously — I think its advice would've carried significant weight. And if Prism had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

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

<u>*The DC transfers*</u>

In addition to transferring the benefits from his DB scheme, Prism also recommended that Mr S transfer the benefits he held under an accompanying AVC policy and a SIPP to the same new provider.

The suitability report indicated that the reason for this was that consolidation of benefits was desired.

The ongoing cost of the AVC was recorded as being a discounted 0.75% annual management charge. The SIPP had a combined annual cost of 1.26% (a 0.91% annual management charge and 0.35% product charge).

The PPP that Prism recommended had an annual management charge of 0.79% and a product charge of 0.35%. But Prism also charged an annual fee of 0.75% for providing ongoing management. So overall, the cost of the new arrangement appears to have been greater than Mr S' existing DC schemes.

The suitability report also confirmed that the majority of the flexible features that the new arrangement would provide were already offered by Mr S' DC schemes. The only difference being the specific investment fund portfolio wasn't available. But it's likely, on balance, that while the portfolio with the new adviser wasn't available Mr S' existing SIPP would've given him access to a far wider range of investments – if this was something that he was genuinely interested in.

So, there seems to have been no particular reason or benefit to Mr S in transferring the DC schemes, beyond consolidation of his different provisions. And as I've already found that the DB scheme transfer was unsuitable, it follows, in my opinion, that without that, the transfer of the DC schemes would not have taken place. So, at the same time as addressing the unsuitable advice to transfer his DB scheme, I think Prism should put Mr S, as far as possible, in the position he would've been in, had the transfer of the DC schemes not taken place.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Mr S didn't provide any further comments for me to consider.

Prism did not agree with my provisional decision and provided an extensive explanation why. It is meant as no discourtesy that I've summarised its response below, rather than repeat each point made. And I've considered everything that it has said and provided.

Prism said the issue to be decided was whether it had discharged its responsibilities as set out by the regulator and taken reasonable steps to ensure the advice was suitable. It was confident that it had and said it was concerned I'd concluded to the contrary and that I'd given my opinion at times, which it felt was outside of the scope of what I was required to decide, rather than making my decision solely on the evidence or facts in this complaint.

It said it felt Mr S and his representatives' complaint was without foundation or merit and questioned the integrity of the complaint. Prism also felt the information it had provided to the representative in response to a subject access complaint, prior to the complaint being lodged, evidenced this. And its view was the complaint should not have been made.

Prism reiterated that it felt Mr S had been clear that he was going to retire at age 55 and wanted to take an income from his pension benefits. It disputes that these objectives were undecided or in question and said that, as Mr S' adviser for a number of years, it was in a position to understand his circumstances and needs. It said Mr S was not in the slightest bit concerned with losing the guaranteed benefits of the DB scheme, as they wouldn't meet his needs.

It refuted that he had other viable ways of achieving his goals as the alternatives suggested would not have satisfied his requirements and did not reflect what he wanted. And it remained of the opinion that the evidence supported that the transfer was in Mr S' best interests.

Prism said it hadn't said that the comparison of benefits available at different points under the DB scheme were irrelevant but that these were 'less relevant;' as Mr S had clearly indicated his confirmed intention to retire and take benefits at age 55.

It also said that Mr S was an experienced investor and, while he did seek advice from Prism, would not have followed this without question. And it also made the point that he was required to seek advice due to the nature of the transfer.

In summary it said that it felt I had no reasonable grounds for saying that the advice was unsuitable. Prism believed the suggested alternative ways of meeting Mr S' needs that I'd discussed were unsound. And it was unhappy with some of the statements I'd made, particularly in relation to Prism's role going beyond transacting what Mr S wanted, as it felt these were unfair and that it had provided appropriate advice.

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'd like to start by reiterating my role here. Our service is an impartial dispute resolution service and an informal alternative to a court of law. Prism has said it believes that a complaint has no merits and should not have been made. But Mr S is entitled to ask our service to consider a complaint, if he feels otherwise. And can use a representative to bring his complaint. As was the case here.

My role, where there is a disagreement, difference of opinion or where the evidence, including testimony, is incomplete, inconclusive or contradictory, is to 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.

In deciding a complaint, I take into account relevant regulations and regulator's rules. What I've considered includes the Principles for Business (PRIN) and the Conduct of Business Sourcebook ('COBS'). And, while not a comprehensive list of all rules and regulations that applied at the time, this includes

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.

But my role isn't just to determine if there has been a breach of regulation. I've also taken into account relevant law, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And, once I've done all of this, I have to decide what I consider to be fair and reasonable in the circumstances of the complaint.

I appreciate from the responses Prism provided to both our Investigator's opinion and my provisional decision that it feels very strongly about this complaint. And that it considers the advice it provided to Mr S to have been appropriate. I've considered everything that it has said and reiterated, as well as all of the other available information. But while I know this will come as a disappointment to Prism, I'm not inclined to depart from my provisional findings.

Prism has said that Mr S had decided, unequivocally, that he was going to retire at age 55 and that he wanted to use his DB scheme benefits to support his income needs, regardless of the guarantees being given up. And he intended to move home within a couple of years meaning he may need to utilise his other assets to cover the costs of this.

But I remain of the opinion that the available information doesn't support that these intentions were set in stone. The fact find completed by the adviser was clear that no final decision had been taken about Mr S' working arrangements from age 55, and that continuing to work – likely reduced hours – was very much under consideration. Prism has said that this option still represented retiring – as many people 'retire' from their role but work part time. But the point is, on balance, I don't think a definitive decision on this had been taken.

Likewise, in respect of a potential house move, the fact find notes recorded by the adviser are clear that Mr S had "*indicated the possibility of a house move in 2 – 4 years*". And there is nothing, in my view, to suggest that this was anything more than a possibility – with costs and requirements unknown.

In any event though, I don't think Mr S needed to transfer his DB scheme benefits when he did. Mr S had other assets – cash reserves, investments, a maturing endowment, equity in a second property and smaller defined contribution pension policies. And given the values of these assets, I'm satisfied a combination of these could've been used to support his retirement income needs – if he had stopped work or reduced his hours from age 55 – based on how much Mr S felt he was likely to require. And these assets would still have had significant remaining value if Mr S did ultimately decide to go ahead with a house move within 2-4 years. So, could still have assisted with this.

It could be argued that these same assets could've been used to support Mr S' needs at a later point in retirement, after transferring his DB scheme benefits and using those initially. But many of these other assets were subject to investment risk. Whereas the DB scheme benefits were guaranteed and would continue to escalate. They provided a pension for life – not just until a pension pot was exhausted. And when coupled with his state pension entitlement, would've provided the significant majority of the income that he was targeting in later life. And again, this would've been guaranteed, rather than subject to risk.

Prism has said that Mr S was not concerned with giving up these guaranteed benefits. But that doesn't mean it was in his best interests to do so. Which I think ought to have been made clear.

As I said in my provisional findings, I know that Mr S made the point that he was concerned that the existing benefits would not leave a legacy for his children and would be lost in the event of his death. But again a pension is designed to provide for the holders retirement first and foremost. And if he transferred the benefits, the sum remaining on his death, the legacy, would be subject to investment risk and would've been depleted by any withdrawals made from the fund. The apparent intention was for there to be significant regular withdrawals, from age 55, with the likelihood being that the fund would've been significantly diminished by state retirement age and potentially exhausted entirely before Mr S reached an age equivalent to his average life expectancy. And given Mr S was in good health, I don't think transferring was likely to mean the pension provided the legacy he intended.

So, for all of the reasons I've explained in my provisional findings and above, I remain of the opinion that transferring was not in Mr S' best interests in the circumstances. So, I don't think Prism should've advised him to do so.

Prism has said that Mr S 'knew his own mind' and has again suggested he knew what he wanted to do – although it has made the point that it believes this is somewhat moot and the advice was suitable. But I still don't think Mr S would've disregarded Prism's advice. He had a history of taking advice from Prism. And I think it's fair to say from the information I've seen that he considered its advice to be professional and that he respected it. So, if Prism had advised him here that transferring wasn't in his best interests and explained why and how he could otherwise meet his aims, I think he'd have accepted that advice. And, but for the unsuitable advice, I don't think Mr S would've transferred his pension benefits, from either his DB scheme or FSAVC and SIPP, and would've retained his existing benefits. So, I think Prism should compensate Mr S for the unsuitable advice.

Putting things right

My aim in awarding redress is to put Mr S as far as possible in the position he would be in now if Prism had given him suitable advice. I think Mr S would have remained in the DB scheme. I also think he would have retained his existing AVC and SIPP arrangements.

What should Prism do?

To compensate Mr S fairly, Prism must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the personal pension at the date of the calculation. I'm aware that Mr S' pension may've been transferred to another provider after he changed financial advisers in January 2020. So, Prism will have to obtain the current value from the relevant provider.

fair value – step one

If Mr S had been given suitable advice, I think he would have remained in the DB scheme.

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 - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/19 (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.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr S whether he preferred any redress to be calculated now in line with current guidance or to wait for the any new guidance / rules to be published.

He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for any new guidance.

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

Prism must therefore calculate the value of the benefits Mr S lost as a result of transferring out of his DB scheme in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

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

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

fair value – step two

Prism must compare the total value of the AVC and SIPP transferred to the personal pension it recommended to Mr S with that of the benchmark shown below to determine the fair value of Mr S' AVC and SIPP if suitable advice had been given.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
AVC and SIPP	Still exists (potentially with a different provider than recommended by Prism)	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

To arrive at the fair value when using the fixed rate bonds as the benchmark, Prism should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sums paid into personal pension should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the personal pension should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Prism totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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

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

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

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

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr S wanted capital growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr S risk profile was in between, in the sense that he was prepared to take a small level of risk with his pension provisions to attain his investment objectives. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objective and risk attitude.

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

My final decision

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

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

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

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

If Mr S accepts my final decision, the money award would become binding on Prism Financial Advice Limited.

My recommendation would not be binding. Further, it's unlikely that Mr S can accept my final 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 11 November 2022.

Ben Stoker
Ombudsman