DRN-3793646

The complaint

Mrs H complains about advice given by PrisWM Limited ("PWM") to transfer defined benefits She held in the British Steel Pension Scheme ("BSPS") to a Self-Invested Personal Pension ("SIPP"). She says the advice was unsuitable and believes it has caused her a financial loss.

What happened

I issued a provisional decision on 26 October 2022. I've recapped the background below:

"In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit (DB) pension schemes when their employer becomes insolvent. The BSPS was eventually closed to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by the Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new defined benefits pension scheme, BSPS2, subject to certain conditions relating to funding and size being satisfied.

Concerned about what the above announcement meant for the security of the benefits she and her husband had accrued in the BSPS, Mr and Mrs H approached PWM in June 2017 for advice. Mrs H had accrued 11 years and 8 months qualifying service and was offered a cash equivalent transfer value (CETV) of £100,685.73. Mr H had accrued significantly more qualifying service and was offered a CETV of almost £400,000.

A fact find and risk profile were completed and, in summary, PWM recorded the following:

- *Mr and Mrs H were 40 and 41 years old, respectively, and in good health. They had two financially dependent children, one of whom had mild Cerebral Palsy which they thought might impact his ability to afford his own home in the future.*
- *They were employed, with Mrs H earning around £12,900 pa and Mr H earning around £35,000 pa.*
- *Mrs H held a small final salary pension in a local government pension scheme (LGPS) valued at £4,500 pa and Mr H was contributing to a new British Steel defined contribution (DC) scheme valued at £2,500 pa. They had two life cover policies for £80,000 and £52,000.*
- *They held investments and savings totaling around £120,000. They also owned their own home, valued at around £300,000, with 12 years remaining on an outstanding mortgage for £48,000.*
- *Their attitude to risk (ATR) was "Highest medium". In terms of objectives, they wanted to be comfortable in retirement and provide "substantial funds" to help their children get on the property ladder.*

PWM's notes from meetings with Mr and Mrs H also noted the following:

- *They wanted to be viewed as a couple for the purpose of PWM's advice and hoped to retire before age 65, possibly around age 57, at which point Mr H thought he'd work part-time.*
- *Mr H wanted to take benefits flexibly and didn't see the benefit of having a pension paid at a consistent level when his income needs were likely to be lower in later years.*
- *Mrs H said that she was aware of the benefits she'd be giving up by transferring, such as a guaranteed, escalating pension for life and a spouse's pension. But she was satisfied that, given her and Mr H's financial position, they'd have enough to live off in retirement. She didn't think they'd deplete their pension funds as they were always careful with money.*
- *She also appreciated that she'd be taking on investment risk and the risk of her pension fund being depleted. However, she was reassured by the long investment horizon she'd have following a transfer.*
- *PWM explained that Mr and Mrs H would be missing out on valuable pension increases if they transferred. However, Mrs H wasn't bothered about this, noting that she'd built up benefits in her LGPS which would provide a guaranteed pension.*
- *Mrs H felt that transferring was the best way for her and her husband to achieve their retirement goals. She was concerned that, if her pension fell into the PPF or benefits changed under BSPS2, she'd lose the opportunity to transfer at a later date.*
- *The death benefits available from a DC scheme were important to Mrs H as she wanted to leave something for her children when she died.*

Transfer Value Analysis (TVAS) reports were produced, and in August 2017 PWM sent Mr and Mrs H suitability reports with their respective TVAS reports enclosed. In summary, amongst other things, PWM said the following in Mrs H's suitability report:

- *Mrs H aimed to retire at age 57 and would like the option to access her funds flexibly, taking a higher income in the early years of retirement.*
- *Mrs H wanted to be able to take the maximum Tax-Free Cash (TFC) and other income from her pension to help her sons each purchase a property.*
- *Mrs H wanted her beneficiaries to benefit from her full fund if she died.*
- *Mrs H had concerns about the stability of the BSPS and the security of her funds in the scheme. She also didn't trust the PPF or believe in its ability to take on the full BSPS liabilities.*
- *If Mrs H took early retirement, her pension would be greatly reduced, so this wasn't advisable. Her BSPS pension would offer much better benefits if she retired early.*
- *No cashflow analysis had been carried out as Mrs H was 16 years away from retirement and didn't know how much she'd need to meet living costs. This would be covered by PWM in annual reviews closer to Mrs H's retirement.*
- *Mr and Mrs H had other investments as well as Mrs H's LGPS pension which she was still contributing to, so they were diversified in terms of assets. They'd also receive inheritances from their parents when they died which could offset the investment risk associated with transferring.*
- *Mrs H's BSPS pension made up the "sizeable proportion" of her pension benefits, so it was "vitally important" that she had full control over her funds.*
- *Despite having life cover in place, Mrs H felt Mr H would benefit from an extra lump when she died.*
- *In terms of ATR, Mrs H didn't consider it appropriate to expose herself "to anything other than a low amount of risk" in the hope of increasing her pension benefits. Based on contributions she was making to her DC scheme, along with savings and investments, Mrs H thought she could tolerate medium losses.*

- *PWM recommended that Mrs H transfer to a SIPP to increase death benefits for her husband and children; increase flexibility to retire early at age 57 and secure a higher income in early years; and to provide £200,000 to fund home deposits for her sons.*
- *Following the transfer, PWM recommended that Mrs H place 48.5% of her funds in the Premier Liberation V fund, 48.5% in the Vanguard Life Strategy 60% Equity fund, with the remaining 3% held in Cash.*

Mr H's suitability report repeated many of the same things set out in Mrs H's report. PWM recommended that Mr H transfer his BSPS benefits to a SIPP and invest in the same way it advised Mrs H to.

Mr and Mrs H signed Client Declarations provided by PWM which, amongst other things, confirmed they accepted the risks associated with transferring; understood the benefits they were surrendering; were aware of the costs of the new arrangement; and recognised that there was no guarantee the new plans would provide greater retirement benefits than the BSPS in retirement. Following this, Mr and Mrs H accepted PWM's recommendation.

Due to a positive change in the funding situation of the BSPS, updated CETVs were issued. By mid-August 2017 Mr and Mrs H's BSPS CETVs were transferred to two new SIPPs. Mrs H's new SIPP value was £102,943.54, while Mr H's was over £400,000.

Mr and Mrs H met with PWM at various points in late 2018 to discuss the performance of their investments. Following these discussions, changes were made to Mr and Mrs H's investment strategy.

By March 2020, Mrs H's pension fund had grown to £121,046.81, while Mr H's had grown to over £430,000. In June 2020 Mr and Mrs H cancelled their ongoing advice service with PWM and transferred their pension funds to another provider.

In March 2022, Mr H approached our service to complain about the suitability of the advice that he and Mrs H received from PWM in 2017. The complaint was referred to PWM and, in summary, it later responded with the following:

- *Mr and Mrs H had been scathing about the BSPS and wanted to get out of it.*
- *At all times PWM had fully understood, questioned, and documented Mr and Mrs H's financial situation, objectives, priorities, and ATR. And, by presenting a balanced view, Mr and Mrs H fully understood the benefits they were giving up.*
- *Mr and Mrs H's basic needs and objectives couldn't be met without transferring.*
- *It disagreed that unsuitable advice was given and pointed to Mr and Mrs H having received net growth of around 4.8% on their funds each year.*

Mr and Mrs H didn't accept this, so they asked our Service to investigate their complaints.

PWM provided our Service with documents from the time of the advice."

Because no agreement could be reached, the matter was passed to me for a decision. And my provisional findings were as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm intending to uphold Mrs H's complaint. I'll explain why. But before I do, I should emphasise that while I've taken note of the extensive arguments made, the purpose of my decision isn't to comment on every point raised. Because of this, I've limited my response to the issue I consider to be central to this complaint. That is to say, whether the advice PWM gave Mrs H was suitable.

Mr and Mrs H asked PWM to treat them as a couple for advice purposes, however, while they were financially dependent on each other and shared assets, the advice they sought concerned the BSPS benefits they'd accrued individually. PWM later advised Mr and Mrs H to transfer these benefits and make individual investments. Because of this, Mr and Mrs H's complaints have been considered separately, bearing in mind obvious points of overlap and repetition with the advice given.

The regulator's position

At the time of PWM's advice, the regulator, the Financial Conduct Authority (FCA), set out the principles for assessing suitability. The relevant rules are 9.2.1 and 9.2.2 as set out in the FCA's Handbook and Conduct of Business Rules (COBS). These required PWM to gather sufficient information from Mrs H to ensure its recommendation met her objectives; that Mrs H could financially withstand the risks associated with these objectives and that Mrs H had the necessary experience and knowledge to understand the risks involved in the transaction.

I don't think all the factors in deciding suitability were met in this case. I'm not satisfied PWM went far enough in terms of gathering and recording enough information about Mr and Mrs H's circumstances; adequately exploring and interrogating their objectives or satisfactorily evaluating, explaining, and documenting the associated risks with transferring. Because of this I don't think it was reasonable for PWM to conclude that transferring was a suitable course of action for Mrs H to take.

DB schemes like Mrs H's BSPS typically have significant benefits and guarantees. Giving these up and subjecting future pension income to the risks associated with unpredictable investment returns should only be done where it can be shown it's clearly in the best interests of the consumer. Under 19.1.6 the COBS rules at the time of the advice said:

"When advising a retail client who is (…) a member of a defined benefits occupational pension scheme (…), a firm should start by assuming that a transfer (…) will not be suitable. A firm should only consider a transfer (…) to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, (…) is in the retail client's best interests."

Given the regulator's position, my starting point is that a transfer won't usually be suitable. So, PWM should've only considered a transfer to a SIPP if there were compelling reasons why, instead of maintaining safeguarded benefits in the BSPS, the transfer was in Mrs H's best interests – merely meeting her apparent objectives wouldn't, in my view, be enough. Generally, a transfer is only likely to be in the consumer's best interests if there's a reasonable prospect that the new arrangement will provide better retirement benefits. The transfer will also need to be suitable, taking into account the individual's particular circumstances.

Mrs H's position at the time of PWM's advice

Although Mr H approached PWM for advice about transferring out of the BSPS and PWM has said Mr and Mrs H were scathing in their comments about it, I don't think this meant that transferring was automatically the best route to go down. Mr and Mrs H clearly had concerns about the scheme and while this may have indicated that Mrs H was open to transferring, I believe the fact she was seeking financial advice more likely demonstrates that she was only willing to transfer if this was in her best interests. And that's what I think Mrs H wanted from PWM – advice about her options and confirmation of what was in her best interests regarding her BSPS benefits and retirement objectives. As a retail client, I think PWM could be confident that Mrs H would be acting upon, or at least relying on, its advice.

At the time of the advice, Mrs H was 41 years old and had accrued moderate qualifying *service in the BSPS she'd held with her former employer. Other than her small LGPS pension and state pension entitlement, Mrs H's BSPS benefits were the backbone of her retirement provision. When considered in comparison to the significant level of benefits her husband has secured under the BSPS, it was obvious that Mr H's BSPS benefits represented the largest proportion of the couple's total future retirement income. So, Mrs H had a clear dependence on Mr H's pension benefits as well as her own.*

In terms of other assets Mr and Mrs H could potentially rely on if transferring didn't work out, they held £86,000 in investment bonds; £28,000 in Individual Savings Accounts (ISAs); £4,000 in cash savings and owned their own home. PWM recorded that Mr and Mrs H expected inheritances which it felt could offset the investment risk associated with transferring. However, it failed to collect any meaningful information about the anticipated inheritances, such as what they might comprise of or their expected value. So, I'd question the basis on which it was able to conclude they could be relied on to mitigate risk.

Notwithstanding what I've said about the inheritances, I accept that Mrs H's financial position was, by all general appearances, fairly favourable. PWM recorded that Mr and Mrs H were satisfied they'd have enough to live off in retirement and didn't think there was any risk of their retirement funds being depleted, saying they were always careful with their money. Despite these views, the fact remains that Mrs H was dependent on PWM's expertise. She wasn't a pensions expert, so she wasn't in a position to effectively assess whether her financial circumstances meant it was appropriate to take additional risks with her BSPS benefits. It wasn't enough for PWM to rely on Mrs H's satisfaction with her financial position or the inheritances she anticipated. It needed to establish her financial position at the outset, including her specific retirement needs, and make a reasonable assessment of the situation. Had PWM done so, I think it would've been clear that, for several reasons, Mrs H transferring out of the BSPS wasn't essential or worthwhile.

Financial Viability

An important part of assessing the viability of a DB transfer, is a careful analysis of the investment returns required from any investments in the receiving scheme, to match (let alone exceed) the benefits being given up by transferring out of the DB scheme. And that needs to be done in conjunction with other important considerations, including the investor's ATR, financial circumstances, and objectives.

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

Mrs H was 41 years old at the time of the advice and wanted to retire at age 57. The critical yield required to match Mrs H's benefits at age 57 was 5.3% if she took a full pension and 3.8% if she took TFC and a reduced pension. At age 65, the critical yield required to match Mrs H's benefits was 5% if she took a full pension and 4% if she took TFC and a reduced pension. The critical yield to match the benefits available through the PPF at age 57 was quoted as 3.7% per year if Mrs H took a full pension and 3.5% per year if she took TFC and a reduced pension. At age 65, the critical yield required to match Mrs H's benefits was 2.5% if she took a full pension and 2.8% if she took TFC and a reduced pension.

This compares with the discount rate of 4.2% per year for 14 years to retirement at age 57 and 4.5% for 22 years to retirement at age 65 in this case. 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% per year. I've taken this into account, along with the composition of assets in the discount rate, what PWM recorded as Mrs H's ATR – "Highest Medium" – and the term to retirement.*

There'd be little point in Mrs H giving up the guarantees available to her through the BSPS only to achieve, at best, the same level of benefits outside the scheme. Here, the lowest critical yield was 2.5%, assuming Mrs H retired at age 65. But PWM's transfer advice was partly based on Mrs H retiring at age 57. The critical yields required for this and her wish to take maximum TFC was 3.8% or 3.5% to match benefits available under the PPF.

These were lower than both the discount rate deemed achievable over the same period, and the mid-band growth rate used by the regulator, however, I think the case for whether they were achievable and Mrs H would be better off as a result of transferring, was borderline. Although PWM said it believed the critical yields were achievable, it acknowledged they'd actually need to be even higher, taking into account plan charges, adviser fees and fund costs. And bearing in mind her term to retirement, I think it's important to note that Mrs H would also need to achieve consistent investment returns each year on top of the critical yield, so that over time this accumulated into benefits of sufficiently greater value to have made the transfer worthwhile. PWM also said the BSPS would offer much better benefits for early retirement, so transferring for this reason wasn't "an advisable course of action". And I agree. I'm not persuaded that the likelihood the critical yields were achievable was to such an extent that it was worth taking the risk transferring involved, even considering Mrs H's other objectives, which I'll comment on later.

PWM recorded Mrs H's ATR as "Highest Medium" (7 on a scale of 1-10) which was expected to produce returns of 5-6% pa and described as someone whose priority was making higher investment returns, who was "more comfortable and better able to adapt to losing money" on their investment. Given some of her answers to the risk questionnaire, I can see how this ATR result and a belief in Mrs H's willingness to take above average risks with her investments was reached. But her answers needed to be considered in the context of her overall circumstances. A willingness to accept a degree of risk isn't the only factor to consider in providing suitable advice. The degree of risk Mrs H was able to take was also material – her capacity to accept losses in the context was a key consideration.

As PWM acknowledged, Mrs H's BSPS benefits made up the "sizeable proportion" of the retirement income she held in her own name. Although, as mentioned earlier, Mrs H's was dependent on Mr H's benefits, her own contribution to her and her husband's overall future retirement income couldn't be ignored. Any significant loss of this would have an impact on Mr and Mrs H's total retirement provision and, beyond that, their children, who they also wished to make provision for in later life. Despite this, in terms of capacity for loss, PWM said Mrs H agreed that she could tolerate medium losses.

Although Mrs H may have thought she could withstand medium losses to her pension, I don't think it was appropriate for PWM to rely on this alone to reach a determination about her capacity for loss, particularly when it was meant to be considering this bearing in mind Mrs H's long-term position and not just how she felt in that moment. Independent of what Mrs H perceived her capacity for loss to be, PWM needed to carry out its own evaluation. I can't see that it did this and so I don't think its conclusion regarding this was reached on a sound basis.

It's worth noting that PWM's suitability report also said that Mrs H didn't "consider it appropriate to expose [herself] to anything other than a low amount of risk in the hope of increasing [her] pension benefits." This contradiction wasn't something PWM ever addressed.

Although Mr and Mrs H wanted to be treated as a couple for the purposes of the advice, TWM still provided them with two individual pieces of advice. I think this was the right approach to take. TWM had a duty to consider Mrs H's position as an individual and the pension provision she held in her own name, as well as her position as part of a couple and the shared assets which came with this. Although there was nothing to indicate Mr and Mrs H wouldn't remain married and therefore financially dependent on each other in retirement, I think the level of dependency Mrs H had on Mr H – by virtue of the size of his BSPS benefits – was such that it was important to ensure Mrs H understood the significance of this dependency; how vulnerable she (and her husband) could be if Mr H's transfer didn't work out; and therefore, what the relative value of her own BSPS benefits were.

PWM didn't produce any cashflow models to show that by transferring Mrs H would've been able to meet her needs. But that's not surprising given the absence of any evidence showing that PWM tried to establish what Mrs H's income needs in retirement were likely to be.

In the suitability report, PWM said that as Mrs H didn't intend to retire for another 16 years, she didn't know how much money she'd need, so this was something it'd cover with her when she was closer to retirement. I have my doubts about this approach, as the closer Mrs H got to retirement, the shorter her investment horizon would be, providing less scope to meaningfully address any shortfall identified in what Mrs H's retirement income needs were determined to be.

Although PWM's final response referred to a discussion taking place in which Mr and Mrs H confirmed that £24,000 pa was their income requirement in retirement, the meeting note I've seen from this discussion doesn't reflect that. The note states that Mr and Mrs H's existing income needs were £24,000 pa and that retirement was too far away to establish what their financial needs would be at that point. As a result, I think PWM failed to meet the regulator's requirement that its advice took into account Mrs H's relevant circumstances.

Although, given the time to retirement, PWM may not have thought that establishing Mrs H's retirement income needs was a priority, I'm conscious that the main purpose of a pension is to meet this need. Other considerations, like flexibility and death benefits for example, are secondary to that, particularly where, as here, there was nothing to suggest Mrs H was in ill health, such that it wasn't expected that her BSPS pension would need to support her for a long time. So, it's hard to see how PWM could've advised Mrs H on what action to take with her existing pension provision without establishing what her specific retirement needs were likely to be.

A transfer won't automatically be suitable just because the critical yields are relatively low, however, it does give an indication of the degree of risk involved in the transaction and whether the transfer value represents good value in return for the benefits being given up. Nevertheless, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable. My understanding of PWM's position is that the basis of its recommendation was the benefit transferring had for Mrs H in terms of other objectives being met.

Flexibility

PWM referred to Mrs H's need for flexibility as a reason for recommending that she transfer. Specifically, it said that Mrs H wanted to retire early, at age 57, taking a higher income in the initial years of retirement. She also wanted to take the maximum TFC available so that she and her husband could provide their sons with deposits to purchase their first homes.

In terms of retiring early, nothing was recorded to suggest this was an essential requirement or that Mrs H had concrete plans in this respect. Based on what I've seen, saying Mrs H *wanted to retire early wasn't a fully articulated objective. And as she had at least 16 years before she was thinking about accessing her pension, I think it was too soon for Mrs H to make any kind of decision about transferring out of the BSPS, especially not an irreversible one which could potentially leave her worse off in retirement. I don't think it was a suitable recommendation for Mrs H to give up her guaranteed benefits when she didn't know what her retirement needs would be. If Mrs H later had a genuine reason to transfer out of the BSPS, knowing at that point what her income requirements were, she could have done so closer to retirement.*

Furthermore, early retirement was already an option available to Mrs H through the BSPS and the PPF (subject to a 10% reduction in benefits). And as PWM said in its suitability report, Mrs H's pension would be "greatly reduced" if she transferred out of the BSPS for early retirement. Specifically, it said that this wasn't "an advisable course of action", adding that the BSPS would provide Mrs H with "much better benefits" if she retired early. So, it's concerning that, several paragraphs later, PWM went on to contradict itself and recommended that Mrs H take the very action it had just warned against – i.e. transferring to retire early.

Regarding Mrs H's desire to access her pension fund flexibly, PWM noted that she wanted to take a higher income in the early years of retirement. Very little detail about what flexibility really meant for Mrs H was gathered and certainly not enough to persuade me that it was a compelling reason for transferring. There's also no evidence of any discussion regarding what level of income Mrs H anticipated taking in early retirement compared to later on and whether this was likely to be sustainable or make the risks associated with transferring, worthwhile. Without even basic information about Mrs H's personal goals in this respect, I can't see how PWM could conclude that flexibility was a genuine need which transferring was likely to meet.

If I accept, which I don't, that Mrs H had a strong requirement for variable income in retirement, I'd repeat my earlier point that she could've remained in the BSPS until she had a genuine need to access her pension benefits in this way and transferred at that point if it was deemed necessary.

As PWM recognised in its meeting notes, by transferring at 41 years old Mrs H would both miss out on valuable pension increases in deferral and, potentially, an increased transfer value. PWM said this raised serious "alarm bells" and that to transfer at that point without very good reason wouldn't be reasonable action to take. So, again, it's unclear why PWM advised Mrs H to do just that.

I accept that the ability to vary the level of income withdrawn wasn't an available option under BSPS2 or PPF. However, as I've said, this wasn't a clearly defined objective for Mrs H. I'm also mindful that in addition to the LGPS pension Mrs H was contributing to, Mr and Mrs H also had investments and savings totalling in excess £100,000 which they could potentially access as a means to withdraw income flexibly if they needed to, while retaining Mrs H's safeguarded benefits. I haven't seen evidence that PWM adequately considered and discounted alternative courses of action to meet Mr and Mrs H's early retirement objective and desire to "enter retirement on their own terms". So, I'm unable to agree with PWM's view that the only way to achieve this was by transferring to a SIPP.

In its final response PWM said that Mr and Mrs H's "primary need" was to "access £200,000 at age 57 to pay for houses" for their sons. Although making provision for her children in the future was understandably important, I don't think it was reasonable for to this to have been given prominence over Mrs H's own requirement to benefit from her accrued pension benefits. PWM had a duty to advise her that that her own financial benefit took priority here and that her desire to provide such substantial funds to her sons had to be properly weighed *up against the guaranteed benefits PWM said she had to relinquish in order to make such provision.*

When asked, as part of the fact find, about their goals, Mr and Mrs H said, "we ***hope*** *to provide our two children with substantial funds to help them get on the property ladder". But, while this was clearly a consideration for Mr and Mrs H at the time, I'm not persuaded that it was established as a principle requirement or that providing the £200,000 figure was crucial.*

Many people might want to provide for their children in retirement, but this can only happen if they have the financial means to do so while supporting themselves in retirement. As Mr and Mrs H's likely needs in retirement weren't established by PWM, I think the basis on which it went on to conclude that transferring to provide lump sums to their sons was flawed. There's nothing to suggest that PWM ever questioned Mr and Mrs H about how they arrived at £200,000 deposit figure or why they wanted to provide this when Mr H was 57 years old. Although one of Mrs H's sons had a mild disability, he was in mainstream school and not expected to be unable to work in the future or be a long-term dependent of Mr and Mrs H. Nothing was recorded about the needs of their second son.

So, providing each son with £100,000 doesn't seem to be something which PWM established was really necessary, certainly not to the extent that transferring and sacrificing Mrs H's valuable BSPS benefits to achieve this was the best course of action for Mrs H to take. If anything, I think the lump sum amount was aspirational and it was for PWM, through discussion with Mrs H, to put this figure into perspective, establish what was feasible, manage expectations and, where applicable, help modify this objective to reflect the reality of her and her husband's financial circumstances.

PWM's suitability report for Mrs H didn't set out the specific lump sums which might be available to her at age 57 and age 65 under BSPS2 or the PPF. Nor did it provide any figures for what a SIPP might provide as an alternative. Given that Mrs H was exploring the idea of funding deposits for her sons using the proceeds of her BSPS benefits and relying PWM's advice about this, I think this was essential information for her to have in order to make an informed decision about what to do.

The TVAS showed that under the BSPS Mrs H could've received a TFC lump sum of £12,735.70 at age 57 and £20,117.65 at age 65. The estimated figures for lump sums available under BSPS2 and the PPF at different retirement intervals weren't provided. However, as it was known at the time of the advice that BSPS2 would broadly secure the same level of benefits as the BSPS, while the PPF had better early retirement factors than BSPS2, it was clear that that neither the PPF or the BSPS2 could likely provide the lump sum being sought, even taking into account the lump sums which could've been available to Mr H at age 57 (around £75,000) and age 65 (around £100,00) under the BSPS.

However, I can't see that any consideration was given to whether Mrs H's existing savings/investments, anticipated inheritance and the lump sum potentially available to her through her LGPS could've helped her and her husband reach the sum they wanted to gift their sons, and if they didn't, whether this indicated an issue with the objective itself. I think this ought to have been explored before advising Mrs H to give up her guaranteed benefits.

Overall, I think PWM deprived Mr and Mrs H of the opportunity to seriously consider other ways of providing the deposits without subjecting Mrs H's main retirement provision to avoidable risk. For example, contemplating whether providing lower deposits (more commensurate with Mr and Mrs H's financial position) which could comfortably be accommodated through TFC available to Mr and Mrs H under BSPS2 or the PPF at different retirement intervals, or, using existing savings or anticipated inheritances to fund the deposits – all while keeping Mrs H's own retirement needs a priority.

Death benefits

Regarding death benefits, PWM recorded that Mrs H wanted her family to benefit from her full fund if she died without depleting it, instead of the prescribed death benefits the BSPS offered. PWM says that it advised Mrs H to transfer to a SIPP because of the increased and flexible death benefits available to her husband and children.

It's understandable that Mrs H wanted to ensure her husband and children benefited from her pension when she died. However, based on what I've seen, I don't think PWM has provided sufficient evidence, demonstrating that transferring for this reason was worthwhile; that PWM met its obligation to provide Mrs H with enough information about the death benefits available under the BSPS and the PPF or that it had regard for the effect of replacing them with the benefits and options under a new arrangement.

PWM's suitability report briefly set out what Mrs H's death benefit entitlement under the BSPS was – a spouse's pension equal to 50% of the pension she was receiving and a lump sum of £6,068.53. It outlined, in general terms, death benefits available through a SIPP and made minimal references those under the PPF.

The TVAS did set out in monetary terms what spouse and children's death benefits under the BSPS could be depending on when, before taking benefits, Mrs H died. But there was nothing about what death benefits might look like under the PPF or a SIPP, even in general terms. Because of this, I'm not satisfied that PWM put Mrs H in a position where she had a complete picture of what her various death benefit options were or that she fully understood them, such that she could make an informed decision about transferring for this reason.

Transferring to a SIPP did offer flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, lump sum, income drawdown or any combination of these. And for the period immediately following the transfer until Mrs H could take any retirement income, the death benefits available would, subject to investment performance, be significant because she couldn't access and deplete the fund value. But Mrs H was in good health, there was nothing suggest she couldn't expect a normal life expectancy and therefore require money from the SIPP to meet her income needs in retirement. So, this could mean that upon death the size of Mrs H's SIPP fund remaining for her beneficiaries was more likely to be much smaller, particularly if investment returns were less favourable than expected.

In addition to setting out the death benefits available, PWM needed to establish what Mrs H's specific needs in this regard were. Without doing so, it was impossible to say with any certainty what fund might reasonably be available to Mrs H's beneficiaries based on her expected rate of income withdrawal and life expectancy and therefore how the SIPP might provide financial support for her husband and children further down the line. PWM ought to have discussed what, in real terms, Mrs H's position on death benefits was and specifically how she wanted to provide for her husband and children in this respect – for example, why she thought Mr H would benefit from extra lump sum death benefits as opposed to a guaranteed ongoing spouse pension, and how much of a safety net her husband and children might require if she passed away.

Although Mr and Mrs H had two life cover policies for a total of £132,000, PWM's suitability report confirmed that to meet her death benefits objective it had considered the possibility of Mrs H purchasing additional life cover for £200,000. No explanation was provided for the £200,000 figure selected, however, this option was discounted as Mr and Mrs H already had life cover in place and didn't think it made sense to pay for more "when this could be achieved by transferring". But PWM offered no comment on this viewpoint. It seemed to just *accept Mrs H's position and in doing so determined that transferring was the most appropriate course of action. This doesn't in my view constitute suitable advice.*

There's nothing to show that PWM considered any death in service cover Mrs H might have available due to her LGPS membership. As I understand it, if Mrs H was a member at the time of her death, a death in service lump sum based on three times her assumed pension at her date of death would be payable, which, like any life cover would've arguably bolstered her position where death benefits were concerned, without giving up guarantees.

Overall, I don't think the different death benefits offered by the SIPP justified the likely decrease in retirement benefits for Mrs H.

Concerns about the financial stability of the BSPS and benefits entering the PPF

PWM says that Mr and Mrs H were both worried about the basis of the BSPS changing and concerned that if this happened again in the future, they could lose the opportunity to transfer at a later date. In the suitability report PWM recorded that Mr and Mrs H were unsure of how their benefits might change under BSPS2 and didn't like that transfers would be restricted under the PPF. Because of this they preferred to remove their benefits from the BSPS entirely.

Although this might suggest that, at the time, Mr and Mrs H may have already been leaning towards transferring, PWM still had a responsibility to address and appropriately manage their concerns. It ought to have explored, interrogated and, where necessary, corrected Mr and Mrs H's views about the PPF and BSPS2, ensuring that any decision being made about transferring was based on a sound understanding of their options and the features, risks and benefits of these. I can't see that this happened here or that PWM made any concerted attempt to allay Mr and Mrs H's misgivings. The extent to which Mrs H's concerns were discussed and managed is captured in PWM's suitability report where it said:

"You have aired your concerns over the stability of the [BSPS] (…) There have been lots of news articles about the company and how the pension fund is being administered which have been worrying for you. You have a deep mistrust of the scheme and worry about the security of your funds whilst remaining in the scheme. You do not trust the PPF and its ability to take on full scheme liabilities should the scheme fall into the protection fund (…) Security of your pension fund is a main priority."

PWM did set out some of the features of the BSPS in the suitability report but there were very limited references to BSPS2 or the PPF. The TVAS, produced by a third party, did set out the particular features of the PPF, but this was fact based as opposed to PWM offering reassurances in terms of the guaranteed benefits offered or Mrs H's specific concerns being addressed. Had such reassurances instead been given about the protections which would still be available, even in the "worst case" scenario of the scheme benefits needing to enter the PPF, I think Mrs H would have viewed things differently.

Although the full details of BSPS2 may not have been known at the time of the advice, I'm conscious that the whole point of the BSPS consultation, which resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the time of the advice BSPS2 seemed, more likely than not, to be a viable alternative. So, even if it appeared Mrs H's existing DB scheme was heading to the PPF she had the option of joining the BSPS2, which was still a final salary scheme, albeit with reduced benefit escalations. And even if the BSPS2 wasn't established and Mrs H's only option was to move with the scheme to the PPF, I think PWM ought to have advised her that it wasn't as concerning as she thought. Mrs H was still unlikely to exceed the benefits available to her through the PPF at age 57 if she transferred out.

Overall, I don't think PWM did much to alleviate that Mr and Mrs H's concerns around the scheme. If their fears had been appropriately managed, I don't believe they would've been sufficient justification for Mrs H to transfer at time.

Summary

I don't think the advice given to Mrs H was suitable. She was giving up a guaranteed, risk-free and increasing income and by transferring out of the BSPS, she was likely to obtain lower retirement benefits. In my view, there were no other particular reasons or circumstances which justified a transfer, particularly when he had, at least, around 16 years before she'd consider retiring.

In arriving at that view, I've taken into account that, at the time the advice was given, there was uncertainty around the BSPS which, coupled with the views of former colleagues and media speculation, genuinely worried Mrs H and meant that she was likely keen to transfer. However, it remained PWM's responsibility to objectively weigh up this uncertainty and the available options for Mrs H. After all, she was relying on it to provide expert advice and advise her on what to do. In the circumstances I'm satisfied that it is more likely than not that Mrs H would've listened to suitable advice and followed the recommendation I think PWM should have made, which was not to transfer.

I don't doubt that features like early retirement and flexibility with retirement and death benefits would have been attractive to Mrs H. But as her adviser, PWM's role was to question and drill down into the drivers behind Mrs H's objectives. Without doing this and setting out Mrs H's various options in a clear and balanced way – in monetary form, where possible – I don't think PWM, let alone Mrs H, was able to establish whether there were reasonable justifications for giving up guaranteed benefits and taking a gamble with her main retirement provision. For the reasons I've given above, I don't think there were.

The option of early retirement was achievable within the BSPS2 and would have remained so in the PPF. In terms of death benefits, Mrs H had existing life cover and potentially also had death in service cover, but the latter was never explored by PWM. Security and stability were referred to as priorities for Mrs H, but achieving this with her pension fund and thereby protecting her husband and children in the event of her death was available without needing to transfer. Arguably, by transferring the protection provided in terms of death benefits was actually lost.

I accept that Mrs H was given risk warnings and was more likely than not capable of understanding them. But it's important to note that disclosure isn't the same as suitability. If the recommendation to transfer was fundamentally unsuitable then the provision of risk warnings doesn't transform it into a suitable one.

Taking account of Mrs H's circumstances, risk profile, capacity for loss, objectives and the guarantees provided by the BSPS2 and even the PPF, if required, I've carefully considered what Mrs H likely would have done, and on balance I think she would have opted to move to BSPS2. I say this because retiring at age 57 was an option Mrs H liked the idea of having as opposed to a concrete and fully thought out plan she did have. So, I don't think that it would've been in her interest to accept the reduction in benefits she would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. Also, Mrs H was married with dependent children, so the BSPS2 benefits relating to these things would have been important to her. There were also the guarantees of annual pension indexation to consider which were more advantageous under BSPS2. So, I think PWM should've advised Mrs H to opt into the BSPS2.

Overall, I think PWM should compensate Mrs H for the unsuitable advice, using the *regulator's defined benefits pension transfer redress methodology. And given what I've said above, it's the benefits available to him through BSPS2 at age 65 that should be used for comparison purposes. For clarity, Mrs H hasn't yet retired and, as I understand it, has no intention to do so before her normal retirement.*

Putting things right

I intend to say that a fair and reasonable outcome would be for the business to put Mrs H, as far as possible, into the position she would now be in but for PWM's unsuitable advice. I consider Mrs H would have most likely remained in her BSPS and subsequently moved into the BSPS2, rather than the SIPP, if suitable advice had been given. So, PWM should use the benefits offered by BSPS2 at age 65 for comparison purposes, as per the usual assumptions in the FCA's guidance.

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

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

PWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs H'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 Mrs H's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs H'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 Mrs H 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 her likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mrs H within 90 days of the date PWM 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 PWM to pay Mrs H.

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.

I invited PWM and Mrs H to respond to my provisional decision. Mrs H accepted my findings. PWM disagreed and, in summary, said:

- I'd applied the regulator's guidance on pension transfers in a way that was different to what was intended and understood at the time of its advice.
- Mrs H and her husband appeared to have exaggerated their son's condition to strengthen the case for transferring and were now changing their position to benefit from a redress payment.
- I'd implied that it hadn't discussed the PPF or the BSPS2 with Mrs H in any detail at the time of the advice, which wasn't true.
- My comments made about the critical yield required in this case were incorrect.

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 looked at all the information from both parties afresh and having done so, my decision remains the same as before (and as set out above). That means I'm upholding Mrs H's complaint for the reasons I've previously given. However, I'll respond to the comments PWM made following my provisional decision.

PWM disgrees with my provisional decision for several reasons. For ease, I'll deal with each of these reasons in turn under the relevant headings below.

Guidance at the time of PWM's advice

PWM says that, at the time of its advice, the guidance was that a transfer should be in a client's best interests, taking into account their needs and objectives. It suggests that my provisional decision reflects a difference position, where transferring is only suitable if it results in better retirement benefits. PWM says this fails to acknowledge a client's circumstances and needs.

In my provisional decision I set out the regulator's position at the time of PWM's advice. Specifically, I said:

"(…) the regulator, the Financial Conduct Authority (FCA), set out the principles for assessing suitability. The relevant rules are 9.2.1 and 9.2.2 as set out in the FCA's Handbook and Conduct of Business Rules (COBS). These required PWM to gather sufficient information from Mrs H to ensure its recommendation met her objectives; that Mrs H could financially withstand the risks associated with these objectives and that Mrs H had the necessary experience and knowledge to understand the risks involved in the transaction. (…)

DB schemes like Mrs H's BSPS typically have significant benefits and guarantees. Giving these up and subjecting future pension income to the risks associated with unpredictable investment returns should only be done where it can be shown it's clearly in the best interests of the consumer. Under 19.1.6 the COBS rules at the time of the advice said:

"When advising a retail client who is (…) a member of a defined benefits occupational pension scheme (…), a firm should start by assuming that a transfer (…) will not be suitable. A firm should only consider a transfer (…) to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, (…) is in the retail client's best interests.""

I explained that, given the regulator's position, my starting point was that a transfer wouldn't usually be suitable unless there were compelling reasons why, instead of maintaining safeguarded retirement benefits, transferring was in a consumer's best interests. Although I said that, *generally*, a transfer would only likely to be in a consumer's best interests if there was a reasonable prospect that the new arrangement would provide better retirement benefits, I added that the transfer would *also* need to be suitable, taking into account an individual's particular circumstances.

In terms of suitability and retirement benefits, the regulator, under COBS 19.1.7A and 19.1.7B, said:

"When giving a personal recommendation about a pension transfer or pension conversion, a firm should clearly inform the retail client about the loss of the safeguarded benefits and the consequent transfer of risk from the defined benefits pension scheme or other scheme with safeguarded benefits to the retail client, including:

(1) the extent to which benefits may fall short of replicating those in the defined benefits pension scheme or other scheme with safeguarded benefit (…)

a firm should not regard a rate of return which may replicate the benefits being given up from the defined benefits pension scheme (…) as sufficient in itself."

With this in mind, I don't think it's unreasonable to say that, *usually* – not always – there'd be little point giving up the guarantees of a DB scheme simply in order to 'stand still' and maintain the same level of benefits being surrendered. Especially, given the innate risk that a transfer might underperform due to the dependence on investment performance.

I think this was reflected by the regulator when it said that a level of return which might merely reproduce the same DB benefits being given up shouldn't be viewed as enough, by itself, to justify advising a customer to transfer. So, thinking about transferring and the likelihood of accumulating benefits of greater value to make the transfer worthwhile is, in my view, a valid consideration when thinking about the suitability of PWM's advice. And one which I addressed in the section of my provisional decision under the heading, *"financial viability".* It's worth noting that I also said that a transfer wouldn't automatically be unsuitable even if the critical yields were high, indicating that the likelihood of a transfer improving on existing retirement benefits might be lower.

So, overall, I don't agree that my provisional decision reflects an approach to assessing the suitability of DB transfer advice which is out of step with the regulator's rules and guidance at the time of PWM's advice. And I disagree with PWM's suggestion that my findings regarding the suitability of its advice are centred on Mrs H securing better retirement benefits.

In reaching a decision about the suitability of PWM's advice, I've taken into account a number of factors, such as – but not limited to – the regulator's position on DB transfers, the status of the BSPS at the time of PWM's advice and as I've already said, the financial viability of the transfer. But taking into account other relevant factors, doesn't mean that Mrs H's circumstances, needs and objectives haven't been key considerations when I've looked at the suitability of the advice he received. I think my provisional decision shows the opposite to be true.

Repeated references to Mrs H's circumstances were made throughout my provisional decision and, most notably, under the section headed, "*Mrs H's position at the time of PWM's advice",* where I set out Mrs H's circumstances as I understood them. Specifically, I said:

"At the time of the advice, Mrs H was 41 years old and had accrued moderate qualifying service in the BSPS she'd held with her former employer. Other than her small LGPS pension and state pension entitlement, Mrs H's BSPS benefits were the backbone of her retirement provision. When considered in comparison to the significant level of benefits her

husband has secured under the BSPS, it was obvious that Mr H's BSPS benefits represented the largest proportion of the couple's total future retirement income. So, Mrs H had a clear dependence on Mr H's pension benefits as well as her own.

In terms of other assets Mr and Mrs H could potentially rely on if transferring didn't work out, they held £86,000 in investment bonds; £28,000 in Individual Savings Accounts (ISAs); £4,000 in cash savings and owned their own home. PWM recorded that Mr and Mrs H expected inheritances which it felt could offset the investment risk associated with transferring. However, it failed to collect any meaningful information about the anticipated inheritances, such as what they might comprise of or their expected value. So, I'd question the basis on which it was able to conclude they could be relied on to mitigate risk.

Notwithstanding what I've said about the inheritances, I accept that Mrs H's financial position was, by all general appearances, fairly favourable. PWM recorded that Mr and Mrs H were satisfied they'd have enough to live off in retirement and didn't think there was any risk of their retirement funds being depleted, saying they were always careful with their money. Despite these views, the fact remains that Mrs H was dependent on PWM's expertise. She wasn't a pensions expert, so she wasn't in a position to effectively assess whether her financial circumstances meant it was appropriate to take additional risks with her BSPS benefits. It wasn't enough for PWM to rely on Mrs H's satisfaction with her financial position or the inheritances she anticipated. It needed to establish her financial position at the outset, including her specific retirement needs, and make a reasonable assessment of the situation. Had PWM done so, I think it would've been clear that, for several reasons, Mrs H transferring out of the BSPS wasn't essential or worthwhile."

With this in mind, I wasn't satisfied that PWM demonstrated that it had met the regulator's requirement for it to obtain necessary information regarding Mrs H's financial situation and objectives. The relevant rule, under COBS 9.2.2, said that in order to do this, PWM was required to gather sufficient information from Mrs H in order to understand essential facts about her; have a reasonable basis for believing that its recommendation met Mrs H's objectives; that Mrs H could financially withstand the risks associated with these objectives and that Mrs H had the necessary experience and knowledge to understand the risks involved in the transaction. The available evidence in this case didn't, in my view, show that PWM met this obligation when it advised Mrs H to transfer out of the BSPS.

As I've said, PWM suggests that, in addition to ignoring Mrs H's circumstances, my consideration of its advice failed to take into account Mrs H's needs and objectives. This isn't correct. I thought carefully about Mrs H's circumstances when looking at PWM's justifications for its advice, which included what it recorded his needs and objectives to be. But having done so, I wasn't satisfied that transferring for reasons like flexibility or death benefits was necessary or shown by PWM to be in Mrs H's best interests. And it's this which led me to conclude that its advice was unsuitable.

Mrs H's needs and objectives

In terms of Mrs H's income needs in retirement, I noted that PWM had made no attempt to establish what these were likely to be. Despite there being almost 16 years before Mrs H intended to retire, I didn't think PWM could afford not to make establishing what her income needs in retirement might be a priority. After all, the main purpose of a pension is to meet this need. All other considerations are secondary that. So, it's still not clear to me on what basis PWM was able to conclude that Mrs H's retirement needs as well as her other objectives could be fully met by transferring. This wasn't, using contemporaneous evidence, shown by PWM to be true.

Although PWM recorded that retiring early, at age 57, and drawing income flexibly was one of Mrs H's objectives, there was nothing to indicate this was an essential requirement or that Mrs H had concrete plans in this respect, which made transferring at that time necessary or worthwhile. I also noted how PWM contradicted itself, saying that transferring out of the BSPS for early retirement wasn't *"an advisable course of action"*, while at the same time recommending that Mrs H take the very action it was warning her against – i.e. transferring to retire early. This contradiction wasn't addressed by PWM.

And in terms of drawing income flexibly, information about what this meant and looked like in practice for Mrs H was noticeably absent. So, like early retirement, I wasn't persuaded that it was a convincing reason for transferring.

PWM said higher and more flexible death benefits were something Mrs H needed which would only be available if she transferred to a SIPP. And so, transferring for this reason was necessary. Responding to this in my provisional decision, I said:

"(…) It's understandable that Mrs H wanted to ensure her husband and children benefited from her pension when she died. However, based on what I've seen, I don't think PWM has provided sufficient evidence, demonstrating that transferring for this reason was worthwhile; that PWM met its obligation to provide Mrs H with enough information about the death benefits available under the BSPS and the PPF or that it had regard for the effect of replacing them with the benefits and options under a new arrangement.(…)

I'm not satisfied that PWM put Mrs H in a position where she had a complete picture of what her various death benefit options were or that he fully understood them, such that she could make an informed decision about transferring for this reason (…)

In addition to setting out the death benefits available, PWM needed to establish what Mrs H's specific needs in this regard were (…) discussed what, in real terms, Mrs H's position on death benefits was and specifically how she wanted to provide for her husband and children in this respect – for example, why she thought Mr H would benefit from extra lump sum death benefits as opposed to a guaranteed ongoing spouse pension, and how much of a safety net her husband and children might require if she passed away (…)."

Overall, I wasn't satisfied that the alternative death benefits available under a SIPP justified the likely decrease in retirement benefits for Mrs H, so I didn't, and still don't, think that PWM's advice to Mrs H to transfer for this reason was suitable.

Mrs H's son's condition and the requirement to purchase property

Notwithstanding other reasons given for its advice, PWM has, in response to my provisional decision, said that a *"driving factor"* behind its recommendation that Mrs H transfer was the health of one of her sons and how this meant that she and her husband would have to purchase a property for him in the future.

PWM expressed disappointment that Mr and Mrs H were now suggesting that their son, with cerebral palsy, was in mainstream education and would be able to get a job. It said that Mr and Mrs H had been adamant at the time of its advice that their son would never be fully independent due to his condition, so purchasing a property for him was required. PWM says this was discussed and documented in meeting notes and its suitability report.

In my provisional decision I acknowledged that making provision for both of Mrs H's sons was important. However, in the circumstances of this case, I didn't think it was appropriate to give this priority over Mrs H's own retirement needs. I said:

"Although one of Mrs H's sons had a mild disability, he was in mainstream school and not expected to be unable to work in the future or be a long-term dependent of Mr and Mrs H. Nothing was recorded about the needs of their second son."

Bearing this in mind, along with PWM's claim that Mr and Mrs H's *"primary need"* was to *"access £200,000 at age 57 to pay for houses"* for their sons, I didn't think there was enough to evidence that this truly was a principal requirement. I said:

" (…) providing each son with £100,000 doesn't seem to be something which PWM established was really necessary, certainly not to the extent that transferring and sacrificing Mrs H's valuable BSPS benefits to achieve this was the best course of action for Mrs H to take. If anything, I think the lump sum amount was aspirational and it was for PWM, through discussion with Mrs H, to put this figure into perspective, establish what was feasible, manage expectations and, where applicable, help modify this objective to reflect the reality of her and her husband's financial circumstances."

I've thought carefully about what PWM has said was documented in its meeting notes and suitability report at the time of its advice. It hasn't referred to anything specific in its advice file, but having reviewed all of the available evidence in this case afresh, I haven't seen anything which persuades me to alter my original finding that advising Mrs H to transfer to provide lump sums to her sons at age 57 to purchase property wasn't demonstrably suitable.

Under *"General Financial Objectives"* on PWM's fact find, Mr and Mrs H's goal was recorded as being in a comfortable position at retirement. Although providing substantial funds to their children to help them get on the property ladder was mentioned, there was no reference to the disability one of their sons had.

In PWM's suitability report, under the heading, *"Current Situation"*, the only comment regarding Mrs H's sons is:

"You have two sons who are financial dependents at present. In the future you would like to help both son's [sic] get on the property ladder."

Under the heading, *"Your Objectives and Priorities"*, the suitability report said:

"You want to help your sons to purchase a property in the future, therefore you want to be able to take the maximum Tax-Free Cash (…)."

And under the heading *"Reasons for my recommendation",* PWM said:

"At age 57 you would like to use the fund to provide deposits for houses for your sons (approx. £200,000)".

So again, there was no mention of Mrs H's son's condition and why this meant that purchasing a property for him in the future was necessary. There was also nothing to indicate that this was the *"driving factor"* PWM says it was for its recommendation that Mrs H transfer. If this was the case, I would expect it to be reflected in PWM's paperwork from the time, especially in its suitability report. But it isn't. And although PWM's meeting notes contain limited references to Mrs H's wish to provide her sons with lump sums to purchase houses, there's nothing to suggest that Mrs H was adamant that her disabled son's condition was such that purchasing a property for him in the future would be required in the way PWM says Mrs H said it was.

It's not entirely clear on what basis PWM, in response to my provisional decision, says that Mr and Mrs H, in contrast to what they'd said previously, were now suggesting that their son was in mainstream education and could potentially get a job. This information came from what *PWM* said in its own final response to Mr and Mrs H's complaint and meeting notes at the time of its advice. Notably, PWM's meeting notes said:

"(…) 12 YO has slight celebral [sic] palsy, although he is in mainstream education and would potentially be able to get a job (so not dependant) (…)."

So, I disagree with PWM's suggestion that Mr and Mrs H exaggerated their son's condition in order to strengthen the case for a transfer. This simply isn't borne out in the available evidence for this case.

PWM's discussions with Mrs H about the PPF and the BSPS2

PWM feels that my provisional decision suggested it didn't discuss the PPF and the BSPS2 with Mrs H in any detail, despite its meeting notes and suitability report confirming that it did.

To be clear, regarding information PWM provided Mrs H with regarding the PPF and the BSPS2, I didn't think PWM had sufficiently considered the benefits potentially available to Mrs H under the PPF or the BSPS2 or shared this information with Mrs H in a meaningful way, before discounting them in favour of transferring to a SIPP to meet Mrs H's documented objectives. For example, regarding flexibility, I said:

"PWM's suitability report for Mrs H didn't set out the specific lump sums which might be available to her at age 57 and age 65 under BSPS2 or the PPF. Nor did it provide any figures for what a SIPP might provide as an alternative. Given that Mrs H was exploring the idea of funding deposits for her sons using the proceeds of her BSPS benefits and relying PWM's advice about this, I think this was essential information for her to have in order to make an informed decision about what to do (…)

Overall, I think PWM deprived Mr and Mrs H of the opportunity to seriously consider other ways of providing the deposits without subjecting Mrs H's main retirement provision to avoidable risk. For example, contemplating whether providing lower deposits (more commensurate with Mr and Mrs H's financial position) which could comfortably be accommodated through TFC available to Mr and Mrs H under BSPS2 or the PPF at different retirement intervals, or, using existing savings or anticipated inheritances to fund the deposits – all while keeping Mrs H's own retirement needs a priority."

And, in terms of death benefits, I said:

"It's understandable that Mrs H wanted to ensure her husband and children benefited from her pension when she died. However, based on what I've seen, I don't think PWM has provided sufficient evidence, demonstrating that transferring for this reason was worthwhile; that PWM met its obligation to provide Mrs H with enough information about the death benefits available under the BSPS and the PPF or that it had regard for the effect of replacing them with the benefits and options under a new arrangement.

PWM's suitability report briefly set out what Mrs H's death benefit entitlement under the BSPS was – a spouse's pension equal to 50% of the pension she was receiving and a lump sum of £6,068.53. It outlined, in general terms, death benefits available through a SIPP and made minimal references those under the PPF.

The TVAS did set out in monetary terms what spouse and children's death benefits under the BSPS could be depending on when, before taking benefits, Mrs H died. But there was nothing about what death benefits might look like under the PPF or a SIPP, even in general terms. Because of this, I'm not satisfied that PWM put Mrs H in a position where she had a *complete picture of what her various death benefit options were or that she fully understood them, such that she could make an informed decision about transferring for this reason."*

And, as to Mrs H's concerns about the BSPS and the PPF, I said:

"PWM did set out some of the features of the BSPS in the suitability report but there were very limited references to BSPS2 or the PPF. The TVAS, produced by a third party, did set out the particular features of the PPF, but this was fact based as opposed to PWM offering reassurances in terms of the guaranteed benefits offered or Mrs H's specific concerns being addressed. Had such reassurances instead been given about the protections which would still be available, even in the "worst case" scenario of the scheme benefits needing to enter the PPF, I think Mrs H would have viewed things differently.

Although the full details of BSPS2 may not have been known at the time of the advice, I'm conscious that the whole point of the BSPS consultation, which resulted in the agreement being announced in August 2017, had been to avoid the necessity of the BSPS pension funds entering the PPF, and by the time of the advice BSPS2 seemed, more likely than not, to be a viable alternative. So, even if it appeared Mrs H's existing DB scheme was heading to the PPF she had the option of joining the BSPS2, which was still a final salary scheme, albeit with reduced benefit escalations. And even if the BSPS2 wasn't established and Mrs H's only option was to move with the scheme to the PPF, I think PWM ought to have advised her that it wasn't as concerning as she thought. Mrs H was still unlikely to exceed the benefits available to her through the PPF at age 57 if she transferred out.

Overall, I don't think PWM did much to alleviate that Mr and Mrs H's concerns around the scheme. If their fears had been appropriately managed, I don't believe they would've been sufficient justification for Mrs H to transfer at time."

So, although I said I didn't think PWM provided Mrs H with sufficient information about the PPF and the BSPS2, that doesn't mean I was suggesting that next to nothing about these was covered by it with Mrs H. My point is that PWM failed to share enough relevant and specific information about the PPF and the BSPS2 which would've enabled Mrs H to make an informed decision about whether to transfer. And that remains my position.

Critical Yield

Finally, PWM has said the critical yield section of my provisional decision is incorrect. Specifically, it says my statement that the critical yield required in this case would need to be higher, to take into account fees, is incorrect. PWM says the fees were included within the critical yield percentages supplied, therefore the critical yield figure would in fact be lower and within the discount rate I quoted.

In response to this, I think it's first worth noting what PWM said about the critical yield figure in its suitability report. Specifically, it said:

"The critical yield figure needed to match your existing benefits is 3.8% (…) in our opinion, we do believe this would be achievable. The net return would need to be higher to take into account plan charges, adviser fees, fund costs etc."

So, it's PWM which first said that fees weren't included in the critical yield figure and therefore the critical yield required would need to be higher. I agreed with this point. However, having reviewed the TVAS report which PWM's critical yield figure came from, I can see that the appendix does in fact confirm that plan charges, adviser fees and fund costs *were* taken into account. So, I accept that, notwithstanding the inaccurate information provided in PWM's suitability report, I made an oversight in this respect.

PWM says that as the plan charges, adviser fees and fund costs were taken into account, in reality, the net growth required to match the benefits being given up by transferring out of the DB scheme would be lower than 3.8%. I agree with this in principle, but I don't think this figure would be a fair representation of the level of risk Mrs H was taking by transferring. Failing to include applicable fees and charges in the critical yield figure would in my view only serve to underplay the benefits of the DB scheme and therefore misrepresent the financial viability of the transfer. And it's evident that additional growth would be required to offset the impact of the fees.

But as I said in my provisional decision, financial viability isn't the only consideration when giving transfer advice. And even if critical yield figures are low, that doesn't automatically make a transfer suitable.

For the reasons given, and as I haven't been provided with anything which leads me to conclude otherwise, my view is that a fair and reasonable assessment of this case leads to a conclusion that the recommendation to transfer wasn't suitable for Mrs H, nor was it in her best interests. So, overall, I think PWM should compensate Mrs H for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the *"Summary"* section of my provisional decision, it is the benefits available to her through BSPS2 at age 65 that should be used for comparison purposes.

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 - 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) 17/9 (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.

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 Mrs H whether she preferred any redress to be calculated now in line with current guidance or wait for the any new guidance/rules to be published. And she has chosen not to wait for any new guidance to come into effect to settle her complaint.

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

A fair and reasonable outcome would be for the business to put Mrs H, as far as possible, into the position she would now be in but for PWM's unsuitable advice. I consider Mrs H would have most likely remained in her BSPS and subsequently moved into the BSPS2, rather than the SIPP, if suitable advice had been given. So, PWM should use the benefits offered by BSPS2 at age 65 for comparison purposes, as per the usual assumptions in the FCA's guidance.

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

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

PWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs H'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 H's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs H'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 Mrs H as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mrs H within 90 days of the date PWM receives notification of her 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 PWM to pay Mrs H.

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

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

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

<u>Determination and money award:</u> I uphold this complaint and require PrisWM Limited to pay Mrs H 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 Mrs H 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 Mrs H 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 Mrs H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs H.

If Mrs H accepts this decision, the money award becomes binding on PrisWM Limited.

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

If Mrs H accepts this final decision on the above basis, the money award becomes binding on PrisWM Limited. My recommendation would not be binding on PrisWM Limited. Further, it's unlikely that Mrs H could accept my decision and go to court to ask for the balance. Mrs H may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 30 November 2022.

Chillel Bailey
Ombudsman