DRN-3815036

## The complaint

Mr H complains Prism Independent Financial Advisers Ltd gave him unsuitable advice to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a self-invested personal pension ('SIPP'). He says this may have caused him a financial loss.

## What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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

Mr H was concerned about what that announcement meant for the security of his preserved benefits in the BSPS. So he contacted Prism for advice. In November 2017 Prism gathered information about Mr H's circumstances and objectives. It recorded Mr H wanted to transfer out of the BSPS because he had sufficient retirement income and wanted to retire early at age 59 to enjoy his retirement, and so he needed higher income until State Pension Age. It said he had significant capacity for loss, and wanted to control his pension funds due to his concerns about his employer and the PPF. Prism also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'cautious/balanced', or, low to medium.

On 28 November 2017, Prism's 'transfer recommendation' report advised Mr H to transfer his pension benefits into a SIPP. It said the reasons for this recommendation were greater flexibility and control of his pension funds, greater flexibility for growth, and because Mr H had little confidence in his employer. Mr H followed this advice and transferred £348,268.05 from the BSPS to a SIPP.

Through our Service, in March 2022 Mr H complained to Prism that its transfer advice hadn't been suitable and might have caused him a financial loss.

Prism provided our Service with documents from the time of the advice. Prism said its advice started from the assumption that a transfer from a DB scheme was unsuitable. But Mr H wanted a clean break from the BSPS, and it wouldn't have given him enough money to retire at 59, pay off his debts, and have flexibility of income. Prism said it carried out a thorough financial advice process with Mr H, considered how best to meet his objectives, and explained the risks and benefits to him. And that Mr H's objectives were strongly held, and he wanted to take advantage of an enhanced transfer value ('CETV'). So Prism's November 2017 advice to transfer was in Mr H's best interests, and he'd made a fully informed decision to accept that advice. Prism said it had been inspected by the regulator in December 2017 with no significant concerns. And soon after, Prism had itself asked another auditor to inspect its practices.

Mr H remained concerned and asked our Service to investigate. He said that at the time, there'd been a lot of confusion and concern about the BSPS and the PPF. And he'd hoped to retire early but this wasn't a definite plan and would only have happened if he'd been made redundant. And that he'd had other, smaller pensions he could have used to retire early anyway. Mr H said Prism had made flexible death benefits sound particular attractive. And that he'd not retired yet, had no plans to do so, and hadn't drawn any pension funds.

This complaint came to me for consideration. On 14 October 2022 I issued my provisional decision. In summary, I said I appreciated Mr H was motivated to transfer out of the BSPS, and that retiring early, having control and flexibility of income, and the potential for higher death benefits on offer through a personal pension would have sounded attractive to Mr H. But Prism wasn't there to simply arrange what Mr H might have thought he wanted – it was instead obliged to give him an objective picture and to recommend what was in his best interests.

I said Prism's advice to transfer was unsuitable. Because it meant Mr H was giving up a guaranteed, risk-free and increasing income, and he was likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this - Mr H shouldn't have been advised to transfer out of the scheme based on an insubstantial wish to retire early and have control and flexibility of income. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

I said Prism should have advised Mr H to opt into the BSPS2, given his particular circumstances and lack of certain retirement plans, and the more advantageous annual indexation of his pension when in payment under the BSPS2. I thought Prism should compensate Mr H for its unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr H through the BSPS2 at age 65 for comparison purposes.

Mr H accepted my provisional decision without providing any further comments or evidence, and chose to have redress calculated in line with the regulator's current FG 17/9 guidance.

Prism provided further comments in response to my provisional decision. I've summarised what I see to be the relevant points it made:

- I should fully consider what the Association of Pension Transfer Specialists ('APTS') and the British Steel Action Group ('BSAG') have said regarding BSPS and the regulator.
- Mr H couldn't keep his existing BSPS benefits – he needed to choose between moving to the BSPS2, moving to the PPF or transferring out, within a limited time and with no support from the existing scheme and regulators. And the BSPS2 wasn't guaranteed to go ahead.
- If Mr H had fallen into the PPF, he wouldn't have had any options going forward. And benefits were much reduced under the BSPS2 and the PPF. Whereas, the BSPS trustees had substantially enhanced the BSPS transfer values.
- Mr H was very knowledgeable about the BSPS and didn't want to opt for BSPS2 or the PPF. Prism had challenged this and pointed out all the facts, options, advantages and disadvantages to Mr H. I'd not taken account of Mr H's objectives

at the time of the advice, or his ability to make decisions for himself. And Mr H chose to transfer for the reasons he wrote on page 10 of the transfer recommendation report, which Mr H signed to confirm his understanding.

- Transferring to a personal pension was the most suitable option for Mr H as he wanted to retire early so he could enjoy retirement knowing his and his wife's other pensions provided sufficient guaranteed retirement income to cover their core expenditure.
- Prism disagreed Mr H would likely receive benefits of a substantially lower value in his personal pension than in his DB scheme. It said no one could know the future, only past performance. That a critical yield of 5.13% at age 65 was achievable and had in fact been exceeded over the last four years. And that critical yield was only one aspect.
- Prism complied with PRIN6, PRIN7, COBS2.1.1R and COBS19.1.6. It met Mr H and his wife three times over six months.
- Prism fully explored death benefits and life insurance with Mr H, and he signed his understanding on the page of the transfer recommendation report which gave reasons against transferring, and a life insurance quote of £37 per month for Mr H.

I'm now in a position to make my final decision.

**What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm still upholding this complaint for same reasons I gave in my provisional decision. I'll set out my full reasoning for this below, addressing the points Prism made in response to my provisional decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

<u>The applicable rules, regulations and requirements</u>

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Prism's actions here.

*PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.*

*PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

*COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

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

I appreciate Prism says it complied with the rules and guidance, and that it had several meetings with Mr H and his wife. But having considered all of this and all the evidence in this case, I'm not satisfied the transfer was in Mr H's best interests. I'll explain why.

*Financial viability*

Prism says that the critical yields were achievable, as demonstrated by the past performance of the fund it recommended Mr H invest in and the growth Mr H has achieved since the advice was given. I've considered this carefully, but I still don't think at the time of the advice Prism could reasonably say Mr H was likely to be better off by transferring out of the BSPS.

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

Mr H was age 51 at the time of the advice and Prism recorded that he wished to retire at age 59. Prism argues Mr H's benefits were much reduced under the BSPS2 and the PPF, whereas, the BSPS CETV had been substantially enhanced at that time. I note what Prism says here. But the critical yield required to match Mr H's benefits available to him through the BSPS2 at age 59 was nonetheless 9.45% if he took a full pension and 7.17% if he took tax free cash (TFC) and a reduced pension. And the critical yield to match the benefits available through the PPF at age 59 was nonetheless quoted as 6.45% per year if Mr H took a full pension and 5.13% per year if he took TFC and a reduced pension.

As Prism highlights, Mr H couldn't retain his existing BSPS benefits – he needed to choose between moving to the BSPS2, moving to the PPF or transferring his BSPS benefits elsewhere. I know Prism considers that there was a lack of support from the existing scheme and regulators, and it wants me to fully consider what the APTS and the BSAG have said about the BSPS situation. But ultimately, Mr H paid Prism for advice about his BSPS pension. And I must be clear that my role here is to consider Mr H's individual complaint about Prism's 2017 advice - it's not my role to comment on the actions of the scheme or the regulator, or on what other organisations have said about them.

Prism argues the BSPS2 wasn't guaranteed to go ahead at the time of the advice. But I think Prism has overstated the chance of BSPS2 not happening. Because Mr H had received his "Time to Choose" pack by the time the advice was given. And details of BSPS2 had been provided and Mr H had been given the choice to opt into it. Of course, it's possible BSPS2 might not have gone ahead, but that was unlikely to my mind.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.1% per year for 13 years to retirement (age 65) and 3.4% for 7 years to retirement (age 59). I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's low to medium attitude to risk and also the term to retirement. There would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.13% (which was based on Mr H retiring at age 59 and taking benefits from the PPF), I think Mr H was likely to receive benefits of a substantially lower overall value than the DB scheme if he retired at that age, as a result of investing in line with that attitude to risk. And this would be the case even if the scheme moved to the PPF.

Prism disagrees that Mr H would likely receive benefits of a substantially lower value in his personal pension than in his DB scheme. It says no one can know the future, only past performance. And that a critical yield of 5.13% at age 65 was achievable. But as Prism will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. And Mr H's low to medium attitude to risk would have been more realistically reflected at some point between the regulator's lower (2%) and middle (5%) projection rates. Furthermore, Prism quotes the rate applicable to age 65, and it's advice was predicated on him retiring at age 59.

Prism also argues that a critical yield of 5.13% has been exceeded over the past four years. That may be the case, but this wasn't something Prism or Mr H could have known in 2017, and I need to base my decision on whether the advice was suitable at the time. In any case, that's a matter for the redress calculation – it's possible that because of the performance achieved this may not show a loss. But this doesn't mean Prism's advice was suitable or that this complaint shouldn't be upheld.

Prism has provided cash flow models which it might think shows Mr H could have been significantly better off by transferring out of his DB scheme. I've considered the cash flow models provided by Prism, but it's difficult to understand these as presented. Because they don't seem to show a direct comparison between the escalating income Mr H was entitled to take through the BSPS2, and the same income being taken through the personal pension to his estimated death. There's also no evidence of a 'stress test', showing how lower performance could affect the fund or income to death. Whilst this wasn't a requirement at the time, I think it was good practice to show customers the impact of poor investment performance on their retirement plans.

Given that I think Mr H was unlikely to be able to match, let alone exceed, his income in retirement if he transferred out, for this reason alone a transfer out of the DB scheme wasn't in Mr H's best interests. Of course, financial viability isn't the only consideration when giving transfer advice, as Prism has argued by saying that critical yield is only one aspect and that Mr H had compelling objectives to transfer to a personal pension. So, there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

*Flexibility and income needs*

Prism argues I've not taken enough account of Mr H's objective of retiring at age 59 so he could enjoy retirement, and that he and his wife's other pensions provided sufficient guaranteed retirement income to cover their core expenditure. And that Mr H wanted to be able to withdraw higher income until State Pension Age, and then reduce it, so he needed flexibility that his DB scheme didn't provide.

But I don't think Mr H required flexibility in retirement. I say this because the documents from the time of the advice don't record any concrete need for retiring at age 59, for flexibility, or for repaying debts. I acknowledge the transfer recommendation report says one of Mr H's objectives was to retire at age 59 to enjoy life at his leisure. I think if asked, most people would say retiring early and flexibility are desirable, but that doesn't mean they were genuine objectives for Mr H at the time of the advice. Mr H was 51 at the time of the advice so he had over seven years before he thought he might like to retire. And I've not seen that Prism recorded any health concerns or other reasons why Mr H might not be able to enjoy his retirement if he left it closer to the scheme retirement date. So I'm not satisfied that retiring at age 59 was a concrete plan Mr H was working towards, but rather was an idea that he had.

In any event, even if I accept Mr H definitely wanted to retire at age 59 (which would've coincided with Mrs H's retirement at age 60) I also can't see evidence that Mr H had a strong need for variable income throughout his retirement. Prism's transfer recommendation report recorded that in retirement Mr H needed £2,055 per month, or £24,660 per year, of retirement income according to the information gathered by Prism. And that this amount included £1,663 per month, or £19,956 per year, of what Prism called "discretionary spending". I think it's fair to say that Mr H could choose whether to spend any or all of that discretionary spending. So, it follows that Mr H's retirement income requirement could've been less than £24,660 per year.

Nevertheless, Prism's transfer recommendation report says the BSPS2 would give Mr H an annual income of £13,503 per year from age 59 if he didn't take TFC. So even if it had it been Mr H's certain plan to retire and have a pension income at age 59, which I don't think it was, his BSPS benefits would have provided sufficient income to meet his essential expenses as well some discretionary spending.

Mr H would also have had additional income from his three other pensions. Prism recorded these were worth £6,930, £7,014 and £9,482 at the time of the advice. And that Mr H and his employer were contributing a total of 36% per year to the one worth £6,930. Based on this, I think it would have been reasonable to conclude Mr H's other pensions would be worth at least a total of about £93,000 by the time he was age 59 - and Mr H says the pension worth £6,930 at that time is now worth £100,000. Mr H could take 25% of this as TFC and could've drawn down further sums if he needed extra income until his state pension became payable.

More importantly, Mrs H was entitled to take her DB scheme benefits at age 60 and this meant a further £12,343 was available to them, comfortably covering the £2,055 per month they thought they would need. All of this means that I think Mr and Mrs H had sufficient retirement income between them to meet both their core spending and their discretionary spending even if Mr H retired at age 59 and accessed his DB scheme benefits.

I'm also mindful that Mr H told Prism that he expected he would downsize his home in retirement, meaning there also could've been additional capital available to them to fund their early years of retirement.

Prism argues Mr H and his wife's other pensions provided sufficient guaranteed retirement income to cover their core expenditure if Mr H retired early. But I don't think that was a good enough reason to recommend Mr H transfer out of the BSPS, because I don't think it is reasonable to advise someone to give up the prospect of extra income just because they already have enough to cover their core expenses. Given that Mr H wanted to enjoy his retirement at his leisure, he could've looked to use any excess retirement income for this purpose. Or he could've looked to save it and make use of it in other ways, for example by placing it in trust for his adult children or making use of the annual gift allowances.

At the time of the advice, Mr H was seven years away from his possible retirement, and this wasn't a concrete plan, so I don't think he should've been advised to make an irreversible decision to transfer out of the BSPS to have flexibility that he didn't really need. In my view, Mr H's desire to access his pension didn't outweigh Prism's responsibility to provide him with suitable advice and act in his best interest. And even if Mr H did in fact have certain plans to retire at 59, which I don't think he did, I think he could've met his objectives by taking his benefits under the BSPS2 and supplementing his income with his other pensions and his wife's pension. I know Prism says that if Mr H had moved with the BSPS to the PPF, he wouldn't have had any options going forward. But by opting into the BSPS2, Mr H would've retained the option to transfer out of the scheme at a later date, should his circumstances dictate that this was in his best interests.

Even if the BSPS2 didn't go ahead, and Mr H moved with the scheme to the PPF, I still think he could've met his income requirements through this scheme. Because Prism's transfer recommendation report said the PPF would give Mr H an annual income of £12,813 per year from age 59 if he didn't take TFC. And as I've said, Mr H would also have had additional income from his other pensions and Mrs H's pension. So even if it had it been Mr H's certain plan to retire and have a pension income at age 59, which I don't think it was, his PPF benefits would have provided sufficient income to meet his core and discretionary spending. And while Prism highlights that Mr H would have lost the opportunity to transfer out of the PPF, I don't think Mr H would have needed this option.

*Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H 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 H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Prism explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married and so the spouse's pension provided by the DB scheme would've been useful to his wife if Mr H predeceased her. I don't think Prism made the value of this benefit clear enough to Mr H. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Prism should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr H genuinely wanted to leave a legacy for his wife or anyone else, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Prism should've instead recommended life insurance. Prism says it fully explored death benefits and life insurance with Mr H, and he signed his understanding on page eight of the transfer recommendation report. I see this page says Mr H could take out a Whole of Life policy with a sum assured of £350,000 at a monthly cost of approximately £374, subject to medical underwriting. Or that alternatively, Mr H could take out a level term assurance policy until his selected retirement date at age 59 with a sum assured of £350,000 at a monthly cost of approximately £37, subject to medical underwriting.

However, the transfer recommendation report doesn't detail anything else about this or why Mr H discounted these cover options. It's possible that paying for level term assurance until retirement at age 59 was discounted by Mr H because of the relatively short term. And I agree that this doesn't seem to be a reasonable recommendation given Mr H already enjoyed death in service benefits through his employer. And it seems likely Whole of Life cover was discounted by Mr H because of the likely monthly cost of £350,000 of cover. But I don't think that these were balanced ways of presenting life insurance to Mr H.

Basing the quote on the transfer value of Mr H's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr H wanted to leave whatever remained of his pension to his wife, which could be a lot less than this if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr H how much he would ideally like to leave to his wife or any other beneficiary, and how much he could afford to contribute. Insurance on this basis was likely to be a lot cheaper to provide and would have enabled him to leave a legacy without risking his retirement income.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H. And I don't think that insurance was properly explored as an alternative.

*Control or concerns over financial stability of the DB scheme*

I think Mr H's desire for control over his pension benefits was overstated. Mr H was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr H – it was simply a consequence of transferring away from his DB scheme.

Prism's transfer recommendation report said Mr H had lost trust in his employer and was worried his pension might fall into the PPF. Prism argues this means Mr H wanted a clean break from the BSPS, and that it discussed Mr H's options with him and he made an informed decision to accept its advice to transfer.

I accept that when Mr H met with Prism, he was concerned about his employer and his pension, and may have been inclined to transfer out of the BSPS because of these concerns. However, it was Prism's obligation to give Mr H an objective picture and recommend what was in his best interest. By the time the advice was given, it was likely that the BSPS would be moving to the PPF, but I think Prism should have explained that this was not as concerning as Mr H thought. As I've explained above, Mr H was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension, particularly if he retired early.

So, I think Prism ought to have reassured Mr H that the possibility of his scheme moving to the PPF wasn't as concerning as he thought. Furthermore, the scheme moving to the PPF was only one of the outcomes; by the time Mr H sought advice, he'd been provided with the choice of remaining in the existing scheme or opting to join the BSPS2. As I've said above, I think Mr H could've met his retirement objectives by opting into the BSPS2, and by making use of his other pensions to bridge the gap until his State Pension was payable. So, I think the availability of the BSPS2 should've allayed his concerns about the PPF.

Although Prism argues Mr H wanted a clean break from his employer, which wouldn't be achieved by him opting into the BSPS2, it's evident that he still worked for the same employer. And he hadn't suggested he intended to find alternative employment. He was also a member of the new defined contribution pension scheme via his employer. So, he wasn't going to be able to break ties with it by transferring, as he would remain tied to the employer in other respects. With regard to his distrust of the employer's control over the pension scheme, I think it should've been mentioned that his employer and the BSPS2 trustees were not entirely one and the same.

*Summary*

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

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr H shouldn't have been advised to transfer out of the scheme to have a clean break from his employer and the BSPS – particularly as this wouldn't be achieved by him transferring out given his remaining ties to it. And the potential for flexibility, control and death benefits wasn't, in my view, worth giving up the guarantees associated with his DB scheme.

Although Mr H expressed an interest in retiring at age 59, I think it's possible he could've chosen to continue working nearer to his normal retirement age. So, I don't think that it would've been in his interest to accept the reduction in benefits he 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, Mr H was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr H chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think Prism should've advised Mr H to opt into the BSPS2.

Of course, I have to consider whether Mr H would've gone ahead anyway, against Prism's advice. Prism argues Mr H was very knowledgeable about the BSPS and didn't want to opt for BSPS2 or the PPF. That Prism challenged this and pointed out all the facts, options, advantages and disadvantages to Mr H. But Mr H still chose to transfer.

I've considered this carefully, but I'm not persuaded that Mr H would've insisted on transferring out of the DB scheme, against Prism's advice. I'll explain why. I can see that while Prism was gathering information about Mr H's circumstances, it emailed him to say that when he'd had time to digest everything discussed so far, could Mr H please confirm whether he did or did not want to transfer out of the BSPS, and the reasons why. Mr H replied to say he did want to transfer out because of greater flexibility and control, greater potential for growth and his lack of confidence in the BSPS. But this was simply Mr H's opinion, since Prism hadn't yet given him any advice, and Mr H was not an experienced investor or the professional here. And while Prism did set out the advantages and disadvantages of transferring, it nonetheless went on to clearly advise Mr H to transfer to a personal pension, in its transfer recommendation report. I don't think the weight of that recommendation to transfer out can be ignored.

As I say, Mr H was an inexperienced investor. And he had a low to medium attitude to risk and this pension accounted for the majority of Mr H's retirement provision. So, 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.

I'm not persuaded that Mr H's concerns about his employer or the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Prism had explained that Mr H could opt into the BSPS2 and that he was still unlikely to exceed his PPF benefits through a personal pension, I think that would've carried significant weight. So, I don't think Mr H would have insisted on transferring out of the DB scheme against Prism's advice.

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

**Putting things right**

A fair and reasonable outcome would be for Prism to put Mr H, as far as possible, into the position he would now be in but for Prism's unsuitable advice. I consider Mr H would have most likely opted to join the BSPS2 if suitable advice had been given.

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 Mr H whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance/rules to be published.

He has chosen not to wait for any new guidance to come into effect to settle his 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 Mr H.

Prism 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.

For clarity, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 Mr H's acceptance of my final decision.

Prism may wish to contact the Department for Work and Pensions (DWP) to obtain Mr 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 Mr 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 Mr 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 Mr H 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 H.

Income tax may be payable on any interest paid. If Prism deducts income tax from the interest, it should tell Mr H how much has been taken off. Prism should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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 Prism 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

Determination and money award: I uphold this complaint and require Prism Independent Financial Advisers Ltd to pay Mr 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 additionally require Prism Independent Financial Advisers Ltd to pay Mr H any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Prism Independent Financial Advisers Ltd to pay Mr 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 Prism Independent Financial Advisers Ltd pays Mr H the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr H.

If Mr H accepts this decision, the money award becomes binding on Prism Independent Financial Advisers Ltd.

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

Prism Independent Financial Advisers Ltd should provide details of its calculations to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 December 2022.

Ailsa Wiltshire
**Ombudsman**