

The complaint

Mr H complains about the advice given by PrisWM Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused 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 (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr H's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

Concerned about what the recent announcements by his employer meant for the security of his pension, Mr H sought advice and he met with PrisWM Limited in August 2017.

PrisWM Limited recorded some information about Mr H's circumstances in a fact-find. It noted that he was 44, married with two dependent children. He was employed earning approximately £43,000. His wife was self-employed and she earned around £9,500. They had a mortgage on their home of approximately £95,000, which Mr H was hoping to reduce the term of so that it ended when he reached 57. While the liabilities section of the fact-find was blank, the income and expenditure section indicated Mr H had a loan as well as credit card debt of around £16,000. Mr H had no savings or investments and Mr and Mrs H's joint monthly expenditure was around £2,069.

On 18 September 2017, the BSPS provided Mr H with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £459,939.49.

PrisWM Limited issued a letter summarising its recommendation (a suitability report) on 21 September 2017. This said Mr H's aim was to retire as early as possible and to draw an income greater than the scheme would provide from age 57. It said he wanted flexibility to allow him to reduce his income when his state pension became payable. It said he wanted the option to take a higher level of income in the early years, which his DB scheme couldn't provide. It also said Mr H wanted his beneficiaries to benefit from the full pension fund upon his death and that he was worried about his life expectancy.

PrisWM Limited recommended that Mr H transfer his pension as this would provide him with increased death benefits; increased flexibility to retire from 55 and allow for a higher income in early retirement if possible; address his concerns about the scheme and his worry about ending up in the PPF; and to provide for a higher tax-free cash lump sum. PrisWM Limited recommended a pension provider and fund that it said was in line with his 'medium' attitude to risk.

Mr H complained to PrisWM Limited in 2022 about the suitability of the transfer advice. In essence he said he didn't think the advice to give up a guaranteed pension income was suitable for him.

PrisWM Limited didn't uphold Mr H's complaint. It said the transfer was suitable because Mr H couldn't meet his objectives by remaining in the DB scheme. It said he wanted to retire at 57 and draw a higher income than the DB scheme provided and he wanted increased death benefits. It also said increased flexibility was a key driver of his and the ability to draw funds as when required.

Dissatisfied with its response, Mr H asked us to consider his complaint. One of our Investigators looked into the complaint and they upheld it. They thought the advice was unsuitable because at age 44 it was too early for Mr H to make the irreversible decision to transfer his pension when he was uncertain when he would retire and what his needs would be. They said any concerns Mr H had about this scheme could've been better managed by PrisWM Limited. They said death benefits shouldn't have been prioritised over providing for Mr H's retirement income needs. And they said Mr H would've been worse off in retirement as a result of transferring due to the growth rates required to match his scheme benefits. They said if suitable advice had been given, Mr H would've retained his DB scheme benefits and then opted to join the BSPS2.

PrisWM Limited said that it was willing to accept the Investigator's findings and wanted to close the complaint by offering any redress due.

Because Mr H chose not to accept PrisWM Limited's offer to settle things informally, the complaint was referred to me for a final decision.

What I've decided – and why

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

I've 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 Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of PrisWM Limited'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 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, PrisWM Limited should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. And because I'm mindful that PrisWM Limited has accepted the Investigator's findings, I have summarised my findings as far as possible.

- The transfer value analysis ('TVAS') report, that PrisWM Limited was required to carry out by the regulator, said that the critical yield - how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 9.3% to match the full pension he'd have been entitled to under the scheme at age 57 (his target retirement age.) Or to match the maximum tax-free cash and reduced pension the scheme would provide at that age, was 7.5%. To match the full pension the PPF would've paid from 57 the critical yield was 7.5% and to match the tax-free cash and reduced pension the PPF would've offered, it was 7.2%.
- Despite the fact it was known by the point PrisWM Limited instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr H, the analysis was based on the BSPS benefits. I think PrisWM Limited should've waited for the BSPS2 details and included this in its analysis. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 57 were likely to be between those of the BSPS and the PPF.
- Given Mr H's recorded 'medium' attitude to risk, the discount rate of 4.0% for 12 years to retirement and the regulator's middle projection rate, I think Mr H was always likely to receive pension benefits, from age 57, of a lower value than those he'd have been entitled to under the BSPS2 or the PPF by transferring and investing in line with that attitude to risk. And given what the TVAS noted about the critical yields for retirement at age 65 – that for the existing scheme these were still above 6% and for the PPF just under 5% – I think he was still likely to receive lower benefits than either the BSPS2 or the PPF offered, even if he retired at 65. And indeed the suitability report noted that the returns were "*unachievable*."
- So for this reason alone, I don't think it was in Mr H's best interests to transfer out of his DB scheme.
- PrisWM Limited recommended the transfer to provide increased flexibility - to allow Mr H to retire early from age 57 and because he would like a higher income in early retirement if possible. But at 44, I'm not persuaded Mr H had likely given any serious

thought to his retirement or reasonably understood what his needs would be some 12 or more years in the future. Indeed the adviser's file note records: *"He isn't sure that he will take his tax-free cash or will retire at age 57..."* It strikes me a target age of 57 was simply based on the earliest date legislation would allow Mr H to take his benefits.

- Mr H no doubt liked the idea of retiring early. But he already had this option available to him – he didn't have to transfer to achieve things. And no doubt he was attracted to the flexibility a personal pension provided. But I think this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr H's. I don't think he had a strong need to vary his income throughout retirement – how would he reasonably know at this stage that he'd want or need a higher income in the early years of his retirement to then reduce it later on? And nothing indicates he had an apparent need for a cash lump sum and defer taking an income or a capital expenditure need that required access to a larger lump sum than his DB pension would provide.
- In any event, Mr H already had flexibility – something it appears PrisWM Limited overlooked. He was contributing to his workplace pension scheme – a defined-contribution ('DC') scheme, which already provided flexibility in how and when he could access his benefits. Given the likely combined employer/employee contribution rate being made to this, I think this had the potential to provide Mr H with a not insignificant pension pot at his chosen retirement age. And I think this could've given him the flexibility to retire early - *if* that's what he ultimately decided. So I don't think transferring to obtain flexibility was in his best interests.
- Mr H's income need was recorded as being £20,400 - £21,600 a year. But again, I don't think he could reasonably know at this time what he'd need when he retired. And PrisWM Limited doesn't appear to have carried out a detailed income and expenditure in retirement analysis to interrogate this figure or determine if it was realistic. It's also not clear whether this was an expected total household income need or an amount in addition to what his wife earned from running their small business. But based on Mr H's current household expenditure of around £2,000 a month, and given this included more than £1,200 of mortgage and other debt repayment, which wasn't likely to remain at retirement, I think it's likely this was a joint or total household need.
- According to PrisWM Limited, Mr H's DB pension income was estimated to be around £12,290 a year at 57 (reduced pension basis plus lump sum). It was recorded that he intended to work in their business when he stopped working in his current employment, so it appears the intention was for this income stream to continue and perhaps grow with his increased involvement. So, if the income figure was a total household figure, I think Mr H's DB scheme income plus the recorded income from the business of around £9,500, supplemented where necessary by Mr H's DC scheme pension, could've likely satisfied their joint income need – at least until their state pensions became payable.
- But ultimately, without a detailed understanding of Mr H's true needs in retirement, I don't think it was in his best interests to transfer at this time. His DB scheme provided a guaranteed and escalating income for life, which wasn't likely to be bettered by transferring. So, in the circumstances, I think retaining his DB scheme was a more appropriate way for Mr H to meet his future retirement needs rather than risking his guaranteed benefits in an attempt to do so.

- PrisWM Limited also recommend the transfer to provide better death benefits. But the priority here was to advise Mr H about what was best for his retirement. And the existing scheme offered death benefits, by way of a spouse's pension, that could've been valuable to his family in the event of his death.
- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mr H drew in his lifetime. And so it may not have provided the legacy that Mr H may have thought it would.
- If Mr H had wanted to leave a legacy for his family, PrisWM Limited could've properly explored life insurance as an alternative. I can see it referred to a quote for a whole of life policy with a sum assured of £200,000 at £170 a month (guaranteed), which was discounted on cost and because Mr H could achieve things by transferring. But this could've been considered on a term assurance basis – which was likely to be cheaper. But there's little evidence PrisWM Limited did so.
- I acknowledge that Mr H had a health condition and he appears to have had concerns about his life expectancy. But Mr H not reaching his expectancy was only a possibility and it was also possible that he would exceed this, in which case he'd need his pension to last longer. If he transferred out of the DB scheme he'd be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's/dependent's pension was guaranteed and escalated.
- Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr H. I don't think that insurance was properly explored as an alternative. And ultimately PrisWM Limited should not have encouraged Mr H to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.
- Mr H may have legitimately held concerns about how his employer had handled his pension and the prospect of entering the PPF. But it was PrisWM Limited's role to objectively address those concerns. If it had waited for the details of the BSPS2 and used the benefits available to him in its analysis and advice this might have gone some way to addressing his concerns about the new scheme. But even if not, the PPF still provided Mr H with guaranteed income and the option of accessing tax-free cash. Mr H was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr H's best interest to give up his DB benefits and transfer them to a personal pension at this time. And I also haven't seen anything to persuade me that Mr H would've insisted on transferring, against advice to remain in the DB scheme – he had no real investment knowledge or experience and nothing suggests to me that he otherwise had the requisite confidence or skill to do so. So, I'm upholding the complaint as I think the advice Mr H received from PrisWM Limited was unsuitable for him.

I can see the Investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr H. So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish PrisWM – which is the job of the regulator.

But I think it's fair to recognise the emotional and practical impact this had on Mr H. Taking everything into account, including what he's said about the worry he has not knowing whether he'll have enough money in retirement, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

Putting things right

A fair and reasonable outcome would be for the business to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider with no firm plans to retire early, Mr H would most likely have remained in the occupational pension scheme and moved with it to the BPS2 if suitable advice had been given.

PrisWM Limited must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

PrisWM Limited should use the FCA's BPS-specific redress calculator to calculate the redress. A copy of the BPS calculator output should be sent to Mr H and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what PrisWM Limited based the inputs into the calculator on.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr H's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, PrisWM Limited should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
 - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
 - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts PrisWM Limited's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum will be treated as income for tax purposes.

So, in line with DISP App 4, PrisWM Limited may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr H's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require PrisWM Limited to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that PrisWM Limited pays Mr H the balance.

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 December 2023.

Paul Featherstone

Ombudsman