

The complaint

Mr W complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a self-invested personal pension (SIPP) in 2017.

At the time, Mr W was a deferred member of the scheme, having been employed between 1978 and March 2016 when he was made redundant. He then became self-employed.

Prism EBC Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Prism".

What happened

In March 2016, Mr W'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 May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were being 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 BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr W was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do, so contacted an independent financial adviser (IFA) which in turn referred Mr W to Prism which is responsible for providing the pension advice. Information gathered about his circumstances and objectives were broadly as follows:

- Mr W was 55 years old, married and with no financially dependent children. He was a self-employed property manager and in good health.
- Including his main residence, Mr W owned five residential properties with a total value of around £570,000. Two were owned jointly with Mrs W and three in his sole name. The total in mortgages outstanding was £352,000.
- Mr and Mrs W had liabilities of around £21,500 in other unsecured borrowing comprising credit card balances and a loan.
- Mr W was earning around £18,000 (before deduction of costs) per year from managing his property rentals business. I've noted Mrs W had an income of £16,900 (net) per year and a pension of £125 per month (net). At the time of the advice

Mr and Mrs W were able to cover all their monthly expenditure with their income. However, Mr W had been recently supplementing his income needs by using some redundancy pay. Mr and Mrs W still had around £30,000 in cash savings and £4,000 in equity-based investments.

- The cash equivalent transfer value (CETV) of Mr W's BPS was approximately £442,472 and the normal retirement age (NRA) was 65. However, Mr W said he intended accessing his pension savings more or less straightaway at around the age of 56. He intended to remain self-employed in his property rentals business.

Prism set out its advice in a suitability report on 27 November 2017. It advised Mr W to transfer out of the BPS and invest the funds in a SIPP, using a discretionary fund manager to manage the investments. Prism said this would allow Mr W to achieve his objectives.

Mr W accepted this advice and so transferred from the BPS to a SIPP. In 2021 Mr W complained to Prism about its advice, saying he shouldn't have been advised to transfer out of the BPS. In response, Prism said it hadn't done anything wrong and was acting on the financial objectives Mr W had at the time.

Mr W referred his complaint to our Service. One of our Investigators looked into the complaint and said it should be upheld – he thought Mr W could have met all of his retirement objectives by moving to the scheme with the PPF – but Prism still didn't agree. As the complaint couldn't be resolved informally, it came to me for a final decision.

I issued a provisional decision (PD) about this in November 2022 in which I said I was minded to uphold the complaint. However, I gave the parties time to respond with any further information and evidence they wanted me to consider.

Having now received those responses, I'm making a final decision. However, I've copied the PD (in full) and included this as an appendix at the foot of this decision. It should be read in conjunction with this decision.

Given that approach, I'm going to focus here mainly on the points Prism has made in response to the PD, rather than to repeat everything again.

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 considered with great care, all the relevant documents from when the advice was given. These included, but were not limited to, the Comprehensive Analysis Document (CAD) also of 27 November 2017, and the suitability report which set out Prism's advice to Mr W.

As I said in my PD, I noted Prism has engaged two legal advisers during the complaint process. So, I've also thought about what these advisers have had to say. More recently, I've now considered Prism's representative's response to my PD. This is set out in a long letter of 28 December 2022. Again, using the same approaches as I have explained above, I have carefully and thoroughly considered everything said in this response. But once again, I have focussed mainly on the issues I consider to affect the outcome of this complaint.

I've also 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'). 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 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.

I have further considered that 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, Prism should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests.

I've therefore used all the information we have to consider whether transferring away from the BSPS to a SIPP was in Mr W's best interests.

I still don't think it was, so I'm now upholding his complaint.

Financial viability

I began my PD of 30 November 2022 by saying that, as required by the regulator at the time, Prism referred in its transfer analysis to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity income as the DB scheme. The critical yield is part of a range of different things which can help show how likely it is that a personal pension or SIPP could achieve the necessary investment growth for a transfer-out of a DB scheme to become financially viable.

When our investigator issued their View, they originally made reference to the various different critical yield rates in this case, particularly those relating to Mr W drawing his pension benefits more or less immediately, at the age of around 56.

However, as I explained, sometimes applying critical yield figures in comparing the benefits of an *immediate* retirement can often produce yields which are very high indeed. And this can result in the percentage yields being somewhat 'skewed' and unmeaningful. In my view, this happened here and so I don't believe it's helpful for us to use the critical yield figures in comparison with a retirement at the age of 56 when Mr W was already over 55. I've noted Prism agrees with this approach.

Given Prism's wider responses, I also think we're both accepting that Mr W genuinely intended to retire at the age of 56 and take benefits from his pension straight away. So, this means then that the critical yields for the age 65 also aren't really relevant, as we acknowledge Mr W wouldn't have waited to take benefits until then.

In further assessing the financial viability of transferring out of the DB scheme, there are some other comparisons we can draw upon. In my view, these provide a window into the overall value of the benefits Mr W would be giving up by acting on Prism's advice to transfer into a SIPP. These can be found in the transfer analysis Prism commissioned which showed

that when being compared to BSPS2, to purchase an annuity with similar benefits at the age of 56, the cost of such a product would be £538,717 if taking a full pension. And if taking a reduced pension with a tax-free cash element the cost was £467,558. Compared against the PPF, the cost to buy similar benefits were £516,235 and £507,278 respectively, again using the more relevant age in this case of 56. All these figures are substantially above the CETV Mr W had been quoted from the BSPS.

Prism doesn't agree these comparisons are relevant given the poor value it says annuities represented at the time, even though they were set out in its own analysis from the time of the advice. It says the poor value of annuities means that in 99 out of 100 cases, the sum required to purchase an annuity, to match the existing scheme benefits is considerably higher. But in my view, this is disagreeing with comparisons made in its own 2017 transfer analysis because they don't necessarily fit Prism's narrative.

For example, what the transfer analysis report also showed, was that even if I were to consider a comparison with buying an annuity to provide benefits of equal monetary value but assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, this still came in at £476,350 and £421,518 (taking out tax-free cash). This, of course, would be comparing a substantially reduced pension in terms of guarantees and wider benefits. So, I think these costs provide more evidence of the value Mr W was being advised to give up by transferring away.

However, after I issued my PD, Prism asked me to reconsider comments in the CAD (pages 16/17) which, in 2017, said that on the open market, it could source an annuity with quite similar benefits that could be purchased with his transferred funds. This, however, appears to conflict with the transfer analysis data above, by implying that Mr W *could* have purchased a very slightly higher annuity with his CETV, at the age of 56. This appears to be an annuity option without taking any tax-free cash. But as well as appearing to directly contradict the transfer analysis document, here I would say, that even if this 'other annuity' was available, that there would be little point in Mr W using his full fund to buy it, which would cost him all his money to do so. Instead, I've considered Mr W's wider circumstances overall, and whether transferring was in his best interests. Given the loss of guarantees and the apparent very marginal differences between him buying this 'different' annuity and moving to the PPF, I don't think the risk was in his best interests.

Given this conflicting information about the cost of annuities at the time, I've relied on what was in the transfer analysis report. And of course, there would be little point in Mr W transferring to a personal pension unless there were clear financial advantages in doing so. Nothing I've seen shows there were.

In short, whilst a comparable annuity might have been possible to have been purchased, in my view there was no point in him doing so giving everything else we know about Mr W's circumstances and the opportunity he had to move to the PPF or BSPS2 at the time.

From a financial comparison perspective, I also considered the other various models and projections put forward by Prism at the time as to how Mr W's transferred funds might provide a long-term retirement income within a SIPP. However, not all of these compared like-with-like benefits with the types of alternative DB scheme Mr W might transfer to, such as BSPS2 or the PPF. And none of them reliably show Mr W would be better off financially in the long term by transferring to a SIPP.

I noted, for example, the projections showing when the SIPP funds might run out. Prism said based on taking a tax-free lump sum of £46,000 and an income of £12,000 per year, Mr W's funds might last until he was 94. However, this doesn't account for Prism's implications now that Mr W apparently wanted to use more of his pension funds to pay down his rental property mortgages, or the assertion that he could access more tax-free cash in a SIPP,

potentially up to around £110,000. These are good examples of where changes in a drawdown strategy would clearly have a substantial impact on fund exhaustion and overall, I don't think the models put forward by Prism were realistic.

In its reply to my PD, Prism also said the actual information in the transfer report and CAD regarding what it called 'run-out rates' showed that, based on matching PPF benefits the amount available upon a transfer – taking into account all charges – would be able to match the PPF benefits to age of 110 (from age 65) or to the age of 97 (from age 56). Prism pointed out that these ages are well above Mr W's life expectancy figure and "*show that the transfer could well improve Mr W's benefits*". However, like many of Prism's 'comparisons' these do not include a spouse's pension available under BPS2 or the PPF. And as I explain later, these types of benefits were meaningful and relevant to Mr and Mrs W. Nor do they cater for market fluctuations and *all* the changes that would be levied in the case of a personal type of pension. At least one element of charges appears to be missing.

However, I agree with many of the points made by Prism in that I think it's evident that Prism's recommendation for Mr W to transfer away from the DB scheme was substantially based on other reasons rather than just straightforward financial comparisons; the transfer advice was based on what Prism said was, "*the flexibility you desire in terms of taking an income and tax-free cash and neither the scheme pension nor an annuity, would necessarily be appropriate for you*".

So, despite there being no evidence that, in financial terms, the overall benefits of a transfer would be better for Mr W, I've also thought about all the other considerations which might have meant a transfer was suitable.

I've considered these below.

Flexibility and income needs

In its suitability report Prism recommended a transfer to a SIPP based on what it said were Mr W's objectives. Much of these related to his property rental business and the mortgages he held on the five properties he owned. I noted the following themes were listed:

- A higher tax-free lump sum would be beneficial.
- A SIPP would provide varying levels of income at different stages of retirement.
- To enable more flexible death benefits to his spouse.

It therefore seems the supporting reasons that Prism recommended the transfer for was much more related to the flexibility and control it offered to Mr W. I have considered all these issues in turn.

- *Tax-free cash*

Prism referred to Mr W being able to access more tax-free cash via a SIPP, rather than the BPS2 or PPF. It said the tax-free lump sums in the case of these was restricted to lower overall amounts and could be taken only once – at the outset of accessing the scheme benefits. On the other hand, the tax-free cash in a SIPP would be around £110,000 and could be taken as and when Mr W pleased.

It's usually the case that more tax-free cash can be accessed from a SIPP when compared against a DB scheme or PPF; this is because the values and benefits of the schemes are calculated differently. However, as this was Mr W's only workplace pension Prism should

have been emphasising to Mr W at the time that extra tax-free lump sums being removed from a SIPP, from the age of 55 onwards, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of accessing more tax-free cash might have been appealing, this needed to be considered against the other options Mr W faced, including opting for either the BSPS2 or PPF which came with a range of benefits and guarantees which I think would have been very relevant to Mr W.

- *Flexibility*

From all the information gathered at the time of the advice, I've noted Mr W's requirement from his pension benefits was an annual income of around £12,000. Prism said the uncertain nature of income from rental property ownership meant that Mr W's need for additional income required flexibility to deal with tenant vacancies and upkeep costs. Prism also said Mr W required the ability to use his 25% tax-free pension lump sum more flexibly to pay off his debts and the various rental mortgages on his properties as they became due in the future.

I do understand the point being made here. And that looked at through a certain lens, a need for flexibility in Mr W's retirement income to cope with these uncertainties going forward could potentially be made out. However, Prism's job here was to advise Mr W as to what was in his best overall interests. This means any apparent advantages to transferring out to a SIPP for 'flexibility' reasons also had to be balanced against the guarantees and benefits Mr W was giving up by leaving a DB pension arrangement. Prism also needed to be mindful of the regulator's starting point – that transfers from DB pensions should be assumed as not in the best interests of most consumers.

I also haven't seen anything which shows that Mr W wouldn't have been able to meet his retirement income needs by transferring to either the BSPS2 or PPF instead of transferring away to a SIPP. In the case of moving to the BSPS2, for example, at the age of 56, Mr W's DB pension was estimated to be £14,408 per year if taken as a full pension, and £10,379 if taken as a reduced pension and tax-free cash of £69,193. In moving to the PPF, these figures were £13,679 and £11,284 per year with tax-free cash of £75,226.

I've noted Prism's reply to my PD takes issue with the above annual pension of £11,284 being below the retirement income requirement of £12,000 Mr W had thought he might need. I consider this to be semantics, since the £12,000 was clearly an estimate and I doubt whether a taxable income shortfall of £716 per year would fundamentally change anything. Mr and Mrs W also had various other income sources which included rental income, Mrs W's salary and a small pension she had. They also expected the state pension in due course.

I've also read the comments Prism has made generally, about flexibility, following my issuing the PD. It said although I had said that I understood the points being made around flexibility, I had simply gone on to dismiss it. However, I haven't dismissed the merits of flexibility – I've more pointed out that it often comes with a price in that it results in the loss of important benefits and guarantees found typically in a DB scheme. And in my view, Mr W shouldn't have been advised to transfer his pension to a SIPP, when the alternatives of BSPS2 or the PPF existed.

So, I still think it's reasonable to point out that in the case of both the BSPS2 and PPF the above amounts were guaranteed and index linked (with certain limitations) and overall, I think they fitted Mr W's specific needs as recorded by him and Prism at the time they were discussing Mr W's retirement income objectives. But overall, I can't see that Mr W required

the degree of flexibility in retirement which justified Prism recommending that he transfer away from a DB pension altogether.

As can sometimes be the case for early retirement situations, here, the PPF income and lump-sum figures were actually higher than BPS2 and they broadly matched the income requirement Mr W had. I've noted that Mr and Mrs W's joint incomes already met their normal monthly expenditures as set out on the 'fact-find'. Mr W's current income from the property rental business was £18,000 per year (gross). Mrs W earned £16,900 (net) and she was also drawing a net pension of £125 per month. However, as I have said above, Mr W told Prism he wanted to add around an additional sum of £12,000 per year to their existing income, so I think the PPF annual income of £11,284 broadly met this need.

Turning to Mr W's principal and rental properties. Of the five interest-only mortgages they jointly had outstanding, four were 10 years away from needing repaying, and according to the documents I've seen from the time of the advice, these were not priorities for Mr W to 'pay down' completely at that point or anytime soon. In fact, even the remaining one mortgage - referred in some documents to the "third property" - which had two-and-a-half years left to run, did not require paying down at that point because it seems Mr W had secured an agreeable fixed-rate mortgage deal on it in the meantime.

Therefore, in applying this to all his outstanding mortgage commitments, Prism's advice to transfer to a SIPP was substantially based on flexibility, primarily to enable Mr W to pay off debt, which included the "third property" mortgage I've mentioned above - this had £46,000 left outstanding.

But as I've shown, this was not an immediate requirement or priority, and even if it became one after two years or so, I think Mr W could have managed this (and his other unsecured lending debts) by transferring to the PPF and accessing the benefits at the age of 56. In this scenario, he'd have broadly: achieved his additional income goals; accessed a tax-free lump sum of £75,226 to more than cater for his unsecured debts and the £46,000 mortgage; and he'd still have had access to his existing savings of around £34,000.

In my view, doing this achieved everything Mr W wanted from a financial perspective at the time and would have still left him with savings for any unforeseen events.

I have also considered the points made by Prism's legal advisers which say Mr W's intention was not only to pay off the mortgage on the so-called "third property", but that his intention was to also use the (larger) tax-free lump-sum generated by a SIPP, to pay off other mortgages too in the future.

However, I've not found persuasive evidence that Mr W intended to do this at the point he was seeking the financial advice from Prism. Wording in the CAD from the time actually said something quite different, "*You may look to use further tax-free lump sums later in your retirement towards your other mortgages, but this would be dependent on whether your fund value is sufficient to support these additional withdrawals*".

What this was therefore saying was that further use of tax-free pension cash to pay off more of the buy-to-let mortgages was not certain. And quite rightly, the above statement was also asserting the obvious in that if Mr W kept withdrawing sums from his pension to pay off all his mortgages, he'd have much less for his retirement.

What I think is fair to consider here is what Mr W's investments were actually in. In a buy-to-let scenario it's common for interest-only mortgages to be in place. The business model is broadly that whilst one hopes for capital growth, an income is derived in the meantime. But the ultimate repaying of the interest-only mortgage is often predicated on the selling of the

original asset. It seems to me that Mr W was already on an agreeable trajectory with all his properties, with substantial equity in each of them. The cumulative equity would have enabled him to sell some properties, yet still retain the others mortgage free.

In short, I don't think he needed to use up substantial chunks of his pension to achieve this. Furthermore, it doesn't appear to have been considered that if Mr W did pay off his unsecured debts and the £46,000 mortgage using the tax-free cash, he'd have had significant extra disposable income to either boost his savings further or pay down his other mortgages sooner. There also doesn't appear to be any information about Mrs W's other pension(s) and how this might be used to support their retirement objectives.

I appreciate that once Mr and Mrs W's state pensions became payable, they may have been in a position of having more income. Prism says that it wouldn't be reasonable to expect Mr W to pay extra tax on this when, by transferring out, he could simply reduce the pension he took from his SIPP. But I think paying a marginal rate of tax on the extra income was a small price to pay for Mr W securing a guaranteed retirement income. And in any event, he could have gifted, reinvested or saved any excess income if he found he had too much, which would have also helped him to meet his objective of being able to pass his pension on in the event of his death. But it's important for me to also say that Mr W's income was not likely to be high and the idea of him having too much income lacks credibility, in my view.

I've read Prism's responses to these points, including the assertion that all this was giving Mr W the flexibility and tax efficiency that he needed. However, I've seen no evidence that joining the PPF, in his case, *"would likely lead to an unwanted tax burden"*.

- *Death benefits*

I've previously outlined in detail (*see attached PD*), my thoughts about the death benefits, so I'm not going to repeat them all here again.

Suffice to say, the spouse's pension provided by the BSPS2 and PPF would have been useful to Mrs W if Mr W predeceased her and I don't think Prism made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a SIPP was. There may also not have been a large sum left anyway in a SIPP upon Mr W's passing, particularly if he lived a long life – and certainly if Mr W had chosen to use a substantial amount of his pension savings to pay down the buy-to-let mortgages, as implied by Prism. In any event, Prism should not have encouraged Mr W to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

I've read Prism's responses to these comments about the death benefits, all of which were set out when I originally issued my PD. But Prism centred its reply on the issue of what Mr W might have done with his existing buy-to-let mortgages – he could have paid them down, for instance, and therefore had equity to pass on to his wife (or another) that would not otherwise have been the case. Prism said, I had failed *"to take into account that, in such a case, the payments against the mortgages would have the knock on effect of releasing substantial equity in the properties, so there would still [be] a significant legacy benefit"*. However, we simply can't say what equity would have been left in Mr W's properties if he'd paid down some of the mortgages. And this wasn't discussed at the time of the advice – so, the points being made now that he'd be better off have only been raised following the complaint being made.

If this really was a genuine strategy, I'd have expected it to have been made clearer when the advice was given. What the comments at the time actually said in relation to death benefits were that *"you wish for [Mrs W] to be able to have access to your full fund value in*

the event of your death, so that she can continue to draw an income in-line with her requirements. You do not wish to have a scheme pension where the income received will halve. You also wish to be in a position whereby your children can receive benefits from your pension, in the event of both your and [Mrs W's] death”.

In my view, these were somewhat misleading comments which ignored the obvious value of the death benefits Mr and Mrs W might have enjoyed if the advice hadn't been to transfer away. What I said therefore stands, Mr W was being advised to give up death benefits – in this case under the PPF – which were of use to him and Mrs W. These were guaranteed and not subject to the prevailing market conditions. If Prism's view that there was a better way to use housing equity to pass on wealth after death, which outweighed the certainty of either the BSPS2 or PPF death benefits, then it's advice at the time should have set this out in a plan that was understandable for Mr W. And I would also have expected that advice to weigh up the risks of relying purely on buy-to-let housing equity / income. This includes market conditions (again), periods of empty tenancy, and the management and upkeep of properties. In my view, these are quite different considerations when compared against the known death benefits in the BSPS2 or PPF.

Overall, in this case I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr W.

Control or concerns over financial stability of the DB scheme

It's clear that Mr W, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Prism said he lacked trust in the company. He'd heard negative things about the PPF and Prism said he could have more control over his pension fund.

So, it's quite possible that Mr W was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Prism's obligation to give Mr W an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. I think that at the time, what was happening should have also alleviated Mr W's concerns about the scheme moving to the PPF and this ought to have been reflected in the advice he was given. And in his particular situation, the more suitable financial option was for Mr W to transfer to the PPF.

So, I think that Prism should have reassured Mr W that the scheme moving to the PPF wasn't as concerning as he thought. The income and tax-free cash available to Mr W through the PPF provided the lump sum and income he thought he needed, and he was still unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Prism's recommendation to Mr W to transfer out of the DB scheme altogether, to a SIPP.

Summary

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

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income available to him within the BSPS2 or the PPF. By transferring to a SIPP, the evidence doesn't show Mr W was likely to obtain better retirement benefits. I don't think there were any other particular reasons which would justify the transfer and outweigh this - and the starting point of the regulator is that these types of transfer are unlikely to be suitable.

I think his retirement objectives could have been met by moving with the scheme to the PPF and taking his benefits. Although Mr W spoke about potentially wanting to take further lump sums to pay down other mortgages, I think Prism ought to have advised Mr W against transferring to a personal pension arrangement for this reason as it would've substantially reduced the pension available to him for his retirement. Using property equity or income as a pension substitute wasn't properly explained, nor were the risks associated with this. And so, on the basis of what I've comprehensively explained above, I think Prism should have advised Mr W to opt into the PPF as this best suited his needs.

I have further considered, given the circumstances of the time, whether Mr W would have transferred to a personal pension arrangement in any event. I accept that Prism disclosed some of the risks of transferring to Mr W, and provided him with a certain amount of information. But ultimately it advised Mr W to transfer out, and I think Mr W relied on that advice. I'm not persuaded that Mr W would have insisted on transferring out to a personal pension arrangement, if this was against Prism's advice. I say this because his workplace pension accounted for almost all of his retirement provision at the time. So, if Prism had provided him with clear advice against transferring to a personal pension, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr W's concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if Prism had explained Mr W was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I am upholding this complaint.

Putting things right

For this final decision, a fair and reasonable outcome would be for Prism to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained a member of BSPS and subsequently moved with it to the PPF and accessed his benefits early, at the age of 56. So calculations should be undertaken on this assumption.

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

Mr W has chosen not to wait for any new guidance to come into effect to settle his complaint. So 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 W.

Prism must 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 Mr W's acceptance of the decision.

Prism may wish to contact the Department for Work and Pensions (DWP) to obtain Mr W'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 W's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W'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 W 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 compensation amount must where possible be paid to Mr W 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 W.

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.

In October 2020, due to an improved funding position, the BSPS trustees bought an insurance policy as part of the process of the pension scheme exiting its PPF assessment and completing a buy-out. Pension Insurance Corporation plc (PIC) will become responsible for paying benefits directly to members. The process of the buy-out is currently expected to be complete by late April 2023.

It's been announced that:

'When the buy-out happens all members whose PPF benefits are less than their full Scheme benefits (i.e. the amount they would be if the Scheme were not in a PPF assessment period) will see an increase to their benefits. All other members will see no change as a result of the buy-out.'

'For most members, PPF level benefits are less than full Scheme benefits. When the buyout happens, these members will see an increase to their current level of benefits so they will receive more than PPF levels. All other members will see no change to their current level of benefits as a result of the buy-out.'

Mr W has retired. Due to the lower early retirement reduction factor which would have applied in the PPF, I think (albeit without certainty in advance of knowing the detailed terms of the buy-out) that entry into the PPF would have produced an overall better outcome for Mr W. As such, I think it's more likely the case that there would be no deficit in the PPF benefits which could be made up by the "buy-out" process.

For this reason I require Prism to undertake a redress calculation on the current known basis, rather than wait for the terms of any future buy-out to be confirmed. This is in order to provide a resolution as swiftly as possible for both parties, and bring finality to proceedings.

After a final decision Mr W accepts it he will be doing so on the basis of my understanding as set out above. It's important that Mr W is aware that, once any final decision has been issued, if accepted, it cannot be amended or revisited in the future.

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'm upholding this complaint and I require Prism EBC Limited to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £160,000.

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

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

If Mr W accepts my final decision, the money award becomes binding on Prism EBC Limited.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 21 February 2023.



Michael Campbell
Ombudsman

Appendix – Summary of provisional decision issued on 30 November 2022

I've looked at all the relevant information about this complaint. Based on what I've seen so far I agree with our investigator about upholding it. However, as I'm intending on doing so for slightly different reasons, I'm going to issue a provisional decision.

I'll look at any more comments or evidence I get about this complaint by 28 December 2022. But unless these change my mind, my final decision is likely to be along the following lines.

The complaint

Mr W complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a self-invested personal pension (SIPP) in 2017.

At the time, Mr W was a deferred member of the scheme, having been employed between 1978 and March 2016 when he was made redundant. He then became self-employed.

Prism EBC Limited is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Prism".

What happened

In March 2016, Mr W'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.

Mr W was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do, so contacted an independent financial adviser (IFA) which in turn referred Mr W to Prism which is responsible for providing the pension advice. Information gathered about his circumstances and objectives were broadly as follows:

- Mr W was 55 years old, married and with no financially dependent children. He was a self-employed property manager and in good health.
- Including his main residence, Mr W owned five residential properties with a total value of around £570,000. Two were owned jointly with Mrs W and three in his sole name. The total in mortgages outstanding was £352,000.
- Mr and Mrs W had liabilities of around £21,500 in other unsecured borrowing comprising credit card balances and a loan.
- Mr W was earning around £18,000 per year from managing his property rentals business. I've noted Mrs W had an income of £16,900 per year and a pension of £125 per month (net). At the time of the advice Mr and Mrs W were able to cover all their monthly expenditure with their income. However, Mr W had been recently supplementing his income needs by using some redundancy pay. Mr and Mrs W still had around £30,000 in cash savings and £4,000 in equity-based investments.
- The cash equivalent transfer value (CETV) of Mr W's BSPS was approximately £442,472 and the normal retirement age (NRA) was 65. However, Mr W said he intended accessing his pension savings more or less straightaway at around the age of 56. He intended to remain self-employed in his property rentals business.

Prism set out its advice in a suitability letter on 27 November 2017. It advised him to transfer out of the BSPS and invest the funds in a SIPP. Prism said this would allow Mr W to achieve his objectives.

Mr W accepted this advice and so transferred from the BSPS to a SIPP. In 2021 Mr W complained to Prism about its advice, saying he shouldn't have been advised to transfer out of the BSPS. In

response, Prism said it hadn't done anything wrong and was acting on the financial objectives Mr W had at the time.

Mr W referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld but Prism still didn't agree. As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've provisionally 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 considered with great care, all the relevant documents from when the advice was given. These included, but were not limited to, the 'Comprehensive Analysis Document' also of 27 November 2017, and the 'Suitability Report' which set out Prism's advice to Mr W.

I've also noted Prism has engaged two legal advisers during the complaint process. So, I've also thought about what these advisers have had to say and in particular, I've taken account of all the points made in the second legal adviser's comprehensive response of 12 April 2022, to the View issued by the investigator in this case. However, whilst I've noted all the points made, I've rightly focussed on what I think to be the relevant aspects and points in this case.

I've also 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'). 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 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.

I have further considered that 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 W's best interests.

I've therefore used all the information we have to consider whether transferring away from the BPS to a SIPP was in Mr W's best interests.

I don't think it was, so I'm intending to uphold his complaint.

Financial viability

As required by the regulator at the time, Prism referred in its transfer analysis to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity income as the DB scheme. The critical yield is part of a range of different things which can help show how likely it is that a personal pension or SIPP could achieve the necessary investment growth for a transfer-out of a DB scheme to become financially viable.

Our investigator made reference to the various different critical yield rates when he issued his View, particularly those relating to Mr W drawing his pension benefits more or less immediately, at the age of 56.

However, I should point out that sometimes applying critical yield figures in comparing the benefits of an *immediate* retirement can often produce yield figures which are very high indeed. And this can

result in the percentage yields being somewhat 'skewed' and unmeaningful. In my view, this happened here and so I don't believe it's helpful for us to use the critical yield figures in comparison with a retirement at the age of 56 when Mr W was already over 55. Put another way, in this particular case, the use of critical yields for immediate retirement provide very little by way of a realistic comparison between the benefits of a DB pension (and in this case, also the PPF) – and transferring to a personal pension arrangement such as a SIPP.

So, although our investigator went into some considerable detail about the very high critical yield rates for retirement at 56, I'm not going to use these to arrive at a decision about the complaint, as I don't believe they are relevant comparisons.

Comparing the critical yield figures for retiring at the NRA of 65 can give a more realistic comparison, in general terms, between remaining in a DB scheme or transferring out to a personal pension arrangement. This is because there is a much more meaningful time period to compare the projected growth rates of funds within a SIPP, for example, with the estimated benefits of remaining in a DB scheme such as the BSPS2, or indeed the PPF. But once again, I think it's also important to bear in mind in this particular case that Mr W wasn't intending to retire at the age of 65 - he wanted to draw the benefits from his pension savings straight away. The critical yield comparison for the age of 65 therefore also has notable limitations in this case.

Nevertheless, in its own suitability report Prism did still say that its analysis of the critical yields to the age 65, showed that *"given your stated attitude to risk, these returns are, in-line with and below your expected investment returns, and could be achieved"*. So, what I think Prism was saying here was that transferring out of the DB scheme to a SIPP was generally a positive step from a financial comparison perspective. In my view, Prism was setting the scene for moving to a personal pension arrangement and implying that the transferred-out funds, in a new SIPP, would grow to an extent that made transferring worthwhile.

I'll therefore make some comments about this.

However, even though I think a retirement comparison, even for the age of 65, is somewhat irrelevant here, I think it's important for me to also say that Prism's above description about 'achieving returns' was misleading. This is because, even for a retirement at 65, some nine years distant, I think the critical yields and other growth projections failed to show transferring out was better from a growth perspective.

As I show below, the critical yield figures for a 65 retirement merely show that whilst Mr W might possibly have been able to grow his transferred-out pension to achieve roughly the *same* level of benefits as the BSPS2 or the PPF, the opportunity to *improve* on them was limited, and in my view unlikely. And I think there would be little point in Mr W giving up the guarantees available to him through a DB scheme or PPF only to achieve, at best, the same level of benefits outside the scheme. So, by implying Mr W could grow his funds above the critical yields, I think Prism was overstating the case.

To demonstrate these points, the yields Prism was referring to in its suitability report were 5.79% for the BSPS2, and 4.62% compared with entering the PPF. Both assumed taking a full pension at 65 with no tax-free lump sum. The corresponding percentages for taking tax-free cash and a reduced pension in each case were 4.13% and 4.38% respectively.

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.

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 3.7% per year for 9 years to retirement, which in this case was being compared against the NRA of 65. This is below all the figures I've set out above and so implies the critical yield figures would be hard to achieve. But I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. I have also factored in that, at the time, Prism assessed Mr W's attitude to risk (ATR) as 'high medium' so I think a figure higher than the discount rate, and close to the mid-point of the regulator's projections was most relevant.

However, as our investigator pointed out, the issue of the SIPP fees and charges needs also to be considered. I've noted Prism's first legal adviser responded to the investigator's View and said the

investigator had over-estimated the effect of fees and charges relating to the transferred funds because of an arrangement made to limit fees with the recommended SIPP. But I've noted that they conceded, nonetheless, that annual management charges and an ongoing adviser fee still applied.

It's possible to go into great detail as to whether, or to what effect the fees and charges pertaining to the SIPP mattered. But I've looked at the SIPP's "Key Facts" document from the time which acknowledges that charges and fees would reduce growth. And to make the advice to transfer out suitable, from a financial comparison perspective, I think it's reasonable to say there would need to be evidence Mr W could improve upon the benefits he had in either the BSPS2 or PPF.

However, in my view, there's no clear evidence that Mr W would have improved his pension benefits by transferring out, even if he had waited until the age of 65. Taking the regulator's mid-rate and comparing it against the critical yields at 65, I don't think there's any clear evidence that Mr W's pension benefits were being improved by him transferring out, not least because of the charges and fees that would be associated with a SIPP. And as I've said, in any event, Mr W's circumstances were such that he wanted to access his benefits immediately, rather than waiting to the NRA.

In assessing the financial viability of transferring out of the DB scheme, there are some other comparisons we can draw upon. In my view, these provide a window into the overall value of the benefits Mr W would be giving up by acting on Prism's advice to transfer into a SIPP. These can be found in the transfer analysis Prism commissioned which showed that when being compared to BSPS2, to purchase an annuity with similar benefits at the age of 56, the cost of such a product would be £538,717 if taking a full pension. And if taking a reduced pension with a tax-free cash element the cost was £467,558. Compared against the PPF, the cost to buy similar benefits were £516,235 and £507,278 respectively, again using the more relevant age in this case of 56. All these figures are substantially above the CETV Mr W had been quoted from the BSPS.

Finally, from a financial comparison perspective, I considered the various models and projections put forward by Prism at the time as to how Mr W's transferred funds might provide a long-term retirement income within a SIPP. However, not all of these compared like-with-like benefits with the types of alternative DB scheme Mr W might transfer to, such as BSPS2 or the PPF. And none of them show Mr W would be better off financially in the long term by transferring to a SIPP.

I noted, for example, the projections showing when the SIPP funds might run out. Prism said based on taking a tax-free lump sum of £46,000 and an income of £12,000 per year, Mr W's funds might last until he was 94. However, this doesn't account for Prism's implications now that Mr W apparently wanted to use more of his pension funds to pay down his rental property mortgages, or the assertion that he could access more tax-free cash in a SIPP, potentially up to around £110,000. These are good examples of where changes in a drawdown strategy would clearly have a substantial impact on fund exhaustion and overall, I don't think the models put forward by Prism were realistic.

However, I agree with many of the points made by Prism in that I think it's evident that Prism's recommendation for Mr W to transfer away from the DB scheme was substantially based on other reasons rather than just straightforward financial comparisons; the transfer advice was based on what Prism said was *"the flexibility you desire in terms of taking an income and tax-free cash and neither the scheme pension nor an annuity, would necessarily be appropriate for you"*.

So, despite there being no evidence that, in financial terms, the overall benefits of a transfer would be better for Mr W, I've also thought about all the other considerations which might have meant a transfer was suitable.

I've considered these below.

Flexibility and income needs

In its suitability report Prism recommended a transfer to a SIPP based on what it said were Mr W's objectives. Much of these related to his property rental business and the mortgages he held on the five properties he owned. I noted the following themes were listed:

- A higher tax-free lump sum would be beneficial.
- A SIPP would provide varying levels of income at different stages of retirement.

- To enable more flexible death benefits to his spouse.

It therefore seems the supporting reasons that Prism recommended the transfer for was much more related to the flexibility and control it offered to Mr W. I have considered all these issues in turn.

- *Tax-free cash*

Prism referred to Mr W being able to access more tax-free cash via a SIPP, rather than the BPS2 or PPF. It said the tax-free lump sums in the case of these was restricted to lower overall amounts and could be taken only once – at the outset of accessing the scheme benefits. On the other hand, the tax-free cash would be around £110,000 and could be taken as and when Mr W pleased.

It's usually the case that more tax-free cash can be accessed from a SIPP when compared against a DB scheme or PPF; this is because the values and benefits of the schemes are calculated differently. However, as this was Mr W's only workplace pension Prism should have been telling Mr W at the time that extra tax-free lump sums being removed from a SIPP, from the age of 55 onwards, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of accessing more tax-free cash might have been appealing, this needed to be considered against the other options Mr W faced, including opting for either the BPS2 or PPF which came with a range of benefits and guarantees which I think would have been very relevant to Mr W.

- *Flexibility*

From all the information gathered at the time of the advice, I've noted Mr W's requirement from his pension benefits was an annual income of around £12,000. Prism said the uncertain nature of income from rental property ownership meant that Mr W's need for additional income required flexibility to deal with tenant vacancies and upkeep costs. Prism also said Mr W required the ability to use his 25% tax-free pension lump sum more flexibly to pay off his debts and the various rental mortgages on his properties as they became due in the future.

I do understand the point being made here. And that looked at through a certain lens, a need for flexibility in Mr W's retirement income to cope with these uncertainties going forward could potentially be made out. However, Prism's job here was to advise Mr W as to what was in his best overall interests. This means any apparent advantages to transferring out to a SIPP for 'flexibility' reasons also had to be balanced against the guarantees and benefits Mr W was giving up by leaving a DB pension arrangement. Prism also needed to be mindful of the regulator's starting point – that transfers from DB pensions should be assumed as not in the best interests of consumers.

I also haven't seen anything which shows that Mr W wouldn't have been able to meet his retirement income needs by transferring to either the BPS2 or PPF instead of transferring away to a SIPP. In the case of moving to the BPS2, for example, at the age of 56, Mr W's DB pension was estimated to be £14,408 per year if taken as a full pension, and £10,379 if taken as a reduced pension and tax-free cash of £69,193. In moving to the PPF, these figures were £13,679 and £11,284 per year with tax-free cash of £75,226.

In the case of both the BPS2 and PPF the above amounts were guaranteed and index linked (with certain limitations) and I think they fitted Mr W's specific needs as recorded by him and Prism at the time they were discussing Mr W's retirement income objectives. But overall, I can't see that Mr W required the degree of flexibility in retirement which justified Prism recommending that he transfer away from a DB pension altogether.

As can sometimes be the case for early retirement situations, here, the PPF income and lump-sum figures were actually higher than BPS2 and they broadly matched the income requirement Mr W had. I've noted that Mr and Mrs W's joint incomes already met their normal monthly expenditures as set out on the 'fact-find'. Mr W's current income from the property rental business was £18,000 per year (gross). Mrs W earned £16,900 (gross) and she was also drawing a net pension of £125 per month. However, as I have said above, Mr W told Prism he wanted to add around an additional sum of £12,000 per year to their existing income, so I think the PPF annual income of £11,284 broadly met this need.

Turning to Mr W's principal and rental properties. Of the five interest-only mortgages they jointly had outstanding, four were 10 years away from needing repaying, and according to the documents

I've seen from the time of the advice, these were not priorities for Mr W to 'pay down' completely at that point or anytime soon. In fact, even the remaining one mortgage- referred in some documents to the "third property" - which had two-and-a-half years left to run, did not require paying down at that point because it seems Mr W had secured an agreeable fixed-rate mortgage deal on it in the meantime.

Therefore, in applying this to all his outstanding mortgage commitments, Prism's advice to transfer to a SIPP was substantially based on flexibility, primarily to enable Mr W to pay off debt, which included the "third property" mortgage I've mentioned above - this had £46,000 left outstanding.

But as I've shown, this was not an immediate requirement or priority, and even if it became one after two years or so, I think Mr W could have managed this (and his other unsecured lending debts) by transferring to the PPF and accessing the benefits at the age of 56. In this scenario, he'd have broadly: achieved his additional income goals; accessed a tax-free lump sum of £75,226 to more than cater for his unsecured debts and the £46,000 mortgage; and he'd still have had access to his existing savings of around £34,000.

In my view, doing this achieved everything Mr W wanted from a financial perspective at the time and would have still left him with savings for any unforeseen events.

I have also considered the points made by Prism's legal advisers in April 2022 which say Mr W's intention was not only to pay off the mortgage on the so-called "third property", but that his intention was to also use the (larger) tax-free lump-sum generated by a SIPP, to pay off other mortgages too.

However, I've not found persuasive evidence that Mr W intended to do this at the point he was seeking the financial advice from Prism. Wording in the Comprehensive Analysis Document from the time actually said something quite different, "*You may look to use further tax-free lump sums later in your retirement towards your other mortgages, but this would be dependent on whether your fund value is sufficient to support these additional withdrawals*".

What this was therefore saying was that further use of tax-free pension cash to pay off more of the buy-to-let mortgages was not certain. And quite rightly, the above statement was also asserting the obvious in that if Mr W kept withdrawing sums from his pension to pay off all his mortgage, he'd have much less for his retirement.

What I think is fair to consider here is what Mr W's investments were actually in. In a buy-to-let scenario it's common for interest-only mortgages to be in place. The business model is broadly that whilst one hopes for capital growth, an income is derived in the meantime. But the ultimate repaying of the interest-only mortgage is often predicated on the selling of the original asset. It seems to me that Mr W was already on an agreeable trajectory with all his properties, with substantial equity in each of them. The cumulative equity would have enabled him to sell some properties, yet still retain the others mortgage free.

In short, he didn't need to use up substantial chunks of his pension to achieve this.

- **Death benefits**

Prism says that death benefits were discussed at the time and the SIPP would better enable the retention of the value of the funds if Mr W died. It said this could be seen as a legacy to be inherited more flexibly.

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 SIPP was probably made to look like an attractive feature to Mr W. But whilst I appreciate death benefits are important to consumers, and Mr W might have thought it was a good idea to transfer to a SIPP because of this, the priority here was to advise him 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 W was prepared to accept a lower retirement income in exchange for higher death benefits.

I think it's fair to also point out that Mr W was still only 55 years old and his health was described as "excellent". Mrs W was also in good health and aged 58. I think the likely death benefits attached to the DB scheme were also substantially underplayed. I've looked carefully at the advice timescales involved and at when emerging details of the new scheme were being released. Members were sent a *Time to Choose* booklet in October 2017 and I think it's reasonable for me to say that BPS2

was going to provide death benefits not substantially different to those in the BSPS and PPF benefits were already known.

The spouse's pension provided by the BSPS2 and PPF would have been useful to Mrs W if Mr W predeceased her and I don't think Prism made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a SIPP was. There may also not have been a large sum left anyway in a SIPP upon Mr W's passing, particularly if he lived a long life – and certainly if Mr W had chosen to use a substantial amount of his pension savings to pay down the buy-to-let mortgages, as implied by Prism. In any event, Prism should not have encouraged Mr W to prioritise the potential for higher death benefits through a SIPP over his security in retirement.

Overall, in this case I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr W.

Control or concerns over financial stability of the DB scheme

It's clear that Mr W, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and Prism said he lacked trust in the company. He'd heard negative things about the PPF and Prism said he could have more control over his pension fund.

So, it's quite possible that Mr W was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was Prism's obligation to give Mr W an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. I think that at the time, what was happening should have also alleviated Mr W's concerns about the scheme moving to the PPF and this ought to have been reflected in the advice he was given. And in his particular situation, the more suitable financial option was for Mr W to transfer to the PPF.

So, I think that Prism should have reassured Mr W that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr W through the PPF provided the income he thought he needed, and he was still unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to Prism's recommendation to Mr W to transfer out of the DB scheme altogether, to a SIPP

Summary

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

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income available to him within the BSPS2 or the PPF. By transferring to a SIPP, the evidence doesn't show Mr W was likely to obtain any better retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think Prism ought to have advised Mr W against transferring to a personal pension arrangement for this reason. And on the basis of what I've comprehensively explained above, I think Prism should have advised Mr W to opt into the PPF as this best suited his needs.

I have further considered, given the circumstances of the time, whether Mr W would have transferred to a personal pension arrangement in any event. I accept that Prism disclosed some of the risks of transferring to Mr W, and provided him with a certain amount of information. But ultimately it advised Mr W to transfer out, and I think Mr W relied on that advice. I'm not persuaded that Mr W would have insisted on transferring out to a personal pension arrangement, if this was against Prism's advice. I say this because his workplace pension accounted for almost all of his retirement provision at the time. So, if Prism had provided him with clear advice against transferring to a personal pension, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr W's concerns about the PPF were so great that he would have insisted on transferring his pension, 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. So if Prism

had explained Mr W was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

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

Michael Campbell
Ombudsman