

## The complaint

Mr T complains that PrisWM Limited ('PWM') gave him unsuitable advice to transfer the benefits from his defined benefit (DB) occupational pension scheme to a self-invested personal pension ('SIPP'). He believes he might have suffered a financial loss as a result.

## What happened

In March 2016, Mr T'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')<sup>1</sup>, or a new defined-benefit scheme ('BSPS2'). Alternatively, members 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 said that if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T'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.

In September 2017, the BSPS trustees gave Mr T details of his DB pension's cash equivalent transfer value, which was £427,037.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere.

Mr T approached PWM for advice about his pension. It conducted a fact-find with him. Amongst other things it noted he was 42 and married. Mr and Mrs T owned their home subject to a mortgage which they anticipated paying off in around eight years. They had two dependent children. Mr T's wife had her own DB pension. Mr T had relatively recently joined his employers newly set up defined contribution pension scheme.

In November 2017 PWM sent Mr T its suitability report setting out its analysis. It recommended that Mr T should transfer his BSPS benefits to a named SIPP.

Mr T accepted PWM's recommendation and the transfer concluded in February 2018.

In 2022 Mr T complained to PWM that its advice might not have been suitable for him. It didn't uphold his complaint.

Mr T brought his complaint to the Financial Ombudsman Service. One of our Investigators looked into it. She didn't think PWM's advice was suitable for Mr T. In brief she didn't think

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<sup>1</sup> The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays 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.

the potential advantages from transferring outweighed the guaranteed benefits the DB scheme offered. She recommended that PWM should carry out a redress calculation to establish if Mr T had lost out as a result of the transfer.

PWM, initially, didn't agree with our Investigator's complaint assessment. However, after reviewing the matter it said it would accept the Investigator's conclusions.

We later wrote to PWM. We said the regulator, the Financial Conduct Authority ('FCA'), had developed a BSPS-specific calculator for establishing redress for BSPS cases. We recommended that PWM should carry out a redress calculation using the FCA's BSPS calculator.

PWM did the redress calculation using the FCA's calculator. It showed Mr T had not suffered a financial loss because of the transfer.

Mr T said he could still potentially lose out in the future and he didn't believe that had been addressed. In an attempt to resolve matters PWM offered Mr T £250 for the distress and inconvenience its unsuitable advice caused..

Mr T didn't think that went far enough. So, as the matter remains unresolved it's been passed to me to make a final determination.

### **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.

As PWM has now accepted our Investigator's assessment that its advice was not suitable for Mr T I see no need to address that point; save to say that I agree with our Investigator's view for broadly similar reasons. Overall, I don't think a transfer was in Mr T's best interests.

The issue before me now isn't the suitability of PWM's advice but whether or not it's done enough to put things right. Mr T is of the opinion it hasn't.

I appreciate many consumers like Mr T feel anger and frustration at the situation they now find themselves in. They approached advising firms like PWM for the benefit of their expertise. So consumers feel understandably shocked and disappointed to learn that some advisers made recommendations to their – often financially inexperienced – clients to take actions that could make those clients poorer and which weren't in their best interests.

So I can understand consumers like Mr T might have an expectation that, because they received unsuitable advice, they are in future danger of suffering a financial loss as a result, and should be compensated in line with the potential for an unquantified loss. But, while the advice might not have been in their best interests, it's not necessarily the case that they have – or will have – lost out. And the purpose of the FCA's methodology for redress calculation is not to put consumers like Mr T into a better position than they would have been had they not transferred. It also isn't designed to punish or fine a business for giving unsuitable advice. Instead, the aim is to put the consumer back, as near as possible, into the financial position they would have been in at retirement had they remained in the DB scheme.

The calculations themselves are fairly complex. They include assumptions about future market conditions, interest rates and investment returns. And those assumptions are susceptible to market forces. That means that the outcome of those calculations will fluctuate with time as the FCA updates the market assumptions the calculations use. And for

consumers like Mr T, the FCA has developed a BPS specific calculator which applies those assumptions fairly.

In essence the calculations look to establish whether or not a consumer like Mr T has sufficient funds in their current pension arrangement to secure equivalent retirement benefits that they would have been entitled to from either the BPS2 or the PPF, had they not transferred out. The calculator uses on the value of the BPS benefits at the date of the calculation and not the date of the transfer. The calculator applies economic and demographic assumptions as set out by the FCA. Firms can't change these.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BPS benefits they would have received, as calculated at the date of the redress calculation, the shortfall is the amount owed to the consumer. If the calculation shows there is enough money in the consumer's pension arrangement, then no redress is due. That means, despite the fact that we might have found that the transfer wasn't in a consumer's best interests, it doesn't automatically mean that they are worse off or will be entitled to compensation. That is something the calculation will determine.

The calculator makes automatic allowances for ongoing advice fees of 0.5% per year and product charges of 0.75% per year which are set percentages by the FCA.

I've checked the inputs that PWM entered which are specific to Mr T. These include his personal details, his individual benefits from the BPS at the date he left the scheme and the value of his SIPP. The calculation also assumes that if he hadn't been advised to transfer his benefits from the BPS, he would have moved to the BPS2 and taken his DB benefits at age 65.

There is one small anomaly with PWM's recent calculation, in that it keyed in the amount of his current SIPP value incorrectly. It gave the value as £547,854, when should have been £547,845, a difference of £10. However, the redress calculation showed that Mr T has a surplus of over £111,000 in his SIPP. So I'm satisfied the £10 variance is not material to whether or not Mr T has suffered a financial loss.

Overall, the above anomaly aside, PWM has carried out the calculation appropriately. I'm satisfied it's done so in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in the FCA's policy statement PS22/13 and set out in their handbook in DISP App 4:

<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

The calculation in Mr T's case shows there is no shortfall to his pension and he has significantly more than enough funds to be able to replicate his DB benefits in retirement. So, I'm satisfied he has not suffered a financial loss by transferring his pension. And as PWM has performed the necessary calculation, I don't think it needs to do anything further in respect of any potential financial loss.

I appreciate that Mr T does now have the concern that, like the majority of defined contribution pension policy holders who invest in personal pensions or SIPPs, his pension remains at investment risk. But it's simply not possible to return him to his DB scheme. And PWM's recent calculation has shown that he's actually currently in a better position than he would have been by remaining in the scheme, which I hope provides him with some reassurance.

That said, while the recent calculation shows Mr T hasn't lost out financially, I accept that the uncertainty he's experienced as a result of PWM's advice has caused some distress and

concern by finding out it may not have been suitable. I'm conscious this upset wouldn't have happened but for PWM's advice. So, in the circumstances, I think PWM's offer of £250 payment for that distress is fair and reasonable.

### **My final decision**

PrisWM Limited has already made an offer to pay £250 to settle the complaint. For the reasons given above I think that is a fair resolution. So I require it to pay that sum to Mr T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 March 2024.

Joe Scott  
**Ombudsman**