DRN-5136976

The complaint

Mr B complains about the advice given by The Prudential Assurance Company Limited ('Prudential') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

The following is a brief summary of the background and circumstances leading up to this complaint.

In April 2019, Mr B approached Prudential to discuss his pension and retirement needs. Mr B had been recommended to them by a work colleague.

Prudential completed a fact-find to gather information about Mr B's circumstances and objectives. Amongst other things this recorded that Mr B was aged 55, he was married with two dependent children, he and his wife were working, they jointly owned their own home, which was unencumbered, they had joint savings and investments of around £150,000, Mr B had five pensions – his paid up DB scheme, a group personal pension which both he and his employer were contributing to, a further paid up DB pension and two other personal pension – and his wife had her own DB pension.

Mr B's objectives were recorded as wanting to retire at age 57 in under two years' time with a wish to transfer his DB scheme to enable him to reach his income target, which was higher than his scheme could provide, and for his children to benefit from his pension monies.

Prudential also carried out an assessment of Mr B's attitude to risk, which it deemed to be 'medium high.'

On 17 July 2019, Prudential advised Mr B to transfer his pension benefits into a personal pension arrangement and invest the proceeds in Prudential's managed 4 fund. The suitability report said the reasons for this recommendation were:

- To allow Mr B to take a variable income from age 57 in line with his changing needs during retirement.
- Provide the ability to take ad-hoc capital withdrawals.
- Provide the ability to nominate whoever Mr B wished to leave any unused funds upon his death.
- To break all ties from the DB scheme which appeared to be important to Mr B.

Mr B accepted the recommendation and on 7 August 2019 Prudential received the cash equivalent transfer value of just over £428,600 whereupon the funds were invested as per the recommendation.

On 13 August 2019, Prudential carried out a further assessment of Mr B's attitude to risk, which it now deemed to be 'medium.' This resulted in an investment fund switch to Prudential's managed 3 fund.

In May 2024, with the help of a professional representative, Mr B complained to Prudential about the suitability of the transfer advice. Mr B said he felt he'd lost out as a result of the advice he received.

Prudential didn't uphold Mr B's complaint. In summary it said the advice was suitable because it met Mr B's stated objectives for flexibility and better death benefits.

Mr B referred his complaint to the Financial Ombudsman Service. An investigator upheld the complaint and required Prudential to pay compensation. They believed the advice was unsuitable because a transfer wasn't financially viable due to the growth required to match Mr B's scheme benefits. And Mr B's desire for flexibility and the potential for higher death benefits wasn't a compelling reason to show that a transfer was in his best interests. They thought if Mr B had been properly advised to retain his DB scheme benefits, he would have accepted the recommendation and not transferred out.

Prudential disagreed. In summary it said the recommendation was not made in an attempt to replicate Mr B's DB scheme income. It said Mr B had no requirement for the income – the recommendation was made to meet Mr B's objectives for flexibility and death benefits.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make 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 Prudential'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.

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. My reasons are set out below.

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, Prudential should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Prudential produced a Transfer Value Comparator (TVC) report (as required by the regulator) showing how much by way of a lump sum Mr B would have to invest now at a risk-free rate of return to provide the same benefits as his DB scheme.

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. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

Mr B was 55 at the time of the advice and wanted to retire at 57, which was less than two years away. Mr B had two tranches of pension benefits representing different periods of service – before and after 2007 – each of which had a Cash Equivalent Transfer Value (CETV). So, Prudential carried out a TVC for each tranche. For the pre-2007 tranche, based on the normal retirement age of 60, Mr B needed a lump sum now of just over £403,700 (just under £163,000 more than the CETV) to invest at a risk-free rate of return to provide equivalent benefits to the DB scheme. That means Mr B needed to achieve around 40% of extra investment growth (above the risk-free rate of return) to match his benefits assuming he purchased an annuity. Prudential also produced a critical yield, or the annual growth rate to retirement, to match the scheme benefits at age 60, which was quoted as 15.8% per year if Mr B took a full pension and 12.1% per year if he took a cash lump sum and a reduced pension.

For the post 2007 tranche and based on the normal retirement age of 65, Mr B needed a lump sum of just over £247,200, which was around £118,000 more than the CETV or 47% extra growth to match his scheme benefits. The critical yields were 9.7% and 8.1%, respectively.

Prudential didn't refer to the analysis based on Mr B's preferred retirement age of 57 in its suitability report, although it did produce it for the pre 2007 tranche. Unsurprisingly, given the shorter period to retirement in this scenario, the cost of transferring was greater – Mr B needed a lump sum in excess of £202,700 more than the CETV and the critical yields were quoted as 54.9% (full pension) and 37.2% (reduced pension.)

I've taken this into account, along with the Mr B's attitude to risk and also the term to retirement. I note that Mr B's original assessment of his attitude to risk in April 2019, produced a 'medium high' rating.
But almost immediately after Prudential received Mr B's transfer value – not sometime later as part of a later review as Prudential has said – his attitude to risk was re-assessed to a lower rating of 'medium' and a fund switch was carried out. Given how I would expect Mr B's investments to have grown, I think Mr B was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with that attitude to risk.

For this reason alone, I think a transfer out of the DB scheme was not in Mr B's best interests. But I can see that the recommendation to transfer was not made because it was believed Mr B could improve on the income he'd receive from the DB scheme. The suitability report said that the TVC showed it couldn't be beaten outside the scheme. And I accept that financial viability isn't the only consideration when giving transfer advice. There might be other considerations, as Prudential has argued in this case, which mean a transfer is suitable despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

In response to the investigator's assessment, Prudential said that Mr B had no requirement for income from these pension benefits and the recommendation was made to meet his objective for flexibility. And the suitability report said that a compelling reason for the transfer was to give Mr B the ability to retire at 57 and take a variable income in line with his changing needs during retirement.

But I'm not persuaded that Mr B needed flexibility – or certainly not over and above that which he already had – or that he required a variable income during his retirement. I don't think his objective for flexibility was a genuine one but rather it was simply a consequence or feature of transferring to a personal pension arrangement.

Prudential produced some modelling analysis to demonstrate Mr B's need for flexibility and how it could be met though income and capital withdrawals from a personal arrangement. The modelling showed how Mr B could withdraw his required expenditure need of £2,685 net each month from age 57, which would then reduce at age 60 when his other DB scheme came into payment. It would then reduce further when his wife's pension started when she was 60, and finally he could cease withdrawals all together when his state pension commenced at 67.

But I don't think this accurately reflects Mr B's needs or demonstrates that it was in Mr B's best interests to transfer to achieve things. I'll explain why.

Firstly, Prudential recorded in the April 2019 fact find that from age 57 Mr B and his wife's joint expenditure needs were £2,685 a month requiring an annual income of around £35,000 gross. Crucially, this was a joint income / expenditure need. So, I can't see why Prudential produced its analysis and justified a recommendation to transfer on the basis that Mr B alone needed to meet the need for £2,685 a month at age 57 and how his scheme pension was 'insufficient for need' (page 36 of the fact find.) When Mr B reached 57, because his wife was around two years younger, she'd still be working at this time. And her income was recorded as being around £2,400 a month. So, that leaves a gap or joint need of less than £300 a month at Mr B's preferred retirement age. Why wouldn't Mr B's wife's income be taken into account and factored in here given it was clearly documented that their expenditure was on a joint basis?

So, based on this income requirement, Mr B already had flexible access to three other defined contribution pensions he could draw on without having to touch his DB scheme pension at this stage. Two of these had a combined value of around £27,500. And Mr B's current workplace pension had a monthly contribution rate of around £1,800 a month.
So, with another two years' contributions, this could add another £40,000 plus to the existing £26,500 pot, not accounting for any growth during this period.

Also, it was recorded that Mr B might consider part-time work in the future, which could have met this need. But Prudential didn't explore this in any further detail as to how likely this was, what kind of work and for how long Mr B anticipated working and earning an income. These were all options that in my view Prudential should have properly considered before recommending a transfer out of the DB scheme to achieve things.

I can see the investigator talked about a 50/50 equal split to their monthly expenditure and that Mr B might have been responsible for half the amount. I'm not persuaded that was a reasonable assumption in the circumstances. But even if that were the case, I think Mr B could have achieved things by remaining in the DB scheme. He could have accessed his other means flexibly drawing income and/or capital as required, and if absolutely necessary, he could have taken his DB scheme benefits early. At age 55 the immediate early retirement quote was £11,455 a year or £10,715 and £57,000 tax-free cash using his AVC fund. So, at 57 this would have been higher and likely sufficient to meet his needs.

While Prudential's analysis/modelling showed Mr B's wife DB pension income coming on stream when she turned 60, her documented intended retirement age was 57. So, at this point she'd likely draw her pension. At age 60 it was recorded she'd be entitled to around £37,000 a year. At age 57 it would likely be less due to an actuarial reduction. But with her DB pension income and if Mr B also took his scheme benefits at this stage, I think they could have jointly met their retirement income need by Mr B remaining in the DB scheme.

At age 60 Mr B had a further smaller DB pension that would come into payment. And at 67 Mr B and his wife would get their state pension. This might have perhaps given them more income than they expected to need. But crucially this was all guaranteed and escalating income. They could simply have improved their standard of living without taking on investment risk. This is not an unsuitable position to be in.

Also, Mr B didn't have to sacrifice flexibility by remaining in his DB scheme. As I have already said, he had access to his other defined contribution pensions as well as access to cash savings and investments for ad-hoc withdrawals, to top up income if required or to possibly further delay having to draw on his DB scheme. I can see that Prudential says that Mr B would likely need to keep a high proportion of their savings and investments to fund their dependent children through further education. And while I accept Mr B would need some funds for this purpose, in my view, by adopting the approach I've set out above, Mr B and his wife would still have had sufficient assets to meet all their needs. And Mr B still had the option of taking a cash lump sum from his DB scheme if needed, which would still have likely given him the required income to help meet his joint needs.

Finally, in terms of Mr B's need for a variable income. Mr B's joint expenditure in retirement was not recorded as needing to change. So, I'm not persuaded a variable income was necessary or a real objective and need. Again, I think it was simply a feature of moving to a personal pension arrangement.

Overall, I don't think a recommendation to transfer at this stage for flexibility and to allow a varied income to be taken from age 57 was suitable or in Mr B's best interests given the circumstances. I don't think it was appropriate or necessary for Mr B to give up the guarantees his DB scheme provided at this stage – I think Mr B's objectives could have reasonably been met by remaining in the DB scheme.

Death benefits

One of the other key reasons for the transfer was to allow Mr B to choose who he wanted to leave his pension monies to upon his death. It was recorded that Mr B was keen to provide for his children.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr B.

But whilst I appreciate death benefits are important to consumers, and Mr B might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool.

Mr B was married and had two dependent children. And while it was recorded that Mr B's wife would be self-sufficient based on her expected pension income, I still think the death benefits provided by the DB scheme would've been useful to his family if he predeceased them. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. It's possible therefore in certain circumstances – for example if Mr B lived a long life – there may not have been a large sum left to pass on anyway. In any event, Prudential should not have encouraged Mr B to prioritise the potential for higher or different death benefits through a personal pension over his security in retirement.

I think if Mr B genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Prudential should've instead explored life insurance. And the starting point for this shouldn't have been basing a quote on the transfer value because this would essentially assume that he would pass away on day one following the transfer, and that isn't realistic. So, the starting point ought to have been to ask Mr B how much he would ideally like to leave to his spouse and/or children, and this could've been explored on a whole of life or term assurance basis (written in trust if necessary) – a term assurance policy was likely to be cheaper to provide. Mr B was in good health at the time and at 55 he was still relatively young.

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

Control or concerns over financial stability of the DB scheme

While not a key reason for recommending the transfer, Prudential recorded that the recommendation would ensure Mr B broke all ties with the scheme which appeared to be important to him given the scheme's widely publicised security.

The funding of Mr B's employer's DB scheme was not in my view in a position such that he should have genuinely been concerned about the security of his pension. And I think Prudential ought to have been clearer about this. Also, the Pension Protection Fund (PPF) exists to protect members of DB schemes when the employer becomes insolvent and can't meet any deficit in the funding of the scheme at that time. So, I don't think this was a compelling reason to justify a transfer out of the scheme.

Summary

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

Ultimately, I don't think the advice given to Mr B was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits, and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr B shouldn't have been advised to transfer out of the scheme just to have flexibility that I'm not persuaded he really needed beyond that which he already had, and the potential for different lump sum death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I think Prudential should've advised Mr B to remain in his DB scheme.

I've now considered whether Mr B would have gone ahead anyway, against Prudential's advice. Having done so, I'm not persuaded that Mr B would have insisted on transferring out of the DB scheme, against Prudential's advice. I say this because Mr B was not in my view an experienced investor or someone who otherwise appears to have possessed the requisite skill, confidence and knowledge to act against advice. I'm also mindful that this pension accounted for the majority of Mr B's retirement provision – it was a significant asset. So, if Prudential had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm not persuaded that Mr B's concerns about his death benefits and the security of his scheme were so great that he would have insisted on the transfer knowing that a professional adviser, whose expertise he had been referred to and was paying for, didn't think it was suitable for him or in his best interests. If Prudential had explained that Mr B could meet all of his objectives without risking his guaranteed pension, I think that would have carried significant weight. So, I don't think Mr B would have insisted on transferring out of the DB scheme.

In light of the above, I think Prudential should compensate Mr B for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Putting things right

A fair and reasonable outcome would be for the business to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would have most likely remained in the occupational pension scheme if suitable advice had been given.

Prudential 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.

For clarity, although Mr B is now retired (a consequence of unforeseen ill health and taking redundancy as a result) he has not taken any of his benefits and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65[1], as per the usual assumptions in the FCA's guidance.

[1] While Mr B's scheme's pre 2007 tranche had a normal retirement age of 60, the post 2007 tranche is 65. Because the scheme required Mr B to take his benefits all at the same time, given his age, the usual assumption of 65 should apply here.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and 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 B's acceptance of the decision.

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

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B 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 B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts Prudential's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr B 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 B's end of year tax position.

Redress paid directly to Mr B as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Prudential may make a notional deduction to allow for income tax that would otherwise have been paid. Mr B's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

My final decision

For the reasons above, I've decided to uphold this complaint and I instruct
The Prudential Assurance Company Limited to put things right in line with the approach above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 May 2025.
Paul Featherstone
Ombudsman