DRN-3612953

The complaint

Mr D complains that he was given unsuitable advice by The Prudential Assurance Company Limited ('Prudential') to transfer the benefits from his defined benefit ('DB') occupational pension scheme with British Steel ('the BSPS') to a personal pension.

What happened

In March 2016, Mr D'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 ('the BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

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

Mr D wasn't sure what to do about his pension so he got in touch with a representative of Prudential. Mr D met with Prudential in October 2017 and it gathered information about his circumstances and objectives. It noted Mr D was 46, that he was divorced with two dependent children. It was recorded that Mr D earned around £36,600 per year and had a mortgage on his home of around £95,000. He had a car loan of around £10,000 and didn't have any significant savings. It was further noted Mr D and his employer were contributing 16% of his salary per month to his employer's new defined-contribution ('DC') pension scheme, equivalent to around £6,000 per year.

Prudential noted Mr D was hoping to retire from his current job at age 60 and either retire fully or take on some less demanding part-time work. He also said he thought he would pay off his mortgage using the tax-free cash ('TFC') he could take from his pension at age 60. Mr D thought the mortgage balance would be around £35,000 by this time. Prudential recorded that Mr D thought he would take £2,000 per month (gross) from his pension to meet his needs in retirement.

Prudential assessed Mr D's attitude to risk as 'medium' (5/10) and noted that he had limited investment experience. It further noted that Mr D believed transferring his pension would set himself and his children up for life. And he would benefit from the flexibility a personal pension would provide him with as he could reduce his income as he got older.

In December 2017 Prudential advised Mr D to transfer his BSPS benefits to a Prudential Retirement Account. It said this would give Mr D the option to retire at 60 and adjust his income as per his needs. Prudential said that the BSPS2 would not meet his income needs at age 60 after taking TFC. It said the transfer provided significantly more advantageous death benefits for his children and would be tax-free if death occurred before age 75. Mr D accepted this advice and £402,611.96 was transferred from the BSPS to his new pension.

In 2021 Mr D complained to the Financial Ombudsman Service about the advice he received, believing it may have been unsuitable for him. Mr D said he had very little pension knowledge and felt rushed and intimidated by the process.

The complaint was passed to Prudential but it didn't uphold it. Prudential said it could only determine whether it was in Mr D's best interests to transfer out of the scheme to a Prudential pension, it was unable to consider whether it was in his best interests to join the BSPS2. But ultimately it believed the advice was suitable as Mr D wanted flexibility and control over how he accessed his pension, he wanted to be able to retire and repay his mortgage at age 60 and it was important to him to be able to leave whatever remained of his pension on his death to his children. Prudential said the transfer met those objectives.

Unhappy with Prudential's response, Mr D asked the Financial Ombudsman to investigate. One of our Investigators looked into the complaint and said it should be upheld. He thought the advice was unsuitable as Mr D wasn't likely to be able to exceed the benefits available to him under the BSPS2 at age 65 and he didn't think there were any other compelling reasons for Mr D to transfer out of the BSPS at the time. The Investigator thought the objectives were generic and were not pressing needs that had to be addressed. The Investigator recommended Mr D should be compensated based on him having opted to join the BSPS2. He also thought Prudential should pay Mr D £300 for the distress and inconvenience the matter caused.

Prudential didn't agree – it maintained the advice was suitable as the transfer met all of Mr D's objectives, which could not be met by remaining in the scheme.

The complaint was subsequently referred for a final decision.

In August 2022 the regulator, the Financial Conduct Authority ('FCA'), launched a consultation on changes to its DB transfer redress guidance. So, the Investigator wrote to Mr D to advise him of the FCA's proposed changes which were due to come into effect in April 2023 and to give him the option to have any redress due to him calculated under the then current guidance or to wait for the new rules to come into effect. Mr D chose to have his compensation calculated under the existing rules and guidance. However, Mr D was informed that if the complaint was not resolved by April 2023 the new rules and guidance would apply in any event.

In January 2023, Prudential contacted our Service to advise that although it maintained the advice was suitable, it had carried out a loss calculation and this showed that Mr D was not owed any redress. Mr D was informed of this and pointed out that Prudential had calculated redress based on him being married, whereas he was divorced. But Prudential confirmed it had correctly input Mr D's marital status as single.

The Investigator subsequently informed both Mr D and Prudential that if the Ombudsman considering the case decided to uphold it, they may require Prudential to calculate any redress owed to Mr D using the FCA's BSPS-specific redress calculator. Although the calculator has been developed specifically for the BSPS consumer redress scheme, the Investigator explained that the FCA encouraged firms to use the calculator for non-scheme cases, such as Mr D's complaint. The Investigator invited both parties to comment if they had any concerns.

Prudential responded saying that it would use the FCA's BSPS calculator and had carried out a new loss assessment. However, the outcome remained that Mr D had not suffered a loss. This was sent to Mr D and he raised concerns about the calculation – he said was not protected from market losses going forwards.

As Mr D remained unhappy, the case was passed to me to make a final decision on the matter. I informed Mr D that I had reviewed the loss calculation carried out by Prudential and was satisfied it had been completed appropriately in line with the regulator's rules and guidance. So, I said I didn't intend to ask it to carry out another calculation. Mr D didn't trust that the figures were correct and said this didn't compensate him for all of the worry the matter had caused.

In light of Mr D's remaining concerns, I'm now providing 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 understand Prudential is still disputing that unsuitable advice has been given. However, nonetheless they have carried out a loss calculation in line with the Investigator's view. So I don't see the need to address the suitability of Prudential's advice to Mr D in detail.

However, I would like to note that I agree with the Investigator's view that the advice was unsuitable for largely the same reasons as follows.

- Mr D was aged 46 at the time of the advice, and while he thought he would retire early at age 60, this was around 14 years away and so his plans could've changed. It was too soon for Mr D to make an irreversible decision to transfer out of his DB scheme when he had the option of joining the BSPS2; by joining it he would retain the option to transfer out at a later date if his circumstances required it.
- At age 65, the critical yield (the investment return required to replicate the benefits available to him through the BSPS2) was 4.9%. Given Mr D's medium attitude to risk, the discount rate of 4.4% for 18 years to retirement and the regulator's middle projection rate, I don't think Mr D was likely to be able to exceed his BSPS2 benefits at retirement by investing in line with that attitude to risk. The critical yield at age 60 was likely to be higher than this given benefits would have to be paid for longer and the investment horizon to retirement was shorter. So, Mr D was likely to receive lower overall retirement benefits if he retired at age 60.
- It wasn't clearly in Mr D's best interests to give up the guarantees associated with his DB pension simply to achieve, at best, equivalent benefits at retirement. Mr D had little capacity for loss – this was his main pension – and I don't think he could really tolerate the risk of transferring his DB pension.
- Prudential says Mr D was divorced and wasn't likely to marry again so the critical yield wasn't relevant as it was based on him purchasing an annuity providing a spouse's pension. But Mr D was still relatively young and couldn't rule out that having the benefit of a spouse's pension would become important to him in the future.
- Prudential failed to do any meaningful analysis of the benefits available to Mr D under the BSPS2 at age 60. Prudential says it wasn't able to do that, as it could only compare the existing scheme with a Prudential pension, but it told Mr D in the suitability report that the BSPS2 wouldn't have met his income needs of £24,000 gross per year.
- But the suitability report said that at age 60, Mr D would be entitled to a pension of £13,715 per year after taking TFC of £91,437.74 through the BSPS2. While the pension wasn't enough on its own to meet Mr D's income need, Mr D could've used his leftover TFC to top up his income until his state pension became payable – Mr D thought he only needed around £35,000 to repay his mortgage. Mr D and his employer were also contributing to his DC scheme – Prudential estimated this would

have a fund value of around £109,000 at age 60. Mr D could've also used some of these funds to top up his income, if needed.
- Evidently Mr D could have met his income objective and retained a degree of flexibility through his DC scheme if he remained in the DB scheme.
- Mr D was concerned about death benefits for his children as he had no savings. But Mr D was relatively young and in good health, so there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement into his old age.
- If Mr D was concerned about leaving a legacy for his children, Prudential ought to have explored insurance instead, which was likely to be cheap to provide given his age, and wouldn't risk his own security in retirement.
- It also noted Mr D had disposable income that he was saving for the benefit of his children – Prudential could've advised him to redirect those savings to his DC scheme, where he could nominate his children to benefit from the fund on his death.
- Mr D's desire for control over his pension was overstated, he was an inexperienced investor and would be reliant on professional advice going forwards.
- Mr D may have legitimately held concerns about his employer and the PPF, but it was Prudential's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mr D with guaranteed income and TFC, and if he retired early, the benefits available to him may have exceeded those under the BSPS2. Mr D could still achieve his retirement objectives even if his DB scheme moved to the PPF.

Overall, I can't see persuasive reasons why it was clearly in Mr D's best interest to give up his DB benefits and transfer them to a personal pension. So, I'm upholding the complaint.

Putting things right

I'll focus in this decision on how to put things right for Mr D as no agreement could be reached.

The aim is to put Mr D back in the financial position he would have been in at retirement had he remained in the DB scheme. Prudential carried out a calculation using a specific BSPS calculator provided by the FCA which is what I would expect them to do in the circumstances.

The calculator uses economic and demographic assumptions to calculate how much a consumer needs in their pension arrangement to secure equivalent BSPS retirement benefits that they would have been entitled to under either the BSPS2 or the PPF (as uplifted to reflect the subsequent buy-out), had they not transferred out.

If the calculation shows there is not enough money in the consumer's pension arrangement to match the BSPS benefits they would have received, 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.

The BSPS calculator has been developed by actuaries and is programmed by the FCA with benefit structures of the BSPS, BSPS2 and PPF (including the impact of the subsequent buy-out) and relevant economic and demographic assumptions which are updated regularly. This information can't be changed by firms.

The calculator also 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 have checked the inputs that were entered by Prudential which are personal to Mr D. These include Mr D's personal details, his individual benefits from the BSPS at the date he left the scheme and the value of his personal pension. The calculation also assumes that if he had not been advised to transfer his benefits from the BSPS, he would have moved to the BSPS2 and that he would have taken his DB benefits at age 65.

Overall, based on what I've seen, the calculation has been carried out appropriately and 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 D's case shows that there is no shortfall to his pension and that he has sufficient funds to be able to replicate his DB benefits in retirement. So, I'm satisfied that Mr D has not suffered a financial loss by transferring his pension.

I recognise that Mr D has concerns about the calculation carried out by Prudential – he says it has calculated that he only needs £362,474.22 in his pension now in order to replicate his BSPS2 benefits at retirement. But he says this is less than the amount he was offered to transfer out of the BSPS over five years ago. He believes the amount should have increased, not decreased, so doubts the veracity of the figures.

I can see why Mr D would question this. But the transfer value offered to Mr D by the scheme trustees in 2017 was based on economic factors and financial assumptions at that time. Annuity rates and the financial assumptions used in the redress calculation have changed significantly over the last 12 months, which explains why the cost of replacing Mr D's benefits at retirement has reduced.

I appreciate Mr D's concern that market conditions could become less favourable in the future, and that when he comes to retire he may not have enough in his pension fund to replace his benefits. But the regulator has set out what it considers the appropriate method of compensation to be in instances of unsuitable pension transfer advice and is also based on the approach a court would take in similar cases. I'm satisfied the regulator's redress method puts Mr D back, as far as possible, into the position he would have been in had he not transferred his BSPS benefits.

Overall, I think the calculation carried out by Prudential is appropriate in the circumstances and no redress for financial losses is due to Mr D. However, I do think Prudential should pay Mr D £300 compensation for the distress and inconvenience this matter has caused him. While the loss assessment has determined that Mr D hasn't been financially disadvantaged by the unsuitable advice, I accept that it has caused him a lot of worry whilst the matter remained unresolved.

My final decision

I uphold this complaint and require The Prudential Assurance Company Limited to pay Mr D a sum of £300 for the distress and inconvenience he says this matter has caused him.

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

Hannah Wise
Ombudsman