

The complaint

Mr F complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a type of personal pension plan, in 2017.

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

What happened

In March 2016, Mr F's former 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 F's employer would be set up – the BSPS2.

In October 2017, members of the BSPS were 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 F was concerned about what some of the early announcements by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to PrisWM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr F had accrued around 31 years of pension benefits with the BSPS. He was 51 years old. Although single, he was due to marry his fiancée shortly.
- He owned a home worth £160,000 mortgage free. He also had £108,000 in savings and investments. He had no debts.
- Mr F earned around up to £39,000 per year in the steel industry. After all his monthly household expenses were used, he had a reasonable disposable income left over.
- The cash equivalent transfer value (CETV) of Mr F's BSPS was approximately £471,644. The normal retirement age (NRA) was 65. Mr F had told the adviser he'd like to semi-retire earlier than this, if possible, around the age of 55.
- Mr F had joined the new defined contribution (DC) TATA Steel pension as a consequence of the BSPS closing to ongoing contributions.

PrisWM set out its advice in a suitability report on 30 November 2017. In this it advised Mr F to transfer out of the BPS and invest the funds in a type of personal pension plan. Mr F accepted this advice and so transferred out. In 2021 Mr F complained to PrisWM about its advice, saying he shouldn't have been advised to transfer out to a personal pension but PrisWM didn't uphold his complaint.

Mr F then referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. PrisWM still didn't agree. And as the complaint couldn't be resolved informally, it came to me for a final decision.

However, PrisWM has since agreed to accept the investigator's view. It has also agreed to carry out a loss calculation in line with the approach we've been asking businesses to use when complaints of this nature are being upheld. This involves the use of a specific FCA calculator to determine whether or not there has been any loss incurred by Mr F - and if so, how much. So, a few weeks ago we asked Mr F to provide details of his current pension value and some associated information so that PrisWM can go ahead and do this calculation. At the time of writing, I've seen nothing showing that Mr F or his representative have provided this information.

I've considered all the circumstances with care and come to the view that the parties have had sufficient time to attempt to resolve the complaint. I'm therefore going to issue a final decision, but because PrisWM has accepted the investigator's uphold view, I don't see the need to address the suitability of PrisWM's advice to Mr F in the same extensive and close detail as I would normally. However, to be clear, I fully agree with the investigator's view that the advice to transfer was unsuitable, and I do so broadly using the same rationale..

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 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 PrisWM'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, PrisWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr F's best interests.

Having considered all the information in this case, I'm upholding Mr F's complaint.

PrisWM's transfer advice was unsuitable for the following reasons:

- For the age of 65 which in this case was the NRA, the critical yield, which is the investment return required to replicate the benefits available to him through the BPS2, was 5.4% (if taking a pension with a tax-free lump sum). For an early retirement at the age of 55 the respective critical yield was demonstrably higher, at 24.6%. Conversely, the discount rates for the above scenarios were only 4.1% and 2.8% respectively (for just over 13 years or 3 years to retirement). So, I think this was already showing that by transferring away from the DB scheme, Mr F was unlikely to be able to grow his pension to a degree which made transferring financially viable.
- I've 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%. But I've also considered the higher costs associated with a personal pension and that Mr F probably required on-going support and management from a professional adviser. Everything I've seen shows – that when viewed from the time of advice in 2017 - he would likely receive lower pension benefits in the longer term as a result of transferring away from the DB scheme.
- I've noted too, that PrisWM's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, the estimated fund required at Mr F's NRA was £764,886. At the age of 55 it was even higher, at £822,091. Because these are far above Mr F's CETV, they represent, in my view, a revealing window into the real value of the guaranteed pension Mr F could be giving up by transferring away to a personal plan, rather than the similar DB scheme (BPS2) that was on offer here.
- Elsewhere in its transfer analysis, PrisWM also made mention of the PPF, which it described as a compensation scheme providing a "safety net" for pension schemes when the sponsoring employer becomes insolvent. The critical yields to match the benefits available through the PPF were lower. But these yields related to the reduced benefits available with the PPF and PrisWM itself says Mr F wouldn't have wanted to transfer to this scheme.
- PrisWM said part of the reasons for transferring to a personal pension plan was that Mr F wanted to access the tax-free element of his pension to buy a property. But I agree with our investigator that there was no evidence this was anything other than aspirational thinking as there was no real mature plan. He was still only 51 and below the age at which he could access these funds. No property had been identified and there were no specific details discussed about the overall cost or how it could be funded. I've also noted that Mr F already had significant financial resources comprising of 100% property equity in his existing home and a six-figure amount of savings invested in various products. There also seemed plenty of capacity to fund a future purchase of a home in the normal way, particularly given interest rates at the time were historically low, and had been low for some time.
- I think PrisWM also implied that the tax-free element would be higher in a personal pension. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values

and benefits of the two schemes are calculated differently. But PrisWM should have been telling Mr F at the time that extra tax-free lump sums being removed from a personal pension, potentially in his mid-50s in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

- I've seen nothing that showed Mr F required changing how his retirement benefits ought to be paid. He'd said he was only thinking about semi-retirement at 55, rather than full retirement. And this was still a few years away. In any event, he appeared to have a very significant amount of disposable income, so even if he semi-retired in a few years I think his resources would have easily met the requirements he said he had for a retirement income of £21,000 per year, without giving up his DB scheme. His fiancée was also 14 years younger than Mr F and so her financial resources would have contributed significantly to this goal.
- Mr F also already had a new and more flexible DC pension with his existing job as a consequence of the old BPS scheme being closed to new contributions. I think it's easy to completely discount this pension in the light of his BPS amount being quite large. But there was already £10,000 in here and this DC pension was being significantly contributed towards by both Mr F and also his employer. And as I've said, Mr F did seem to have the capacity to raise his contribution levels over the next 3 – 13 years depending on when he eventually stopped working completely. There's no real evidence this would have stopped at 55. So, there's no reason why by retirement this DC pension couldn't have contained a meaningful sum. It would have significantly contributed towards any flexibility he might have needed in the years ahead.
- I've also seen no evidence that Mr F had the true desire to exercise control over his funds. He had some degree of financial knowledge, but I think he would have found the complexity, scale and responsibility of managing over £471,000 of transferred funds to be onerous in the years ahead. What I've seen tends to show Mr F would have required ongoing financial advice and support, all of which would cost him money which his DB scheme option in BPS2 didn't require from him.
- Death benefits - the BPS2 contained certain benefits payable to a spouse if Mr F died. Mr F was due to be married soon, so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BPS2 would have been useful to his current fiancée if he predeceased her after their marriage. I don't think PrisWM 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 personal pension was.

I think the adviser told Mr F that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone that he nominated. So the lump sum death benefits on offer through a personal pension were probably made to look like an attractive feature to Mr F. But this needed carefully explaining. Whilst I appreciate death benefits are important to consumers, and Mr F might have thought it was a good idea to transfer the BPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. Mr F was still only 51 and was in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr F had lived a long life there could be nothing left at all in his personal pension plan. It also doesn't appear that PrisWM took into account the fact that Mr F could have nominated a beneficiary of any funds remaining in his other (TATA) DC

scheme. So, to this end, Mr F already had options ensuring part of his pension wouldn't 'die with him'.

- It's clear that Mr F, like many employees of his company, was concerned about his pension. However, even if there was a chance the BSPS2 wouldn't go ahead, I think that PrisWM should have reassured Mr F that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr F through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out. 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 PrisWM's recommendation to Mr F to transfer out of the DB scheme altogether.

Summary

I don't think the advice given to Mr F was suitable.

He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension, the evidence shows Mr F was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think PrisWM ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr F's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. On this basis, I think PrisWM should have advised Mr F to opt into the BSPS2.

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

Putting things right

A fair and reasonable outcome would be for the business to put Mr F, as far as possible, into the position he would now be in but for PrisWM's unsuitable advice. I consider Mr F would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. PrisWM should use the benefits offered by BSPS2 for comparison purposes.

PrisWM must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:

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

PrisWM should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr F and our Service upon completion of the calculation.

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

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

- calculate and offer Mr F redress as a cash lump sum payment,
- explain to Mr F before starting the redress calculation that:
 - the 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 the redress prudently is to use it to augment the DC pension
- offer to calculate how much of any redress Mr F receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr F accepts PrisWM's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr F for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr F's end of year tax position.

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

Our investigator recommended that PrisWM should pay Mr F for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr F in his particular circumstances. This pension at the time represented most of his retirement provision and it was a large amount. In his situation I think the thought of losing material benefits would have impacted upon Mr F. So I agree the recommended payment of £200 for distress and inconvenience. PrisWM should pay Mr F this amount in addition to the redress I've set out above.

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 am upholding this complaint and I now direct PrisWM Limited to pay Mr F the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that PrisWM Limited pays Mr F the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr F.

If Mr F accepts my final decision, the money award becomes binding on PrisWM Limited.

My recommendation would not be binding. Further, it's unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F 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 F to accept or reject my decision before 9 November 2023.

Michael Campbell
Ombudsman