DRN-3319742

The complaint

Mrs R complains about the suitability of the advice provided by PrisWM Limited ("PWM") in November 2017 to transfer the value of her safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a self-invested personal pension ("SIPP").

Mrs R is represented in this complaint by a law firm ("Representative").

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which was provided to both the Representative and PWM. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mrs R's employer, Tata Steel UK Ltd ("Tata Steel"), 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 safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefits ("DB") pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mrs R, under the *'Time to Choose'* exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a SIPP.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF.

The details of Mrs R's safeguarded benefits in the BSPS were as follows:

- She had accrued 23 years and 6 months' qualifying service between November 1992 and May 2016;

- The scheme pension provided was a safeguarded benefit defined by reference to her final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in May 2016, her annual scheme pension was £11,484;

- The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount;

- The revaluation and escalation rates were guaranteed in line with the BSPS rules;

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at 55 and a 18% reduction at 60;

- On death before retirement, a refund of contributions of £38,127 plus interest at 3% per year compound and a 50% spouse's pension would be provided – after retirement, a potential lump sum equivalent to her remaining annual pension between the date of death and five years' after the date of retirement and a 50% spouse's pension thereafter calculated as if no tax-free cash was taken by Mrs R at retirement;

- The provision of a dependant's allowance for any qualifying dependants calculated as five sixths of the spouse's pension with this amount being shared between dependants; and

- The cash equivalent transfer value of her safeguarded benefits was £322,018.76

Mrs R was concerned about what the announcement by Tata Steel meant for the security of her preserved benefits in the BSPS. She approached PWM for advice and met one of its advisers in October 2017 for a meeting. A fact find and attitude to risk questionnaire were completed which recorded the following information about Mrs R and her family:

- She and her husband were both 42 and had three financially dependent children aged between 5 and 11;
- She was in good health but was concerned about her future health as auto immune disease ran through the female side of her family;
- She was employed by Tata Steel on a gross annual salary of about £30,000;
- She didn't have any savings or investments and would rely on help from her father if money was needed in an emergency;
- Her liabilities comprised a mortgage on the marital home which was on course to be repaid in five years' time at about age 47;
- The household income exceeded the monthly household expenditure;
- She planned to retire at 57, although this could change. Her State pension age was 67;
- Her husband was employed in the public sector and was due retire from his role at 55;
- She was a member of a defined contribution ("DC") pension scheme through her employment with Tata Steel – her plan was then valued at about £11,000; and
- Her risk profile was determined to be 7 on a scale of 1 to 10, where 1 was lowest risk and 10 highest risk. The rating of 7 was described as 'Highest Medium' risk.

PWM recorded that Mrs R had several objectives and needs, summarised as follows:

- **Control:** She was concerned about the financial security of the BSPS and the prospect that the value of her benefits could be reduced in the future following a transfer to either the BSPS2 or PPF. As a result, she wanted to transfer away from the BSPS as soon as possible to remove the risk of reduced benefits;

- **Flexibility:** She wanted the ability to draw benefits flexibly from 57 onwards so that she could choose when and how to take these. She didn't want her pension income to be paid on a prescribed basis by either the BSPS2 or PPF and spread out over her lifetime, preferring the ability to take flexible income and lump sums in the early years of retirement to provide luxuries items and reduce withdrawals once her State pension started. It was noted that her husband was a member of a public sector pension scheme and was projected to receive a tax-free lump sum of about £96,000 and annual pension income of about £20,000 from 55 which would cover their expected living costs in retirement of £1,900 per month net, meaning that she could relinquish the guarantees attached to her safeguarded benefits;

- **Death benefits:** She wanted to maximise the level of death benefits payable to her family in the event of her early death and to provide them with flexibility in how they would be paid. She wasn't interested in the prescribed death benefits offered by either the BSPS2 or PPF, especially since she was concerned about her future health.

In November 2017, PWM issued its suitability report recommending that Mrs R transfer the value of her safeguarded benefits in the BSPS to a SIPP and invest it to align with her 'Highest Medium' risk profile to provide long term capital growth, as follows:

- 48.5% Premier Multi Asset Global Growth C Acc
- 48.5% Vanguard Lifestrategy100% Equity Acc
- 3% cash

PWM stated that its recommended asset allocation led to an average risk score of 7 out of 10. The costs associated with its recommendation were set out in the suitability report. These were deducted from Mrs R's SIPP, summarised as follows:

Initial charges

- £5,000 – initial adviser charge payable to PWM. This was for the provision of the suitability report and implementation of the pension transfer.

Ongoing annual charges based on SIPP fund value

- 0.75% adviser charge – payable to PWM to provide ongoing advice to Mrs R which was estimated to be £2,377.64 in the first year
- 0.25% product charge – payable to SIPP product provider
- 1.81% investment charge – Premier Multi Asset Global Growth fund, pro-rated based on proportion of SIPP invested in this fund
- 0.22% investment charge – Vanguard Life strategy 100% Equity fund, pro-rated based on proportion of SIPP invested in this fund

This complaint

In 2020, the Representative, on behalf of Mrs R, complained to PWM about the suitability of its pension transfer advice. PWM didn't uphold this complaint and so the Representative referred it to this service.

One of our investigators considered this complaint and recommended that it be upheld. This was because he thought that PWM's recommendation to transfer wasn't in Mrs R's best interests and was therefore unsuitable. To put things right, our investigator recommended that PWM carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9:*

Guidance for firms on how to calculate redress for unsuitable DB pension transfers' on the basis that Mrs R opted for the BSPS2 and would be a 20% income tax payer in retirement. In addition, he recommended that PWM pay Mrs R £200 compensation for the trouble and upset caused by its unsuitable recommendation.

Mrs R accepted our investigator's assessment and recommended remedy. PWM didn't accept the outcome and provided additional comments in response and requested that the matter be referred to an ombudsman for review.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked the Representative to confirm with Mrs R that in the event this complaint is ultimately upheld, whether she preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told the Representative that if we didn't receive an answer that we'll assume Mrs R would prefer redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'.* As at the date of this final decision, the Representative didn't confirm which option Mrs R preferred.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the Representative on behalf of Mrs R and PWM. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The FCA's suitability rules and guidance

PWM was authorised and regulated by the FCA at the time it provided the recommendation to Mrs R. This meant that when it advised her it was required to adhere to the suitability rules and guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook. In assessing the suitability of PWM's recommendation, it's necessary for me to have due regard to these rules and guidance.

Primarily, PWM was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mrs R. The suitability rules and guidance that applied when PWM provided its recommendation to Mrs R were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a "fact find" process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mrs R's case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *"A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm's comparison and its advice."*

Under the heading "Suitability", COBS 19.1.6G set out the following:

> *"When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can **clearly demonstrate, on contemporary evidence**, that the transfer, conversion or opt-out is in the client's best interests." [my emphasis added]*

COBS 19.1.7G also stated:

> *"When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client's attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up."*

And COBS 19.1.8G stated that:

> *"When a firm prepares a suitability report it should include:*
>
> *(1) a summary of the advantages and disadvantages of its personal recommendation;*
>
> *(2) an analysis of the financial implications (if the recommendation is to opt-out); and*
>
> *(3) a summary of any other material information."*

Businesses are required to adhere to these rules and guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

Mrs R's situation

The situation for Mrs R wasn't normal because the existing DB scheme, the BSPS, was closing. So she was essentially forced to transfer the value of her safeguarded benefits to a new scheme. She had three options:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a SIPP.

Options 1 and 2 would've enabled Mrs R to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. There were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mrs R, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date when needs could be determined with greater accuracy than at 42 – the PPF didn't offer these additional features.

So while the situation was somewhat unusual, Mrs R still had the option to retain guaranteed benefits in either the PPF or BSPS2. Due to her age and circumstances, it's my view Mrs R would've been better off choosing the BSPS2 instead of the PPF based on what was known at that time. Given the FCA's view on safeguarded benefits, it's my fair and reasonable opinion that PWM should've started its advice process by assuming the BSPS2 was suitable for Mrs R and to only recommend a transfer to the SIPP if it could clearly demonstrate it was in her best interests.

Was PWM's recommendation suitable?

The transfer value analysis system ("TVAS") rules applied at the time PWM advised Mrs R. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the pension payable by the DB pension scheme.

PWM calculated the following critical yield figures:

	At age 57 based on a full pension	At age 57 based on a reduced pension and maximum tax-free cash	At age 65 based on a full pension	At age 65 based on a reduced pension and maximum tax-free cash
BSPS	9.5%	8.0%	6.7%	5.7%
PPF	6.8%	6.6%	4.7%	4.5%

The critical yield figures for the BSPS2 weren't calculated. But it was known at the time PWM advised Mrs R that the BSPS2 would pay a higher level of benefits than the PPF but lower than the BSPS, so the critical yield figures for the BSPS2 likely fell somewhere in between the figures above assuming the same transfer value was offered by the BSPS2.

PWM's recommendation to Mrs was provided to her after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* 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 on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 is 4.5% based on Mrs R taking benefits at the BSPS normal retirement age of 65, and 4.2% based on her taking benefits at 57. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate.

PWM recorded that Mrs R wanted to take benefits from 57. In my view, the discount rate and FCA projection rates imply that the financial viability of the pension transfer required Mrs R to accept a high-risk investment approach to provide the potential for the sort of investment returns required over the investment timeframe to age 57. But that would only come with accepting the risk of significant investment loss. This is because the relationship between risk and reward is closely related.

I note that Mrs R was recorded as having a 'Highest Medium' risk profile. The evidence I've seen indicates that she had very limited investment knowledge and experience before this pension transfer. At the time of PWM's advice, she had no existing savings or investments other than her Tata Steel DC pension plan which was then valued at about £11,000 and invested in a fund which could be described as having a low to medium risk profile. There's no evidence that Mrs R had experience of investing significant sums of money. This doesn't necessarily mean that it was unsuitable for her to invest the value of her safeguarded benefits on a higher risk basis as recommended by PWM, but it does concern me whether it was appropriate for an individual in Mrs R's circumstances to take on the significant risks associated with the transaction. Given the critical yields applicable in this case, I think that there was limited scope for the SIPP to provide benefits that matched the relinquished benefits, let alone exceed them.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this.

Control of pension benefits

PWM recorded that Mrs R was concerned about the financial security of the BSPS and the prospect that the value of her benefits could be reduced in the future or transferred to the PPF. As a result, she wanted to transfer away from the BSPS as soon as possible to remove the risk of reduced benefits and to have control over her safeguarded benefits.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on her age on transfer to the PPF, Mrs R could expect to receive a minimum of 90% of her scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended SIPP where there's no promise of a minimum level of benefits payable. In its 2016/17 annual report, publicly available at the time of PWM's recommendation, the PPF stated that its overall financial position as at 31 March 2017 remained robust, with an increase in its surplus funds to £6.1bn. There wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

Had PWM advised Mrs R to transfer to the BSPS2 she would've maintained safeguarded benefits and retained the option to transfer to a SIPP at a later date, if then deemed suitable, when she could immediately access benefits and, crucially, determine her retirement income and lump sum needs with greater accuracy than at 42. I think this is a key point.

A transfer to the BSPS2 would've also removed any immediate concerns Mrs R had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a private pension plan before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mrs R or that there was an urgency to transfer to a SIPP at that time to avoid a transfer to the PPF. In my view, Mrs R was reliant on PWM to provide a fair and balanced assessment of the BSPS2 and PPF and to act in her best interests in this regard. This ought to have involved discussing with Mrs R the features, risks and benefits of those alternative options and allaying her misapprehensions.

If Mrs R was apparently concerned about her safeguarded benefits being transferred to the PPF which would result in her losing 10% of her scheme pension, then I question why she would accept the risk of transferring to a SIPP which exposed her to unlimited downside risks where the loss could be significantly greater than 10%. It seems odd to me that Mrs R wasn't prepared to accept the potential 10% reduction of her benefits under the PPF yet was apparently content to accept the unlimited downside risks with investing the value of her safeguarded benefits on a higher risk basis over a substantial investment time horizon as recommended by PWM. That simply doesn't make sense to me and suggests that she didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. She was relying on PWM to provide expert advice on this point, but I think it failed to do this. It's therefore my view that PWM failed to adequately allay Mrs R's misapprehensions and that she therefore made the decision to transfer from an uninformed position regarding the BSPS2 and PPF.

Flexibility of pension benefits

PWM calculated the estimated revalued benefits payable by the BSPS as follows:

Scheme	At age 57 based on a reduced pension and maximum tax-free cash	At age 65 based on a reduced pension and maximum tax-free cash
BSPS	£10,947 annual pension plus tax-free cash of £72,981	£14,021 annual pension plus tax-free cash of £93,473

The figures for the BSPS2 would've been lower than illustrated above but I think this provides a very rough indication of the level of benefits that could've been payable to Mrs R at 57 or 65 had she retained her safeguarded benefits.

PWM recorded that Mrs R wanted the ability to draw benefits flexibly from 57 onwards to provide luxuries such as holidays and other items such as a recreational vehicle that could cost about £40,000. A key component of this objective was linked to Mrs R's husband being a member of a public sector pension scheme and expecting to receive a tax-free lump sum of about £96,000 and annual pension income of about £20,000 from 55 which was expected to cover their estimated living costs in retirement of £1,900 per month net, meaning that she could relinquish her safeguarded benefits to obtain the flexibility she desired.

Mrs R had accrued 23 years and 6 months' qualifying service in the BSPS. So I think it's fair to say that when the time came to retire that she'd be heavily reliant on the value of these benefits to fund any capital or income needs in retirement. I think it's clear that Mrs R was attracted to a flexible arrangement. However, she was 42 at the time and so 15 years away from taking benefits at her preferred retirement age of 57. It was noted that she wanted to retire at 57 but that things could change, meaning she could retire at a later date. So I think it's fair to say that there was some uncertainty – at age 42 – regarding exactly when she would retire. And I think it would've also been difficult to predict with any reasonable degree of certainty what her expected living costs would be 15 years in the future. So I'm not convinced it was reasonable for PWM to conclude that Mrs R wouldn't be reliant on the value her safeguarded benefits to meet her income needs in retirement.

While I don't doubt Mrs R would've liked the flexibility to draw any level of benefit she wanted from 57 onwards, plans can change over such a long period of time. In my view, there were alternative options available to Mrs R which would've provided access to capital to provide luxuries such as holidays and other items, meaning that she didn't need to relinquish her safeguarded benefits. I'll explain why:

- At the time of the advice, PWM recorded that household bills were adequately covered by her husband's employed income and that her income was essentially surplus to their needs – in my view, this surplus income could've been reinvested over the 15 year timeframe to 57 to build up funds for future use for when Mrs R came to retire;

- Mrs R's mortgage was on course to be repaid in five years' time at age 47, meaning that the £800 monthly repayments being paid at that time would be free to be reinvested over the 10 year timeframe to 57 to build up additional funds for retirement;

- Mrs R was 42 and an active member of the Tata Steel DC pension scheme and had been since June 2016. I cannot see in the contemporaneous evidence what Mrs R's plans were for her future employment. But while she remained employed by Tata Steel she was building up additional pension benefits in the DC scheme. And in the event she left the employment of Tata Steel, I think it's likely that she'd find alternative employment, albeit perhaps outside of the steel industry, and, with the legal requirements of auto-enrolment, would build up additional DC benefits elsewhere over the period until she retired. So I think it's fair to say that over the 15 year timeframe to age 57 that she'd build up a significant DC benefits from which she could draw flexible benefits; and

- Her husband was expecting to retire from his public sector job at 55 and receive a tax-free lump sum of about £96,000 which could've been used to meet any capital needs to cover the cost of luxury items.

Utilising these alternative options would've enabled Mrs R to maintain her safeguarded benefits. And it probably would've enabled her to delay drawing those benefits until 65 thereby reducing the impact of an early retirement reduction. But I can't see that any such alternative options were properly explored in a meaningful way and discounted by PWM.

In response to this complaint PWM stated that Mrs R envisaged using her safeguarded benefits flexibly to withdraw amounts as and when she needed it, potentially using it alongside a part-time job, when she was able to access it, or for luxuries throughout retirement. If that was the case then I don't think a decision to transfer ought to have been made at that time. The transaction resulted in all the investment, inflation and longevity risk being transferred from the DB scheme to Mrs R but she couldn't access any benefits until at least 55. So I cannot see that there was any compelling reason to transfer at that time.

In conclusion, while I understand Mrs R's reasons and motivations for flexible benefits, I don't think it was in her best interests to relinquish her safeguarded benefits at that time to achieve her capital lump sum objectives at least 15 years in the future. I don't think the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2, and I'm satisfied that Mrs R's capital and income needs likely could've been met by a blended and well-planned access to her different types of accrued benefits by the time she came to retirement, as I've noted above. The available evidence simply doesn't support the position as to why control or flexibility would've been sufficiently compelling reasons for Mrs R to relinquish valuable benefit guarantees – especially at 42.

Death benefits

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 recommended SIPP offered flexible death benefits – nominated beneficiaries could choose to convert the fund value to secure a lifetime annuity, death lump sum or income drawdown or any combination of these. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the SIPP and for the period until Mrs R could draw any benefits from 55 onwards, the death benefits available would be significant (subject to investment performance) due to the simple fact she couldn't access and deplete the fund value for at least 13 years.

Mrs R was recorded as being in good health. So she could expect life expectancy into her late 70s or early 80s. I acknowledge that she was concerned about her future health as auto immune disease ran through the female side of her family. And because of this she believed that she wouldn't be well enough to enjoy retirement beyond 70 and so wanted to spend more money in the early years of retirement. But it doesn't seem that there were any immediate concerns regarding her health.

The value of Mrs R's safeguarded benefits represented the backbone of her retirement provision built up by that time. It was recorded that she didn't view her preserved benefits as important and instead intended to use the transfer value to provide luxuries such as holidays and other items. But withdrawing money from the SIPP to meet these needs in the early years of retirement would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.
The BSPS2 provided valuable guarantees. Mrs R's husband would've received a guaranteed spouse's pension for life which would increase in payment and would've been valuable if Mrs R predeceased him as well as a dependant's pension for their children. And I note that through her employment, Mrs R had generous death in service life cover. In addition, the value of her Tata Steel DC plan would be paid as a lump sum to her nominated beneficiary(ies). So her family would receive guaranteed and flexible benefits if she died.

In any event, while I appreciate death benefits are important to consumers, the priority here was to advise Mrs R about what was best for her own retirement provisions. A pension is primarily designed to provide income in retirement. So I don't think death benefits paid in a different format justified a pension transfer at that time given that Mrs R didn't have any immediate health concerns.

If properly informed, would Mrs R have transferred anyway?

Based on the evidence I've seen, I'm not persuaded that a pension transfer was in Mrs R's best interests and that PWM's recommendation could therefore be regarded as suitable in the circumstances. So I think it's fair and reasonable to uphold this complaint.

In potential mitigation of PWM's advice, I've also thought about whether Mrs R, if placed in a fully informed position, would nevertheless have decided to transfer the value of her safeguarded benefits to a SIPP. This was a complex transaction involving many factors which Mrs R, as a layperson, wouldn't have been familiar. It's my view that she was heavily reliant on PWM, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice. Given Mrs R's reliance on PWM to provide expert advice, I think it's unlikely, on balance, she would've transferred against its advice had it advised her to opt for the BSPS2.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs R, as far as possible, into the position she would now be in but for the unsuitable advice she was given. My view is aligned with that of our investigator in that, had Mrs R been properly advised, she would've opted for the BSPS2 rather than the PPF. I'll explain why.

There were differences between the BSPS2 and PPF. These differences meant that the PPF was likely the better option for unmarried, deferred members who expected to retire early or take the maximum tax-free cash available even allowing for the 10% reduction in the starting entitlement. But the BSPS2 was likely the better option for married pensioners and deferred members who expected to draw benefits at or close to the scheme normal retirement age of 65. For the reasons set out above, I think it's likely that, properly advised, Mrs R would've envisaged accessing her Tata Steel DC plan (or other DC plan savings if she worked for another employer) and relying on her husband's pension income or a combination of both in the first instance to make up any income shortfall before starting to take her safeguarded benefits at 65. In terms of death benefits, under the BPSP2 the spouse's pension would be set at 50% of her pension at the date of death, and this would be calculated as if no tax-free cash was taken at retirement. And so it's the benefits offered by the BSPS2 which should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mrs R takes benefits at the scheme normal retirement age of 65.

FCA consultation

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**.**

In this consultation, the FCA stated that it considers the current redress methodology in Finalised Guidance (FG) 17/9 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance – https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has stated that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while 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 the Representative to confirm with Mrs R whether she preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and rules to be published. She didn't make a choice. So, as set out previously, I've assumed in this case she doesn't want to wait for any new guidance. I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mrs R.

PWM must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it 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 this final decision and using the most recent financial assumptions at the date of this decision. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs R's acceptance of this final decision.

PWM may wish to contact the Department for Work and Pensions ("DWP") to obtain Mrs R'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 BSPS on Mrs R's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs R's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the SIPP isn't possible or has protection or allowance implications, it should be paid directly to Mrs R 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've been taken as tax-free cash and 75% would've been taxed according to her likely income tax rate in retirement – presumed to be 20%, as previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

If this complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect PWM to carry out a calculation in line with the updated rules and/or guidance in any event.

In addition, PWM should pay Mrs R £200 for the distress and inconvenience this matter has caused her.

The compensation amount must, where possible, be paid to Mrs R within 90 days of the date PWM receives notification of her acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes PWM to pay Mrs R.

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. 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 uphold this complaint and require PrisWM Limited to pay Mrs R 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 PrisWM Limited to pay Mrs R any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require PrisWM Limited to pay Mrs R any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that PrisWM Limited pays Mrs R the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs R. If Mrs R accepts this final decision, the money award becomes binding on PrisWM Limited. My recommendation would not be binding. Further, it’s unlikely that Mrs R can accept my final decision and go to court to ask for the balance. Mrs R may want to consider getting independent legal advice before deciding whether to accept this final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs R to accept or reject my decision before 30 December 2022.

Clint Penfold
Ombudsman