DRN-4628147

The complaint

Mr W complains about the outcome of the review carried out by The Prudential Assurance Company Limited ("Prudential") in connection with the FCA's consumer redress scheme for the British Steel Pension Scheme ("BSPS") – to make my findings easier to follow, I'll refer to this as the "redress scheme".

What happened

The sequence of events isn't in dispute, so I've only set out a brief summary of what happened.

Mr W had built up 23 years and 9 months' pensionable service in the BSPS between June 1993 and March 2017. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. At the date of leaving the BSPS, his annual pension was £11,959.56. It would be revalued annually until the scheme normal retirement age of 65.

In November 2017, the BSPS issued a transfer value of £290,350.57 to Mr W – this was the capitalised value of his DB pension if he transferred his entitlement to another pension arrangement. He sought advice from Prudential on his options. Prudential recorded information about Mr W and his wife, Mrs W, summarised as follows:

- Mr W was aged 56. Mrs W was aged 55. They were both in good health. They had two adult children who weren't financially dependent on them;

- Mr W was employed by British Steel and paid gross annual income of about £35,000. His pension provision comprised the following: (1) entitlement to a full state pension from age 67; (2) his preserved DB pension in the BSPS; (3) a PPP provided by Prudential valued at about £23,400; (4) a paid-up B&CE pension valued at about £1,000 and (5) a workplace defined contribution ("DC") plan that he joined in April 2017 – the total annual contribution into his DC plan was 16% of his gross annual income;

- Mrs W was employed as a part-time customer services representative by a local business and paid gross annual income of about £10,200. Her pension provision comprised the following: (1) entitlement to a full state pension from age 67 and (2) a workplace DC plan valued at about £28,500 (details of the ongoing contributions paid into that plan weren't recorded);

- Their assets comprised their main residence valued at £180,000, cash deposits in joint names of £1,500, a stocks and shares ISA in Mr W's name valued at about £23,100 and a stock and shares ISA in Mrs W's name valued at about £31,600;

- Their debt comprised a repayment mortgage of £2,074 (due to be repaid in July 2018), a personal loan of £2,700 (due to be repaid in July 2019) and car finance of £13,500 (due to be repaid in February 2021). This meant there was an expectation that all outstanding debt would be repaid before Mr W's 60th birthday. It was noted that Mr W didn't plan to repay these early since they the repayments were affordable;

- Their monthly outgoings were about £1,800 (or £21,600 per year). After paying for bills and essentials, they had surplus disposable income of around £1,270 available every month (or £15,240 per year). It was noted that this excess was usually saved on deposit and used to fund holidays;

- They both wanted to retire from age 60, if financially able to do so. Mr W planned to remain employed by British Steel until he retired; and

- Mr W had *"Moderate Experience"* of investments. He was assessed as having a *"Low to Medium"* risk profile.

Prudential recorded Mr W's objectives in connection with his DB pension as follows:

- **Death benefits** – He wanted Mrs W to benefit from any unused pension benefits on his death because she had minimal pension benefits in her own right. And then, following her death, for their two children to inherit any unused pension benefits;

- **Ability to retire early** – He wanted to retire from age 60 on a sufficient income to meet his objectives. The joint annual retirement income need from age 60 was around £1,270 (in 2018 terms) increasing in line with inflation. In the event of his earlier death, Mrs W would require annual retirement income of around £1,000;

- **Flexibility and control of benefits** – He wanted to raise an immediate tax-free lump sum of £20,000 to cover the cost of a summer house and wedding gift for one of his children. It was noted that he didn't envisage any further capital requirements in retirement but wanted the flexibility to vary income; and

- **Breaking ties with British Steel** – He was concerned about the financial difficulties experienced by British Steel and the negative impact this could potentially have on his DB pension in the future**.** So he wanted to sever ties with British Steel and secure the transfer value of £290,350.57.

On 1 February 2018, Prudential issued a suitability report to Mr W in which it advised him to transfer the value of his DB pension to a new PPP to enable him to meet his recorded objectives. The transfer to the PPP was completed shortly afterwards and invested in a fund to align with Mr W's *"Low to Medium"* risk profile. Prudential's initial advice charge was £8,100. The ongoing annual charges based on the PPP fund value were: 0.35% pa product charge and 0.50% pa for ongoing advice.

The redress scheme

In November 2022, the FCA announced its final rules (set out in PS22/14) for the redress scheme after it had identified that many former members of the BSPS were given the wrong advice to transfer away from the scheme. The redress scheme started in February 2023. The rules for the redress scheme require firms to identify scheme cases following certain criteria. Once identified, firms need to review the advice they gave to former BSPS members in these cases – and then tell them if the advice was suitable or not. As part of the review process, firms are required to use the FCA's BSPS Defined Benefit Advice Assessment Tool ("DBAAT"). The review can lead to one of two outcomes:

- The advice is rated as "suitable" and the case is closed; or

- The advice is rated as “unsuitable” – if so, the case progresses to a calculation and the payment of redress if it’s shown the consumer suffered a financial loss.

If the consumer disagrees with the outcome, they can ask the Financial Ombudsman Service (“FOS”) to look at whether the review was carried out correctly in line with the redress scheme rules.

Prudential’s review of the advice it gave Mr W

In September 2023, Prudential completed its review of the advice it gave Mr W to transfer out of the BSPS. This initially generated a suggested suitability rating of “potentially unsuitable” on the basis that the transfer analysis at the time of the advice didn’t support a recommendation to transfer. However, Prudential finalised the rating as “suitable” and closed Mr W’s case.

Prudential confirmed the review outcome to Mr W and told him that it wouldn’t be taking any further action.

FOS’s assessment

Mr W disagreed with Prudential’s assessment of his case. So he referred the matter to FOS.

One of our investigators recommended that this complaint be upheld because he had concerns Prudential hadn’t followed the FCA’s redress scheme rules. He explained the reasons why in his assessment. To put things right, our investigator recommended that Prudential amend the review outcome on Mr W’s case under the redress scheme to “unsuitable” and then go on to calculate and pay any redress due to him in line with the redress scheme rules.

Mr W accepted our investigator’s view. However, Prudential didn’t accept it and provided substantial comments in response. It thought its answers on the DBAAT were correct and supported its view that the advice was suitable. In its view, based on the information available at the time of the advice, Mr W’s objectives couldn’t be met by the successor scheme to the BSPS, the BSPS2 and so a pension transfer was the only viable option. It thought our investigator’s conclusion was unfairly reached with the benefit of hindsight. With reference to the availability of the BSPS2, it stated:

> *"There was significant uncertainty surrounding the BSPS2 scheme at the point the advice was provided, so whilst the Investigator has presented a potential solution which may have met* [Mr W’s] *income needs in retirement, this is based on the benefit of hindsight regarding the BSPS2 scheme, and a set of unproven assumptions regarding his other pension provisions. Whilst we are of the view that this potential solution does now present a suitable way of achieving* [Mr W’s] *objectives, it was not considered to be as viable a solution at the point of advice. It is our view that both the original adviser and assessor have been able to demonstrate that the advice was in* [Mr W’s] *best interests under COBS 19.1.6”.*

Our investigator considered Prudential’s additional comments but wasn’t persuaded to change his view. Since agreement couldn’t be met, this complaint has now been allocated to me to review and decide. This is the last stage of our process.

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 considered all the evidence afresh including Mr W's and Prudential's comments in response to our investigator's assessment. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So 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 BSPS DBAAT

The redress scheme rules are set out in CONRED 4 in the FCA's rulebook.

The FCA's default position (COBS 19.1.6G) requires firms to start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer if it can *clearly* demonstrate it's in their client's best interests. This presumption of unsuitability is referred to within CONRED 4 Annex 21, which covers the instructions for case reviews under the redress scheme. The CONRED rules also refer to COBS 9.2.1R(2), COBS 9.2.2R and COBS 9.2.3R, which are the suitability rules.

As noted above, the redress scheme rules require firms to use the FCA's BSPS DBAAT. In summary, the tool helps firms assess the suitability of pension transfer advice by considering whether, based on the evidence on the consumer's file, any of 12 examples of unsuitability are present. For each example, the firm, in its role as assessor, should simply answer "yes" or "no" to indicate whether or not the example is present considering the consumer's circumstances and FCA guidance at the time of the advice.

If an example is present on the consumer's file it may indicate failure to comply with the FCA's suitability requirements for pension transfer advice. Once all 12 suitability questions are answered, the tool suggests a rating. If one or more examples are present, the tool will suggest that the advice is "potentially unsuitable" and the pension transfer isn't likely to be in the consumer's best interests. If no examples are present, the tool will suggest that the advice is "potentially suitable". But the tool only provides a suggested rating. It's for the assessor to make a final judgment, taking account of the available evidence, whether it considers the advice is suitable or not. In all cases the assessor must explain its reasoning for the final judgment.

Prudential's review of the advice it gave Mr W

In its role as assessor, Prudential answered that one (Example 9) of the 12 examples of unsuitability applied to Mr W's case. This generated a suggested rating of "potentially unsuitable". But Prudential finalised the advice rating as "suitable" based on the following rationale:

> *"Why transfer is suitable*
>
> *Only a transfer can meet client's income needs in isolation. Client required £1,270 per month household income from age 60. Our analysis shows that client would be entitled to an income at age 65 (NRD) of £14,152.66 per annum (£1,179.39 gross per month). This would be even lower if taken earlier, so would still not be sufficient. Cashflow modelling shows good sustainability, with PTS stress test based on client drawing an income to meet his shortfall running to 111 (98 on black swan).*

Transfer will offer access to flexible income/capital. This will allow client to access a capital sum of £20,000 in the short term, whilst not being compelled to commence an income until required from age 60. It will also allow the client to draw an appropriate pension income to meet his changing needs (e.g. higher initial income which reduces and likely ceases altogether post State Pension age). This can also be done using a combination of income and tax free cash to create a tax efficient income stream.

The spouse pension (which equates to 50% of the scheme pension payable to [Mr W] *would not be sufficient to meet* [Mrs W's] *income need of £12,000 per annum should* [Mr W] *predecease her. This would leave* [Mrs W] p*articularly vulnerable should* [Mr W] *die before she reaches State Pension age.*

A transfer would meet client's preference over death benefits of being able to pass on any unused pension to his family on second death, this is a want rather than need; however, modelling shows that transfer can potentially meet income need and legacy want with minimal risk of shortfall, even only factoring in one State Pension.

Why scheme is not suitable

Client will be reliant on income from this pension throughout retirement. Client requires £20,000 now, and £1,270 per month household income from age 60 to meet retirement expenditure. No early retirement scheme quote; however, based on TVAR to NRD of £14,152.66 pa it is very likely that client's retirement income needs would not be met from age 60, until State Pension age. It is almost certain that scheme would not meet his income need in isolation from age 60-67, along with his need/want for capital now.

Attitude to risk

Client assessed as having a low to medium ATR, which is in line with the recommended fund.

Capacity for Loss

Client was still working therefore not reliant on this pension for income so, if it were to fall in value before he retired, it would not affect his standard of living and he would likely leave this invested for the potential of recovering any losses.

Clients were both forecast to reach State Pension age at 67 and based on their National Insurance contributions it was assumed they will be entitled to the basic State Pension of £520 per month. Clients would both like to retire at age 60 and have calculated they will require an income of £1,270 per month at that time as they will be debt free and therefore expect expenses to decrease. For the first 7 years of retirement they will be reliant on drawing an income from the recommended pension to maintain their standard of living which, when State Pensions start, could then be reduced to reflect the additional household income. The retirement modeller showed that taking all of [Mr W's] *pension provision into account, this could provide clients with a fund that would last until they are 111. This does not take into account* [Mr W's] *new workplace scheme or* [Mrs W's] *workplace pension which could be used to fund additional lifestyle spending.*

Clients also have around £54,000 in stocks and shares ISAs which they could use for capital if required in retirement.

On first death they calculated that expenditure would reduce to around £838 per month in retirement. Each client would have access to the recommended pension in this report which, along with their State Pensions and other personal and workplace pension schemes, they are confident will provide them with sufficient income to support them in retirement.

It was concluded that due to other assets and pension provision, the clients had sufficient capacity for loss to absorb all but the most significant of falls in the recommended pension.

Knowledge and investment experience

Clients feel that they have a fairly varied investment experience. Client took out a Prudential Pension in 1987 to provide an income in retirement and this was invested in the smoothed With Profits Fund. Clients have stocks and shares ISAs which they took out in December 2016 on the advice of a close friend who is an IFA to provide them with potential capital growth. The ISA was invested in natural return funds and although these have only been invested for a year, clients have been happy with the returns they have provided but have seen some fluctuation in the value of the fund.

Additional points

CY to NRD unachievable based on net EGR of Prufund 10.40. PPF CY is also unachievable. No CY for age 56 however this would be higher so may not be achievable".

I've reviewed the answers on the completed DBAAT. For largely the same reasons, I agree with our investigator's view that Prudential didn't follow the redress scheme rules when it assessed Mr W's case. In particular, based on the contemporaneous evidence and the redress scheme instructions in CONRED 4 Annex 21, I think Prudential, in its role as assessor, should've answered "yes" to the following examples of unsuitability:

Example 1: The client is, or will be, reliant on income from the comparator scheme

Under this question the assessor is required to consider whether Mr W was, or would be, reliant on the income produced by the comparator scheme (BSPS2).

At the time of the advice, Mr W was aged 56 and Mrs W was aged 55. They were both in good health. They were financially interdependent. Mr W's DB pension, accounting for 23 years and 9 months' pensionable service, represented his (and his wife's) main private retirement provision built up by that time. The capitalised value of his DB pension was £290,350.57. Their other retirement provision built up by that time comprised:

- Their state pensions, payable from age 67; and
- Combined DC plan savings of about £53,000 (but expected to increase by retirement)

In April 2017, Mr W had joined his workplace DC plan into which 16% of his gross annual income of £35,000 was being contributed (about £5,600 pa). The level of contribution would increase in line with increases in Mr W's salary. Given that Mr W wanted to retire from age 60, this meant that about 5 years' worth of contributions totalling around £28,000 would've been invested by that point.

Mr W wanted to retire from age 60 on a sufficient income to meet his objectives. The joint annual retirement income need from age 60 was around £1,270 (in 2018 terms) increasing in line with inflation. In the event of his earlier death, Mrs W would require annual retirement income of around £1,000. I think the forecast income need appeared reasonable in light of their expenditure patterns and plans to pay off liabilities.

In my view, the starting point should've been for Prudential to establish if the stated income need from age 60 could be met by the comparator scheme. In Mr W's case, despite knowing that he wanted to retire early from age 60, Prudential failed to establish the estimated pension payable from that age or obtain an early retirement quote. Rather, Prudential's transfer analysis was based on the BSPS normal retirement age of 65. As a result, it's my view it failed to collect sufficient information to demonstrate that transferring to the PPP was clearly in Mr W's best interests. This wasn't addressed by the assessor when it completed the DBAAT.

According to the TVAS report, the estimated revalued DB pension payable from age 65 was £14,152.66. This would be actuarially reduced if paid earlier than age 65. But the reduction wasn't a penalty. Rather, the reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally.

Based on the above considerations, it's my view that Mr W (and his wife) would be heavily reliant on his DB pension to contribute to their stated income need. Prudential agreed as much in the DBAAT rationale, when it stated, *"Client will be reliant on income from this pension throughout retirement".* So there's no dispute that he would be reliant on the income from the comparator scheme to meet the stated income need. The key question is whether Mr W (and his wife) had the requisite capacity for loss to bear the risks associated with the pension transfer.

Mr W was identified as being a *"Low to Medium"* risk investor with *"Moderate Experience"* of investments. It's not in dispute that the value of his DB pension represented his most valuable asset at the time. This increased the need to ensure that his DB pension wasn't exposed to unnecessary risks before retirement. Given Mr W's age and income at that time, I think it's fair to say that he had limited ability to build up any other meaningful retirement provision before his preferred retirement age. And so, based on the available evidence, I'm not persuaded he had the requisite capacity for loss to expose his main retirement provision to unknown future investment, inflation and longevity risks.

Given the limited capacity for loss, I would've expected Prudential to adequately consider alternative options to meet Mr W's income need which would've enabled him to remain a member of the comparator scheme. For example, it may have been more suitable for Mr W to take reduced benefits under the comparator scheme from age 60 to provide a base core income but supplement this in the following ways until the state pension commenced from age 67:

- saving some or all of their surplus disposable income of around £1,270 available every month (or £15,240 per year) while they were still working in either a pension, investment or savings account to provide flexible income or lump sums from age 60 rather than transferring and losing benefit guarantees; and/or

- using some or all of their then existing total DC plan savings of about £53,000 to meet any flexible income and lump sum needs – this was expected to increase over the period to age 60, as noted above; and/or

- using some or all of their total combined ISA investments of about £54,700.

There's insufficient evidence to show that Prudential adequately considered and discounted the use of other savings and investments to contribute towards the stated income need to enable Mr W to retain his DB pension. This was a lower risk option and likely met the income need for the period between age 60 and 67.

Under this alternative lower risk option, once both state pensions were in payment, they would likely be in receipt of total income in excess of the stated income need – and on a lower risk basis than compared to the recommended PPP alternative. Any excess income could be reinvested for future use. For example, on the first death, the survivor's pension income would reduce (the DB pension in payment would reduce by 50% and the deceased's state pension would stop). So having access to that reinvested excess income at a later date would be suitable.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 1.

Example 2: The aim of the transfer is to pass the value of the pension to beneficiaries on the member's death, but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under this question the assessor is required to consider whether the pension transfer was required to achieve Mr W's death benefit objective and – if so – whether he was able to bear the risk of the transfer. Under reference 10.5R (3), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

Mr W had a death benefit objective linked to his DB pension. He wanted Mrs W to benefit from any unused pension benefits on his death because she had minimal pension benefits in her own right. And then, following her death, for their two children to inherit any unused pension benefits. So it's not disputed that passing on the value of his DB pension upon his death was important to Mr W. However, the question here is whether the pension transfer was required to achieve the objective.

The primary purpose of a pension is to meet the income needs of an individual during retirement. While I understand that death benefits are important to consumers, the priority here, in my opinion, was to advise Mr W about what was best for his own retirement provision.

There's no contemporaneous evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Prudential:

- using Mr W's disposable income to obtain level or decreasing term assurance (which would meet the objective of providing a lump sum on death);

- using Mr W's available death in service benefits provided by his then employer (which would've been based on a multiple of his annual salary of £35,000);

- using Mr W's personal contributions paid into the BSPS (and BSPS2 had he been advised to select that option) which would be refunded to any nominated beneficiary on his death , at that time, his personal contributions were £48,474.98 plus interest; and/or

- using the value of Mr W's DC plans then valued at about £24,000 to provide death benefits.

This wasn't addressed by the assessor when it completed the DBAAT. With reference to 10.5R (4), the assessor is required to decide whether the firm has a reasonable basis for believing that the recommendation to transfer in order to pass the value of the pension to beneficiaries on death met the consumer's investment objectives; and that the consumer is able financially to bear any transfer-related risks consistent with their investment objective.

It's not in dispute that Mr W will be reliant on income from the comparator scheme, as set out in Example 1. It's my view that Prudential failed to demonstrate that Mr W had the requisite capacity for loss to be able to relinquish his safeguarded benefits. I think it's also clear that lower risk suitable alternative options were available to achieve his death benefit objective but Prudential failed to adequately consider these, as noted above.

Since Mr W was aged 56 and in good health at the time, he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the PPP and for the period until Mr W was able to withdraw retirement benefits, the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the PPP to meet his income and lump sum needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

Taking into account the above, it's my view that Prudential didn't have a reasonable basis for believing that Mr W was able financially to bear any transfer-related risks consistent with this investment objective.

Under reference 10.6E, the assessor is directed to answer "yes" to Example 2 when the available evidence demonstrates that:

- (1) the consumer didn't have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective; and/or

- (2) a lower risk suitable alternative was available to achieve this objective; and/or

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 2.

Example 3: The aim of the transfer is to access income-related benefits flexibly but the firm has not demonstrated that the consumer can bear the risk of the transfer that would be needed to achieve this objective

Under reference 10.9E, the assessor is required to answer "yes" to this question where the following apply:

- (2) there is an alternative way for the consumer to meet their objectives using other assets instead of transferring their BSPS scheme.

And under 10.10G it states, *"A consumer may have a strong desire to transfer to obtain flexibility and control where they have real or perceived concerns regarding the financial viability in the scheme. The circumstances of the BSPS restructuring may have encouraged a greater than usual proportion of members to seriously consider the option of transferring out, which may in turn have led to an increased occurrence of consumers expressing a strong desire to transfer. However, this does not absolve the firm from its responsibility to* *only recommend a transfer if it can demonstrate that it is suitable".* This guidance is relevant in Mr W's case.

It was recorded that he wanted to transfer so that he could have flexibility regarding how and when he withdrew his pension benefits. It was noted that he wanted to raise an immediate tax-free lump sum of £20,000 to cover the cost of a summer house and wedding gift for one of his children. So, before age 60, the only flexibility required was immediate access to a lump sum of £20,000. It was also recorded that he wanted to sever ties with British Steel due to his concerns about the financial difficulties it had experienced.

Flexibility of income and control might sound attractive, but I cannot see that Mr W had any concrete need for it specifically in connection with his DB pension. There's no real evidence that he required the flexibility of irregular or variable income during retirement from this money. Rather, the evidence indicates that he required a steady and reliable source of income when he retired. If he did require flexibility, there were alternative, lower risk options available:

- using some of their surplus disposable income of around £1,270 available every month (or £15,240 per year) while they were still working to cover the cost of a personal loan to meet the £20,000 lump sum objective rather than transferring and losing benefit guarantees; and/or

- using some or all of their total combined ISA investments of about £54,700.

This wasn't addressed by the assessor when completing the DBAAT. In response to our investigator's assessment, Prudential stated that it was impractical to use the ISA savings of £54,700 to meet the £20,000 lump sum need due to early repayment penalties which it estimated to be 6% (£1,200) if the full amount required had been withdrawn. But this is a view made with hindsight. There's no evidence Prudential investigated this at the time or established the actual penalty applicable. But even if it was the case that the penalty was around £1,200 this may have been more suitable rather than relinquishing valuable benefit guarantees attached to the main retirement provision. I don't agree with Prudential's view that the only viable option to meet Mr W's £20,000 lump sum objective was a pension transfer.

The transfer to the PPP exposed Mr W, who was a *"Low to Medium"* risk investor to a higher level of risk – the transfer led to the investment, inflation and longevity risks associated with providing the pension income transferring from the BSPS to Mr W for no clearly defined benefit. Overall, it's my view that Prudential failed to adequately consider and discount alternative, lower risk options to achieve any flexible needs rather than relinquishing a guaranteed lifetime income under the DB pension.

As for Mr W's control objective, I do understand that he may have had concerns about the future of his employer and what impact this might have on his DB pension. But any such concerns were likely made from an uninformed position. The comparator scheme wasn't actually controlled by his employer – trustees were appointed to protect the scheme members' interests. I think Mr W ought to have been reassured that his employer couldn't simply change his benefits in the future even if it wanted to. The BSPS2 was designed to provide the same starting pension with a lower level of increases compared to the BSPS. Overall, I don't think that Mr W's fears about his employer or the BSPS2 were adequately challenged and allayed by Prudential, as they should have been.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 3.

Example 6: the consumer wants to retire early but can meet their objective(s) in the comparator scheme(s)

Under this question the assessor is required to consider whether the pension transfer was needed to achieve Mr W's early retirement objective. Under reference 10.19R (4), the assessor is required to identify whether there was an alternative way to meet the objective without giving up comparator scheme benefits.

Mr W wanted to retire from age 60. As explained in Example 1 above, it's my view that the stated income need could've likely been met without Mr W giving up the comparator scheme benefits through a combination of his reduced DB pension payable from age 60 and utilising other savings, investments and DC plans. This was a lower risk suitable alternative option to achieve the early retirement objective rather than transferring to the PPP which exposed Mr W to a higher level of risk. Overall, I cannot see why it was suitable for Mr W to transfer when his income objective could be met by a lower risk suitable alternative option that already existed.

Under reference 10.20E, the assessor is required to answer "yes" to this question where the following apply:

- (2) the consumer didn't have the requisite capacity for loss because they were not able to forego comparator scheme benefits to achieve this objective;

- (3) a lower risk suitable alternative was available to achieve this objective.

Given the above points, it's my opinion that the assessor should've answered "yes" to Example 6.

Example 9: The firm's transfer analysis does not support a recommendation to transfer

Under reference 10.27E (1) (a), the assessor is required to answer "yes" to this question when the firm hasn't demonstrated that the transfer analysis supports the recommendation to transfer, for example because: (i) the critical yield indicated in the transfer value analysis is likely to be unattainable, factoring in the term to retirement and the consumer's attitude to investment risk.

When completing the DBAAT, Prudential answered "yes" to this question. Since it has already conceded that its transfer analysis didn't support the recommendation to transfer, I don't think it's necessary to go into great detail here but I want to make the following points.

As explained above, the basis of the recommendation was that Mr W wanted to retire at age 60. But Prudential's transfer analysis was based on Mr W taking benefits from the PPP at the BSPS normal retirement age of 65. I think this was a material oversight because the critical yield figure at age 60 would've been greater than the figure of 8.3% calculated at age 65. This is because of the shorter investment timeframe to age 60 and impact of the initial advice charge on the required growth rate. This meant that Mr W wasn't provided accurate information about the level of investment growth required in the PPP to match the DB pension if he took benefits earlier than age 65.

The critical yield figure at age 65 was 8.3% on the basis of Mr W taking the full pension only. Prudential recommended that Mr W invest the value of his PPP into a fund that aligned with his *"Low to Medium"* risk profile. The key features illustration for the PPP showed that the assumed growth rates were 5.37% for the upper projection rate, 2.44% for the middle projection rate and -0.49% for the lower projection rate. Those figures took into account assumed annual future inflation of 2.5%. And in its transfer analysis, Prudential stated that the expected annual growth rate for the recommended fund was 5.5% before charges.

It's my view that the critical yield figure of 8.3% at age 65 was likely to be unobtainable based on the rates of return shown on the illustration and Mr W's risk profile. As I noted above, the critical yield figure at age 60 would've been higher than 8.3%, further undermining the case for a pension transfer from a financial viability point of view.

In conclusion, it's my view that the transfer analysis showed it was likely Mr W would be financially worse off as a result of the pension transfer. And so I don't agree that the transfer analysis supported Prudential's recommendation to transfer.

Conclusion

Based on the above considerations, it's my opinion that Prudential failed to follow the FCA's redress scheme rules when it assessed Mr W's case. Specifically, for the reasons explained above, it's my view that had it followed the guidance correctly, it would've answered "yes" to unsuitability examples 1, 2, 3 and 6 – in addition to the "yes" it answered to unsuitability example 9 in the DBAAT. The tool would've then generated a suggested rating of "potentially unsuitable". Considering the evidence in the round, I cannot see any compelling reason why a suggested rating of "potentially unsuitable" should be overturned to "suitable".

Finally, I'd like to address Prudential's view that our investigator's conclusion was unfairly reached with the benefit of hindsight in reference to the availability of the BSPS2. In my view, by the point Prudential advised Mr W on 1 February 2018, there was sufficient information in the public domain for firms to have concluded that the BSPS2 was more likely than not to go ahead. And so the availability of the BSPS2 should've been considered when it was formulating its recommendation. Indeed, the FCA has stated that the BSPS2 should be used as the comparator scheme for advice given after 12 October 2017 (CONRED 4 Annex 21 1.3R (7) (c)). Therefore, I don't agree that our investigator acted unfairly, as suggested by Prudential.

Causation

I've considered the points under reference 11.7G (1) to (9) in the Causation Section under the redress scheme rules to decide whether I think it's more likely than not that Prudential's non-compliant conduct was the effective cause of Mr W's decision to transfer. This was a complex transaction involving many factors. In my view, Mr W was reliant on Prudential, as the professional party in the transaction, to take those factors into account and provide balanced and suitable advice regardless of his own views about what was right for him.

Overall, it's my view that Prudential's conduct is more likely than not to have caused Mr W to transfer to the PPP when this wasn't in his best interests. Given Mr W's reliance on Prudential to provide suitable advice, I think it's unlikely he would've still decided to transfer to the PPP against its advice had it advised him not to transfer.

Putting things right

Prudential must do the following:

1. Calculate and pay any redress due in line with the redress scheme rules; and

2. Ensure that any relevant records and reporting to the FCA are updated accordingly to reflect the change in outcome on Mr W's case.

My final decision

I uphold this complaint. I direct The Prudential Assurance Company Limited to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 July 2024.
Clint Penfold
Ombudsman