DRN-3456939

The complaint

Mr J complains about the advice Mulberry Wealth Management Limited (MWM) gave to him to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr J to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr J's.

Similarly, a law firm was representing MWM. But, for simplicity, I will refer to the law firm's comments as being MWM's.

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) 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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the 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 J's employer would be set up – the BSPS2.

In October 2017 the DB scheme administrators sent its members "time to choose" packs. I haven't been provided with a copy of the pack sent to Mr J. But I'm aware that those gave scheme members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

Mr J approached MWM for specialist pension transfer advice. MWM gathered information about his entitlement under his current DB scheme and obtained a transfer value analysis (TVAS) report. It also completed a fact-find with him and an assessment of his risk appetite. Amongst other things, it recorded that:

- Mr J was 33 years old and married to Mrs J. They were both in good health and had no dependents.

[1] The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- Mrs J was working earning around £40,000 a year. She was contributing to her employer's DB scheme.
- They owned their own home, valued at around £237,000 with an outstanding mortgage off £165,000 which would be paid off in 24 years.
- They had savings of £10,000.
- Mr J earned around £32,200 a year.
- Mr J had death in service cover of four times his salary.
- He had recently begun paying into his employer's defined contribution ('DC') pension scheme. He paid contributions of 6% of his salary and his employer also paid contributions equivalent to 10% of salary, Mr J intended to match his employer's contribution of 10% the next year.
- His risk appetite was moderate to adventurous.
- His BSPS pension had a cash equivalent transfer value ('CETV') of around £101,300.
- The BSPS2 would pay him a pension of £8,370 a year at the normal scheme retirement age of 65 if he took a full pension. Alternatively he could take a tax free cash ('TFC') lump sum of roughly £38,500 and a reduced income of £5,780 a year.
- The growth rates required (the critical yields) to match the benefits from the BSPS2 in an alternative pension arrangement at 65 were 4.49% for a full pension and 3.85% if he took TFC and a reduced pension.
- The PPF would pay Mr J a full pension of around £7,600 at age 65[2]. If he wanted to take TFC he could take a lump sum of £39,985 together with a reduced pension of around £6,000 a year.
- The critical yields to match the PPF benefits were 4.18% and 3.96% respectively.
- If Mr J retired at age 60 the BSPS2 would pay him a full pension of around £7,100. Alternatively he could take a TFC lump sum of roughly £34,100 and a reduced income of around £5,100 a year.
- The critical yields to match the benefits from the BSPS2 at 60 were 5.22% for a full pension and 4.51% if he took TFC and a reduced pension.
- The PPF would pay Mr J a full pension of around £6,400 at age 60. Or he could take TFC of around £34,900 together with a reduced pension of around £5,200 a year.

MWM sent Mr M some documents including its TVAS report, cash-flow analysis and what it called an "options" document, in which it set out much of the analysis it later included in its suitability report. It then met with Mr J. It told him its recommendation was that he should transfer his DB scheme funds to a named personal pension. Mr M signed the forms to go ahead with the transfer that day.

Three days later (4 November 2017), MWM sent Mr J its suitability report. Amongst other things it said Mr J's financial objectives were:

- To retire at age 60.
- To transfer his DB scheme funds away from his employer.
- To take control of his pension funds and be able to access those flexibly.

MWM said that by transferring Mr J would be able to achieve the above objectives. It added that it would also allow for different death benefits for Mrs J and had the potential for higher TFC.

In 2021 Mr J complained to MWM that its advice to transfer wasn't suitable for him. In a lengthy response MWM set out why it didn't believe that was the case. In essence it said its recommendation enabled Mr J to achieve his financial objectives.

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[2] The PPF figures are different between MWM's TVAS and suitability report. Here, for reasons I explain below, I've quoted the figures from the TVAS.

Mr J referred his complaint to our service. One of our Investigators upheld the complaint and recommended MWM to establish if Mr J had suffered a loss and pay compensation, including £300 to address Mr J's distress and inconvenience. In short our Investigator didn't believe MWM's advice was suitable for Mr J.

In a detailed reply MWM disagreed with our Investigator's complaint assessment. Amongst other things it said it believed its advice was suitable for Mr J's circumstances and objectives at that time. It also said it gave Mr J enough information to make an informed decision.

MWM also said it couldn't have advised Mr J to opt into the BSPS2 as at that time the BSPS2 wasn't certain to be established. It said if Mr J had opted in to the BSPS2, and it didn't go ahead, his BSPS pension funds would have moved into the PPF.

MWM added that our Investigator had placed too much weight on comparison between critical yields and discount rates. It pointed out the regulator had cautioned against advising firms placing to narrow a focus on critical yields. MWM said it had provided the appropriate suitability assessment, comparisons and risk warnings. And, as a result, Mr J was in a position to make a fully informed decision.

MWM also argued that, had its advice been different Mr J would most likely have gone ahead with the transfer anyway.

A second Investigator reviewed the complaint. He said the initial Investigator's assessment wasn't based on critical yield alone. The second Investigator also pointed out that at the time of the advice joining the BSPS2 was one of three options discussed by MWM. He agreed with our first Investigator's assessment of the complaint.

MWM didn't agree with our Investigators' complaint assessments so it's been passed to me to make a final determination.

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.

In responding to this complaint MWM's made a number of detailed points. I've considered everything on file. But in this decision I don't intend to address each and every matter or point raised. Instead I will focus on what I see as being the key issues at the heart of Mr J's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of MWM's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigators gave.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, MWM should have only considered a transfer if it could clearly demonstrate that it was in Mr J's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Uncertainty around the future of the BSPS or the BSPS2

The BSPS closed in March 2017 and at the time Mr J approached MWM the situation had been evolving for some months. There was some widespread concern about what moving pensions to the PPF meant for BSPS members. It's also well-known that this was a period of uncertainty for people in Mr J's situation. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. And it's apparent that Mr J had some very real concerns about his employer's conduct. It's also notable that at the outset he apparently told MWM he was *adamant* he wanted to transfer his pension benefits away from the control of his employer. So he might well have been leaning towards transferring his pension when he approached MWM. But MWM was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr J should transfer out of his DB scheme MWM needed to be able to clearly demonstrate that doing so was in his best interests.

At the time Mr J approached MWM there was still the possibility that his pension could move to the PPF. And in response to our Investigator's assessment of the complaint MWM has argued that the BSPS2 may not have gone ahead. But I think MWM has changed its position on that point. It's notable that MWM's TVAS and suitability report make appropriate comparisons between Mr J's likely pension entitlement from the BSPS2 and his likely benefits from an alternative arrangement. Further, MWM clearly set out in its suitability report and "options" document that the BSPS2 was one of the possibilities it was considering for Mr J. So I think MWM, at the time of its advice, most likely felt the BSPS2 would be going ahead.

Further, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr J's employer would set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017. And the confirmation that Mr J's employer had made the required payment for it to go ahead was announced on 11 September 2017. And, in October that year – before MWM made its final recommendation to transfer – the BSPS trustees had provided details of the BSPS2 to scheme members in its “time to choose” information. So it seems that, at that time, MWM – correctly in my view – believed it was more likely than not that BSPS2 would go ahead.

So, while entry into the PPF was still a possibility, I think this was unlikely to be Mr J’s only option for remaining in a DB scheme environment. Further, even if Mr J remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think MWM could have addressed that concern.

A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. And, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it’s probably the case that it wasn't as significant as many BSPS scheme members believed it to be. Indeed it's notable that, subject to some clarification of its figures, which I explain below, MWM’s suitability report said there was *“very little difference*” between the benefits available from the BSPS2 and the PPF.

It follows that I'm not persuaded the uncertainty Mr J experienced when he entered into the advice process was sufficient reason for MWM to recommend he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That’s because to do so would unnecessarily expose those funds to the volatilities and risks of the investment markets. So, I don’t think those concerns should have been a significant driver in MWM recommending Mr J transfer out of the DB scheme altogether.

Financial viability

MWM carried out a TVAS (as required by the regulator) showing how much Mr J’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

As I've indicated in a footnote above, the figures quoted in MWM’s TVAS for Mr J’s entitlement from the PPF are different to those given in its suitability report and options document. For example the TVAS says that Mr J had a full pension entitlement from the PPF at age 65 of £7,604, whereas the suitability report said that it would pay Mr J £8,892 a year. I think the latter figure is almost certainly wrong. That's because the PPF would generally pay a sum of around 90% of a full benefit entitlement at the scheme’s normal retirement age, which in this case was around £8,370 a year. But the PPF sum MWM gave in the suitability report is higher than Mr J’s BSPS2 entitlement, which seems an unlikely prospect at his normal retirement age. So I think the TVAS figures are more likely to be accurate. Given that MWM didn’t recommend Mr J allow his DB funds to move to the PPF or the BSPS2, I think any error in figures here is unlikely to have significantly affected the outcome. But, for the avoidance of doubt, the critical yields I've quoted below are all reflective of the TVAS figures.

MWM provided Mr J advice after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 this Service published similar rates on our website. I acknowledge that MWM was under no obligation to refer to discount rates when giving advice. But it was free to do so. And under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. And I think the discount rates provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. And so those would, in my view, be a reasonable assumption by which to compare the benefits likely to be paid under a personal pension with those payable under a DB scheme.

MWM also said the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. MWM said Mr J didn't want an annuity, so the critical yields don't provide a comparison with the benefits Mr J was looking to secure based on his objectives. But the regulator required MWM to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr J could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 26 full years. So, it's entirely possible he would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

Mr J was 33 at the time of the advice and said his preference was to retire at 60, although the schemes' normal retirement age was 65. I've set out the relevant critical yields in the table below.

	Age 60		Age 65	
Scheme	Full pension	TFC and reduced pension	Full pension	TFC and reduced pension
BSPS2	5.22%	4.51%	4.49%	3.85%
PPF	4.82%	4.59%	4.18%	3.96%

The relevant discount rate closest to when the advice was given which I can refer to was published by this Service for the period before 1 October 2017, and was 4.6% per year for 26 full years to retirement at age 60 or 4.7% for 31 full years to retirement at age 65. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr J's medium to adventurous attitude to risk and also the term to retirement. In this instance the relevant discount rate is above the critical yield if Mr J took TFC and a reduced pension. So that would indicate a potential for Mr J to be marginally better off by transferring particularly if he took TFC at age 65.

But there would be little point in Mr J giving up the guarantees available to him through his DB scheme only to achieve a level of benefits outside the scheme that was broadly comparable to what he would receive from remaining in it. That's because, in order for the potential to improve slightly on the DB scheme benefits, he would need to put those funds at risk. But here, given the discount rate was broadly equivalent to the critical yield, then the scope for gains was small. And, if there was an extended period of poor performance or his investments suffered losses that could result in him being worse off in retirement.

Further, by transferring from the DB scheme Mr J would have to pay the fees and charges that are required in order to invest in a personal pension. And those would reduce any gains the funds made. Those are not charges he would have had to pay if he opted into the BSPS2.

MWM said that cash-flow models showed that by taking an income equivalent to what he could receive from the BSPS2, either at age 60 or 65, by drawdown, then Mr J's fund would last beyond his life expectancy. But, as I've said above, there would be little point in Mr J putting his funds at risk only to match the benefits available under the scheme. And the cash-flow models don't allow for the increasing spouse's benefits the BSPS2 or PPF would pay to Mrs J if he were to die before her. So I don't think those paint a full picture of what Mr J would be giving up by transferring.

That said, given his moderate to adventurous attitude to risk there was scope for Mr J's investments to make him slightly better off in retirement. But that was anything but guaranteed and doing so meant putting his funds at risk for only the marginal possibility that he could be better off by doing so. And, if his funds didn't meet MWM's projected growth rates, then he would likely be worse off in retirement. I don't think that "clearly demonstrates" as the regulator required that it was in his best interests to transfer.

Of course financial viability isn't the only consideration when giving transfer advice, as MWM has argued in this case. It said its recommendation allowed Mr J to achieve his other objectives. So I've gone on to consider whether MWM has clearly demonstrated that its advice was in Mr J's best interests. When doing so I've been mindful that MWM's role was to find out what Mr J's wants and needs were and why. Its role wasn't simply to do what Mr J wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and income needs

MWM said that transferring out of the scheme would allow Mr J to retire at age 60. However, as far as I can see MWM doesn't appear to have modelled exactly what Mr J's income needs would be in retirement or how he would meet those. Instead, it's based its analysis on the amounts the BSPS2 would pay him at age 60. So transferring didn't allow Mr J to achieve something he couldn't already achieve from the BSPS2 or the PPF. In other words he didn't need to transfer his safeguarded benefits out of the scheme and put his pension funds at risk in order to take early retirement.

Further, I can fully understand Mr J's wish to retire early. I think most people would say they would like to retire early if given the chance. I also think most people would understand that having the opportunity to retire early isn't worth compromising their income security for the remainder of their life. It seems to me that this is something Mr J was likely to reassess once he reached or neared age 60. And as such, I think early retirement was something that he aspired to, rather than a definite plan. In other words it was something that would be nice to have rather than a genuine need for Mr J.

In any event I don't think Mr J had a distinct need to take early retirement. As I've said above I can understand why he would want to retire at age 60. But, for most people, early retirement means a significant drop in income. That would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr J. But there's no evidence MWM seriously challenged his objective of early retirement. It follows that I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

MWM's said that by transferring Mr J gained the opportunity to access his funds flexibly in retirement. But I can't see evidence that Mr J had a strong need for variable income throughout his retirement. As I've said above, I don't think MWM established what Mr J's income needs in retirement would be or how he would achieve those. So I don't think he had any concrete needs to access his DB funds flexibly.

Also Mr J had recently started paying into his employer's DC scheme. He and his employer together were contributing about 16% of his salary towards that pension. At that time that would have been around £5,150 a year. He could have anticipated continuing to contribute to that policy (or a similar one if he were to change jobs in the future) for the remainder of his working life. So I think it's reasonable to assume that, by the time he reached 60, his personal pension should have amassed a sizeable pot. Indeed without allowing for Mr J increasing his contributions, his salary growing, or any return on the investment, by 60 he could have a pot in the DC pension of around £133,000. And that sum would increase to around £160,000 by the time he reached 65. So Mr J could have accessed those funds in a flexible manner if he felt the need to do so. That would have allowed him to leave his safeguarded DB funds untouched. So he didn't need to transfer out of the DB scheme in order to have some flexible access to funds in retirement.

It follows that I'm satisfied Mr J could have met his flexible income needs in retirement while remaining in the BSPS2 or the PPF. So, I don't think it was in his best interests to transfer his pension just to have flexibility that he didn't need.

I understand the option of drawing all his pension income flexibly might seem like something that would be nice to have. But I can't see that Mr J had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that MWM gave its advice. So I don't think it was in his best interests to transfer.

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 lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr J. That's because whatever was left within it at the date of his death would be passed on to Mrs J. And, if that happened before his retirement or soon after, then that would likely be a significant sum. In contrast the BSPS2 or PPF would pay Mrs J half of Mr J's yearly pension after he died. And that pension would die with her. So Mrs J couldn't leave it as a legacy for others after she died.

But whilst I appreciate death benefits are important to consumers, and Mr J might have thought it was a good idea to transfer his DB funds to a personal pension because of this, the priority here was for MWM to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement rather than for a legacy to family. But in transferring out of his DB scheme Mr J was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not receive or need for many years to come. And by that time, the fund could have been depleted by Mr J's withdrawals from it..

I also think the existing death benefits attached to the DB scheme were underplayed. Mr J was married. Both the BSPS2 and the PPF would have paid Mrs J 50% of Mr J's yearly pension on his death. Although the BSPS2 was more generous as it didn't make a spouse's benefit deduction for any TFC taken. This was guaranteed and escalated it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left in the personal pension if Mr J lived a long life or if his investments suffered a prolonged period of poor performance. In any event, MWM should not have encouraged Mr J to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Further, I'm aware that Mr J had death in service cover from his employer. So that would have paid a considerable lump sum in the event he died while still working for his employer. But, if he wanted to leave a legacy for Mrs J, which didn't depend on his employment, investment returns or how much of his pension fund remained on his death, I think MWM should have instead explored life insurance. I appreciate that life insurance can be expensive. So, the starting point ought to have been for MWM to ask Mr J how much he would ideally like to leave to Mrs J. MWM could then have explored this on a whole of life or term assurance basis to establish if there was a policy affordable to Mr J. But there's little evidence it did so.

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

Summary

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

MWM was in a good position to have analysed, tested, challenged and advised Mr J about what was in his best interests for retirement planning. It knows valuable pension pots like Mr J’s DB scheme were paid into with the intention of providing for retirement. So, I don’t think it was in Mr J’s best interests for him to transfer his DB scheme funds to a personal pension.

I appreciate the BSPS2 hadn’t been established when MWM gave its advice. But I think it was clear to all parties that it was likely to be going ahead. And, I think it would have been in Mr J’s best interests to have opted into BSPS2 as that had more generous benefits than the PPF. By opting into the BSPS2, Mr J would have kept the option to transfer out of the scheme nearer to his retirement age if that was what he decided to do at that point. So, I think MWM should have advised Mr J to opt into the BSPS2. And ultimately, I don’t think the advice MWM gave to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension Mr J was unnecessarily putting his pension funds at risk. And I don’t think there were any other particular reasons which would justify the transfer and outweigh this. So, I don’t think it was in Mr J’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

Of course, I have to consider whether Mr J would have gone ahead with the transfer anyway if it wasn’t for MWM’s advice. And, after thinking about this carefully, I'm not persuaded he would have done so. That’s because, Mr J’s BSPS pension accounted for a significant portion of his retirement provision at the time. So, if MWM had given clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests, I think he would have accepted that expert professional advice he was paying for.

I’m also not persuaded Mr J’s concerns about the future of the DB scheme was so great that he would have gone against MWM’s advice. That’s because MWM had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. The future of the pension scheme was in the process of being taken out of the employer’s hands. So MWM could have allayed Mr J’s concerns about the uncertainty of the scheme. And I don't think those would have been sufficient reasons for Mr J to insist on a transfer.

It follows that I don't think MWM’s advice to Mr J to transfer out of his DB scheme was suitable for him. Instead I think it should have advised him to opt into the BSPS2 instead. So, it’s fair for MWM to compensate Mr J for the unsuitable advice, in line with the regulator’s rules for calculating redress for non-compliant pension transfer advice. Also, I understand that learning he might have been misadvised and potentially being worse off in retirement has been a source of distress and inconvenience for Mr J; I think MWM should pay him £300 to address that.

Putting things right

A fair and reasonable outcome would be for the MWM to put Mr J, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr J would have most likely opted into BSPS2 if MWM had given suitable advice.

MWM 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.

When making the calculation MWM (or providers acting for it) 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 J's representative and our Service upon completion of the calculation.

For clarity, Mr J has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr J's acceptance of the decision.

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

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

Redress paid to Mr J as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, MWM 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 J'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.

Also, for the reasons given above, MWM should pay Mr J £300 compensation to address his distress and inconvenience arising from its unsuitable advice.

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 Mulberry Wealth Management Limited to pay Mr J 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 Mulberry Wealth Management Limited pays Mr J the balance.

If Mr J accepts this decision, the money award becomes binding on Mulberry Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 31 August 2023.

Joe Scott
Ombudsman