DRN-3564068

The complaint

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

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

Mr T himself has engaged an adviser to act for him so I'll refer to any issues or replies as coming from Mr T himself.

What happened

In March 2016, Mr T's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr T's employer would be set up – the BSPS2.

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

Mr T was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to MWM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr T was 47 years old, married and with one dependent child. He was described as being in good health. He had accrued over 26 years' worth of service with BSPS.

- The cash equivalent transfer value (CETV) of Mr T's BSPS was approximately £340,344. The normal retirement age (NRA) was 65.

- Mr T had joined the new TATA define contribution (DC) pension scheme as a consequence of the BSPS closing to further contributions in the months before this advice was given.

- Mr T lived in a home valued at around £270,000 with an 18-year mortgage outstanding of around £50,000.

- Mr T earned £34,500 still in the steel industry. Mrs T also worked (part-time) and earned about £5,000 per year. But she was also apparently a shareholder in a limited company business Mr T owned in addition to his full-time job. From this Mrs T was paid around £15,000 per year. After all their household expenses they had some disposable income left over.

- Mr and Mrs T had a loan outstanding of costing £163 per month and didn't have any demonstrable savings.

MWM set out its advice in a suitability report on 18 September 2017. In this it advised Mr T to transfer out of the BSPS and invest the funds in a type of personal pension plan. MWM said this would allow Mr T to achieve his objectives. Mr T accepted this advice and so transferred out. In 2021 Mr T complained to MWM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr T referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. In response, MWM said it hadn't done anything wrong and was acting on the financial objectives Mr T had at the time.

However, MWM has since said it would like to settle the complaint. It said it would do this in full and under a specific calculator which the financial regulator has established for these cases. So, MWM has asked for Mr T to supply details of his transferred pension value so it can begin the process of establishing if there has been a loss. MWM has said if there is a loss, then it will pay what is due under the guidelines issued by the financial regulator.

However, Mr T still hasn't provided these details. This is most unfortunate as we've asked for the value several times now and I'm satisfied that Mr T is aware of what is needed to start the redress process. So, even though I can see MWM is apparently fulling willing to settle this complaint using the approach we endorse, it can't evidently be resolved informally. It's therefore come to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

The applicable rules, regulations and requirements

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

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, MWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr T's best interests. In particular, I have also carefully considered the final response letter from MWM and those from its legal representatives. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr T's complaint. However, I should also add that Mr T now needs to supply the details of his transferred pension to enable MWM to carry out the redress calculation.

Financial viability

MWM referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme.

There seems to have been several transfer analyses produced, no doubt due to the updated CETV values that Mr T was given over several weeks and also the different types of funds which MWM was considering recommending to him back in 2017. I also think some details were still emerging around that time of the new BSPS2 scheme and the values contained within. So, in explaining the critical yields and some of the other analysis, I've used the transfer report dated 13 September 2017 and the suitability report of 18 September 2017.

It's not clear to me that Mr T would have been shown the transfer analysis report(s). In my experience, the data contained within these are typically summarised and explained for consumers within the suitability report. Put another way, the suitability report tends to make the critical yield comparison easier to understand and I'd normally expect the consumer to make their decision based on the information contained within this.

The critical yield comparison was a requirement from the regulator at the time when advising clients on DB transfers. It's also important to point out that the critical yield comparison is only one of a number of different metrics I've used to compare the different schemes. And in my view, these all point one way – that Mr T was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

MWM said that the critical yield required to match the benefits of the BSPS2 at the age of 65 was 7.04%. However, I think the suitability report downplayed the value of using critical yields as a comparative metric as it said Mr T wanted to retire at the age of 55. But whilst it provided the critical yield for a retirement at 65, the suitability report didn't in my view clearly show the yield for a much earlier retirement. I think this was wrong of the adviser because if Mr T really was insistent on retiring at this much younger age, I think he would have found the corresponding critical yield rate useful in helping him arrive at an informed decision.

I say this because the critical yield rate for a retirement at the age of 55 was much higher, at over 17%.

However, as I'll explain more about later, retirement was a relatively long way off for Mr T and so I very much doubt whether retiring at 55 was anything more than something he just aspired to, rather than being part of a real plan.

But I think there was enough evidence at the time showing that achieving enough growth outside the DB scheme, to make transferring financially viable, was going to be unachievable and I think this should have been brought to Mr T's attention. I say this with the following in mind.

The advice was given 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 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 was only 4.4% per year for 17 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. But for a retirement at 55, the discount rate was only 3.4%. I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

At the time, MWM assessed Mr T's attitude to risk (ATR) as "moderate". But I think even this was too high. The evidence I've seen shows Mr T was not a risk taker and he didn't like the idea of his capital, if transferred to a fund, going down as well as up. I don't think Mr T himself had any experience of wider 'money market' investments more commonly found in personally managed pensions and so he probably had no past experience to draw upon.

I think MWM's main point in relation to the critical yield analysis is that it wasn't really relevant in this case because Mr T wanted to retire earlier. I do understand the point being made. However, the use of critical yields to help consumers weigh up the suitability of transfers was a requirement from the regulator at the time. And even if I were to only use the much earlier retirement age put forward by MWM, the yield was over 17% and there was simply no way Mr T could expect to see annual growth in that range if he agreed to transfer his pension to a personal plan.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's lower projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 3½-to-5% were much more realistic. These were below the critical yield figures for the BSPS, so I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was unlikely.

I've also noted that using the NRA of 65, MWM's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme the estimated fund required (also known as the capital value) was much higher than Mr T's CETV. Even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £450,668.

To reiterate, these figures are found in MWM's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are well above Mr T's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension Mr T could be giving up by transferring away to a personal plan, rather than a similar DB scheme that was on offer here.

Elsewhere in its transfer analysis, MWM also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. MWM said the critical yields to match the benefits available through the PPF at age 65 were lower. But these yields related to the *reduced* benefits available with the PPF and MWM itself says Mr T wouldn't have wanted to transfer to this scheme. It's also important to remember here that the effect of charges and fees associated with a personal pension such as the one being recommended to Mr T, would have further reduced the likely growth.

I therefore think it's fair to say that from a financial comparison perspective, MWM's own figures, shown partially in its suitability report and more fully in the transfer analysis documents, showed that transferring to a personal pension plan would mean Mr T would likely receive lower pension benefits in the longer term, when compared against the available DB scheme.

I've also considered some projections MWM used to help show that if he transferred out to a personal plan, the funds could last Mr T well into retirement. Again, I think most of these were based on growth projections which were based on past performance. It's also fair to say these were not comparing like-with-like. What MWM was showing Mr T were comparisons with plans which lacked the guarantees and benefits of a DB scheme. And some of the scenarios showed him running out of funds in his 80s whereas his DB pension was guaranteed for life.

Of course, according to MWM, its recommendation that he should transfer out to a personal pension was not wholly based on the financial comparisons with his current scheme alone. Rather, MWM said Mr T also had other reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned earlier.

I've considered these below.

<u>*Other needs and objectives*</u>

MWM recommended a transfer to a personal pension plan based on what it said were Mr T's wider objectives. The suitability report mentioned several times that retiring from the steel industry was something Mr T was very much hoping to do at the age of 55. I've noted that when given a pension questionnaire to fill out, Mr T ticked, in level of priority, what he thought were the important issues for him. However, I'm mindful that these were pre-determined priorities already set out for him in the questionnaire. Nevertheless, I think they give a flavour of what he considered to be important to his pension thinking at the time:

1. *"The security of my pension fund,*

2. *the ability to retire early,*

3. *provision for a spouse's and dependent's pension,*

4. *to increase my pension,*

5. *tax-free lump sums at retirement,*

6. *lump sum benefits upon my death before retirement."*

I have also used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away. The following areas were set out in the suitability report effectively justifying the recommendation to transfer. It was also recorded that Mr T would be prepared, at age 55, to either keep working and withdraw earnings from his limited company to help continue pay the mortgage until age 65 when the mortgage expired, or he would also consider taking some tax-free cash to reduce the outstanding mortgage and therefore bring down his outgoings. Regarding the transfer rationale, the suitability report said:

- *"It satisfies your objective of completely severing the link between your pension and your employer,*

- *when you retire, you can access the portion of the tax-free cash you require, without having to withdraw the full amount so it can continue to be invested within your pension plan,*

- *you can choose to take additional or ad hoc tax-free cash / income payments at any time in the future,*

- *it provides flexible death benefits for your family,*

- *any contributions will be invested in funds which benefit from a tax-efficient status and when you come to draw benefits from the plan, you can take up to 25% of the fund tax-free."*

So, it seems the supporting reasons that MWM recommended the transfer out to a personal pension was for the general flexibility and control it offered to Mr T. I have therefore considered these issues in turn.

- *Retiring early and 'flexibility'*

Mr T evidently told the adviser he would eventually like to leave the steel industry and maintain his self-employment through his limited company in 'retirement' if he could achieve this at an early age; 55 years old was mentioned several times.

But whilst I'm sure, like most people, Mr T probably wanted to stop working as early as possible, I think what he and the adviser discussed could only ever have been general retirement aspirations on his part. I accept that some of the adviser / client notes referred to Mr T insisting on an early retirement, but in reality, there was no plan to retire early specifically at 55. In fact, some discussions clearly took place about a retirement at 58, rather than 55. So I think Mr T was merely assessing, generally, what his options might be. He was still only 47 years old and still had a dependent child, a 17-year mortgage and I think a lot could have changed before his realistic retirement age came into focus. He also still had over 17 years still left to when he'd be actually contemplating retiring if using his NRA. Even if using an aspirational age of 55, this was still over seven years away and 58 would be over a decade away.

I've also noted that the adviser said on the suitability report, *"you cannot see yourself a TATA steel until the age of 65, you would like to go at 55 if you can"* which I think left room for the adviser to question and challenge whether this was right for him and whether this should have been a major influence in him deciding to irreversibly move away from a DB scheme. Doing so involved an investment risk which I've showed above could mean lower overall financial benefits at retirement.

But even if I were to consider that Mr T's retirement hopes were more fixed than aspirational - and he really did plan to retire early - I think MWM should have assessed the possibility of achieving this goal whilst being a member of the BSPS2, for example. Early retirement under the BSPS2, or indeed the PPF, would still have been an option for Mr T. Retiring early from a DB scheme, such as BSPS2 would simply have meant Mr T's pension benefits would have been somewhat different, due to him accessing the pension earlier and for longer.

MWM's analysis said that at the date of stopping BSPS contributions (31 March 2017) Mr T already had a preserved pension income of £13,017 per year. Increased in line with prescribed assumptions, Mr T's benefits from the date of the analysis to his NRA (65) were £20,205 per year. Using a retirement age of 55 instead his benefits were around £14,500 per year. The suitability report said Mr T could live off £20,000 per year in retirement although it didn't elaborate on this.

This means I've seen nothing explaining why Mr T wouldn't want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. If all he needed was around £20,000 per year I think the adviser should have pointed out that this seems achievable given the above income and the other income he could call upon. By this I mean that Mr T had already clearly said he could continue to operate his limited company business if he left the steel industry at the comparatively young age of 55. We know the income generated from this was £15,000 per year as this is what he said his wife 'earned' from this company. No information was recorded by the adviser about any further financial assets in the limited company though.

But it certainly isn't unreasonable to say that by his eventual retirement age, Mr T could have built up a reasonable sum in his DC fund. We also know Mrs T had also said she would continue to work. The above were BSPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BSPS2) at around the very time this advice was being sought. I don't think MWM adequately explained these things to Mr T as its advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

So, I don't think there's anything showing Mr T's pension entitlements in both the DB and DC schemes, the limited company income, and anything else Mrs T earned wouldn't have fairly easily met their anticipated future income requirements, without any need for him to transfer away from a DB scheme. I think that by retirement, whenever it eventually came, Mr T could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a reasonable DC scheme over a number of years. And if Mr T ever found he needed flexibility, then he'd be able to use the latter, rather than transferring away from the former.

MWM also promoted to Mr T that he could access more tax-free cash if he transferred to a personal pension plan. It said he'd be able to access 25% of his pension as a lump-sum and then use the remaining funds more flexibly. It's usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But MWM should have been telling Mr T at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55 in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

I think 'flexibility' would have sounded positive to Mr T. However, I can't see that Mr T required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by MWM. For example, I've seen nothing that showed Mr T required changing how his retirement benefits ought to be paid. Retirement for him was still a fair way off and he already had a new and more flexible DC pension with his existing job as a consequence of the old BSPS scheme being closed to new contributions.

I think it's easy to discount this second pension by saying it had only recently started and therefore didn't have much in it. But if taking, say, the relatively young retirement age of 58, one could say Mr T would by then have been a member of this scheme for over 10 years. This DC pension was being significantly contributed towards by both Mr T and his employer - 6% and 10% respectively and he seemed to have a modest capacity to increase contributions if he wished in the years ahead. It's therefore reasonable to say that this pension could have accrued reasonable sums of money by his mid-to-late fifties and it shouldn't be discounted.

So, whilst I accept the notion of retiring early, flexibility and / or accessing tax-free cash might have been appealing, all this needed to be considered against the other options Mr T had; in my view this included opting for the BSPS2.

- *Control of the funds*

I've also seen no evidence that Mr T had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr T was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees.

I accept that Mr T may have had a basic understanding of pensions but as I've said, there's no evidence he was an experienced investor. He had his new DC pension with TATA. But I've seen nothing showing the investment strategy for this pension was anything other than an 'off the shelf' mix of investments commonly found in most company DC schemes. And I think he would have found the complexity, scale and responsibility of managing over £340,000 of his own transferred funds from his DB scheme to be onerous in the years ahead. What I've seen tends to show Mr T would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him. He simply didn't have the experience to personally manage the funds.

- *Death benefits*

Death benefits are an emotive subject. When asked, I think most people would like their loved ones to be taken care of when they die. The BSPS2 contained certain benefits payable to a spouse and children if Mr T died. The benefits included related to both pre-retirement and post-retirement.

Mr T was married and had a child so I think the value of these benefits were most likely underplayed because the spouse's pension provided by the BSPS2 would have been useful to Mrs T if he predeceased her. I think his wife would have found this benefit a source of comfort and security. MWM didn't really record many details about Mrs T's financial situation. But I've noted her part-time income was modest and there's certainly no evidence she had a meaningful pension of her own.

I therefore don't think MWM made the real value of this benefit area clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser probably discussed with Mr T that he'd be able to pass on the value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension was probably made to look like an attractive feature to him. But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think MWM explored to what extent Mr T was prepared to accept a different retirement income in exchange for different death benefits.

Mr T was only 47 and in good health. An obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. To this end, if Mr T had lived a long life there could be nothing left at all in his personal pension plan.

Although I've questioned the ability to forecast an early retirement whilst still relatively young (in pension terms), there's no real doubt that retiring at 55 was at least mentioned. The adviser should have therefore additionally known that a healthy male retiring at 55 would likely have many years ahead in which he would be drawing down his pension funds thus leaving less to pass on to someone.

I can't be sure the extent to which life insurance was discussed in this case. But at 47 years old, another modest 'term' life insurance policy may have still been a reasonably affordable product if Mr T really did want to leave a large legacy for a specific relative or someone else. But more so, it doesn't appear that MWM took into account the fact that Mr T could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. So, to this end, Mr T already had some options ensuring part of his pension wouldn't just 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr T. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr T's situation.

- *Concerns over financial stability of the DB scheme*

It's clear that Mr T, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and MWM said he lacked trust in the company. He'd heard negative things about the PPF and MWM said he could have more control over his pension fund.

So, it's quite possible that Mr T was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was MWM's obligation to give Mr T an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated any concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that MWM should have reassured Mr T that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr T through the PPF would have still probably provided a significant portion of the income he would have needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his ATR and the effect of pension charges and fees. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to MWM's recommendation to Mr T to transfer out of the DB scheme altogether.

Suitability of investments

MWM recommended that Mr T invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr T and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in a DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

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

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

I think Mr T's circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire earlier than 65 if he felt he really needed to – there would have been an actuarial reduction involved, depending on his age at the time. But because he also had a smaller 'second' DC pension, and another income stream with his limited company, this supported that strategy in my view.

I don't think it was in Mr T's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2. I think it was clear to all parties that the BSPS2 was likely to be going ahead. Mr T still had several years before he could realistically retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr T would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. On this basis, I think MWM should have advised Mr T to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr T would have transferred to a personal pension in any event. I accept that MWM disclosed some of the risks of transferring to Mr T, and provided him with a certain amount of information. But ultimately it advised Mr T to transfer out, and I think Mr T relied on that advice.

I'm not persuaded that Mr T would have insisted on transferring out of the DB scheme, against MWM's advice. I say this because Mr T was likely an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if MWM had provided him with 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 advice.

I'm also not persuaded that Mr T's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if MWM had explained Mr T was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think MWM should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for MWM's unsuitable advice. I consider Mr T would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice and compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. MWM should use the benefits offered by BSPS2 for comparison purposes.

As I've said, I've noted Mr T's refusal to provided details that MWM needs to start the redress process. He needs to do this. MWM must then 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.

MWM 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 T and our Service upon completion of the calculation together with supporting evidence of what MWM based the inputs into the calculator on.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr T's acceptance of my final decision.

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

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
    - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr T receives could be augmented rather than receiving it all as a cash lump sum,

- if Mr T accepts MWM's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr T's end of year tax position.

Redress paid to Mr T as a cash lump sum will be treated as income for tax purposes. 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 T'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.

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.

This pension at the time represented nearly all of Mr T's retirement provision. I believe the uncertainty and worrying impact of this unsuitable advice caused him distress and inconvenience. I therefore also order IFM to pay an additional £300 to Mr T.

My final decision

Determination and money award: I am upholding this complaint and I now direct Mulberry Wealth Management Limited to pay Mr T 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 T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T.

If Mr T accepts my final decision, the money award becomes binding on Mulberry Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 12 October 2023.

Michael Campbell
Ombudsman