DRN-3626708

## The complaint

Mr P complains about the advice given by Chequers Wealth Management Limited ('CWML') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

## What happened

In March 2016, Mr P'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'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

On 11 August 2017, scheme members were told that terms had been agreed for a Regulated Apportionment Arrangement ('RAA') (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) and that when it took affect they would have a choice - either move into the new scheme - BSPS2 - or remain in the existing scheme and move with it to the PPF.

Mr P was concerned about what the recent announcements by his employer meant for the security of his pension so he sought advice. Mr P met with CWML in August 2017 having been referred to them by another financial adviser. CWML completed a fact-find to gather information about Mr P's circumstances and objectives. This, along with an email sent to CWML from the other financial adviser, recorded that Mr P was 56 years old; he was married; he and his wife owned their own home, which had an outstanding mortgage of around £30,000 costing £700 a month; he had around £30,000 in saving; he had around £30,000 unsecured debt; he wanted to access a cash lump sum to repay his debts and continue to work for another two to five years; and his target retirement income was £20,000 a year. CWML says it also carried out an assessment of Mr P's attitude to risk, although it is not included in its business file submission, which it deemed to be 'balanced.'

During the same month, CWML advised Mr P (in an undated report) to transfer his pension benefits into a personal pension arrangement and invest the proceeds in a fund CWML deemed matched Mr P's attitude to risk. In summary, the suitability report said the reasons for this recommendation were to provide Mr P with flexibility and the ability to access part of his tax-free cash to suit his requirements and to allow him to nominate the beneficiaries of his pension fund remaining upon his death at his discretion.

Mr P duly accepted the recommendation and in October 2017 around £450,000 was transferred to his new personal pension.

Mr P complained to CWML in 2022 about the suitability of the transfer advice. In summary Mr P said that as a result of the transfer his wife would no longer receive a widow's pension; he was anxious about having lost the security of his DB pension; he thought the advice process was hurried and he felt pressured; he didn't think the advice was suitable given he wanted security and stability in his life; and he believes he will be financially worse of in retirement.

CWML didn't uphold Mr P's complaint. In summary, it set out Mr P's circumstances and objectives and said that the benefits available to Mr P through the existing scheme and PPF were illustrated to him because the BSPS2 scheme details weren't available. It said it confirmed its belief that the PPF was the better option when taking benefits at age 60. It said Mr P didn't believe he could meet his three objectives by remaining in the DB scheme – he couldn't take an initial lump sum to pay off his debts and even deferring things until retirement, the lump sum available wasn't enough to allow him to pay things off and subsidise a higher income in the early years of his retirement. It said it reiterated to Mr W that it was unrealistic to expect the transfer option to provide a secure income equal to or better than the existing scheme – this was the best option to provide a secure income. It said it fully discussed Mr P's attitude to risk and it disputed that it hurried its advice. It said all costs and fees were discussed. It said in relation to Mr P feeling anxiety over his pension – given he'd started taking benefits in 2021 at a greater level that his BSPS scheme would've provided, it said this is inconsistent with his concerns about the future and it believes Mr P was fully aware of the implications of transferring and that it met his objectives.

Dissatisfied with its response, Mr P asked this Service to consider his complaint. One of our investigator's upheld the complaint and required CWML to pay compensation. In summary they said it was unclear why Mr P needed to transfer at this time or that he needed flexibility with his pension. They said in relation to death benefits, the recommendation should have been given in the context of Mr P's best interests not those of his family or a desire for legacy planning. They said Mr P had lump sum death benefits already through his death-in-service benefits and his DC pension – but that any additional need could've been met through life assurance. They also said that the growth rates required to match Mr P's DB scheme benefits wasn't realistically achievable. So they said for these reasons and because Mr P's capacity to absorb losses was low, they didn't think the advice was suitable. They said if suitable advice had been given Mr P would've likely remained in the DB scheme and then opted into the BSPS2.

CWML disagreed. It said the investigator's decision had not taken account of the additional information provided by Mr P that his transfer value was increased. It said the only way Mr P could secure his transfer value was to transfer before the 'Time to Choose' process closed. It said while it agreed the purpose of a pension is to provide an income, if sufficient income can be taken while allowing a member to leave a legacy, this can put them in a better position. It said the investigator's comment about Mr P's death-in-service benefit was irrelevant as he would shortly retire and so would no longer be available. It said the cashflow modelling completed at the time showed that Mr P could take his required £20,000 and at age 87 he'd have a residual fund of around £275,000 to pass on to his family tax-free. It said Mr P also had his DC scheme which he could use to supplement his income. It said if Mr P had remained in the DB scheme, he was likely to incur unnecessary income tax on excess income from the scheme. It said overall Mr P required flexibility and that he has fully utilised the flexibility afforded to him by taking partial tax-free lump sums – something he wouldn't have been able to do within the scheme or the PPF.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me for a final decision.

Following the referral request, CWML said that, while it maintained the advice it gave Mr P was suitable, it carried out a loss calculation, which showed that Mr P had not incurred a loss as a result of the advice. Mr P said that he still wanted his complaint to be decided by an Ombudsman, so it falls to me to decide the matter.

**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 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 CWML'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 largely the same reasons given by the investigator. My reasons are set out below.

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, CWML should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

*Financial viability*

CWML carried out a transfer value analysis report (as required by the regulator) showing how much Mr P's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits. But at the time of the advice Mr P didn't have the option to remain in the existing scheme.

In light of the agreed terms for the RAA, CWML ought to have known that Mr P would soon have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF. This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant and so wasn't helpful to Mr P. I think it's reasonable to say that, in light of the announcement CWML should've waited for the details of the new scheme and based its analysis and advice on the benefits available to Mr P through the BSPS2 instead. That way Mr P would've had all the relevant information to make a properly informed decision.

I accept that BSPS2 was far from being a certainty at the time of the advice. But in my view all of the information from the scheme trustees indicated that the new scheme would go ahead. So I still think CWML should've waited and taken the benefits available to Mr P through the new BSPS2 into account in formulating its advice.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr P was 56 at the time of the advice and it's recorded that he wanted to retire in the next year or so – the fact-find and covering email from Mr P's existing adviser suggested he might continue to work for the next two to five years. The critical yield required to match Mr P's benefits under the existing BSPS at age 65 was 10.75% a year assuming he took a full pension and 8.24% a year on the basis of taking a cash lump sum and a reduced pension. At age 60, the critical yields were 20.41% and 14.19% respectively. The critical yields to match the benefits available through the PPF at age 65 was quoted as 5.31% a year and 4.61% a year respectively. CWML did not produce critical yields to match the benefits available through the PPF at age 60.

But as I've said above, Mr W remaining in the BSPS wasn't an option. So, CWML should've waited and provided the critical yields applicable to the BSPS2 benefits instead. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But I still think they would've likely been higher than those reflecting the PPF benefits.

This compares with the discount rate of 2.8% per year for three years to retirement in this case (age 60). For further comparison, 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 P's assessed 'balanced' attitude to risk (I'll come back to this further on) and also the term to retirement. In my view there would be little point in Mr P giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, the lowest critical yield based on a retirement age of 60 (so closest to when Mr P indicated he wanted to retire) was 14.19%, which was based on Mr P taking a cash lump sum and a reduced pension. As I said above, CWML didn't produce a critical yield figure for taking the same benefits through the PPF at age 60. But based on taking the same benefits through the BSPS2, , I think the critical yield would've been somewhere between the figure for the PPF had it been produced and the existing scheme, and likely closer to 14.19%. And this was significantly higher than both the discount rate and the regulator's upper projection rate.
So I think Mr P was most likely to receive benefits of a significantly lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with a balanced attitude to risk.

If the BSPS2 hadn't gone ahead, Mr P would've moved with the scheme to the PPF. As I said above, no critical yield was produced based on the benefits available through the PPF at age 60. But at 65 it was 5.31% (full pension) and 4.61% (reduced pension) - so at age 60 it was likely to be higher given the shorter investment term. Given this, I think it's likely Mr P would receive benefits of a lower overall value than the PPF at retirement, as a result of investing in line with his stated attitude to risk.

While I've considered this on the basis that Mr P's attitude to risk was 'balanced', I have some concerns about how CWML arrived at this. CWML has said that an assessment questionnaire was completed to arrive at the overall assessment. But I've not had sight of this – it didn't form part of its business file submission – so I can't see what questions were asked of Mr P. But I'm mindful that Mr P was very close to his intended retirement age; his DB pension accounted for almost all of his private retirement provision so I don't think he had much, if any capacity for loss; he still had outstanding liabilities; and he appears to have limited knowledge and experience of investing – CWML's suitability report referred to Mr Ps' experience as only being in relation to his pensions. So it strikes me that Mr P's circumstances describe someone who ought to be more cautious or low risk in their approach – I think this is a more appropriate description and fit with the level of risk I think Mr P was prepared and ought reasonably to have taken.

I can see that CWML produced a cashflow analysis / model, which it says shows how Mr W could meet his objective of taking £20,000 a year despite the high critical yield and that he would still have a significant amount remaining in his fund to pass on to his family at age 87 – his life expectancy. Firstly, this assumes that drawdown was appropriate or suitable for Mr P. But given that I'm not persuaded a 'balanced' attitude to risk was a reasonable assessment of the level of risk I think Mr P was prepared or needed to take and that a cautious approach was more appropriate, I'm not persuaded a drawdown arrangement was suitable in the circumstances. In any event, CWML's analysis assumes a consistent year on year growth rate of 6.2%, which I'm not persuaded was reasonable. It also assumes that at age 66 Mr P reduces his income withdrawal once his state pension became payable. I'm not sure how realistic that would be. Furthermore, there is no stress testing of the model to show how Mr P's fund might be impacted due to periods of lower-than-expected investment performance or increases in inflation. So I'm not persuaded this analysis demonstrates the financial viability of the transfer or that it was in Mr P's best interests to transfer out of the scheme.

So based on financial viability alone, I don't think a transfer out of the BSPS was in Mr P's best interests. Of course financial viability isn't the only consideration when giving transfer advice as CWML has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

*Flexibility and income need*

It seems that the primary reason CWML recommended Mr P transfer his DB scheme benefits was to provide him with flexibility – specially to allow him to take a portion of his tax-free cash so he could repay his debts including his mortgage before his retirement.

But I don't think Mr P truly required flexibility in retirement. This is because based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash at this point and leave his funds invested until he retired and needed to draw an income.
I say this because, while on the one hand I accept repayment of debt might generally be seen as a prudent approach to take, it doesn't necessarily follow that accessing tax-free cash before retirement to do so is suitable. And in Mr P's circumstances I'm not persuaded it was. Mr P said he wanted to repay his debts before he retired – but CWML didn't question Mr P as to why he felt this was necessary. There is no evidence to show that Mr P's debts, including his mortgage were unaffordable or that he was coming under any financial

pressure. The evidence indicates that Mr P intended to continue working for at least the next couple of years, which means that he could continue to make his debt repayments from earned income thus continuing to reduce the outstanding balances.

Mr P's mortgage balance was recorded as being around £30,000 and his monthly repayment was around £700 a month. So on this basis, it appears within the next few years – i.e. within the period Mr P indicated he would likely continue working – it would be repaid anyway. Furthermore, Mr P's income and expenditure comparison appears to indicate he had surplus income, which he could've been advised to direct towards either overpaying his mortgage or towards his credit card debt, which was more likely being charged at a higher rate of interest. I'm mindful too that Mr P had around £30,000 in savings, which he could've used part of to reduce his unsecured debt – particularly if that debt had a high interest rate. He could then use his surplus income to replenish some of those savings while he continued working. It doesn't appear that CWML considered these options in giving its advice.

So I don't think Mr P genuinely needed flexibility and access to part of his tax-free cash entitlement before he wanted to retire and start taking an income – I see no reason why Mr P couldn't have retained his DB scheme benefits and accessed a cash lump sum and income at the same time when he decided to retire. The tax-free cash available to Mr P at age 60 was around £75,000 based on the benefits available to Mr P through the existing scheme. So it seems this would've been more than sufficient for Mr P's needs – I think he could've used this to repay any remaining outstanding debt at this time and still have some left over to supplement his income, which is what he said he wanted to do. So I don't think flexibility was a genuine need of Mr P's – I think it was simply a feature or a consequence of transferring to a personal pension arrangement.

Turning to Mr P's income need – it was recorded that his household expenditure was currently £1,500 a month, or £18,000 a year, and that he would like a retirement income of £20,000 a year. And based on this, I've seen nothing to indicate that the income from either the BSPS2 or the PPF (if the new scheme didn't go ahead) wouldn't have provided Mr P with what he needed to likely meet his overall income need when taking into account the other provision available to him.

For example, through the existing scheme at age 60 CWML's analysis showed that Mr P would be entitled to an annual pension of around £16,300 (full pension) or £11,200 on a reduced basis – the most likely option given Mr P would still probably have some outstanding debt to repay. Because of the reduced revaluation factors, under the BSPS2 these figures would be lower, but in my view still close to it. Although this alone wouldn't meet Mr P's income need, Mr P's wife was already in receipt of her full state pension, which combined with Mr P's DB scheme income would likely meet their household expenditure need. Mr P could then use his excess tax-free cash to supplement things. CWML has argued that the scheme lump sum wouldn't have been enough to meet Mr P's objectives. But as I said above, if Mr P continued working as he indicated was likely (and if CWML had advised him accordingly) Mr P's mortgage would be cleared or significantly reduced through its normal monthly repayment. And Mr P might have been able to make inroads into his unsecured debt too before he stopped working. So I think it's likely that with suitable advice the scheme's cash lump sum offering would've been sufficient to enable Mr P to repay any outstanding debt at this time as well as giving him funds to supplement his income.

I'm mindful too that Mr P had savings and it was also recorded that he was contributing to his workplace DC pension. And while CWML didn't record the level of contribution here, I think this would've provided an additional source of funds Mr P could draw on flexibly to supplement his income at least until his state pension became payable at age 66.

If the BSPS2 hadn't gone ahead, Mr P would've moved with the scheme to the PPF. And while the income Mr P would receive was likely lower than the pension he'd be entitled to under the BSPS2, I don't think it was substantially lower (particularly if Mr P did take the tax-free cash and reduced pension option) such that it would've made a difference to the recommendation. As I've said above, Mr P had other means together with his wife's pension to supplement things until his state pension became payable.

So overall, I think Mr P could've likely met his income needs in retirement through the BSPS2 or the PPF. And I don't think it was in Mr P's best interests for him to transfer his pension just to have flexibility to repay his debt before retirement that I'm not persuaded he really needed.

*Death benefits*

CWML also recommended the transfer to enable Mr P to pass on what remained of his pension fund to his children in the event of his death.

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 P. But whilst I appreciate death benefits are important to consumers, and Mr P might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr P about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy planning tool. And I don't think CWML properly explored to what extent Mr P was prepared to accept a lower retirement income in exchange for higher death benefits.

The advice paperwork recorded that Mr P didn't just want his pension to merely provide a reduced pension for his spouse. But I think the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr P predeceased her – it was 50% of Mr P's pension. And just because Mr P was younger than his wife by more than 10 years, it doesn't automatically follow that she would predecease him. I don't think CWML made the value of this benefit clear enough to Mr P. This was guaranteed and it escalated – it would also be calculated as if no tax-free cash had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

CWML has argued that its cashflow modelling showed that Mr P's pension fund would have still have a value or around £250,000 at age 87 after allowing for his required income withdrawal. But as I said earlier on, this was based on certain assumptions, including an annual growth rate that I'm not persuaded was realistically achievable on a consistent basis and it was dependent on Mr P reducing his income withdrawals once his state pension became payable. Periods of lower-than-expected investment performance, increases in inflation and/or if Mr P maintained his income withdrawal rate of £20,000 would've likely had a material impact on the value of his pension fund - so it's possible there may not have been a large sum left, as CWML has argued, to pass on when he died. In any event, CWML should not have encouraged Mr P to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I'm mindful that CWML recorded in the fact-find (handwritten notes) that Mr P was expecting an inheritance of £250,000, which it appears from the age of the person Mr P was expecting this from, might not be too far in the future. I don't think CWML took this into account when considering Mr P's desire to pass on a legacy to his children.

But that aside, if Mr P genuinely wanted to leave a legacy for his children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think CWML could've explored life insurance. And this could've been written in trust for the benefit of his children if that's what he wanted to do. The starting point here needn't have been to base the sum assured on the full transfer value – that would assume Mr P would day on day one following the transfer which isn't realistic. Ultimately Mr P wanted to leave whatever remained of his pension at his death, so this ought to have been considered in terms of how much Mr P ideally wanted to leave his family. And this could've been explored on a whole of life or term assurance basis, which was likely to be more affordable to provide.

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

*Suitability of investments*

Because I'm not persuaded that Mr P's attitude to risk was 'balanced', I think the investment recommended was unsuitable. But, as I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr P, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr P should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

*Summary*

I accept that given the broader situation and circumstances at the time, including the increased transfer vale Mr P received in August / September 2017, Mr P was likely motivated to transfer out of the BSPS. And I don't doubt that the flexibility and the potential for higher or different death benefits on offer through a personal pension would have sounded like attractive features to Mr P. But CWML wasn't there to just transact what Mr P might have thought he wanted or seemed like a good idea. The adviser's role was to really understand what Mr P needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the proposed BSPS2 or the PPF. By transferring to a personal arrangement Mr P was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr P shouldn't have been advised to transfer out of the scheme just to repay debts that there is no evidence to demonstrate weren't affordable, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. And just because Mr P's transfer value might have been higher at the time was not of itself a compelling reason to recommend the transfer.

Overall, I don't think it was in Mr P's best interests for him to transfer his BSPS benefits to a personal pension at this time.

So, if things had happened as they should have and CWML had waited until the details of the BSPS2 were known before formulating its advice, which in the circumstances I think it was fair and reasonable for it to do, I think it should've recommended that Mr P opt into the BSPS2.
I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time. But I think everything pointed to it going ahead, so this ought to have been the position CWML adopted. While I'm mindful that Mr P indicated he wanted to retire within *"a couple of years or so"* because his original adviser said that he might look to continue working for up to five years, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable

reduction for very early retirement. And by opting into the BSPS2, Mr P would've retained the ability to transfer out of the scheme at a later date - if he needs demanded it.

Also, because Mr P was married his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr P chose to do so, which it appears was likely). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

I'm mindful that CWML has said that it confirmed to Mr P that the PPF was more beneficial to him based on a retirement age of 60. But I've not seen anything within the evidence presented to support that. As I said earlier on, CWML's TVAS report did not show the benefits available to Mr P through the PPF at 60 and there's also no reference made to this in the suitability report. So, for the reasons above, I still think the BSPS2 was the suitable option for Mr P in his circumstances.

Of course, I have to consider whether Mr P would've gone ahead anyway, against CWML's advice.

I've considered this carefully, but I'm not persuaded that Mr P would've insisted on transferring out of the BSPS, against CWML's advice. I say this because, while as I've already said Mr P was likely motivated to transfer when he approached CWML, I still think he would've listened to and followed CWML's advice if things had happened as they should have and it recommended he not transfer out of the scheme. Mr P was not, in my view an experienced investor. CWML's suitability report referred to Mr P's investment knowledge being limited to having a pension. So I don't think Mr P was someone who possessed the requisite skill, knowledge or confidence to against the advice they were given, particularly in complex pension matters. Mr P's pension accounted for almost all of his private retirement provision and I think his attitude to risk was cautious. So, if CWML had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr P's concerns about his death benefits were so great that he would've insisted on the transfer 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. If CWML had explained that Mr P could likely meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr P would've insisted on transferring out of the BSPS against CWML's advice.

In closing I can see that CWML has argued that Mr P has gone on to access his benefits flexibly, which the personal pension allowed him to do and he's taken a greater level of income than was discussed at the time of the advice. It says it believes Mr P understood the implications of the transfer and that this shows it was suitable. But just because Mr P has accessed his benefits flexibly as his pension allows him to do, does not in my view demonstrate the advice was suitable for at the time. And while Mr P might be drawing a higher income than was contemplated at the time and greater than his DB scheme would provide, this is something which has happened subsequent to the advice. And its possible this is due to a subsequent change in circumstances. So for the reasons I've set out in detail above, I'm not persuaded the advice was suitable and Mr P's subsequent actions do not alter my decision.

In light of the above, I think CWML should compensate Mr P for the unsuitable advice in line with the regulator's rules for calculating redress for non-compliant pension transfer advice And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr P**,** as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would most likely have remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

CWML 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.

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

For clarity, Mr P started taking his pension benefits in April 2021 at age 60. So, compensation should be based on him taking benefits at this age.

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 P'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, CWML should:

- calculate and offer Mr P redress as a cash lump sum payment,
- explain to Mr P 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 P receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr P accepts CWML's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr P 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 P's end of year tax position.

Redress paid to Mr P as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, CWML 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 P'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.

## My final decision

Determination and money award: I uphold this complaint and require Chequers Wealth Management Limited to pay Mr P 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 Chequers Wealth Management Limited pays Mr P the balance.

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

My recommendation would not be binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 11 October 2023.
Paul Featherstone
**Ombudsman**