DRN-3744376

The complaint

Mr P complains about the advice given by Mulberry Wealth Management Limited (MWM) 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.

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.

In October 2017, members of the BSPS were 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 the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr P approached MWM in November 2017 to discuss his pension and retirement needs. Mr P was concerned with the situation surrounding the BSPS. He had a friend who had received advice from MWM and so decided to seek advice from them himself.

MWM completed a fact-find to gather information about Mr P's circumstances and objectives. This was first completed on 27 November 2017. It was signed by Mr P on 19 January 2018 in an advice meeting. This showed that:

- He was 36 years old.
- He was married and had two young children.
- He was employed (by a different employer) earning £56,000 a year. His wife was also employed and earned £23,000.
- They owned their own home, valued at £400,000 which was subject to a mortgage.
- They owned a second property, also subject to a mortgage, which was rented.
- He had a modest personal loan and credit card balances.
- They were living within their means.
- He had no savings or investments, and it was recorded that he and Mrs P were essentially investing in their property.

MWM also carried out an assessment of Mr P's attitude to risk, which it said was 'moderate to adventurous'. Mr P said he could tolerate some losses to his DB scheme benefits but this wouldn't be desirable.

In respect of his pension arrangements Mr P had deferred benefits with the BSPS. A cash equivalent transfer value ('CETV') quotation was issued on 7 November 2017. The transfer value was £95,725.13.

Mr P also had a second DB scheme but details of this weren't provided. And he was a member of his employer's current occupational scheme which was a defined contribution ('DC') group personal pension. He was contributing 4.4% of his income into this and his employer also contributed 6.6%. Making a total of 11%.

On 22 January 2018, MWM advised Mr P to transfer his pension benefits into a personal pension and invest the proceeds in funds that met his attitude to risk. The suitability report said the reasons for this recommendation were, in summary:

- Mr P had concerns over the future management of the proposed BSPS2 scheme, and he did not trust his ex-employer to fund and run the scheme efficiently. He felt the situation that had arisen around BSPS was unacceptable.
- He wanted to control his pension benefits and take them flexibly in the future. He may want to reduce the income his private pensions provided when he reached state pension age. And take tax free cash when he needed it
- He wanted to potentially retire at his age 60. A personal pension was the only way he could do this without reduction.
- He didn't think that the revaluation rate of the BSPS2, the consumer price index plus 2% was particularly generous. He thought this could be bettered.
- Given that he was a member of his current employer's DC scheme he felt he could risk his BSPS benefits.
- He also felt that the projected pension from the BSPS2 could be improved on.
- He was attracted to the better death benefits in a personal pension. That would enable him to pass his pension fund onto his wife and immediate family.
- The personal pension had the opportunity for greater tax-free cash.

Mr P accepted MWM's recommendation and transferred his BSPS funds to a personal pension.

Mr P complained in 2021 to MWM about the suitability of the transfer advice. He said that he was unsure that the advice he had received from MWM was appropriate for him.

MWM didn't uphold Mr P's complaint. It said that Mr P received detailed and accurate information about the BSPS and the situation. He received appropriate advice and risk warnings. The advice was suitable for him and encompassed his needs and requirements at the time. MWM also noted that the advice has been reviewed by the industry regulator, the Financial Conduct Authority ('FCA') and found to be suitable.

Mr P referred his complaint to our service. An Investigator upheld the complaint and recommended that MWM pay compensation. She said that although there was a chance that the personal pension would result in higher benefits, she didn't think it was established that it was in Mr P's best interests to transfer. Overall, he would have benefitted more from keeping his guaranteed DB scheme benefits. She didn't think it was likely that he fully understood what he was giving up. She thought Mr P would have remained in the BSPS2 if he was given suitable advice.

MWM disagreed, saying:

- Its advice was suitable for Mr P's circumstances and objectives at that time. It also said it gave Mr P enough information to make an informed decision.
- It shouldn't have advised Mr P to opt into the BSPS2 at that time as it wasn't certain to be established. It said if Mr P had opted in to the BSPS2, and it didn't go ahead, his BSPS pension funds would have moved into the PPF.
- The PPF was the only reasonable comparator here.

- It was not required to guarantee that the transfer was suitable for Mr P. It only had to take reasonable steps to ensure suitability, which it did.
- It said the Financial Ombudsman Service had placed a disproportionate reliance on critical yield and discount rate analysis. This may not be relevant as the BSPS2 was not certain to go ahead
- The transfer met his objectives of flexibility in retirement and providing more suitable death benefits.

The Investigator wasn't persuaded to change her opinion, so the complaint was referred to me to make 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 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 largely the same reasons given by the Investigator.

MWM says that its adviser was only required to take reasonable steps to ensure the advice was suitable for Mr P. I agree that under the FCA's Conduct of Business Sourcebook ('COBS') MWM was required to take reasonable steps to ensure that its personal recommendation to Mr P was suitable for him (COBS 9.2.1).

However, additional regulations apply when advising on transferring out of DB schemes. These additional regulations say that the starting assumption for a transfer from a DB scheme is that it is unsuitable. And that a business should only have considered a transfer out of the scheme if it could clearly demonstrate that it was in Mr P's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests. I'll explain why.

In arriving at my findings, I've noted that MWM provided an FCA review of the advice which MWM says shows the advice was suitable. But there is almost no information about exactly what this review considered, and so I'm not able to place any weight on this.

Financial viability

MWM 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).

MWM has said that BSPS2 may not have gone ahead so the only worthwhile comparison it could provide was with the benefits available to Mr P through the PPF. But Mr P had already opted for the BSPS2 and the point of sale documentation does contain information about the BSPS2 and the PPF, which correctly reflects the situation here. So, it's not clear to me why MWM has said this.

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.

Mr P was 36 at the time of the advice and wanted to retire between the ages of 60 and 65. The critical yield required to match Mr P's benefits from the BSPS2 at age 65 was 5.13% if he took a full pension and 4.36% if he took tax-free cash and a reduced pension. The same calculations at his age 60 were 6.10% and 5.24% respectively.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 4.78% per year if Mr P took a full pension and 4.56% per year if he took tax-free cash and a reduced pension. The same figures at his age 60 were 5.46% and 5.24%.

The suitability report stated that the yields at his age 60 and 65 were certainly achievable to match the scheme pension benefits offered by BSPS2. Especially as Mr P was a moderate risk investor and that he was very likely to access his tax-free cash entitlement.

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, and was 4.7% per year for 28 years to retirement, at his age 65. And 4.6% per year for 23 years to retirement, at his age 60. 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 P's 'moderate to adventurous' attitude to risk and also the term to retirement.

Mr P had a relatively high attitude to risk. And I can accept, given his financial situation and the time he had to retirement, he would have been able to take some risk with his pension planning. That said, I would have expected a higher risk investor to have some investment experience and have been familiar with fluctuating investments. This isn't the case here. And Mr P seems to have invested for his future in what he thought were more secure areas such as his property. And he said he didn't really want to risk his DB scheme benefits. I think this attitude to risk classification is far from conclusive and if MWM had explored this a little further I'm not persuaded that he would have had a high tolerance to risk for this transaction.

That said, 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, given the lower critical yields were in the region of 4.5%, I think it's not certain that Mr P could improve significantly on the DB scheme benefits at retirement at 65. And at his intended earlier retirement age of 60 this becomes more unlikely. There is a significant risk that he could receive much lower benefits, as a result of investing in line with his attitude to risk. This would be the case even if the scheme moved to the PPF. I'm not persuaded that he wanted to take this risk.

MWM has provided cashflow models which it says show Mr P would've been able to meet his needs despite the high critical yields. I've considered these, MWM's models show that if Mr P took the same benefits as the BSPS2, and it increased by the retail price index then the fund would run out at his age 81 or 82 if he took benefits at his age 65. Assuming it grew at a medium rate of return. The same figures if he took benefits at age 60 were 77 and 78. So if there was a period of poor performance or Mr P lived a long time past his life expectancy of somewhere between 70 and 80, then the fund could be particularly depleted.

Also, as MWM will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

Further, MWM also produced a transfer value comparator which showed what Mr P's fund would need to grow by if he wanted to match the BSPS2 benefits by buying an annuity. The fund required to purchase the annuity at age 65 was £179,615.52, or £159,965.80 if tax-free cash was taken. The same funds at age 60 were £173,607.40 and £156,664.48 respectively. These are reasonably high amounts, and they give a revealing window into the 'cost' of the benefits Mr P was giving up.

MWM also says that 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 says Mr P didn't want an annuity, it said he wanted to take his benefits flexibly. 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 P 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 around another 23 years. It's entirely possible that Mr P would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

MWM says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings solely on this, I think it is a useful additional consideration when seeking to determine what level of growth was achievable at the time of the advice. 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. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr P's attitude to risk, which leads me to believe there was a good chance he could be worse off in retirement if he transferred out of the DB scheme. Especially if he retired early as he wanted to.

For this reason alone a transfer out of the DB scheme wasn't in Mr P's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as MWM has said. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It seems one of the main reasons that MWM recommended this transfer was for the flexibility and control it offered Mr P. It's evident that Mr P could not take his DB scheme benefits flexibly in the same way as a personal pension. Although he could choose to take tax-free cash and a reduced annual pension, Mr P had to take those benefits at the same time.

Mr P was far away from retirement, so there wasn't a detailed analysis of what his income or expenditure needs would be at this time. The retirement planning, what there was of it, was based on Mr P wanting an income of 60 to 65% of his salary from around age 60. He said he wanted to live a simple life. This is vague, but I can accept that given that his retirement was such a long time away, it would be difficult to provide a lot of detail about his needs then.

But of course, this also means that it wasn't really established that Mr P had a genuine need to access his tax-free cash earlier than the normal scheme retirement age and leave his funds invested until a later date. It was discussed that he may want to do this in the future, to perhaps allow him to retire early, but there was no immediate need to do this. And I note his only significant debt, his mortgage, should've been paid before he retired. So, I don't think there was any particular need for a lump sum, it seems more of a 'nice to have'.

Turning to the income he could receive, the BSPS2 could have provided an annual pension at 65 of £7,788 or a tax-free cash payment of £35,872 and a reduced annual pension of £5,380. At age 60 it could provide an annual pension of £6,620 or tax-free cash of £31,754 and an annual pension of £4,763.

Similarly, the PPF would provide an annual pension of £7,102.65 at 65 and tax-free cash of £37,912.89 plus an annual pension of £5,686.93. At age 60 it would provide an annual pension of £5,571.18 or tax-free cash of £31,762.18 plus an annual pension of £4,769.50.

So, I think it's reasonable to say Mr P probably wouldn't have been able to meet his aims just with his BSPS2 pension. And this was documented at the time of sale.

But there are other factors to consider here. Mr and Mrs P would both receive their state pensions. And this would go some way to meeting their needs. Any shortfall would be most acute if Mr P wanted to retire early some time before his state pension age. MWM says the flexibility of the personal pension would have allowed him to draw the required income until his state pension became payable.

But at the time of sale Mr P was a member of his employers new DC scheme and he would be building up a fund over the next 24 years or so (as a minimum), through this. As a very rough estimate, given his salary, the total amount going into the scheme each month would be about £510. Even without taking investment growth into account, it would be worth in the region of £147,700. And by assuming modest growth of 2% over 24 years, the funds could be worth in the region of £189,000 by the time Mr P was 60.

And Mr P also had another DB scheme pension that I understand had an annual benefit of around £1,000 a year. And modest DC scheme benefits. Mrs P was also working at the time, her pension details weren't recorded but given her occupation she may have also had access to a DB scheme. I think it was a serious failing on MWM's part not to fully consider her occupation and likely pension income before giving advice here as their overall situation was important.

This means that at age 60 or 65, if Mr P remained in the BSPS2, he could take an annual increasing pension. Given that there wasn't any certainty around the need for tax-free cash (even if it was recorded that he did want to do this) I think it's likely that Mr P could've met his income needs until his state pension became payable at age 68. I think it's likely any shortfall could've been met by Mr P accessing income or tax-free cash from his DC scheme. Mr P would have likely had a significant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I don't think Mr P would have had to sacrifice flexibility in retirement by staying in the BSPS2.

But even if this didn't entirely work out. As I've set out above, Mr P was unlikely to obtain better benefits at retirement if he transferred his funds to a personal pension. So, as a starting point I think Mr P had a better chance of achieving his retirement aims by opting into the BSPS2 (the benefits under which were guaranteed and escalated) rather than relying on investment growth in a personal pension.

I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr P had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF.

As I've detailed above, the income from the PPF could be slightly lower than the pension he'd be entitled to under the BSPS2, but I don't think it was substantially lower such that it should've made a difference to the recommendation. And, in fact, if he were to retire at age 60, the initial benefits were slightly higher from the PPF than those from the BSPS2. Mr P would've also had his DC scheme to draw on until his state pension became payable. So, I still think Mr P could've met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

I also think it's likely, as is usually the case going forward from this stage of life, that Mr P's circumstances and needs *would* change. And the planning should have encompassed this likelihood. Keeping as many of his options open to him as possible would've been in Mr P's best interest here.

So, I don't think it was a suitable recommendation for Mr P to give up his guaranteed benefits when he didn't really know what his needs in retirement would be. And I think Mr P could've most likely met his income needs by remaining in the BSPS2. Furthermore, if Mr P later had reason to transfer out of his DB scheme, he could have done so closer to retirement.

Overall, I'm satisfied Mr P could have met his income needs in retirement through the BSPS2 or the PPF. So, I don't think it was in Mr P's best interests for him to transfer his pension just to have flexibility that he didn't need.

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 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. And I don't think MWM explored to what extent Mr P was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr P was married and had children and so the spouse's and dependent's pension provided by the DB scheme would've been useful to his dependents if Mr P predeceased them. I don't think MWM made the value of this benefit clear enough to Mr P. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left particularly if Mr P lived a long life. In any event, MWM should not have encouraged Mr P to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr P genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think MWM should've instead explored life insurance.

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 that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

It's clear that Mr P, like many of his colleagues, was concerned about his pension. His ex-employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and he said he preferred to have control over his pension fund. He was clearly unhappy with events at his ex-employer and with the BSPS.

So, it's quite possible that Mr P was also leaning towards the decision to transfer because of the concerns he had about his ex-employer and his negative perception of the PPF. However, it was MWM's obligation to give Mr P an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. The advice did take into account the benefits available to Mr P through the BSPS2. I think MWM should have taken steps to alleviated Mr P's concerns about the scheme moving to the PPF. But I don't think it did this. The suitability report said that:

'*As things stand today, the BSPS2 scheme has not yet been established and there is still concern that if insufficient funding is put in place to support the scheme, then there is still a chance that the original pension scheme will automatically fall into the PPF and therefore, the option to transfer your accrued benefits will be lost.*

It is unknown at this stage whether members who join the BSPS2 pension scheme will be able to obtain transfer values in the future, should it be their desire to research an alternative way to receive their pension benefits.'

Even if there was a chance the BSPS2 wouldn't go ahead, I think that MWM should've reassured Mr P that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr P through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. 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've led to MWM recommending Mr P transfer out of the DB scheme altogether. I note the suitability letter did say that there was very little difference between the BSPS2 benefits and those the PPF would provide.

I think Mr P's desire for control over his pension benefits was overstated. Mr P was not an experienced investor, and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr P – it was simply a consequence of transferring away from his DB scheme.

Suitability of investments

MWM recommended that Mr P invest in a fund it said was suitable for his attitude to risk. 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 don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr P. But MWM wasn't there to just transact what Mr P might have thought he wanted. 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 within BSPS2 (or the PPF). By transferring to a personal pension Mr P was, in my view, unlikely to significantly improve these, and he may have got less. 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 P's best interests for him to transfer his DB scheme to a personal pension when he had opted into the BSPS2. I think MWM should've advised Mr P not to transfer and he would have remained in the BSPS2.

I accept that MWM disclosed the risks of transferring to Mr P and provided him with a significant amount of information in the suitability report. But ultimately it advised Mr P to transfer out, and I think Mr P relied on that advice.

I'm not persuaded that Mr P would've insisted on transferring out of the DB scheme, against MWM's advice. I say this because Mr P was an inexperienced investor and this pension accounted for the bulk of his 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've accepted that advice.

I'm not persuaded that Mr P's concerns about the PPF 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. And if MWM had explained Mr P was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his needs in retirement without risking his guaranteed pension, I think that would've carried significant weight. I appreciate some time has now passed but Mr P now says that this is what he would have done.

I'm aware that in some communications with MWM Mr P appeared motivated to get the transfer out completed. But Mr P had received advice from MWM that he should transfer out of the DB scheme. So, I think his words have to be considered in that context. It isn't reasonable to assume that he'd have behaved the same way if he'd been advised to remain within the BSPS2. So, I don't think this demonstrates he'd have gone against the advice.

In light of the above, I think MWM should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that MWM also pay Mr P £250 for the distress caused by the unsuitable advice. Mr P has explained that although he has been 'out of the loop' he has been very concerned about this situation recently. And I don't doubt that Mr P will have been caused some worry in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

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 BSPS2 if suitable advice had been given.

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.

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 P and our Service upon completion of the calculation.

For clarity, Mr P 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, 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 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 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 P redress as a cash lump sum payment,
- explain to Mr P 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 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 MWM's offer to calculate how much of his 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 his 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 (rather than into a pension) 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 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.

MWM must also pay Mr P £250 for the distress the poor advice has caused him.

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

<u>Determination and money award</u>: I uphold this complaint and require Mulberry Wealth Management Limited to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that Mulberry Wealth Management Limited pays Mr P the balance.

If Mr P 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 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 20 September 2023.

Andy Burlinson
Ombudsman