

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.

Michael James trading as West Country Financial is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "MJWCF".

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 MJWCF 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 49 years old and married to Mrs T who was 45. They had grown up children all in their 20s.
- Mr T had previously suffered from a potentially life-threatening disease although he'd been given the 'all clear' around 4 years prior to the advice. Mrs T was said to need some surgery on a back issue but was working full-time. Mr T had an income of around £37,000 per year and Mrs T's income was £21,000. They had a meaningful disposable income left available each month after essentials were paid.
- Mr and Mrs T lived in a home valued at around £160,000 with a 15-year mortgage outstanding of around £93,000. They owned some shares (c£8,000) and had around £10,500 in a deposit savings account. They had further cash savings in ISAs of £9,000 in total. The adviser recorded that they each anticipated inheriting properties from elderly relatives at some stage. But I've made the assumption that these were not certain as it could depend on long-term care requirements or other unforeseen factors.

- The cash equivalent transfer value (CETV) of Mr T's BPS was approximately £426,190 as he had over 29 years' service. The normal retirement age (NRA) was 65. However, I can see Mr T expressed an interest in retiring early, at around the age of 60.
- Mr T had recently joined the TATA defined contribution (DC) pension scheme as a consequence of the BPS closing to ongoing contributions. Mrs T had a number of small DB and DC pensions of her own, built up through different employers over the years.

MJWCF set out its advice in a suitability report on 15 November 2017. In this it advised Mr T to transfer out of the BPS and invest the funds in a type of personal pension plan. MJWCF 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 MJWCF about its advice, saying he shouldn't have been advised to transfer out to a personal pension. In response, MJWCF said it hadn't done anything wrong and was acting on the financial objectives Mr T had at the time.

Mr T then referred his complaint to our Service, the Financial Ombudsman Service. One of our investigators looked into the complaint and initially said in early 2022 that it shouldn't be upheld. As I'll explain a little more about later, the investigator thought Mr T's previous illness meant that transferring to a personal pension arrangement was suitable for him.

However, after receiving further submissions from Mr T, the investigator issued another view, in October 2022. This time the investigator recommended that, having reconsidered all the available evidence, we ought to uphold his complaint. MJWCF hasn't agreed to uphold it and has asked for an ombudsman's 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 MJWCF'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, MJWCF 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 BPS to a personal pension was in Mr T's best interests. I have also carefully considered the final response letter from MJWCF. I've carefully considered too, all the various other responses made to the points contained within our investigator's views.

Having considered everything we have with great care, I'm upholding Mr T's complaint.

Financial viability

MJWCF 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.

In this case, MJWCF used the existing scheme (BPS) for the critical yield comparisons, rather than the 'new' BPS2. However, we know that by the time of the advice, Mr T's options didn't include staying in the BPS. MJWCF has since said that getting information from the trustees was difficult due to the numbers of requests to transfer.

However, this issue doesn't have any meaningful effect on the outcome though. That's because we know the critical yield figures for the BPS2 would have been somewhere close to those of the 'old' BPS. And, as I show below, looked at through the prism of 2017 it was unlikely that Mr T would be able to achieve even close to the critical yield if transferring to a personal pension plan.

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.

MJWCF said that the critical yield required to match the benefits at the age of 65 in the BPS, was 7.36% if Mr T took a full pension at the NRA (65). MJWCF also calculated the critical yield rates for an earlier retirement, at the age of 60. It did this because Mr T had apparently expressed a desire to retire early. However, as I'll explain more about later, at the age of 49, retirement was still a long way off for Mr T and so I very much doubt whether retiring at 60 was fixed. For the age of 60, the critical yield came out at 8.94%.

But I don't think there was credible evidence at the time that achieving enough growth outside the DB scheme, to make transferring financially viable, was ever going to be attainable. 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 4.3% per year for 15 years to retirement (age 65), which is well below the relevant critical yield figure I've referred to above. For retiring at 60, the discount rate was only 3.8%. 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%.

At the time, MJWCF assessed Mr T's attitude to risk (ATR) as "adventurous" or 8/10. I think this categorisation was too high and appears based only on answers on a pre-formatted questionnaire about general risks Mr T was asked to complete. The evidence is strongly suggestive of his answers being based mainly on Mr T's previous life-threatening illness experience where Mr T appeared to have adopted a 'life is for living' attitude. But I've seen no evidence Mr T had the investment experience needed to be classified as an adventurous investor as I can see nothing showing he had relevant experiences to draw upon.

I therefore think any portrayal of Mr T's as being knowledgeable and / or experienced about investing in areas like this was overblown. I've listened to recorded telephone calls we've had with him over the last few months and whilst he is clearly an intelligent and inquisitive person, there's simply no evidence he had a detailed knowledge of investing on this scale. I've noted too, that even the adviser themselves reduced his ATR to 6/10 when thinking about the funds Mr T ought to be invested in after the transfer. The funds Mr T was shown assumed "mid-rate" and "high" growth rates of around 2.2% to 5.1% respectively and of course, we know 2017 was a period of sustained low interest rates and bond yields.

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 projections and also to the discount rate were most relevant here in my view. And even the funds' own "mid-rate" and "high" projections were relatively modest. So, I think growth assumptions of around 4½-to-5% were much more realistic if thinking about Mr T's NRA of 65. If considering a much earlier retirement, at the age of 60, I think the assumed growth should have been slightly lower. So, these realistic growth rates were substantially below the critical yield figures for the BSPS which were 7.36% (aged 65) and 8.94% (aged 60). Achieving these year-on-year, upon transferring out, was unlikely.

I've also noted that using the NRA of 65, MJWCF's own transfer analysis said that in order to purchase an annuity to provide benefits of equal value to the estimated benefits in the existing scheme, the estimated fund required at 65 was £1,046,817. For the age of 60 the amount required was £923,623.

To reiterate, these figures are found in MJWCF's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are far 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.

Elsewhere in its transfer analysis, MJWCF 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. MJWCF 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 MJWCF 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, MJWCF's own figures, shown in its suitability report and 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 BPS. But as I've said, MJWCF should have recalculated the comparisons for Mr T when the situation with BPS2 became clear – we know this was available at the time.

I've also considered some projections MJWCF 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 MJWCF was showing Mr T were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

Of course, according to MJWCF, 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, MJWCF 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.

Other reasons to transfer away

MJWCF recommended a transfer to a personal pension plan based on what it said were Mr T's wider objectives. I have used all the documents we still have from the advice sessions to summarise the following themes as supporting the recommendation to transfer away.

As I've mentioned above, our investigator was initially persuaded that Mr T's previous illness might well have caused him to adopt an attitude whereby he just wanted access to his pension in case something bad happened to him again and Mrs T was left to cope alone. He also expressed a fear that if he died, his adult children wouldn't get anything from his DB scheme. I've also noted some reference in the documents that Mr and Mrs T were considering buying a property abroad.

However, I think these things were overstated. I certainly wouldn't want to imply Mr T's previous health scare wasn't a very significant shock, or that it had caused him to view life a little differently. But we know, thankfully, that Mr T had recovered from this and had been given the 'all clear' four years before the advice. There's also no hard and fast evidence the home purchase abroad was anything other than a possible option. Indeed, the 'fact-find' from the time said they had no plans for major capital spending anytime soon and Mr T only said they had "*thought about*" a home overseas.

These things, in my view, show how important it was for the adviser to look at Mr T's situation objectively when advising him. I accept Mr T probably went to the advice session with an outline view of what he wanted. However, the adviser was being paid for their advice and they were the regulated party here. And their job wasn't to just transact what Mr T – an amateur in this field – thought was a good idea. The job of the adviser was to use their skill, experience and training to recommend what was in Mr T's best interests. I don't think this happened.

The following were listed by the adviser as Mr T's objectives:

- *take your retirement from age 60 without incurring a “penalty”*
- *you prefer to have control of the investment strategy and to have greater flexibility with the timing and levels of lump sum withdrawals and income rather than the regular income option available via the final salary scheme.*
- *ensure that the full value of your pension is available for your spouse and children in the event of your death as you feel [your wife] would not be comfortably provided for with a 50% spouse pension.*
- *you wish to access some of the tax-free cash to buy a holiday home abroad and repay any outstanding mortgage at retirement, though you are overpaying to try to clear it prior to retirement.*
- *concern regarding the financial security of the pension.*

I have considered all these issues.

Retiring early and accessing the funds early

Mr T was still only 49 years old and had thankfully recovered his health. So, I think it's important to focus for a moment here on Mr T's comparatively young age by pension standards.

The evidence I've seen here is that Mr T – understandably - had no concrete plans yet for his retirement and didn't really have any mature plans for the money. As I've said, I think the home abroad was only a thought. In reality, there was no property yet identified and no plan as to how it was going to be funded. So citing this as a potential reason to transfer his pension and access cash early was wrong, in my view.

I've noted that another advantage cited of the transfer to a personal pension plan was that of retiring early and accessing a large tax-free lump sum to pay off Mr and Mrs T's mortgage. Of course, it's rarely a bad idea to think about paying down debt. But there was no evidence that Mr and Mrs T were not duly paying down the mortgage in accordance with the rules and payment plan. I also think it's important to point out they had 15 years left on their mortgage. This means that by the time an early retirement at 60 came about for Mr T, there might only be four years or so left on the mortgage. And as a consequence of this, the remaining balance would be low and easily met from the savings Mr and Mrs T had - there was no need to use Mr T's pension for this purpose. Even without using the savings they already had, there was also a possibility of the mortgage being paid completely anyway before Mr T retired. This is because Mr and Mrs T had said that when their youngest child left university they might use their disposable income to pay extra each month to reduce their mortgage debt. So, there was every chance that the term would be reduced to before Mr T even reached early retirement.

I also think that as Mr and Mrs T were only still in their late 40s, it's important to bear in mind that life would probably still have some challenges to throw at them, meaning a retirement couldn't be easily planned just yet when it was still over a decade away. I think there's evidence that issues such as their youngest child still being at university, and some health issues being endured by Mrs T, were considered as priorities they wanted to sort out. These types of issue clearly had the capacity to change their outlook and financial profile considerably.

So, I've considered Mr and Mrs T's relatively young ages and their overall circumstances when thinking about whether 'now' was the right time to advise Mr T to irreversibly transfer

away from a DB scheme. He'd been through a very hard time with his health and whilst I'm sure, like many people, Mr T probably *wanted* to stop working as early as possible, I think he also had several more pressing priorities in the years ahead which could change what he was able to achieve in terms of retiring. What he and the adviser discussed about retirement, in 2017 therefore, could only ever have been general aspirations about Mr T eventually giving up work. But in reality, there was no plan to retire early. It was simply too early to speculate about this and give up the benefits and guarantees the BSPS2 contained.

I think it's also likely MJWCF also promoted to Mr T that he could access more tax-free cash if he transferred to a personal pension plan. It implied 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 MJWCF should have been telling Mr T at the time that extra tax-free lump sums being removed from a personal pension, potentially in his late 50s in his case, also came with consequences in that the amount left for his later retirement years would obviously decrease.

In my view, the adviser also portrayed the DB scheme opportunity Mr T had with the proposed BSPS2 in a somewhat negative dimension. The implication was that transferring to the BSPS2 was somehow too restrictive for Mr T and unsuitable for him. For example, retiring early from a DB scheme was referred to as a 'penalty'. But retiring early from that DB scheme (the 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. So, in my view, referring to this as a 'penalty' was inaccurate and needed a very careful explanation. Overall I think the adviser focused heavily on transferring away, rather than starting by assessing whether BSPS2 could meet Mr T's early retirement objectives. I think the adviser just promoted the more flexible arrangements which Mr T would find with a personal pension plan.

In this context, with over 15 years still left to when he'd be actually contemplating retiring if using his NRA, there was simply no meaningful rationale brought forward as to why Mr T should have been deciding to transfer way. And doing so involved an investment risk which I've showed above would probably mean lower overall financial benefits at retirement.

Flexibility and control

I also can't see that Mr T required flexibility in retirement in the way the adviser suggested. In any event, flexibility was poorly defined by MJWCF. And so, I've seen nothing that showed Mr T required changing how his retirement benefits ought to be paid. Even if I were to assume the retirement plans were more fixed than the distant thoughts about something that was still over a decade away, I still don't think there was any case for Mr T transferring away from a DB scheme at that point. This is because MJWCF itself set out the estimated pension he'd get under the BSPS. In my view, this showed a reasonable income when assessed against what Mr T had speculated that he might need in retirement.

Of course, I've already explained the unpredictability of assessing retirement needs so far in advance. However, Mr T speculated that they might have needed around £20,000 per year if they made progress on paying their mortgage.

MJWCF's analysis said that if retiring at 60, Mr T could expect an annual pension of around £17,912. But we know Mrs T was still a few years younger and so she would only be 56. She would therefore have still had a salary herself – her current salary was £21,000 per year - or even if she did retire very early, she would have a modest retirement income which comprised of both DB and DC pension schemes in her own name. I don't think the adviser

comprehensively calculated all these scenarios up. In my view these calculations would have helped to demonstrate that Mr T could probably still retire early, but as a member of BPS2, rather than having to transfer. The above were BPS figures, but that doesn't really matter because current members were being given similar estimates about the new scheme (BPS2) at around the very time this advice was being sought. I don't think MJWCF adequately explained these things to Mr T and that his hoped-for income could still be met without leaving the DB scheme. I think the advice simply discounted him transferring to the new scheme to obtain flexibility which was poorly defined and which he didn't need.

Mr T also already had a new and more flexible DC pension with his existing job as a consequence of the old BPS scheme being closed to new contributions. I don't think the adviser took enough notice of this. Whilst it may have contained only a small sum in 2017, this DC pension was being significantly contributed towards by both Mr T and his employer - 6% and 10% respectively and still had over 15 years left to run (10 years if he did eventually retire very early). As of 2017, Mr T easily appeared to have enough financial capacity to raise his contributions to this DC scheme. So I think that by retirement it isn't unreasonable to say he'd have accrued a substantial sum within this. I think this secondary pension would have afforded Mr T any flexibility he might have needed in the years ahead.

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. Indeed, 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 BPS2 and the scheme was still underpinned by the PPF. On the other hand, he'd have also built up a substantial DC scheme over a long period of time - 10 to 15 years. So, if Mr T ever found he needed so-called flexibility, then he'd be able to use the latter, rather than transferring away from the former.

I've also seen no persuasive 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 BPS2. It's true there were some differences in this scheme when compared to the original BPS, but it remained a DB scheme nonetheless and was run for him by trustees. There's no real evidence that Mr T was an experienced investor. He and Mrs T had savings, but the vast majority of this was in cash deposit type accounts. Mrs T had some shares, but in my view this was probably connected with a past employment. I also accept Mr T had joined the new TATA DC scheme which involved investing, but again I've seen nothing showing this was conducted under anything other than an 'off the shelf' investment strategy which required no direct investment decisions from Mr T himself. In any event, he'd only just joined this a few months before.

Mr T appeared to therefore have no direct experience of these types of 'money market' investments and I think he would have found the complexity, scale and responsibility of managing over £426,000 of transferred funds 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.

I therefore think Mr T's circumstances here were much more aligned to him transferring to BPS2 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, this supported that strategy in my view.

Death benefits

Death benefits are an emotive subject and when asked, most people would like their loved ones to be taken care of when they die. I think these issues were particularly emotive given the health issues Mr T had endured.

The adviser told Mr T that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone he nominated. So, the lump sum death benefits on offer through a personal pension were probably made to look like attractive features to Mr T. Given what Mr and Mrs T had been through I can understand why.

I'll deal with Mr T's three adult children first. He clearly liked the idea that they might be able to inherit part of his pension fund if he died. This wasn't a feature of the BPS2. But we know that when he did transfer, he apportioned 97% of the personal pension's benefits to his wife. Only 1% each was awarded to the three children. Not unsurprisingly therefore, Mr T's overwhelming priorities were to see to the financial wellbeing of his spouse. So I don't think using his adult children – and their chance of inheriting his pension if he died – was the relevant factor here.

On the other hand, the BPS2 contained certain benefits payable to a spouse if Mr T died. These benefits existed both pre and post retirement. I therefore think the value of these benefits were most likely underplayed because the spouse's pension provided by the BPS2 would have been extremely useful to Mrs T if Mr T predeceased her. The evidence is that she had her own pension(s) but overall, I think these were moderate sums. I don't think MJWCF made the value of this death benefit in BPS2 clear enough. This was guaranteed for life and it escalated – and in my view it would have been a source of financial reassurance to Mrs T if Mr T did pass away before her. This spouse's pension was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer the BPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. Mr T had come through a difficult time with his health and he'd been given the 'all clear' several years ago. A pension is primarily designed to provide income in retirement. So I don't think MJWCF explored to what extent Mr T was prepared to accept a different retirement income in exchange for different death benefits.

Mr T was only 49 and now in much better 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.

Given his medical history, I acknowledge that life insurance probably wasn't a realistic option for Mr T. However, it doesn't appear that MJWCF really took into account the fact that Mr T could have nominated a beneficiary of any funds remaining in his other (TATA) DC scheme. As I've said, he could have potentially built up a meaningful sum in this. So, to this end, Mr T already had some other options ensuring part of his pension wouldn't 'die with him'. Mr T also had a death-in-service benefit with his new scheme which I think would have represented a substantial lump-sum payment to Mrs T if he died in the next 10-15 years.

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 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 MJWCF said he lacked trust in the company. He'd heard negative things about the PPF and MJWCF 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 MJWCF'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 MJWCF 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 true 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 MJWCF's recommendation to Mr T to transfer out of the DB scheme altogether.

Suitability of investments

MJWCF 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 the 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.

I accept he'd had some worrying health issues, but these appeared to be behind him as of late 2017. 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.

I also don't think there were any other particular reasons which would justify the transfer and outweigh this. I've explained that the apparent rationale for transferring, to access the pension early and get a lump-sum, was flawed.

I therefore 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 many more years before he intended to retire. So, I don't think that it would have been in his interests 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 MJWCF 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 MJWCF 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.

In light of the above, I think MJWCF 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 MJWCF'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. MJWCF should use the benefits offered by BSPS2 for comparison purposes.

MJWCF 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>.

MJWCF 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, the Financial Ombudsman Service, upon completion of the calculation together with supporting evidence of what MJWCF 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, MJWCF should:

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T before starting the redress calculation that:
 - the 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 the redress prudently is to use it to augment the 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 MJWCF's offer to calculate how much of the 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 the 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, MJWCF 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.

Our investigator recommended that MJWCF should pay Mr T for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr T in his particular circumstances. This pension at the time represented most of his retirement provision. In his situation I think the thought of losing material benefits would have impacted upon Mr T. So I agree the recommended payment of £250 for distress and inconvenience. MJWCF should pay Mr T this amount in addition to the redress I've set out above.

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 am upholding this complaint and I now direct Michael James trading as West Country Financial 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 Michael James trading as West Country Financial 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 Michael James trading as West Country Financial.

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 7 November 2023.

Michael Campbell
Ombudsman