DRN-3906661

The complaint

Mr W complains about the advice given by Mather & Murray Financial Ltd ('Mather & Murray') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS') 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 W's ex-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'). The PPF acts as a 'lifeboat' for insolvent DB pension schemes, paying compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme. Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr W's ex-employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. It is my understanding that Mr W chose to opt-into the BSPS2 prior to the deadline.

Mr W's scheme benefits had a cash equivalent transfer value ('CETV') of around £138,900.

Mr W was concerned about what the recent announcements by his employer meant for the security of his pension, so he sought advice. Mr W made contact with Mather & Murray having found them through a website.

Mather & Murray recorded some information about Mr W's circumstances. It noted that he was 33, single and he lived with his sibling. Mr W was employed earning approximately £42,000. He and his sibling had a mortgage on their home of approximately £159,000, which had a remaining term of 22 years. He had no other liabilities and had savings of £80,000. His monthly expenditure was around £1,000. Mather & Murray also carried out an assessment of Mr W's attitude to risk, which it deemed to be 'moderate-adventurous' – a score of seven out of ten.

Mather & Murray issued a suitability report detailing its recommendation on 3 January 2018. This said Mr W wanted to retire at 60 on an approximate income of £25,000 a year. It said his expenditure was already modest, but would be reduced further when his mortgage was paid off. It said Mr W wanted to make use of his 'active' retirement years – the first 10 years or so – by having a higher income, which he could then reduce in his later years. It said Mr W wanted the option of further lump sums for discretionary spending.

Mather & Murray recommended that Mr W transfer his pension to a personal pension arrangement. It said the main reason for the recommendation was because Mr W wanted to secure the transfer value. It said Mr W was insistent that a transfer take place after things didn't proceed with another advice firm. It said it believed the critical yield was achievable and that transferring would provide him with flexibility that the DB scheme couldn't. It also said because Mr W was single, he wanted to change the way the death benefits were paid and that transferring would allow him to nominate beneficiaries. Mather & Murray recommended a pension provider and fund that it said was in line with his attitude to risk. The suitability report also noted that ongoing reviews would be provided, which would come at a further cost.

Mr W complained to Mather & Murray in 2022 about the suitability of the transfer advice. In essence he didn't think the advice to give up a guaranteed pension income was suitable for him.

Mather & Murray didn't uphold Mr W's complaint. It said the recommendation was in line with his objectives at the time, so it was suitable. It said Mr W wanted flexibility to retire early at 60 if his funds allowed and if there was anything left when he died, he wanted his family to benefit. It said Mr W both understood and accepted the risks of transferring. Nevertheless, it said it was prepared to make a goodwill offer in full and final settlement of the complaint.

Dissatisfied with its response, and rejecting Mather & Murray's offer, Mr W referred his complaint to us using the services of a representative. He said he now believes the advice he received was flawed and that by relying on it he's suffered a loss.

One of our Investigators looked into the complaint and they upheld it. They firstly said that while Mather & Murray had referred to Mr W as being insistent on transferring, this wasn't a case of them treating him as an insistent client. They said Mather & Murray had provided transfer advice. They said it wasn't there just to facilitate Mr W's wishes - it's role was to recommend what was in his best interests, which is what they would go on to consider.

They then went on to explain why they thought the advice was unsuitable. In essence they didn't think Mr W was likely to improve on the benefits available to him through the DB scheme and there were no other compelling reasons to justify the transfer as being suitable. They said Mr W didn't know what his retirement plans were at this stage; his other provision including his savings and the pension fund he'd be accruing in the years to retirement weren't properly considered; and different death benefits wasn't a suitable reason to transfer. They said the use of a DFM wasn't appropriate for Mr W - it added costs and it was a sophisticated investment strategy when he had no prior experience or expertise. They said if Mr W had been advised to retain his DB scheme benefits he would've accepted that advice. And they said the benefits available to Mr W under the BSPS2 should form the basis of the redress.

Mr W, through his representative agreed with the Investigator's findings to uphold the complaint. But they said that redress should be based on a retirement age of 65. And they didn't think the notional deduction of 15% of the redress to take into account the tax Mr W would've paid, had this been taken as income was fair. They said it doesn't account for the charges that would've been deducted from the fund value over that time.

Mather & Murray disagreed. In summary it said the FCA has said the advice process should not be framed as a mathematical exercise regarding future projected yields but it should take a holistic approach to the client's needs and objectives. It said it disagreed with the Investigator's conclusion that the critical yield was significantly above the discount rate. It said Mr W's attitude to risk was recorded in the fact-find and the questionnaire used to assess his risk attitude was independently produced and used industry-wide. It said Mr W understood the risks involved. It said it disagreed with the Investigator's view about the use of a DFM. It said while it accepted a DFM would usually add an extra layer of cost and complexity to things, the one recommended in this case was a lost cost, simple and proportionate solution to Mr W's needs. It said its requirement was to take reasonable steps to demonstrate the transfer was suitable rather than to guarantee it was. It said it believes its advice was clear, it had lengthy discussions with Mr W about the options available, it challenged his motivations and Mr W proceeded in light of the various disclosures. It said it believes the advice is clearly and demonstrably suitable. It also indicated that it thought an oral hearing was desirable because it acknowledged it could've captured soft facts more diligently.

Because the investigator wasn't persuaded to change their mind, the complaint was passed to me for final decision.

Before issuing my final decision, I clarified whether Mather & Murray was requesting a formal hearing. And it replied to say a hearing wasn't necessary.

I also let both parties know that I thought the Investigator's recommendation for an award of £300 for the distress and inconvenience the unsuitable advice had caused Mr W was too high in the circumstances. I said that, while I accepted he'd likely experienced some distress and worry about whether he's suffered a loss as a result of the advice to transfer, given his relatively young age and the number of years to his intended retirement, an award of £200 was more appropriate and fairer in the circumstances.

Mr W's representative disagreed. It said because Mr W is still a long way from retirement, this means he is worrying for a longer period of time than most given his pension is exposed to investments markets. It also said the redress methodology means there is a real possibility that Mr W will end up not having received any compensation to ensure he's not lost out by transferring. It said these two things combined is very stressful for him – worries he wouldn't have had he been given suitable advice.

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 Business ('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 Mather & Murray'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.

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, Mather & Murray should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests.

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 transfer value analysis ('TVAS') report, that Mather & Murray was required to carry out by the regulator, said that the critical yield - how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – was 5.28% to match the full pension he'd have been entitled to under the scheme at age 65. No figure was produced to match the maximum tax-free cash and reduced pension the scheme would provide at that age. To match the full pension the PPF would've paid from 65 the critical yield was 3.91% and to match the tax-free cash and reduced pension the PPF would've offered, it was 3.71%.

- Despite Mather & Murray recording that Mr W wanted to retire at 60 (or between 60 and 65 in other parts of the paperwork) it did not produce critical yields based on the benefits available to Mr W under the scheme at age 60. Only basing them on the scheme's normal retirement age wasn't helpful to Mr W given he'd indicated he might want to retire earlier than 65. I think to enable Mr W to be in a properly informed position, Mather & Murray should've also produced analysis based on him retiring at 60. Afterall, I think this was the advice Mr W was seeking.

- Furthermore, despite the fact it was known by the point Mather & Murray instructed the TVAS that continuing in the BSPS in its existing form wasn't an option for Mr W, and that I understand he'd elected to opt-into the BSPS2 prior to the 22 December 2017 deadline, the analysis was based on the existing BSPS benefits. I think this analysis was somewhat redundant. I think it should've carried out analysis of the benefits Mr W would've been due under the BSPS2. In any event, given what we know about the BSPS2, I think the critical yields to match the benefits the BSPS2 would've provided from age 65 were likely to be between those of the BSPS and the PPF.

- Mather & Murray assessed Mr W's attitude to risk as 'moderate - adventurous'. But, like the Investigator, I have some concerns about how this was arrived at and I'm not persuaded this was a true or fair reflection of the risk Mr W was prepared to take with his pension benefits. I say this because of five answers - key answers in my view - Mr W gave in Mather & Murray's risk assessment. These indicated he wasn't prepared to take substantial risk; he had little investment experience; he'd rather be safe than sorry when it came to investing; he didn't want to take chances with high-risk investments; and he was concerned by the uncertainty of stock market investment.

- So while Mr W's age and the term to retirement suggest he could afford to adopt some level of investment risk, I think a closer inspection of the risk assessment suggests that a more appropriate and fair assessment of the level of risk he was prepared to take was a 'medium' or a 'moderate' approach.

- So, taking into account a more appropriate 'medium' attitude to risk, the discount rate of 4.7% for 31 years to retirement (age 65) and the regulator's middle projection rate, I think Mr W was always likely to receive pension benefits, from age 65, of a lower value than those he'd have been entitled to under the BSPS2. And given the shorter term to a retirement age of 60, I think it's likely the critical yields, had they been produced, would've been higher than those at age 65. So I think he was even more likely to receive lower benefits than the BSPS2 offered, if he retired early.

- While it appears there was some scope to improve on the benefits available through the PPF at age 65, given the critical yields based on a retirement age of 60 were again likely to be higher given the shorter term to retirement, I think the opportunity to improve on the benefits the PPF offered was limited, if he retired early. But even if I thought a transfer was financially viable for Mr W, because this isn't the only consideration in determining whether a transfer was suitable and in Mr W's best interests, I've considered whether there were other supporting and compelling reasons to justify a transfer.

- Mather & Murray recorded that the main reason for the recommendation was because Mr W wanted to secure the transfer value. But I don't think this alone is a compelling or suitable reason to justify the transfer as being in Mr W's best interests.

- It also recorded that Mr W wanted to retire at 60, have flexibility to be able to enjoy a higher income in the first 10 years of his retirement, take lump sums for discretionary spending and then reduce his income later in life. But at 33, I'm not persuaded Mr W had likely given any serious thought to his retirement or reasonably understood what his needs would be some 25 years or more in the future. The evidence doesn't support that he had any kind of retirement plan – hence why I think 60-65 was sometimes referred to as being Mr W's target retirement age in the advice paperwork.

- I'm certain Mr W liked the idea of retiring early. But he already had this option available to him – he didn't have to transfer to achieve things. And no doubt he was attracted to the flexibility a personal pension provided. But I think this was simply a feature or a consequence of transferring to a personal pension rather than a genuine objective of Mr W's. I don't think he had a strong need to vary his income throughout retirement – how would he reasonably know at age 33 that he'd want or need a higher income in the early years of his retirement to then reduce it later on? And nothing indicates he had an apparent need for a cash lump sum and defer taking an income.

- In any event, Mr W already had flexibility – something I think Mather & Murray appears to have overlooked. He was contributing to his employer's workplace pension scheme – a defined-contribution ('DC') scheme, which already provided flexibility in how and when he could access his benefits. Given the 20% contribution being made to this, and over the next 25 years or more, I think this had the potential to be a not insignificant pension pot. I think Mr W’s DB scheme income, his already not inconsiderable savings, which he was adding to monthly, together with his DC pension could’ve given him the flexibility to retire early - *if* that’s what he ultimately decided. So I don’t think transferring to obtain flexibility was in his best interests.

- Mr W’s income need was recorded as being £25,000. But again, I don’t think he could reasonably know at this time what he’d need when he retired. Mather & Murray doesn’t appear to have carried out a detailed income and expenditure in retirement analysis to interrogate this figure or challenge how realistic a figure it was. Mr W was only spending £1,000 a month while he was working and Mather & Murray recorded that his spending was modest and would reduce even further once his mortgage was repaid. So it strikes me as being somewhat on the high side in the circumstances. But if this figure was what Mr W wanted, I haven’t got evidence to show that Mather & Murray demonstrated to him that he could sustainably meet this income need from age 60 by transferring to a personal pension. Mather & Murray says it carried out a cashflow analysis at the time to show - but it hasn’t been able to provide it.

- Without a realistic understanding of Mr W’s true needs in retirement, I don’t think it was in his best interests to transfer at this time. Mr W’s DB pension was estimated to be around £13,700 a year at 65 – a guaranteed and escalating income for life, which wasn’t likely to be bettered by transferring. I think it would’ve provided a solid income foundation upon which Mr W’s other means, including his DC scheme pension and savings, could supplement to likely meet his income needs and objectives in retirement. I think this was a more appropriate way for Mr W to meet his future retirement needs rather than risking his guaranteed benefits to attempt to do so.

- Mather & Murray said Mr W wanted to change the way death benefits were paid – he was single with no children and was happy to sacrifice his DB benefits to do so. It said the current death benefits had no advantage to him. But the priority here was to advise Mr W about what was best for his retirement. Mr W might have been single at the time, but that doesn’t mean he would remain so. So it’s possible that the existing scheme’s death benefits, by way of a spouse’s pension, could’ve been valuable to any future family in the event of his death.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would’ve also been reduced by any income Mr W drew in his lifetime. So in any event, it may not have provided the legacy that Mr W may have thought it would.

- Although I don’t think it was essential at this stage given Mr W’s circumstances, if he genuinely wanted to leave a legacy for his family, Mather & Murray could’ve explored life insurance as an alternative. It recorded that he had significant disposable income through which he could’ve met the associated premiums. And this could’ve been considered on a whole of life or term assurance basis – which was likely to be cheaper, particularly given Mr W’s age. But there's little evidence Mather & Murray did so.

- So, I don’t think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mr W. I don’t think that insurance was properly explored as an alternative. And ultimately Mather & Murray should not have encouraged Mr W to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

Overall, I can't see persuasive reasons why it was clearly in Mr W's best interest to give up his DB benefits and transfer them to a personal pension at this time, particularly when he had the opportunity to join the BSPS2. And I also haven't seen enough to persuade me that Mr W would've insisted on transferring, against advice to remain in the DB scheme. I can see that Mather & Murray recorded in the suitability report that Mr W was insistent that a transfer take place. It said he'd sought advice from another advice firm, but this couldn't proceed due to the firm not having the necessary regulatory permissions.

But it wasn't the case that Mather & Murray treated Mr W as an insistent client. An insistent client is one that wishes to take a different course of action from the one recommended and wants the business to facilitate the transaction against its advice. In this case, Mather & Murray recommended that Mr W transfer. I accept Mr W was likely motivated to transfer when he approached Mather & Murray given the circumstances, but on balance I still think he would've listened to and followed the advice he was given – advice he had sought out and was paying for. Mr W had little investment experience and nothing suggests to me he had the requisite confidence or skill to go against the advice he was given. So I still think that, if things had happened as they should have and he'd been advised to retain his DB scheme benefits, he would've likely accepted that advice.

So, I'm upholding the complaint as I think the advice Mr W received from Mather & Murray was unsuitable for him.

As I referred to above, the Investigator recommend an award of £300 for the distress and inconvenience the matter has caused Mr W. I thought in the circumstances this amount was unfair – I thought it was too high. I accepted that Mr W had likely suffered some distress given what he'd said about the anxiety about not knowing the extent to which he'd lost out as a result of the unsuitable advice. But given Mr W's age and that he still has many years to retirement, I thought a fairer award was £200. And while I've listened to what Mr W's representative has said, I've not been persuaded to change my mind.

Firstly, as Mr W's representative knows, it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr W back into the scheme as if the transfer out hadn't happened. But this isn't possible here. So, overall, I remain of the view that the redress proposed fairly compensates Mr W for the impact of the unsuitable advice he received.

Secondly, in my experience most people typically worry more about things which are in the present or near future and less about things that are in the distant future. And while a pension is a significant thing and retirement is a major life event, I've not been given reason to believe that Mr W thinks any differently from most people. So, while I accept as I've said above that he's likely suffered some distress and inconvenience as a result of the unsuitable advice, I'm not persuaded by Mr W's representative's argument that because his retirement is many years away his worry will last longer. So, for the reasons I've given, I think an award of £200 to reflect the distress and inconvenience caused to Mr W is fair in all the circumstances.

I've thought about Mr W's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr W would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, as I said above, I'm mindful that it is not possible to put Mr W precisely back onto the position he would now be in but for the unsuitable advice – i.e. back in the DB scheme. So, overall, I'm satisfied that the redress proposed fairly compensates Mr W for the unsuitable advice he received.

Putting things right

A fair and reasonable outcome would be for Mather & Murray to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice. If suitable advice had been given, I think it would've confirmed his decision to opt-into the BSPS2 was the right one and was suitable for him given his circumstances. So it is the benefits available to Mr W under the BSPS2, which should be used for comparison purposes.

Mather & Murray 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.

Mather & Murray 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 W and the Financial Ombudsman Service upon completion of the calculation together with supporting evidence of what Mather & Murray based the inputs into the calculator on.

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

This calculation should be carried out using the most recent financial assumptions in line with 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 CONSUMER'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, Mather & Murray should:

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

Redress paid to Mr W as a cash lump sum will be treated as income for tax purposes.

So, in line with DISP App 4, Mather & Murray 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 W'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 £170,000, 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 £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Mather & Murray Financial Ltd to pay Mr W the compensation amount as set out in the steps above, up to a maximum of £170,000.

Mather & Murray Financial Ltd should also pay Mr W £200 for the distress and inconvenience this matter has caused.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Mather & Murray Financial Ltd pays Mr W the balance.

If Mr W accepts this decision, the money award becomes binding on Mather & Murray Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 14 December 2023.
Paul Featherstone
Ombudsman