DRN-4449203

The complaint

Mr S 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.

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

I issued a provisional decision about this complaint last month and I've had the replies I need. So I'm now issuing a final decision.

What happened

In March 2016, Mr S'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 S'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 S was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do and was referred to MWM which is responsible for providing the pension advice. Information gathered about his circumstances and objectives at the time of the recommendation were broadly as follows:

- Mr S was 56 years old and married to Mrs S who was 51. They had one adult child who was in tertiary education. Mr S himself was described as being in relatively good health. However, Mrs S wasn't in such good health and had a lifelong condition that can sometimes cause serious disability.

- Mr S earned around £36,000 (gross) per year still in the steel industry and Mrs S was in receipt of benefits of over £8,300 per year as a consequence of her medical condition. Mr and Mrs S lived in a home with a mortgage although the term was nearing completion. After all their household expenses, they had some disposable income left over each month. They were putting aside some savings.

- Mrs S had three small pensions of her own, one of which was due to pay £2,869[1] per

[1] Source: MWM's suitability report, 22 November 2017.

year in due course.

- The cash equivalent transfer value (CETV) of Mr S's BSPS totaled approximately £318,171. The normal retirement age (NRA) was 65. Mr S was hoping to retire a little earlier although he acknowledged this was hard to judge as to when this might be. He said he was thinking about reducing his hours first, in anything between 2 -and- 5 years' time.

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

MWM set out its advice in a suitability report on 22 November 2017. In this it advised Mr S to transfer out of the BSPS and invest the funds partly in an annuity and partly in a type of personal pension plan. MWM said this would allow Mr S to achieve his objectives. Mr S accepted this advice and so transferred out. In early 2022 Mr S complained to MWM about its advice, saying he shouldn't have been advised to transfer out to a personal pension.

Mr S referred his complaint to the Financial Ombudsman Service in March 2022. One of our investigators looked into the complaint and said it should be upheld. They also recommended we should direct that MWM should pay £500 for the distress and inconvenience caused by its unsuitable advice. In response, MWM said it hadn't done anything wrong and was acting on the financial objectives Mr S had at the time.

The complaint has now come to me for a final decision.

What I've decided – and why

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

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

<u>*The applicable rules, regulations and requirements*</u>

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

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, MWM should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr S's best interests.

I've used all this information we have to consider whether transferring away from the BSPS to a personal pension was in Mr S's best interests. In particular, I have also carefully considered the final response letter from MWM. I've carefully considered too, the various other responses made to the points contained within our investigator's view.

Having done all this, I'm upholding Mr S's complaint.

Financial viability

Because Mr S's CETV was comprised of various different historical elements and the advice was ultimately to invest in annuity *and* also a personal pension, there were a number of different analyses that the adviser undertook with regard to all the different options available to Mr S. These types of analysis documents are often referred to as a "TVAS".

However, to keep things simple, I've focussed mainly on what Mr S was told and set out in the suitability report he was given by the adviser and the TVAS *("Analysis Label: bsps 2 v wom.")* dated 20 November 2017. These were, in my view, the principal documents used when considering what was best for him and the suitability report had recommendations about what he ought to do.

MWM referred in the 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. 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 S was probably going to receive lower pension benefits overall, as a result of transferring to a type of personal pension plan.

For example, MWM said the following about retiring at the NRA, from what I've taken to be the existing scheme. It said, *"the critical yield needed to match your existing benefits is 9.22% for the main scheme and 11.43% for the* [other] *part, this means the rate of annual growth which would need to be achieved by the Insurance Company to mirror the benefits being offered by your occupational scheme.* I've noted that MWM went on to say that these rates were *"not achievable because you are a low medium risk investor 4/10"*.

However, MWM then also set out in tabular form, a number of critical yields about retiring at the NRA using the new BSPS2 and the PPF. At the age of 65 for instance, the critical yields were 8.42% if taking a full pension *without* any tax-free lump sum, and 5.96% if taking a reduced pension *with* a tax-free lump sum. But when considering an earlier retirement (at the age of 60) the critical yield rates were much higher than this – up to almost 20%.

If using the PPF, by retiring from this at the age of 65 the critical yield rates were 7.7% (PPF pension with no lump sum) and 6.95% (with a lump sum). And for the age of 60, the PPF critical yields were 18.67% and 17.12% respectively.

We know that taking a lump sum upon retiring was in no way certain here. In fact, I'd say it was improbable. This is because Mrs S's means tested benefits were said to be predicated on her not having substantial amounts of cash savings available – and a large lump sum might have taken their family 'wealth' over the limit she was allowed. It's therefore clear to me that achieving any of these critical yields annually should have been viewed as being highly unlikely at the time. As I'll explain a little more about later, Mr S wasn't an experienced investor and he didn't want to take many risks with his pension monies. So I don't think achieving annual growth rates of around 8.42% -to- 18.67% was attainable. I don't really think the adviser did either. And although one of the funds Mr S was recommended had recently achieved a past performance of around 8%, there was very little supporting evidence or analysis to show this was a credible and sustainable growth rate assumption for an investor like Mr S. I'll explain why.

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 3.5% per year for just over 8 years to retirement (age 65), which is well below all of the critical yield figures I've referred to above. But for a retirement at 60, the discount rate was only 2.8% (3 years to retirement). I've also kept in mind that the regulator's upper projection rate at the time was 8%, the middle projection rate was 5%, and the lower projection rate was 2% although these hadn't been updated for some time and we were in a period then of low interest rates and low bond yields. So, if anything, projected returns would realistically be lower.

I therefore don't think the adviser had enough information or evidence to recommend transferring away from a DB scheme based on a financial comparison basis. Growth assumptions close to the regulator's lower projections and also to the discount rate were most relevant here in my view. So, I think growth assumptions of around 3-to-5% were much more realistic. These were below the critical yield figures for the BSPS2 and the PPF, so I think this showed that achieving the critical yield(s), year-on-year, upon transferring out, was very unlikely.

I've also noted that using the NRA of 65, MWM's own transfer analysis referred to the probable cost of purchasing an annuity to provide benefits of equal value to the benefits provided by the existing scheme. This was included in the transfer analysis document of 20 November 2017 and it related to a quote from a specific insurance company which may not have gone ahead. But this set out the estimated fund required (also known as the capital value) – and at £586,835 it was much higher than Mr S's CETV. Even to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme, assuming *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the estimated fund required at 65 was £376,922.

To reiterate, these figures are found in MWM's own analysis based on data the regulator required businesses to refer to at the time. And because these figures are well above Mr S's CETV, they represent, in my view, a revealing window into the value of the guaranteed pension he would be giving up by transferring away to a personal plan arrangement, rather than a similar DB scheme that was on offer here.

I therefore think it's fair to say that from a financial comparison perspective, MWM's own figures, shown partially in its suitability report and more fully in the transfer analysis documents, showed that transferring to a personal pension plan would mean Mr S would likely receive lower pension benefits in the longer term, when compared against the available DB scheme.

I've also considered some projections MWM used to help show that if he transferred out to a personal plan, the funds could last Mr S well into retirement. I think most of these were based on growth projections which were based on past performance. It's also fair to say these were certainly not comparing like-with-like. What MWM was showing Mr S were comparisons with plans which lacked the guarantees and benefits of a DB scheme.

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

I've considered these below.

<u>Other reasons to transfer</u>

MWM recommended that Mr S should transfer away from the BSPS. His CETV was £318,171 and the advice was to transfer broadly around 60% of this to a type of 'hybrid' annuity which would pay Mr S an annual payment on an escalating (2%) basis, paid monthly. The remaining 40% would transfer to a personal pension plan and be invested in money market funds.

The suitability report listed the following rationale for the recommendation:

- MWM said he'd be able to get the same annual income from the annuity it was recommending, as from the BSPS, by using only *part* of his CETV. It said if he didn't need the income form the annuity straightaway then the funds could be redistributed back into it.

- The annuity income was guaranteed for life.

- It said his tax affairs would be easier.

- Mrs S wouldn't lose her state benefits.

- It said he could choose to take additional withdrawals and / or income at any time in the future from the drawdown element of the arrangement.

- He could continue pension contributions to other pension plans, subject to the Money Purchase Annual Allowance of £4,000.

I have therefore considered these issues.

- *Getting the 'same' income as the BSPS*

I think it was wrong to portray that Mr S would get the same annual income as he would have gotten from the BSPS, by only using up around 60% of his CETV. The implication here was that this was a really 'good deal' because he'd be getting the same annual income as a

BSPS pensioner, but he'd also still have 40% (around £120,000) in a personal pension arrangement which would continue to grow by investing.

Mr S is still working as I write this decision and he's now 62 years old. At the time of the advice, there were also no concrete plans for him to retire and it was even recorded in the documents from the advice sessions that he might reduce his hours (as opposed to retire) within 2 –to- 5 years.

In this context, he didn't need to start drawing any retirement income. Put simply, he wasn't retiring and so the early retirement quote of only £5,776 per year from his existing scheme wasn't really a true reflection of what his pension would look like. So, by saying he would get the same pension by using only around 60% of his CETV, this was comparing it against an unnecessarily low starting point. The annuity may well have been guaranteed for life; but so was membership of a DB scheme or indeed, the PPF. There were certain links to inflation in BSPS2 and the PPF.

There was also no justification in saying his tax affairs would somehow become easier or that by taking up this advice Mrs S wouldn't lose her state benefits. Mr S's tax affairs weren't complicated and so there were no such advantages. Also, Mrs S wasn't at risk of losing her benefits if her husband remained in the BSPS and then joined either the BSPS2 or migrated into the PPF. As long as Mr S didn't take a lump sum at the point of retiring, there was every chance that their joint savings wouldn't breach the allowed limit, which was apparently £10,000.

In my view, MWM could have portrayed different figures – and more relevant ones - within its recommendation. These would have made the benefits of transferring away look quite different. For example, we know that the estimated benefits for Mr S's BSPS2 scheme. And for a retirement at the NRA this was £17,346 per year. This annual pension was reduced slightly if Mr S chose to take a lump sum with it. But of course, we know he didn't want to do this because it would immediately place in jeopardy the annual £8,300 Mrs S received in benefits and which was due to be paid (index-linked under normal circumstances) until 2033. Alternatively, at the age of 60, Mr S could still retire from the BSPS2 with an annual pension estimated to still be £15,079 per year.

If Mr S hadn't joined the BSPS2 but had migrated into the PPF instead, the same document said he'd get an annual pension of £15,309 at the age of 65. For retiring at 60 in the PPF it would have been £12,396 per year. So, I don't think that MWM was justified in promoting the much lower annual pension of £5,776. This is because this represented a more or less immediate retirement - and Mr S wasn't intending this course of action.

Mr S had estimated that he'd need around £17,000 per year when he retired to maintain a reasonable lifestyle. Although clearly an estimate, I think it was probably based on his and Mrs S's current expenditures. For instance, the 'fact-find' said their total expenditures per year as of 2017 were £22,274 (this included a £2,000 'lifestyle' contingency addition). So I think that an annual income in retirement of around £17,000 together with Mrs S's £8,300 benefits would have broadly met their retirement requirements after allowing for some taxation.

However, Mr and Mrs S's mortgage was nearing its end and was due to be paid down completely well ahead of Mr S's NRA. So, at some point soon they would see a £350 reduction in their monthly outgoings. Upon retiring, they might also reasonably have chosen to eliminate or reduce the £200 monthly savings they were paying into a cash ISA. These things could easily mean that their overall spending could reduce to around £16,000 per year. Other relevant factors here were Mrs S's small pensions yet to be paid out, and the state pension(s) which for Mr S would kick in in around 9 years from the point of the advice.

I’ve also noted that Mr S had joined the new TATA DC pension. I think it’s easy to discount this second pension by saying it had only recently started and therefore didn’t have much in it. But as I’ve said, Mr S accepted he wasn’t going to retire for a while just yet and in any event, a precursor to retirement was the stated likelihood of him reducing his hours rather than giving up work entirely. One could say that Mr S could therefore have been a member of this new DC scheme for up to 8 years, although I accept in all likelihood it would be a little less than this. However, this DC pension was being significantly contributed towards by both Mr S and his employer - 6% and 10% respectively and he seemed to have a modest capacity to increase contributions if he wished in the years ahead. It’s therefore reasonable to say that this pension could have accrued reasonable sums of money by his eventual retirement date and so it shouldn’t be discounted.

I think Mr S appeared to have the capacity to transfer to the BSPS2 or the PPF and then retire early with enough to live on. Mr S’s income would have been enough to meet their stated needs and I think they could have begun reaching this point in Mr S’s early sixties. This is particularly true given the smaller additional amounts Mrs P could add to their overall income and the likelihood of their day-to-day costs slightly reducing. And if we add Mr S’s DC pension, I think this could have supplemented his DB income until he reached state pension age.

This means I’ve seen nothing explaining why Mr S wouldn’t want to continue membership of a DB scheme and to use that scheme in exactly the way it was originally intended. If all he needed was around £17,000 per year I think the adviser should have pointed out that this seemed achievable given the BSPS2 or PPF income and the other income he could call upon. I think that by retirement, whenever it eventually came, Mr S could have been in an agreeable position. On one hand he’d have an existing deferred DB scheme of considerable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed within BSPS2 and the scheme was still underpinned by the PPF. On the other hand, he’d have also built up a small DC scheme and if Mr S ever found he needed some flexibility at the beginning of his retirement and before he got his state pension, then he’d be able to use the latter, rather than irreversibly transferring away from the former.

- *Death benefits*

Death benefits are an emotive subject. When asked, I think most people would like their loved ones to be taken care of when they die. MWM’s recommendation had produced a somewhat unusual situation because the part (around 60%) he was advised to move into an annuity did seem to contain some death benefits but they were not as good as the DB scheme options Mr S had.

However, I think the fact that Mr S agreed to this part of the recommendation confirms he wanted Mrs S to have a chance of ‘something’ if he died. But the roughly 40% which was invested in a ‘standard’ personal pension plan (a DC scheme) contained no such death benefits. I think this element was unsuitable for Mr S.

The BSPS2 and PPF both contained certain benefits payable to a spouse if Mr S died. The benefits included related to both pre-retirement and post-retirement and they were superior, in my view, to the annuity. Mr S was married and he was around four and-a-half years older than Mrs S. I think the value of these benefits were most likely underplayed because the spouse’s pension provided by the BSPS2 or PPF would have been useful to Mrs S if he predeceased her. I think his wife would have found this benefit a source of comfort and security, particularly as she herself was unable to ever work and her own pension provision was very small. I don’t think MWM promoted the real value of this benefit area or made it clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

I think the adviser probably discussed with Mr S that he'd be able to pass on the whole value of a personal pension, potentially tax-free, to anyone he nominated and I think Mr S liked the idea of his 19-year-old son having some hope of inheriting part of this. So, the lump sum death benefits on offer through a personal pension was probably made to look like a very attractive feature to Mr S. But whilst I appreciate death benefits are important to consumers, and Mr S might have thought it was a good idea to transfer the BSPS to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think MWM explored to what extent Mr S was prepared to accept a different retirement income in exchange for different death benefits.

Mr S was still only 56 at the time. He's said himself he was overweight, but the suitability report said he had, *"some minor health issues, but nothing that threatens your financial security"*. Because of Mrs S's obvious vulnerability, I think Mr S's financial priority would have been to her, although I'm sure he'd have expected his son to receive something. But 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 S had lived a long life there could be nothing left at all in his personal pension plan.

I accept that life insurance was probably viewed as quite expensive in Mr S's case, but it doesn't appear that MWM really took into account the fact that Mr S could have nominated a beneficiary, such as his son, of any funds remaining in his other (TATA) DC scheme if he died. So, to this end, Mr S still had some options ensuring part of his pension wouldn't just 'die with him'.

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

- *Concerns over financial stability of the DB scheme*

It's clear that Mr S, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and MWM said he lacked trust in the company. He'd heard negative things about the PPF and MWM said he could have more control over his pension fund.

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

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

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

- *Other issues*

By transferring around 40% of his CETV to a personal pension plan, Mr S was exposing this to market forces. He was not an experienced investor and had only ever traded shares which I've taken to be from a building society conversion in the 1990s. I've seen no evidence that Mr S had either the capacity or desire to exercise control over his funds. With his DB scheme, Mr S was being offered the opportunity to transfer to the new BSPS2. It's true there were some differences in this scheme when compared to the original BSPS, but it remained a DB scheme nonetheless and was run for him by trustees.

I accept that Mr S had his new DC pension with TATA. But I've seen nothing showing the investment strategy for this pension was anything other than an 'off the shelf' mix of investments commonly found in most company DC schemes. And I think he would have found the complexity, scale and responsibility of managing his remaining c£120,000 or so of his own transferred funds from his DB scheme to be onerous in the years ahead. What I've seen tends to show Mr S would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him. He simply didn't have the experience to personally manage the funds.

<u>Suitability of investments</u>

MWM recommended that Mr S 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 S and I don't think he would've insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in a DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

<u>Summary</u>

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

He was giving up a guaranteed, risk-free and increasing income within the BSPS2 or PPF. By transferring to a personal pension, the evidence shows Mr S was likely to obtain lower retirement benefits. Although the recommendation was to transfer part of his pension to an annuity with certain guarantees, these were still inferior to the scheme he was in and might have transferred to in the form of BSPS2 or the PPF. It also generated an income at the age of 56 which Mr S didn't need. MWM portrayed this income as matching his existing retirement benefits. But the comparison as I explained, was flawed.

I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think MWM ought to have advised him against transferring out of his DB scheme for the reasons I've comprehensively explained.

Because Mr S wasn't likely to take a large lump sum with his pension, I think his circumstances here were much more aligned to him transferring to BSPS2 and retiring from that when he felt he was ready to do so. This is a departure from what our investigator said – they said Mr S would have probably moved into the PPF. But this was based on the differences in what Mr S might get from either the BSPS2 or the PPF at retirement.

Sometimes we find that people closer to retirement age do get higher benefits from the PPF. However, this is often dependant on whether or not a lump sum is taken. In reality, the financial differences between the BSPS2 and the PPF in Mr S's situation were minimal.

So, I think it's difficult to say what Mr S would have done if advised suitably. But on balance, he certainly wouldn't have transferred away – and I think he'd have opted for the BSPS2. As I've said, he's still working now.

So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF. By opting into the BSPS2, Mr S would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. On this basis, I think MWM should have advised Mr S to opt into the BSPS2.

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

I'm not persuaded that Mr S would have insisted on transferring out of the DB scheme, against MWM's advice. I say this because Mr S was likely an inexperienced investor and this pension accounted for most of his retirement provision at the time. So, if MWM had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think MWM should compensate Mr S 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 S, as far as possible, into the position he would now be in but for MWM's unsuitable advice. I consider Mr S would have most likely opted to join the BSPS2, rather than transfer to the personal pension if he'd been given suitable advice. He has not yet retired and so compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance. MWM should use the benefits offered by BSPS2 for comparison purposes.

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

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S's acceptance of my final decision.

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

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

Redress paid to Mr S as a cash lump sum will be treated as income for tax purposes. So, in line with DISP App 4, MWM may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr S's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

Our investigator recommended that MWM should pay Mr S for the distress and inconvenience caused by the unsuitable advice. I have considered the impact this would likely have had on Mr S in his particular circumstances. This pension at the time represented most of his retirement provision and it was a large amount. In his situation, closer than most to retirement, I think the thought of losing material benefits would have impacted upon Mr S. So I agree the recommended payment of £500 for distress and inconvenience. MWM should pay Mr S this amount in addition to the redress I've set out above.

My final decision

Determination and money award: I uphold this complaint and I direct Mallinson Wealth Management Limited to pay Mr S 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 will also recommend that Mallinson Wealth Management Limited pays Mr S the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 December 2023.

Michael Campbell
Ombudsman