DRN-3816304

The complaint

Mr H complains about the advice given by Mulberry Wealth Management Limited ('Mulberry Wealth') to transfer out of the British Steel Pension Scheme ('BSPS') and invest the funds in a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and is concerned this has caused him a financial loss.

What happened

In March 2016, Mr H's employer announced that it would be examining options to restructure its business, including de-coupling the BSPS from the company. There was a consultation with members which referred to possible outcomes regarding their preserved benefits. This included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit ('DB') scheme. Members were also informed that they could transfer their benefits to a private pension arrangement.

Mr H stopped working for his employer around February 2017 and quickly found employment with a new firm. His new role offered its own defined contribution ('DC') scheme, which he had joined.

In May 2017, the PPF made an announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. The announcement said that, if risk related qualifying conditions relating to size and funding were satisfied, a new DB pension scheme sponsored by Mr H's now ex-employer would be set up. This was to be known as BSPS2. The Pensions Regulator then approved the RAA on 11 August 2017.

Like most individuals affected by this, Mr H was concerned about what the announcement by his ex-employer meant for the security of his defined benefits held within the BSPS scheme. Mr H was unsure about what do with his pension.

So, he approached Mulberry Wealth in August 2017 to discuss his pension and retirement needs. He had a pre-existing relationship with Mulberry Wealth, having previously obtained advice from them on insurance and his mortgage.

Mulberry Wealth completed a fact-find in October 2017 to gather information about Mr H's circumstances and objectives. It was noted that Mr H was aged 36 and had recently been married. He didn't have any children at present. He and his wife were looking to purchase a larger property in about a year's time. They were intending to fund this through the sale of their existing property as well as the sale of the existing buy to let property they had at that time.

Mulberry Wealth also carried out an assessment of Mr H's attitude to risk, which it deemed to be 'moderate' (3/5). It was noted that he wanted to retire early if possible, at 55 years old with an income of between £15,000-£20,000 per year.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options. The three options were to stay in the BSPS and move with it to the PPF, move to the BSPS2 or to transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 and this was later extended to 22 December 2017.

On 6 November 2017, Mulberry Wealth advised Mr H to transfer out of the BSPS into a SIPP with LV and invest the proceeds (the majority with Brewin Dolphin in their discretionary portfolio and a small amount in the Vanguard Life Strategy 60% Equity (series 2)). The suitability report said the reasons for this recommendation were:

- It met Mr H's objective of severing the link between his pension and his employer.
- Mr H did not wish to enter the PPF or switch into the new BSPS2 scheme.
- Mr H wished to have control over his fund and flexibility of his options at retirement and to benefit from the new pension freedoms rules.
- It would allow Mr H to retire early at age 58, either reducing his hours or stopping work altogether.
- When Mr H retired, he could access the portion of tax-free cash ('TFC') he required, without having to withdraw the full amount so it can continue to be invested within his pension plan. Mr H could also access a greater amount of TFC.
- Mr H could choose to take additional or ad-hoc TFC or income payments at any time in the future.
- It would provide flexible death benefits for Mr H's family.
- Any contributions would be invested in funds which benefited from a tax-efficient status and when Mr H came to draw benefits from the plan, he could take up to 25% of the fund tax-free.

Mr H accepted the advice and, in January 2018, £419,554.37 was transferred to his new pension.

Mr H complained in 2021 to Mulberry Wealth about the suitability of the transfer advice because he'd spoken with ex-colleagues and said when he looked at the advice checker on the Financial Conduct Authority (FCA) website, he found a lot of 'red' in the advice process. He says he therefore became concerned about the advice he'd received.

Mulberry Wealth didn't uphold Mr H's complaint. They said they had exercised reasonable skill and care in advising Mr H and their advice meant that Mr H was able to make a properly informed decision to proceed. They referred back to the reasons given in the suitability report as to why the advice they had given was suitable and said they were satisfied they had complied fully with their regulatory obligations. They also said that in their view, Mr H would have transferred out of the scheme regardless of the advice they gave to him.

Mr H referred his complaint to the Financial Ombudsman Service. The Investigator upheld the complaint and required Mulberry Wealth to pay compensation on the basis that Mr H would have gone into the BSPS2. They weren't persuaded that Mulberry Wealth had sufficiently challenged Mr H's apparent objectives. And, they concluded that the stated objectives weren't sufficient justification for transferring out of the scheme. They noted that Mr H was only 36 at the time of the advice, and so they felt there wasn't sufficient reason for him to transfer at that point, rather than waiting until he was older, when his retirement objectives and needs would be clearer. The Investigator noted Mulberry Wealth's comments that Mr H was adamant he wanted to transfer out, but said that as the professional advisers in the transaction, Mulberry Wealth had a duty to advise the best course of action, even if that wasn't something Mr H wanted to do.

Mulberry Wealth disagreed, saying they remained of the view that, in line with their regulatory duties, they took reasonable steps to ensure that the advice provided to Mr H was suitable and that the transfer itself was suitable based on Mr H's circumstances and objectives at the time. They disagreed with the Investigator's approach to assessing the complaint and felt they'd adopted an unreasonable approach to the reliability of Mr H's retirement objectives. They didn't feel it was reasonable to rely on a comparison between the critical yield and the relevant discount rate when referring to these discount rates wasn't a regulatory requirement. They said it was a flawed assumption that Mr H had the option at the time of the advice of transferring to BSPS2 because it was mistaken that BSPS2 already existed or would inevitably come into existence so that transfers into it would proceed. Lastly, they said the Investigator had not placed adequate weight on the fact that Mr H made a fully informed decision to proceed with the transfer and said there was no evidence Mr H had lost out as a result of the advice.

Mulberry Wealth requested a hearing as they felt it would be appropriate for the Ombudsman considering the case to hear oral evidence from both Mr H and the adviser before they made their final decision in order that the complaint be fairly determined.

The Investigator responded to Mulberry Wealth's further points. They said they agreed that the adviser had a duty to obtain relevant information from Mr H, and they were entitled to rely on the information he provided. But they said Mulberry Wealth also had a duty to use that information to provide advice that was in his best interests.

The Investigator said it was unrealistic to expect Mr H to have had any firm understanding at the age of 36 of what his financial needs would be in retirement and clarified they didn't accept the objectives and reasons for the transfer were reasonable. Lastly, the Investigator explained they still felt basing the redress on BSPS2 was appropriate because if Mulberry Wealth had advised Mr H not to transfer, some months after, Mr H would have had to choose between BSPS2 and the PPF. And the Investigator felt Mr H would have opted for BSPS2 when making that choice, for the reasons previously stated.

As the Investigator ultimately wasn't persuaded to change their opinion, the complaint was referred to me to make a final decision.

Before issuing my final decision, I considered Mulberry Wealth's request for a hearing in detail. I wrote to Mulberry Wealth on 16 October 2023 explaining the reasons why I didn't consider a hearing to be necessary for me to fairly decide this case.

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.

Both parties have provided extensive submissions. And, I'd like to reassure both parties that I've carefully considered everything that's been provided. If I haven't commented on, or referred to, something that either party have said, this doesn't mean I haven't considered it. Rather, that I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my decision.

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

The applicable rules, regulations and requirements

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

Mulberry Wealth have said that the adviser was only required to take reasonable steps to ensure the advice was suitable for Mr H. I do agree that under COBS Mulberry Wealth were required to take reasonable steps to ensure the recommendation given to Mr H was suitable for him (COBS 9.2.1). However, as outlined above, additional regulations and guidance apply to providing advice on transferring out of a DB scheme. These say that the starting assumption for a DB transfer is that it is unsuitable. And, a business should only consider a transfer out if it can clearly demonstrate that the transfer is in the consumer's best interests (COBS 19.1.6G). So, I'm satisfied that since Mulberry Wealth was advising on a transfer out of a DB scheme, it was expected to clearly demonstrate that doing so was in Mr H's best interests.

Having looked at all the evidence available, I'm not satisfied Mulberry Wealth's advice was in Mr H's best interests. I've explained why below.

Uncertainty around the BSPS and BSPS2

As noted above, the BSPS closed in March 2017 and by the time Mr H approached Mulberry Wealth, the situation had been evolving since then. It's well known that this was a period of uncertainty for people in Mr H's situation. This emphasises the need for consumers like Mr H to have received a balanced assessment of the options and suitable advice accordingly.

There may be instances where a consumer seeks financial advice with pre-existing ideas or concerns about their employer and associated pension scheme. It's clear here that Mr H did already have concerns about his ex-employer. And, it's notable that according to the advice documentation, Mr H was adamant to Mulberry Wealth that he wanted to transfer his pension benefits away from the control of his ex-employer. So, it's likely he was leaning towards transferring his pension when he approached Mulberry Wealth for advice.

However, as the professional adviser, Mulberry Wealth was tasked with rationally addressing Mr H's concerns and providing an appropriately balanced view of the situation and options available. And again, in order to recommend that Mr H should transfer out, Mulberry Wealth needed to clearly demonstrate that doing so was in his best interests.

At the time Mr H approached Mulberry Wealth, there was still a possibility that his pension could move to the PPF. In response to the Investigator's view on the complaint, Mulberry

Wealth said that the BSPS2 may not have gone ahead. But, it's notable that Mulberry Wealth's TVAS and suitability report make appropriate comparisons between Mr H's likely pension entitlement from the BSPS2 and from an alternative arrangement. Mulberry Wealth also clearly set out in their suitability report that the BSPS2 was one of the possibilities it was considering for Mr H.

Additionally, in May 2017, the PPF announced that the terms of the RAA had been agreed. The Pensions Regulator approved the RAA on 11 August 2017. The confirmation that Mr H's ex-employer had made the required payment for it to go ahead was announced on 11 September 2017. And in October 2017, prior to Mulberry Wealth giving its final recommendation for Mr H to transfer out of the scheme, the BSPS trustees had provided details of the BSPS2 to members via the 'Time to Choose' leaflet. So, from the evidence available, it would seem that Mulberry Wealth did at the time think – correctly, in my opinion - that it was more likely than not that the BSPS2 would go ahead.

So, while entry into the PPF was still a possibility, I think this was unlikely to be Mr H's only option to remain in a DB scheme structure. And, even if Mr H remained concerned about the possibility, however small, of the BSPS2 not happening or moving into the PPF itself, Mulberry Wealth could have addressed that concern.

Moving to the PPF would mean, generally speaking, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. And, while I understand that the prospect of their benefits moving to the PPF may have been daunting for some consumers, it's probably the case that it wasn't as significant as many BSPS scheme members believed.

It follows that I'm not persuaded the uncertainty Mr H experienced when he started the advice process was sufficient reason for Mulberry Wealth to recommend he transfer out, even a scheme with the possibility of going into the PPF. The reason being that to do so would mean unnecessarily exposing those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have been a significant driver in Mulberry Wealth recommending Mr H transfer out of his DB scheme altogether.

Financial viability

Mulberry Wealth carried out a transfer value analysis report ('TVAS') (as required by the regulator) showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). For the avoidance of doubt, the figures I've quoted below are reflective of the TVAS.

The advice in this case 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.

Mulberry Wealth has highlighted that there was no obligation on them to refer to discount rates when giving advice, which I acknowledge. However, there was nothing preventing them from doing so either. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under the consumer's DB scheme with the benefits payable under a personal pension by using reasonable assumptions. I think the discount rates do provide a useful indication of what growth rates would at the time have been considered reasonably achievable for a typical investor. So, in my view, those would therefore be a reasonable assumption to use to compare the benefits likely to be paid under a personal pension with those payable under the DB scheme.

Mulberry Wealth also said the critical yield is of limited relevance because it's based on the growth required to produce a fund sufficient to purchase an annuity on the same basis as the benefits provided by the DB scheme. Mulberry Wealth have said an annuity wasn't contemplated in Mr H's case as he did not have a need for income over the long term and so an annuity or fixed income arrangement wasn't a suitable solution for him. So, overall, they've said the critical yield doesn't provide a useful comparison with the benefits Mr H was looking for based on his objectives.

I've taken these points into account, but the regulator required Mulberry Wealth to consider the rate of investment growth that would need to be achieved to replicate the benefits being given up. So, Mulberry Wealth needed to provide an analysis based on the critical yield. Furthermore, I do think it is a relevant consideration in this case as Mr H wasn't expecting to retire for at least another 18 years (age 55). So, I don't think Mr H could realistically be certain at this stage whether he would want to take a regular income at retirement or not. It's entirely possible that when he was closer to retirement, he would want at least some regular, guaranteed income, which could be achieved through the benefits offered by the DB scheme.

Mr H was 36 at the time of the advice and thought he would like to retire at 55. The scheme's normal retirement age was 65. For clarity, I've set out the relevant critical yields below, including where a reduced pension and TFC is taken:

	Age 55		Age 65	
Scheme	Full pension	TFC and reduced pension	Full pension	TFC and reduced pension
BSPS2	7.41%	6.43%	6.35%	5.62%
PPF	6.98%	6.68%	5.67%	5.42%

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.4% per year for 18 years to retirement at age 55 or 4.7% for 28 years to retirement at age 65. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's 'moderate' attitude to risk and also the term to retirement. In this case, the discount rate and the regulator's middle projection rate is lower than the critical yield, even if Mr H took TFC and a reduced pension at age 65. So, this would indicate there was little potential for Mr H to improve on his benefits by transferring. There would be little point in Mr H giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.42%, I think Mr H was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF and he retired closer to age 65.

Additionally, if there was an extended period of poor performance, that could result in Mr H being worse off in retirement. And, by transferring, Mr H would have to pay the fees and charges associated with a personal pension, reducing any gains the funds did make. Mr H would not have had to pay these charges if he had opted to join the BSPS2.

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

When considering these other reasons given for the transfer, I've borne in mind that Mulberry Wealth's role wasn't simply to facilitate what Mr H said he wanted. Their role was to find out in sufficient detail Mr H's wants and needs and the reasons for these, challenging and analysing his motives appropriately.

Flexibility and income needs

Mulberry Wealth said that transferring out of the scheme would allow Mr H to retire early at age 58. However, from what I can see, Mulberry Wealth don't seem to have looked at exactly what Mr H's income need would be in retirement or how he would meet it if he did in fact retire early.

I can understand Mr H's apparent wish to retire early, as most people would. However, I also think most people would understand that having the opportunity to retire early isn't worth compromising the security of their income for the rest of their life. And retiring early would likely mean a significant drop in their income, reducing their spending power and lifestyle. When faced with such a prospect, I think most people choose to continue working, rather than retire early. And so, I think Mr H was likely to reassess this once he reached or neared the age of 58. So, I think for Mr H retiring early was a 'nice to have if possible' as opposed to a genuine, concrete need at the time of the advice. And I'm not satisfied from the evidence that Mulberry Wealth seriously challenged this objective as they should have done.

Even if he did wish to retire early, I'm satisfied Mr H didn't need to transfer out in order to meet his stated income needs in retirement at 58. Mr H said he needed £15,000-£20,000 per year in retirement according to the information gathered by Mulberry Wealth. And under the PPF, Mr H would have received an annual income of £19,819.34 at 55 if he took a full pension, or a lump sum of £110,669.01 and a reduced annual pension of £16,600.35. These figures only increase for both the PPF and BSPS2 the later Mr H retired. So, I think Mr H could've met this objective by staying in the scheme, even without taking into account other sources of income he would likely have at retirement, such as savings and other pension provisions.

Mulberry Wealth have also referred to flexibility as being an advantage of the transfer for Mr H, including being able to take TFC. But I don't think Mr H required flexibility in retirement. Based on the evidence I've seen; I don't think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave the funds invested until a later date. I say this because no reason was given as to what Mr H was intending to use any TFC for. Again, I think this was simply a consequence of transferring rather than a something Mr H had any genuine need for.

I also can't see evidence that Mr H had a strong need for variable income throughout his retirement. Again, no specific reason was given as to why Mr H required this or how specifically he would use this. Again, I don't think Mulberry Wealth established in any meaningful way what Mr H's income needs in retirement would likely be or how he would achieve this.

Also, Mr H had recently started paying into his new employer's DC scheme. It's reasonable to assume he would likely continue to make contributions to that pension (or a similar one if he changed jobs in the future), for the rest of his working life. So by the time he reached age

58, his pension would have grown to be a sizeable pot. And, Mr H could have accessed those funds in a flexible manner if he still needed to do so at that point, while also leaving his valuable, safeguarded DB benefits untouched. So, even if flexible access to funds in retirement was a genuine need for Mr H, he didn't need to transfer his BSPS benefits in order to achieve this.

Furthermore, Mr H was only 36 at the time of the advice, and based on what I've seen he didn't have concrete retirement plans. Mr H had, at minimum,18 years before he could think about accessing pension savings, so I think it was too soon to make any kind of decision about transferring out of the DB scheme. I don't therefore think it was a suitable recommendation for Mr H to give up his guaranteed benefits now, when he didn't know what his needs in retirement would be. And if Mr H later had reason to transfer out of his DB scheme, if he joined the BSPS2 he could have transferred out of it closer to retirement.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Mulberry Wealth explored to what extent Mr H was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr H predeceased her. I don't think Mulberry Wealth made the value of this benefit clear enough to Mr H. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. The sum remaining on death would also be reduced by any income Mr H withdrew from it during his lifetime.

It's also worth noting that Mr H's DC pension through his new employer would likely have offered some form of death benefits too. But, I can't see that Mulberry Wealth highlighted this to Mr H.

In any event, Mulberry Wealth should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his own security in retirement.

Furthermore, if Mr H genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, life insurance is generally a good way of achieving this. I can see from the fact find that Mr H did already have some form of life cover in place, which would run until he was about 64. Mulberry Wealth could've taken this into account and explored replacing it with whole of life cover if Mr H was genuinely interested in leaving an extra legacy behind. Given his age and good health, this wasn't likely to be unaffordable.

Overall, I don't think the different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr H. And I don't think that insurance was properly addressed or highlighted as an alternative.

Control and concerns over financial stability of the DB scheme

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

It's worth noting that Mr H already worked for a different employer at the time of the advice. And, Mulberry Wealth were in a good position to be able to explain to him that the scheme trustees and Mr H's ex-employer were separate and not one and the same. The future of the scheme was being taken out of his ex-employer's hands. So, I don't think this was a reason which would justify transferring or that would've meant Mr H achieved something he didn't already have i.e., the scheme and his ex-employer being separate.

Although Mr H seems to have had concerns about the scheme moving to the PPF, I think Mulberry Wealth should have explained that this was not as concerning as Mr H thought. As I've explained above, Mr H was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

Use of a DFM

Mulberry Wealth recommended that Mr H use Brewin Dolphin to manage the majority of his pension funds on a discretionary basis via their discretionary portfolio. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so Brewin Dolphin would not have had the opportunity to manage his funds if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr H. But Mulberry Wealth wasn't there to just transact what Mr H might have thought he wanted. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was very likely to obtain lower retirement benefits and put his funds at risk. And, in my view, there were no other particular reasons which would justify a transfer and outweigh this. So, I don't think Mulberry Wealth should've advised Mr H to transfer out of his DB scheme pension.

As noted, I appreciate the BSPS hadn't been established when the advice was given. But, I think it was clear that it was likely to be going ahead. The BSPS2 offered more generous benefits than the PPF and so I think it was in Mr H's best interests to have opted into it. By doing so, he would still have had the option to transfer out at a later point, when he was closer to retiring, if he wished to do so. So, I think Mulberry Wealth should have advised Mr H to opt in to BSPS2.

Of course, I have to consider whether Mr H would've gone ahead anyway, against Mulberry Wealth's advice. Mulberry Wealth argues that this is the case, saying they think Mr H would have gone ahead with the transfer in any event because he was attracted by the benefits a personal pension would provide and how these aligned with his objectives. He also had a strong aversion to remaining in his ex-employer's scheme and he wished to avoid the risk of his benefits being transferred to the PPF which they say was an undesirable outcome.

I’ve considered this carefully, but I’m not persuaded that Mr H would’ve insisted on transferring out of the DB scheme, against Mulberry Wealth’s advice. I say this because Mr H was an inexperienced investor with a medium attitude to risk and this pension accounted for the majority of Mr H’s retirement provision. So, if Mulberry Wealth had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn’t in his best interests, I think he would’ve accepted that advice.

I’m not persuaded that Mr H’s concerns about his ex-employer, the PPF and the other objectives mentioned such as flexibility were so great that he would’ve insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn’t think it was suitable for him or in his best interests. If Mulberry Wealth had explained that Mr H could meet all of his objectives (or wait until he was older and had a clearer idea of what his retirement objectives were) without risking his guaranteed pension, I think that would’ve carried significant weight. And, Mulberry Wealth could have explained that the scheme trustees and Mr H’s ex-employer were not one and the same. The future of the scheme was being taken out of his ex-employer’s hands and I think if Mulberry Wealth had fully explained this in a balanced way, this would have resolved Mr H’s concerns in this regard. So, I don’t think Mr H would have insisted on transferring out of the DB scheme against the advice.

In light of the above, I think Mulberry Wealth Management Limited should compensate Mr H for the unsuitable advice, in line with the regulator’s rules for calculating redress for non-compliant pension transfer advice.

I've thought about Mr H's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr H would've paid had this been taken as income. They believe 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, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr H back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr H for the impact of the unsuitable advice he received.

Lastly, I understand and appreciate that learning he may be worse off in retirement as a result of having been mis-advised has likely been an ongoing source of distress and inconvenience to Mr H. For these reasons, I agree with the Investigator that Mulberry Wealth should pay £250 to Mr H to recognise the impact of their unsuitable advice.

Putting things right

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

Mulberry Wealth 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.

Mulberry Wealth 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 H and our Service upon completion of the calculation together with supporting evidence of what Mulberry Wealth based the inputs into the calculator on.

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

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

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Mulberry Wealth's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

Redress paid to Mr H as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Mulberry Wealth 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 H'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.

Also, for the reasons given above, Mulberry Wealth should pay Mr H £250 compensation to recognise the distress and inconvenience caused to him as a result of the unsuitable advice.

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 award: I uphold this complaint and require Mulberry Wealth Management Limited to calculate fair compensation as set out in the steps above. My decision is that Mulberry Wealth Management Limited should pay Mr H the amount of compensation produced by that calculation - up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I also recommend that Mulberry Wealth Management Limited pays Mr H the balance.

If Mr H accepts this final decision, the determination and award becomes binding on Mulberry Wealth Management Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 10 January 2024.

Fiona Mallinson
Ombudsman