DRN-3240241

The complaint

Mr J complains about the advice given by D C Financial Limited ('DCFL') to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). The BSPS is a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him.

Mr J is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr J.

What happened

In March 2016, Mr J's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In September 2017, the BSPS provided Mr J with a summary of the transfer value of his scheme benefits. The letter explained the value had been updated as a result of the funding position of the BSPS improving. This was due to Mr J's employer making a lump sum payment into the BSPS – as part of an agreement with the pension's regulator in respect of the ongoing restructuring. This letter said Mr J's benefits had a cash equivalent transfer value ('CETV') of £445,392.74.

And in October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere.

Mr J approached DCFL in October 2017 for advice about his BSPS pension. The information I've seen indicates the first meeting and discussion between the two parties took place on 11 October 2017.

DCFL completed a fact-find to gather information about Mr J's circumstances and objectives. It noted he was 50, employed full time, in good health, unmarried but co-habiting with his partner of over thirty years and had two children in their twenties. He owned his own home with an outstanding mortgage of approximately £49,500 which was due to be repaid in roughly seven years.

In addition to the benefits held in the BSPS, Mr J was also a member of his employer's new defined contribution pension scheme. And he and his employer were making combined contributions to this equivalent to 20% of his salary. That pension arrangement had only recently begun and the BSPS benefits made up the majority of his retirement provisions at that time.

DCFL recorded that Mr J wasn't sure he'd continue working for his current employer beyond age 55 as he didn't want to continue with shift work. It noted that he was interested in potentially becoming self-employed when he left his current employer and expected to need an income of £2,000 per month when he did retire. It also noted that he was concerned by the uncertainty around the BSPS and that it was important to Mr J that the pension could be passed on to his dependents in the event of his death.

DCFL also carried out an assessment of Mr J's attitude to risk, which it deemed to be 'cautious to moderate'.

A follow up meeting took place on 18 October 2017. The meeting notes provided by DCFL confirm that, during that meeting, it advised Mr J to transfer his pension from the BSPS to a SIPP. The notes say the advantages and disadvantages were discussed and that Mr J was confident in his decision to transfer. It said this was because he had a lack of trust in his employer, was unhappy with the penalties that would be applied if retiring early under the DB scheme, was concerned the pension would be lost if he died and liked the flexibility offered by the SIPP. The documents also reiterated that Mr J may stop working for his employer at age 55 but repeated that he'd probably take other work or become self-employed.

Application forms to complete the transfer were signed following that meeting and submitted to the providers.

A written summary of the advice given by DCFL was not produced until 23 October 2017 – after the application had been submitted. The suitability report said the reasons for DCFL's recommendation were that Mr J wanted control of his pension because of the ongoing uncertainty and was concerned about losing flexibility if he moved to the PPF and the inflexible death benefits in general the DB scheme provided. It said Mr J was also unhappy with the penalties for retiring early under the PPF or the BSPS2. And that he wanted the flexibility to take tax-free cash ('TFC') at age 55 but not begin drawing an income until later. The report did say that the critical yield – how much a new pension would need to grow by each year in order to allow Mr J to purchase equivalent benefits to those the DB scheme guaranteed – was unlikely to be achieved. But didn't comment further on why it was suitable for Mr J to accept that. The report confirmed that subsequent to the transfer, DCFL would provide ongoing servicing and advice to Mr J in relation to the pension, at a cost.

The transfer went ahead in line with DCFL's recommendation.

Mr J complained to DCFL in 2021. He said the advice was unsuitable and he thought a transfer should not have been recommended because the benefits the recommended pension would provide were unlikely to match the guaranteed benefits that he could've received through the BSPS2. He felt DCFL had misrepresented the value of the benefits being given up and hadn't adequately explained these, or what he would realistically be entitled to by transferring. Mr J also said he was not intending to retire at age 55 and indeed his plans were unknown, he did not have a need for TFC at age 55 and that death benefits were not important because he had alternatives in place to provide a legacy to his family.

DCFL didn't uphold Mr J's complaint. It said it had fully considered Mr J's circumstances, provided clear advice, including a detailed suitability letter, and set out the risks involved. And DCFL still felt the advice to transfer was suitable based on Mr J's objectives and reasons for transferring.

Mr J referred his complaint to our service. An Investigator upheld the complaint and said DCFL should compensate Mr J for any loss the DB transfer had led to as well as pay £500 for the distress caused. He acknowledged that Mr J likely had concerns about the ongoing consultation and might've gone into the discussion thinking transferring might be a good idea. But the investigator said DCFL's role wasn't just to put in place what Mr J might've thought he wanted. He though Mr J was always likely to receive overall pension benefits of a lower value as a result of transferring. And he didn't think any of the other reasons for transferring given by DCFL were strong enough to justify the transfer or Mr J accepting this reduction in benefits. So, he didn't think a transfer was in Mr J's best interests and if he had been correctly advised believed Mr J would've transferred his benefits to the BSPS2.

DCFL disagreed. It said the BSPS2 was not certain to proceed at the time and that to say this should've been recommended is unreasonable. DCFL said it doesn't think the critical yield and whether this was achievable should be a substantive consideration when looking at suitability. It also says the critical yield is not relevant here as Mr J didn't intend to purchase an annuity. And the critical yield of the BSPS, which the analysis the Investigator had referenced showed, wasn't relevant either as remaining in the BSPS was not an option for Mr J. So, if the critical yield was considered it said the only relevant comparison would be to the PPF. And DCFL said the performance of the pension since the transfer, while it was providing advice, exceeded the critical yield for the PPF. It also thought it was unreasonable to say it should've had regard for discount rates published by our service as it wasn't required to do so by the regulator.

DCFL said its recommendation was based on an assessment of Mr J's circumstances and it maintained that transferring was in his best interests. It said it provided him the control and flexibility he wanted and needed as well as addressing his concerns about death benefits – noting that addressing this through life insurance was considered unaffordable. And DCFL said if growth achieved through transferring meant the benefits of the new pension were the same as, or even slightly less than the DB scheme, the advice would still have been suitable as it provided flexibility. Overall, it said it felt transferring as the only way for Mr J to meet his objectives and it thought he'd have always looked to transfer even if DCFL had advised him against doing so.

The Investigator wasn't persuaded to change their opinion. He said he still thought Mr J didn't have a strong reason to transfer at the time of the advice – noting that a lot of the reasons for doing so were features of pension freedoms rather that compelling objectives. And he didn't agree that transferring was the most appropriate way to meet Mr J's retirement objectives, particularly given he was always likely to receive lower overall benefits. He also noted that, while DCFL had outlined risks to Mr J, this wasn't a substitute for suitable advice.

As agreement could not be reached, the complaint was referred to me to make a final decision.

What I've decided – and why

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

DCFL has said that the regulator, the Financial Conduct Authority ('FCA'), previously undertook a review of its advice process in relation to members of the BSPS and didn't highlight any concerns. It has therefore questioned how our service can come to a different conclusion – that transfer advice was unsuitable. But our role is different to that of the FCA. It is to look at the individual circumstances of a complaint, not a business' processes and practices as a whole, and decide what we consider is fair and reasonable. That is what I've done here.

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 DCFL'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.

The FCA states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DCFL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr J's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCFL has argued that the critical yield should not be a substantive consideration when looking at whether advice was suitable.

The primary purpose of a pension is to provide for the pension holders retirement – by way of an income. How the income that the pension holder could expect to receive after transferring compared to the guaranteed benefits they were due under their existing arrangements is, in my view, an important consideration as to whether they would be better off by transferring. Which in turn is important when determining if a transfer was in the pension holders' best interests. And indeed, the FCA required such a comparison to be undertaken and shared with the pension holder – COBS 19.1.2 – and for a transfer value analysis ('TVAS') report, providing analysis of this, to be conducted. And a TVAS, at that time, was expected to include the calculation of critical yields.

As I mentioned previously a critical yield, which again the regulator required DCFL to calculate and consider when giving pension transfer advice, is an estimate of the growth rate required of a new pension to allow the pension holder to purchase equivalent benefits to those they were guaranteed under their existing arrangements. So, I think this is an important indicator of whether someone would be better off by transferring. Whether a transfer is financially viable – likely to result in the pension holder being better off or not in terms of retirement income – is not the only consideration when looking at whether advice was suitable. And it isn't the only thing I've thought about here. But I still think it, and in turn the critical yield and whether this was achievable, are relevant and important considerations.

DCFL has said that Mr J did not intend to purchase an annuity as he wanted flexibility. So, it says the critical yield is of little relevance. But I don't agree. Mr J was still several years from being able to access his pension benefits. And although he'd indicated he was considering changing job at age 55 it wasn't certain that he'd do so or that he'd begin drawing pension benefits at that time – indeed his plans overall were not finalised. So, I don't think it could be said with any certainty that he wouldn't want at least some guaranteed income in retirement.

DCFL has also said it indicated in the suitability report that it felt the critical yields were unlikely to be achieved. And I can see it did so. But highlighting a risk does not mean that the advice that follows is suitable. And the suitability reported offered no additional commentary on this. There was no explanation what this meant for Mr J in terms of what income he would be able to sustainably draw from the new arrangement or how that compared to what he was giving up. Nor was there any detailed comparison for him to consider. And DCFL didn't explain why it considered accepting that the critical yields wouldn't likely be achieved – and the likely reduction in overall benefits this would bring – was in Mr J's interests. So, while DCFL says Mr J accepted the risk of not achieving the critical yield, I don't think, based on what I've seen, that he was in a suitably informed position to understand what this meant.

The critical yield figures calculated in the TVAS which DCFL instructed were based on matching Mr J's existing scheme, the BSPS. But Mr J didn't have the option to remain in the BSPS as it was. He either needed to opt into the BSPS2 or move with the BSPS to the PPF if he stayed with the DB scheme. While critical yield figures were calculated in respect of moving to the PPF, which was appropriate, there was no comparison to the BSPS2. And I think there should've been. By the time the advice was given here, sufficient details around the BSPS2 had been provided for a meaningful comparison to have been made.

DCFL has said that the BSPS2 was not certain to go ahead, and this wasn't a genuine option at the time. So, only the critical yields for the PPF are relevant here. But I still think a comparison of the BSPS2 benefits ought to have been carried out as part of the TVAS given the details of the BSPS2 that had been released by the time it was instructed, not least regarding escalation and revaluation rates.

And I think DCFL is also overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the point DCFL instructed the TVAS reports and provided Mr J advice. Mr J's employer had agreed actions with the pension's regulator, and these had been carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations in September 2017. Mr J had also received his "time to choose" pack – with joining the new scheme one of the options. And details of the new scheme had been provided. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead. Of course, it's possible it may not have done. But given it appeared likely to proceed I still think the benefits available to Mr J through the BSPS2 should've been factored into the TVAS reports and subsequent advice so that he was able to make an informed decision.

Mr J was 50 at the time of the advice. DCFL says Mr J intended to retire at age 55 and begin taking pension benefits at that time.

The TVAS said the critical yield required to match the full escalating annual pension the BSPS was likely to provide from age 55 (estimated to begin at £14,244) was 15.28%. To match the estimated full pension the PPF would provide at that time (starting at £15,201 and escalating, but at a different rate) the critical yield was said to be 8.7%. The critical yield applicable to the BSPS2 benefits was not calculated – although again I think it should have been. The lower annual increases under the BSPS2 would've likely decreased the critical yields in comparison to the BSPS. The PPF also had more generous early retirement reductions that the BSPS2 – which would've been applicable at age 55. Although the escalation rates of the BSPS2 were better than those of the PPF. Overall, I think it’s likely the critical yield of the BSPS2 at age 55 would’ve been broadly equivalent to or slightly less than that of the PPF at that time.

The TVAS also calculated what the critical yield would be if Mr J took the maximum available TFC under the PPF at age 55 and a reduced pension. And it said this was 7.45%. No equivalent figures were given for either the BSPS or the BSPS2.

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.

DCFL says there was no requirement for it to have regard for the discount rate. But I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, as I’ve mentioned already, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. The discount rate would be considered a reasonable assumption of likely returns. And businesses were free to refer to it. So, whilst I agree businesses weren't required to refer to these rates when giving advice on pension transfers, I consider 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 and was 3% per year for 4 full years to retirement (which would be the case if Mr J retired at age 55). 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 J’s ‘cautious to moderate’ attitude to risk and also the term to retirement. Contrary to what DCFL has said, I think there would be little point in Mr J giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme – essentially introducing significant additional risk to achieve only the same position. But here, I think Mr J was always likely to receive benefits of a substantially lower overall value as a result of transferring and investing in line with his attitude to risk than those he would’ve been guaranteed under the BSPS2 or the PPF at age 55.

In response to the Investigator’s opinion, DCFL said that it felt the critical yield required to match the benefits the PPF would’ve provided at age 65 was achievable and that the performance of the SIPP while it was providing ongoing advice had exceeded this.

The TVAS did include critical yields for matching the benefits the BSPS and the PPF were expected to provide at age 65. But DCFL based its advice on Mr J retiring significantly before this and taking benefits from age 55. That notwithstanding, I have considered the critical yield figures relating to retiring at age 65.

To match the full pension the BSPS was likely to provide at age 65 (estimated to be £26,407 per year) the TVAS said the critical yield was 7%. To match the full pension the PPF would likely have provided at age 65 (estimated to be £21,571.55 per year) DCFL said the critical yield was 3.8%. There was again no calculation in respect of the BSPS2. The lower annual increases under the BSPS2 would again have likely meant the critical yield was lower than that of the BSPS. But due to the revaluation and escalation rates, I think at age 65, the critical yield required to match the BSPS2 benefits was likely to have been higher than those reflecting the PPF benefits - and likely closer to those of the BSPS benefits.

The relevant discount rate from that time for 14 years to retirement was 4.2%, with the regulator's standard projections the same as previously mentioned.

So, based on Mr J's attitude to risk, time to retirement and the composition of the assets in the discount rate it does appear, on balance, more likely that the SIPP may have been able to match the benefits offered by PPF, if Mr J were retiring at 65. But again, there would be little point in introducing significant additional risk to achieve broadly the same benefits – which seems more likely than Mr J significantly exceeding the benefits he'd have been guaranteed under the PPF. And I still don't think on balance the SIPP was likely to match the benefits potentially payable through the BSPS2.

DCFL has said the performance of the SIPP between the transfer being completed and the complaint show that a higher level of growth – enough to achieve the critical yields to 65 - was achievable. But past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward.

So, from a financially viability perspective, I don't think a transfer was in Mr J's best interests. As I've said though, financial viability isn't the only consideration when looking at whether a transfer was suitable. DCFL has said there were other considerations that meant the transfer was suitable, despite providing overall lower benefits. I've considered these below.

Flexibility

DCFL recorded that Mr J thought it was likely he'd leave his employer before age 65 – potentially at age 55. DCFL said he wanted the flexibility to be able to take his pension benefits early but wasn't willing to accept the penalties that would apply for retiring early under the BSPS2 or the PPF. It says he also wanted the option of taking TFC but not having to immediately take an income. And he wanted the ability to vary the income he took in retirement, with him expecting to need an income of around £2,000 per month.

It doesn't seem to be in dispute that, when he took advice, Mr J was thinking he was unlikely to remain with his employer until age 65. But I don't think that decision was finalised and all of the information I've seen supports that, if he did leave, Mr J intended to continue working elsewhere. Mr J was 50 at the time and intended to continue with his employer until at least age 55. It's entirely possible in that time his plans could've changed, and he could've elected to continue with his employer for a few years longer. And because he anticipated continuing to work, he expected to continue to earn an income. Taking all of that into account, I don't think it had been decided at that point that he would require access to his pension benefits early. And in any event, Mr J could take benefits from age 55 under either the PPF or the BSPS2. So, I don't think he needed to transfer in order to access his pension from age 55.

DCFL has said that Mr J was unhappy with the penalties for accessing his benefits early under the PPF or the BSPS.

It is true that if Mr J drew his benefits at age 55, as DCFL has suggested he was interested in, under either the PPF or the BSPS2 the amount he could take would be subject to an actuarial reduction. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by taking benefits at age 55 Mr J would've been receiving his pension for ten years longer. It was a trade-off, rather than a 'penalty'. I don't think, based on what I've seen, that DCFL gave a balanced explanation of this. And, as I've already explained, I think Mr J was always likely to receive benefits of a lower overall value than those he'd have been guaranteed under the BSPS2 or the PPF at age 55 as a result of transferring.

DCFL indicated that transferring would mean Mr J did not incur these penalties. But while taking benefits flexibly under a personal pension would allow Mr J to decide the level of his income 'without penalty' the amount he could take was entirely dependent on the sum available under the pension plan. The income he took would deplete the plan – potentially leaving him with less than he might need later. Whereas the DB scheme benefits, regardless of which point they started, were guaranteed for life. And I can't see that it was estimated or discussed with Mr J what level of income he could sustainably draw from the pension in order to ensure he had enough funds for his entire retirement. And I think if it had been, and Mr J had been in a more informed position about the 'penalties' for early retirement, he might've been more willing to accept them.

DCFL has said that Mr J was interested in taking TFC from age 55. But it is interesting to note that this wasn't recorded in the fact find as a requirement of his. And again, he would've been able to do this under the PPF or the BSPS2.

DCFL also says he wanted TFC without having to draw an income from the pension. But while Mr J might've been drawn to the idea of taking a lump sum when DCFL explained this could be an option through a SIPP I can't see that he had a need for this.

Mr J had a mortgage but from the information I've seen this would've been largely repaid by the time he reached 55. And there is nothing to suggest he had need for a lump sum to clear this. DCFL has said that the TFC would've been used for starting up costs for Mr J's self-employment. But again, while I think this was probably discussed as a potential option for Mr J if he left his employer, I don't think his decision about whether he'd actually take this action was definitive. There was also nothing noted about what level of costs Mr J might expect to incur if he did become self-employed. And there doesn't seem to have been any exploration of alternative ways of potentially funding this – which I'd have expected to have seen, particularly bearing in mind the starting point for pension transfers being that a transfer will generally be unsuitable for a customer.

DCFL has suggested that Mr J needed flexibility in order to meet his income objective. But again, it hasn't provided copies of analysis from the time to support that this would've been sustainable through a SIPP.

And again, I understand Mr J intended to continue working beyond 55. There was no suggestion of what the future potential income from this employment would be – which again seems to support that his retirement plans were not finalised. But the TVAS estimated that under the PPF he could've taken a guaranteed pension of £15,201.02 from that point. Or TFC of £81,653.26 and a reduced annual pension of £12,291.95. These annual pensions would've continued to escalate in payment. He also would've had access to the benefits accrued through his employers new defined contribution scheme to potentially use flexibly.

So, I think it appears likely that through a combination of these and any income from his new employment if he did in fact change jobs at age 55, he could've met his income needs from that time. And he would've then later received his state pension to complement his other pension income and allow him to continue to meet his needs.

Based on what I've seen, I don't think Mr J had a need for flexibility at the time of the advice. And I don't think it was a suitable recommendation for Mr J to give up his guaranteed benefits when he did – particularly given he was always likely to receive benefits of a lower overall value by doing so. If Mr J later had reason to transfer out of his DB scheme, I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

Death benefits

DCFL says Mr J wanted alternative death benefits. He and his partner were not married, so she would not have benefited from the spouse's pension the DB scheme provided. And it says he was unhappy with the rigid nature of the death benefits provided by the DB scheme and the idea of leaving his fund as a lump sum to his partner and children appealed to him.

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 J. But whilst I appreciate death benefits are important to consumers, and Mr J 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 J about what was best for his retirement provisions. Because a pension is primarily designed to provide income in retirement.

Mr J was not married at the time of the advice, so his partner may not have qualified for a spouse's pension under the PPF or the BSPS2. But I'd have expected to see DCFL make enquiries of the BSPS about this, before advising Mr J to transfer in order to achieve alternative death benefits. And to potentially discuss whether Mr J and his partner had any plans to marry – in which case the position may be changed. Neither of which it appears to have done.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr J drew in his lifetime. Mr J was recorded as being in good health, so there was nothing to suggest he was less like to live until at least his average life expectancy. And given the implication was that Mr J would draw a pension 'without penalty' from the SIPP, potentially from as early as 55, and only scale back much later when he began to receive his state pension, it appears likely the fund would've been significantly depleted, and potentially utilised entirely, by the time Mr J reached his average life expectancy. So, the pension may not have provided the legacy that Mr J may have thought it would. And in the event he lived a particularly long life, he may've been left with no pension funds to support himself.

The fact-find also recorded that Mr J had death in service benefits from his current employer, which appear, in my view, to have been a more appropriate method by which to leave a legacy to his dependents. And the new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB schemes. So, it appears that a legacy would already have been provided. And I can't see that DCFL explored what level of further legacy Mr J thought was necessary.

DCFL has said, in response to the Investigator's opinion, that the cost of life cover to replace the CETV was considered unaffordable. But I note that the suitability report and meeting notes I've been provided from the time of the sale don't indicate this was discussed.

In any event though, basing an insurance quote on the transfer value of Mr J's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr J wanted to leave whatever remained of his pension to his dependents, which would be a lot less than this if he lived a long life, if investment returns were poor or both. So, the starting point ought to have been to ask Mr J how much more on top of his existing provisions he would ideally like to leave. As this cover could've been a lot cheaper to provide. But again, DCFL doesn't appear to have asked about this.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr J.

Control and concerns over financial stability of the DB scheme

I think Mr J's desire for direct control over his pension benefits was overstated. Mr J 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. Indeed, DCFL continued to manage his SIPP on his behalf after the transfer. So, I don't think that this was a genuine objective for Mr J – it was simply a consequence of transferring away from the BSPS.

I think this objective was more linked to the uncertainty about the BSPS. I don't doubt Mr J, like many of his colleagues, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time and it'd been made clear he would need to make a choice. I also don't doubt Mr J had likely heard negative things about what could happen, including entry into the PPF and this was why he said he preferred to have control over his pension fund. It's also quite possible that Mr J was also leaning towards the decision to transfer because of his concerns. But it was DCFL's obligation to give Mr J an objective picture and recommend what was in his best interests.

By the time advice was given here details of BSPS2 were known and it seemed likely it was going ahead. The "Time to Choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated any concerns Mr J might've had about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that DCFL should've reassured Mr J that the scheme moving to the PPF wasn't as concerning as he might've thought. While he was clearly thinking about what he would do in retirement, I don't think he had definitive plans around this. But if he did take the course of action he'd initially thought about, it appears likely the pension payable under the PPF, in conjunction with his other means, would've provided what he needed in retirement. He was also unlikely to improve his pension benefits by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to DCFL recommending Mr J transfer out of the DB scheme altogether.

Suitability of investments

DCFL recommended that Mr J invest his SIPP in a particular way. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr J, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr J should, in my view, have been advised not to transfer so the investments wouldn't have arisen if suitable advice had been given. DCFL has said that it shouldn't be responsible for any losses stemming from those investments after it ceased managing the SIPP on Mr J's behalf. But again, the investments would not have arisen at all were it not for DCFL's advice. So, I don't agree that it's responsibility for loss stemming from its advice ceased when it ended its agreement with Mr J.

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 J. But DCFL wasn't there to just transact what Mr J might have thought he wanted. The adviser's role was to understand Mr J's circumstances, separate his potential concerns stemming from the ongoing uncertainty and unconfirmed potential plans from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). This action was irreversible and, by transferring, the fund Mr J had accumulated within the BSPS, which at that point was the majority of his retirement provisions, would be subject to additional risk. And Mr J was, in my view, always likely to obtain lower retirement benefits. As I've explained, I don't think there were any other reasons which would justify the transfer and outweigh this. So, I don't think he should've been advised to transfer.

Again, DCFL says the BSPS2 was not certain to proceed and that it is unreasonable for us to say Mr J should've been advised to join this scheme as it wasn't a genuine option. I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. And the "Time to Choose" documentation confirmed that scheme members could opt into the BSPS2 but still change their mind and transfer prior to March 2018. So, contrary to what DCFL has said, I do think this was an option that DCFL could've recommended at the time.

Mr J was within five years of being able to access his pension benefits. But, for the reasons I've already explained, in my view, his plans were unconfirmed. And I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF. I say this because while it is true the PPF would've provided a more favourable reduction for very early retirement, because his plans were not confirmed, there was no guarantee the reduction in pension income he would receive from the PPF would end up being offset by the more favourable early retirement benefits. And by opting into the BSPS2, Mr J would've 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. So, I think if DCFL had correctly advised him against transferring Mr J would've opted into the BSPS2.

Of course, I have to consider whether Mr J would've gone ahead anyway, against DCFL's advice. DCFL says it this Mr J would've still transferred and that he made an informed decision to do so.

I've seen documents that suggest Mr J and DCFL discussed the "pros and cons" of transferring. And a document was completed indicating Mr J had been made aware of the risks involved. But ultimately DCFL advised Mr J to transfer out, and I think Mr J relied on that advice.

I'm not persuaded that Mr J's concerns about the BSPS consultation, or the potential appeal of alternative death benefits, control or 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. And if DCFL had explained that Mr J was always unlikely to exceed the guaranteed benefits available to him by transferring and that transferring to achieve the other things listed was either not necessary or not in his best interests, I think that would've carried significant weight. So, I don't think Mr J would have insisted on transferring out of the DB scheme.

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

Our Investigator recommended that DCFL also pay Mr J £500 for the distress caused by the unsuitable advice. I don't doubt that Mr J has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

Putting things right

A fair and reasonable outcome would be for the business to put Mr J, as far as possible, into the position he would now be in but for DCFL's unsuitable advice. I consider Mr J would have most likely opted to join the BSPS2 if he'd been given suitable advice. So, DCFL should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr J whether he preferred any redress to be calculated now in line with current guidance or to wait for the new guidance / rules to come into effect.

Mr J would like his complaint to be settled in line with new guidance / rules. I consider it is fair that DCFL calculates Mr J's redress in line with new guidance and rules when they come into effect.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr J.

DCFL must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity, I understand Mr J has not yet retired. So, compensation should be based on his normal retirement age, as per the usual assumptions in the FCA's guidance.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr J's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr J as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr J within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and DCFL has received notification of Mr J's acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes DCFL to pay Mr J.

Income tax may be payable on any interest paid. If DCFL deducts income tax from the interest, it should tell Mr J how much has been taken off. DCFL should give Mr J a tax deduction certificate in respect of interest if Mr J asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

In addition, DCFL should pay Mr J £500 for the distress caused by the disruption to his retirement planning. For clarity, I don't think this payment should be held back until the new guidance / rules are implemented and the calculation discussed above carried out. So, this £500 payment should be made separately, within 30 days of DCFL being notified of Mr J's acceptance of my decision.

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

My final decision

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

Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr J any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require D C Financial Limited to pay Mr J any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that D C Financial Limited pays Mr J the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr J.

If Mr J accepts this decision, the money award becomes binding on D C Financial Limited.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 10 February 2023.

Ben Stoker
Ombudsman