DRN-3259318

The complaint

Mr D complains about the suitability of the advice provided to him by D C Financial Limited (DCFL) to transfer the value of his defined benefit (DB) British Steel Pension Scheme (BSPS), to a personal pension plan.

Mr D is represented in this complaint by a third party which I will refer to as “Representative A”. Though for ease of reading I’ll largely refer to all complainant representations as coming from Mr D.

What happened

The history leading up to this complaint is well known to the parties and has been clearly set out in the investigator’s assessment, which for completeness, I have largely replicated below with small additions and amendments.

In March 2016, Mr D’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, one of which was a transfer to the Pension Protection Fund (PPF) – a statutory fund designed to provide compensation to members of DB schemes when their employers become insolvent.

On 31 March 2017, the BSPS was closed to further benefit accrual.

In May 2017, the 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 D’s employer would be set up – the BSPS2. The RAA was subsequently approved by the Pensions Regulator in August 2017.

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 to a private arrangement (such as a personal pension plan). A deadline was set for members to notify scheme administrators of their choice in December 2017.

Mr D met with an adviser from DCFL in September 2017. A transfer analysis and fact-find were prepared. The fact-find recorded the following, among other things:

- He was 36 years old and married with one son;
- He had limited knowledge and experience of investment;
- He was employed earning £36,500 basic and c. £47,000 including overtime;
- He was contributing 6% and his employer 10% to the company DC scheme;
- He and his wife owned their own home, valued at £135,000, with a mortgage of £120,000 secured against it.
- They had no savings or investments.
- He wanted to retire at 60 but would continue to work as long as he was fit.
- His reasons to look at transferring were the risk of the PPF and lack of trust.

Mr D also completed an attitude to risk assessment. The result was risk level six, but it was agreed that he would invest at risk level five, which was deemed Moderate.

A TVAS report was produced, based on retirement at 65 and 60. It projected full scheme pensions of £6,078 and £4,405 respectively, and corresponding critical yields of 7.32% and 8.05%. Cashflow analysis showed that the equivalent income was projected to exhaust the fund at age 88 in both cases.

DCFL met with Mr D on 16 October 2017. A meeting note, which Mr D signed, stated that:

- he was confident in his to transfer, and was very reluctant to stay in the scheme;
- he planned to reduce his drawings at state pension age;
- he was contributing 6% to his employer's DC scheme, with his employer contributing 10%;
- he wanted to retire at 60, but would keep working as long as possible; and
- he wanted to access benefits without penalty before normal retirement age.

Mr D applied for a personal pension that same day. DCFL subsequently produced a confirmation of advice letter. And Mr D initialled and signed a document listing a number of the risks of transferring confirming his understanding of them.

On 24 October 2017 DCFL produced a suitability report which made the following points, among others:

- Transfers from defined benefit schemes were generally not a good idea except in exceptional circumstances.
- Mr D's reasons for wishing to transfer were concerns over the future of the scheme, the PPF and loss of flexibility, benefits being cut further, the penalties applying at 60, and the inflexibility of death benefits.
- The critical yield was high, and unlikely to be achievable.
- He wasn't sure what income he might require in retirement.

The personal pension plan was recommended to meet Mr D's objectives. At some point subsequently he completed a client questionnaire, on which he stated among other things that he believed the investment risk he had taken to be cautious DCFL added a note stating, *'spoke to client 6/11/17 - he was unsure what to put here , but understands his moderate risk profile.'* In answer to the question *'In what way do you believe the product/s will meet with your objectives?'* Mr D said, '*family security.*'

On 1 December 2017, after the scheme administrator had issued the ' time to choose' packs, DCFL advised Mr D to elect to transfer to BSPS2 as a precaution.

The transfer to the personal pension plan was completed in January 2018.

Mr D complained to DCFL in November 2020. He said that he believed the advice had been unsuitable, and that it had caused him distress as well as financial loss.

DCFL responded setting out the reasons for Mr D wanting to transfer and concluded that the transfer had been suitable because it met those objectives.

Dissatisfied with this response, Mr D brought his complaint to this service for an independent review.

An investigator looked into Mr D's concerns and upheld the complaint. He thought DCFL should pay compensation in line with the regulator's redress methodology for unsuitable DB transfer advice as well as £300 for the distress caused. In summary he said he felt Mr D was always likely to be worse off as a result of transferring as the growth required to match the benefits available under the BSPS2 or the PPF was unlikely to be achieved based on his circumstances and attitude to risk. He also felt Mr D didn't have a genuine need to transfer and that the objectives of flexibility and control weren't determinative given Mr D's age at the time of advice and the number of years remaining to retirement. And the investigator felt DCFL should've done more to address any concerns Mr D had relating to his pension benefits – in particular regarding the PPF and the proposed BSPS2. As a result, the investigator felt that the advice wasn't in Mr D's best interests and if suitable advice had been provided thought he'd have ultimately moved his benefits to the BSPS2.

DCFL didn't agree. It said the investigator had placed too much weight on the critical yields and discount rate and that these were unreliable and largely irrelevant as Mr D didn't intend to take an annuity. DCFL also said Mr D had made a fully informed decision to proceed with the transfer, which the investigator hadn't considered, and which it felt was crucial. It also maintained that the BSPS2 was not a confirmed option at the time of the advice. And it didn't agree that Mr D would've acted differently, nor did it agree he'd have accepted the possibility of the benefits transferring to the PPF.

The investigator wasn't persuaded to change their opinion, so 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.

Both parties have provided detailed arguments and a lot of documentation to consider. And I'd like to reassure both parties that I've carefully considered all the evidence provided. If I don't comment on or refer to everything I've been sent or that either party have said this isn't meant as a discourtesy or because I haven't thought about it. Rather, it is because my decision will address what I consider to be the key issues in deciding what is fair and reasonable.

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.

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, DCFL should have only considered a transfer if it could *clearly* demonstrate that the transfer was in Mr D's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator - the advice to transfer to a personal pension plan wasn't in Mr D's best interests. Had he been suitably advised I think he would have transferred to the BSPS2.

Financial viability

DCFL referred in its transfer analysis and suitability letter to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. In this case, DCFL used the existing scheme (BSPS) for the critical yield comparisons, rather than the BSPS2. It implies this was because so little was known about the BSPS2 scheme at the time. But I don't think this is right. I think DCFL should have waited a short time to compare the benefits of the BSPS2 with transferring out.

It's true the situation was dynamic in that changes were being proposed at that very point, but we know a great deal about the timeline because we've seen many similar complaints to this one. Several weeks before DCFL advised Mr D, BSPS members had been told that if the RAA was approved, they would have a choice – to move into a new scheme (BSPS2) or into the PPF with the old scheme. The RAA was approved in August 2017. A newsletter was put on a microsite that had been set up to support BSPS members and I think DCFL would have been following these events closely because it was advising many similar clients.

So, I think it's reasonable to say that after mid-August 2017 DCFL should have waited for these new details (BSPS2) to emerge as the existing scheme (BSPS) was clearly no longer an option. And so using the existing scheme, rather than the new one, to make comparisons with, wasn't giving Mr D the best opportunity to make an informed decision about what to do.

I've also noted DCFL's comments about this service's over reliance on critical yield rates in general when assessing the suitability of pension transfers. While I understand the point being made, the critical yield is only a part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable. I think it's also fair to say that despite some uncertainty at the time, the BSPS2 critical yields were likely to be between the BSPS and PPF yields, but most likely much closer to the existing scheme.

Nevertheless, all DCFL's subsequent documentation – and the suitability letter in particular - referred to comparisons between the BSPS and the merits of Mr D transferring out to a personal pension plan. I think it's also important to say that in making these comparisons, DCFL itself acknowledged, during its advice, that the growth rates required to match the benefits of Mr D's existing pension scheme were high. It said, for example, the financial benefits were unlikely to be matched, let alone exceeded, by transferring to a personal pension arrangement. This is because in its suitability letter DCFL said, *"the critical yield* *required is high and it would be very unlikely that an investment could provide a return to match the benefits you are giving up".*

DCFL explained the critical yield required to match his existing benefits in the BSPS at the age of 65 was 7.32% and 8.05% based on retirement at the age of 60. I agree that these yields are high, and in my view, they should have shown DCFL that transferring Mr D's DB scheme out to a personal pension plan was highly likely to produce lower pension benefits in the longer term.

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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr D was 36 years old at the time of the advice and wanted to retire at 60. The critical yield required to match Mr D's benefits at age 60 was 8.05% if he took a full pension and 7.32% at age 65. The critical yield to match the benefits available through the PPF at age 65 was quoted as 6.60% per year if Mr D took a full pension.

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 4.6% per year for 24 years to retirement at age 60. As this is well below the 8.05% critical yield DCFL told Mr D was required from his personal pension at age 60, I think this shows Mr D was very unlikely to grow his personal pension by enough to get anywhere near the critical yield needed just to match his scheme benefits.

However, I've also 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%. DCFL assessed Mr D's attitude to risk as moderate, so I think a figure at around the mid-point of these projections was most relevant. And again, this was well below the critical yield figures for the BSPS, so I think this too showed that achieving the critical yield, year-on-year, upon transferring out just wasn't likely.

And it's important to remember here that the effect of charges and fees associated with a personal pension would have further reduced the likely growth.

I've taken this into account, along with the composition of assets in the discount rate, Mr D's moderate attitude to risk and also the term to retirement. There would be little point in Mr D giving up the guarantees available 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 7.32% (for retirement at age 65), I think Mr D 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. DCFL have said this comparison should rightfully be made against the benefits available if the scheme moved to the PPF. I don't consider that I need to make a finding on this point, as the critical yield needed to provide the benefits available under the PPF are also higher than reasonably expected growth.

So, I think it's fair to say that from a financial comparison perspective, DCFL's figures as presented in its suitability letter and transfer analysis documents, showed that transferring to a personal pension plan would mean Mr D would receive lower pension benefits in the longer term, when compared against the BSPS. But as I've said, DCFL should have waited and recalculated the comparisons for Mr D when the situation with BSPS2 became clear – which we know this was imminent.

That transferring to a personal pension plan would mean Mr D would receive lower pension benefits in the longer term was supported by DCFL's own statements in the suitability letter, which I've referred to above. And I think it's safe to say the same can be said broadly of the BSPS2 scheme, although we don't have corresponding analysis here to show it. And in fact, I note that in a letter dated 1 December 2017 DCFL said:

> *We have been advised by the British Steel Pension Scheme that they are now advising members who have applied to transfer their pension to return their Time to Choose Options letter as a precaution. They recommend that if you wish to transfer, you should choose to move to the New British Steel Pension Scheme (BSPS 2). We are now informing all clients with an outstanding transfer to select this option and return their form before the deadline… .*

For this reason alone a transfer out of the DB scheme wasn't in Mr D's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as DCFL 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.

Flexibility and other needs

In its suitability letter DCFL recommended a transfer to a personal pension based on what it said were Mr D's objectives, including that Mr D felt the BSPS scheme was "very inflexible in comparison to a personal arrangement. The ability to access tax free cash and to withdraw a flexible income from age 55 with no early retirement factors appealed to [Mr D]."

DCFL have said that Mr D wanted the flexibility to take a variable income in retirement. However, I can't see that it was part of a formulated plan. I say this because Mr D was only 36 years old at the time of advice and from what I've seen, he had no concrete plans for retirement at that point. Furthermore, I don't think DCFL promoted the additional income and flexibility Mr D would enjoy at retirement as a result of joining his employer's new defined contribution ('DC') scheme. He had already accrued a not insignificant sum in this pension and both he and his employer would be contributing to this for at least another 20 years, even if retiring very early. In my view, he would have been in a good position: the DB pension (BSPS2) was guaranteed and index linked; and the DC pension had the added 'flexibility' were his circumstances to change. I think this fitted in very well with Mr D's likely financial needs going forward. DCFL failed to adequately account for this when advising him.

DCFL have also said that Mr D wants to retire early and while I've no reason to doubt that Mr D might have genuinely hoped to do this, I've seen nothing that shows this was anything more than something he aspired to do at that stage. But regardless, Mr D could have retired early as a member of the BSPS2 or the PPF.

So, even if I were to consider that Mr D's retirement plans were more advanced than the mere aspirations set out by DCFL - and he really did have a plan to retire early - I think DCFL should have more comprehensively assessed the possibility of achieving this goal whilst being a member of the BSPS2 or the PPF. As I've said, DCFL chose to make all the comparisons with the existing BSPS benefits rather than wait for information about BSPS2, which was becoming available; contrary to DCFL's arguments, details of BSPS2 were emerging at the time and early retirement with the PPF was already something that could be calculated.

The suitability report said that “there would be a 30% reduction in the scheme pension if you were to retire at age 55 and an 18% reduction at age 60.” And it noted that Mr D was in good health and not planning to retire until at least age 60, “but feel the penalties imposed for early retirement under BSPS are too high.”

In my view, this was somewhat misleading and the way this was depicted shows the nature of how the advice was ‘pitched’ to Mr D at the time. In fact, retiring early *was* possible from both the BSPS2 *and* the PPF and if actuarial reductions caused by accessing the pension early was a genuine concern, then Mr D could have been advised to wait a little longer before accessing his benefits under either scheme. If he’d chosen to plan his retirement under the DB scheme to, say, 60 – still five years below the normal retirement age– then this would have resulted in a far less reduction in the pension benefits.

So, I think DCFL portrayed early retirement from these types of schemes in a negative dimension despite the guarantees and benefits found in them.

DCFL also linked accessing the benefits early to Mr D paying off his mortgage. But again, there was no real detail around this and certainly nothing to show why irreversibly exiting a DB pension scheme was necessary to pay his mortgage off in Mr D’s circumstances.

The fact-find for example, shows his residential mortgage as having £120,000 outstanding with 32 years remaining. But Mr D couldn’t access his pension for almost 20 more years anyway. And I’ve seen nothing to show that his mortgage wasn’t being reduced in the normal way as it was shown as being a repayment type. So, by the very earliest Mr D could access his pension (at 55), there would be far less owing on the mortgage. DCFL did not assess what the outstanding amount would be or why he couldn’t just continue to pay it down as planned under the terms he’d taken it out under.

In response to the investigator’s view, DCFL said that flexibility was worth more to Mr D than “having a rigid set income for life.” And that he wanted to take tax-free cash without having to take an income. But as Mr D had nearly 20 years before he could access his pension (at age 55) I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don’t think it was a suitable recommendation for Mr D to give up his guaranteed benefits now when he didn’t know what his needs in retirement would be. If Mr D later had reason to transfer out of their DB scheme, for example to access tax free cash to repay his mortgage, he could have done so closer to retirement.

DCFL also referred to Mr D being able to access the maximum tax-free cash via a personal pension. It’s usually the case that more tax-free cash can be accessed from a personal pension when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But DCFL should have been telling Mr D at the time that extra tax-free lump sums being removed from a personal pension, potentially from the age of 55, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of accessing more tax-free cash might have been appealing, this needed to be considered against the other options Mr D faced, including opting for the BSPS2. Again, I also come back to Mr D’s age at the time and the fact that these assumptions about what he would or wouldn’t need when he retired, were effectively a ‘best guess’ at such a relatively early stage.

Therefore, I think Mr D’s circumstances were much more aligned to him retiring from a DB scheme in this case, such as BSPS2, and drawing this pension in the way it was originally intended. I think DCFL’s advice should have reflected this.

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 D. But whilst I appreciate death benefits are important to consumers, and Mr D 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 D about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DCFL explored to what extent Mr D 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 D was married with one dependent child, and so the spouse's/dependent's pension provided by the DB scheme would've been useful to them if Mr D predeceased them. I don't think DCFL made the value of this benefit clear enough to Mr D. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

And as the cashflow analysis shows there may not have been a large sum left anyway in a personal pension upon Mr D's passing, particularly if he lived a long life. So I don't think the advice should have implied his wife / child would benefit more from a personal pension. In any event, DCFL should not have encouraged Mr D to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, it doesn't appear that DCFL took into account the fact that Mr D could have nominated someone as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr D had already ensured part of his pension wouldn't 'die with him'.

I can't be sure about the extent to which life insurance was discussed in this case. However, at around 36 years old and apparently healthy, 'term' life insurance may have been a reasonably affordable product if he really did want to leave a legacy for his loved ones.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr D. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr D's desire for control over his pension benefits was overstated. Mr D 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 D – it was simply a consequence of transferring away from his DB scheme. And in my view, DCFLs statements about control over the funds are generic, and they don't explain how Mr D's personal control would be in his best interests.

However, I do accept that it's clear that Mr D, 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 DCFL said he lacked trust in the company. He'd heard negative things about the PPF and DCFL said he could have more control over his pension fund.

So, it's quite possible that Mr D 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 DCFL's obligation to give Mr D 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 Mr D's concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that DCFL should have reassured Mr D that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr D through the PPF would have still provided a an income in retirement, and he was still unlikely to be able to exceed this income by transferring out, given his ATR. 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 DCFL's recommendation to Mr D to transfer out of the DB scheme altogether.

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 D. But DCFL wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to really understand what Mr D needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS. By transferring to a personal pension, the evidence shows Mr D was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think DCFL ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr D's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I think it was clear to all parties at the time that BSPS2 was most likely going ahead. Mr D still had several years before he intended to retire. 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, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr D would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, I think he would have wanted to consider a wife's pension and that it would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr D chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think DCFL should have advised Mr D to opt into the BSPS2.

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

I'm not persuaded that Mr D would have insisted on transferring out of the DB scheme, against DCFL's advice. I say this because Mr D asked DCFL for professional financial advice and he was not an experienced or knowledgeable investor. So, if DCFL 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.

I'm also not persuaded that Mr D's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if DCFL had explained Mr D was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think DCFL should compensate Mr D 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 D, as far as possible, into the position he would now be in but for DCFL's unsuitable advice. I consider Mr D would have most likely opted to join the BSPS2, rather than transfer to the personal pension 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 set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice.

In this consultation, the FCA 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 D whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr D.

For clarity, Mr D has not retired. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr D's acceptance of the decision.

DCFL may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr D's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr D'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 D 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr D within 90 days of the date DCFL receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes DCFL to pay Mr D.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect DCFL to carry out a calculation in line with the updated rules and/or guidance in any event.

I have also considered the impact on Mr D of the unsuitable advice and transfer. Our investigator recommended that a sum of £300 should be paid to Mr D by DCFL for what he referred to as the upset and worry caused by this unsuitable transfer. I've taken into consideration all of the circumstances of this complaint, and I agree that DCFL should also pay Mr D £300 for the trouble and upset caused by the unsuitable advice which has likely had an impact on his retirement planning.

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

My final decision

Determination and money award: I uphold this complaint and I now direct DC Financial Limited to pay Mr D 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 DC Financial Limited to pay Mr D any interest on that amount in full, as set out above.

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

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

If Mr D accepts my final decision, the money award becomes binding on DC Financial Limited. My recommendation would not be binding. Further, it's unlikely that Mr D can accept my decision and go to court to ask for the balance. Mr D may want to consider getting independent legal advice before deciding whether to accept any final decision.

The loss assessment calculation should be provided to Representative A in an easy to understand format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 January 2023.

Jennifer Wood
Ombudsman