DRN-3379160

The complaint

Mr T complains about the advice given by D C Financial Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme with British Steel ('BSPS') to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr T'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.

Mr T was concerned about what the announcement by his employer meant for the security of his DB scheme, so he sought advice. In August 2017 Mr T met with D C Financial and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr T was 47 years old; he was working full-time; he was married; he owned his own home with an outstanding mortgage of £40,000 that had seven years remaining; he had a car loan which would be repaid in a year; and he had cash savings of around £4,000. D C Financial also carried out an assessment of Mr T's attitude to risk, which it deemed to be 'cautious to moderate.'

On 11 September 2017 D C Financial issued its formal written advice and it recommended Mr T transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in investment funds, which D C Financial deemed matched Mr T's attitude to risk. The suitability report said the reasons for the recommendation were that Mr T wanted to control his pension fund; he wanted to avoid going into the PPF; penalties would be imposed by the DB scheme for early retirement; he was concerned about the potential for benefits to be cut further by the BSPS; he was interested in potentially accessing tax-free cash ('TFC'), when he reached 55, but not immediately take an income; and the 'inflexible' death benefits of the existing scheme concerned him and he wanted to leave his pension fund to his children.

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. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mr T's pension transfer completed in December 2017 and around £345,000 was received into the new personal pension.

Mr T complained to D C Financial in 2021 about the suitability of the transfer advice.

D C Financial didn't uphold Mr T's complaint. In summary it said Mr T wanted to transfer because he had a lack of trust in the BSPS and he was concerned about entering the PPF, which would mean he would lose future flexibility and his benefits would be reduced. It said the transfer met Mr T's objectives of wanting to be able to retire early, take control of his pension and allow his family to benefit from his pension upon his death. It said neither the BSPS2 nor the PPF would have met Mr T's income need at his desired retirement age. Overall it said the recommendation was suitable.

Dissatisfied with its response Mr T asked this service to consider his complaint. And an investigator upheld it and said D C Financial should pay Mr T compensation. In summary they said they didn't think the advice was suitable. They said that, given the growth rate required to match Mr T's scheme benefits, he was likely to be worse off in retirement as a result. They also didn't think there were other compelling reasons for the transfer – for example they said there was nothing to show Mr T needed flexibility in accessing his tax-free cash and delaying taking his income. They said better or different death benefits shouldn't have been prioritised over providing Mr T with an income in retirement and that Mr T's concerns about the scheme could have been allayed by D C Financial waiting for the BSPS2 details and using this in formulating its advice. They said they thought Mr T would've remained in the occupational scheme and eventually transferred to the BSPS2, as this would have given him the greatest degree of flexibility in the future.

D C Financial disagreed. In doing so it provided a substantive response, which I have read in full. But in summary it said the BSPS2 did not exist at the time so it couldn't have recommended Mr T transfer to it. It said it doesn't think the critical yield and whether this was achievable should be a substantive consideration when looking at suitability. If the critical yield was considered it said the only relevant comparison would be to the PPF. But it didn't think critical yields were relevant as Mr T didn't intend to purchase an annuity. In any event it said even if the 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 Mr T with flexibility. And the past performance and what had happened since the advice, which it says shouldn't be disregarded, showed that this level of growth was achievable. Overall it said it still felt that the recommendation to transfer was suitable as it allowed Mr T to achieve his goals and avoid moving to the PPF. It also argued that it was not responsible for any losses caused by 'bad investment advice' since it had stopped providing ongoing servicing of Mr T's pension. And it said if the ombudsman concludes that the advice wasn't suitable, it wants a provisional decision issued with an opportunity to consider and respond to before a final decision is reached.

The investigator wasn't persuaded to change their opinion, so the complaint was passed to me for a final decision.

What I've decided – and why

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

I've 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 D C Financial'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 broadly the same reasons as the investigator. My reasons are set out below.

I'd firstly like to briefly address something D C Financial raised in its response to the investigator's assessment. It 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 they didn't highlight any concerns. It said, whilst the advice was tailored for each matter, it applied a consistent approach to determining suitability and recording its advice. So it has questioned how our service can come to a different conclusion that transfer advice was unsuitable.

My role and that of our service is different to that of the FCA. My role is to look at the individual circumstances of a complaint - not a business' processes and practices as a whole - and decide what I consider is fair and reasonable in all the circumstances of the complaint taking into account the considerations I listed above. And that is what I've done here.

I can also see that D C Financial has requested that I issue a provisional decision on this case before I make a final decision. But I don't think I need to do so. Having considered everything provided by both sides, I'm upholding the complaint for largely the same reasons given by the investigator. I'm not persuaded that any of the arguments raised by D C Financial in its two substantive submissions following the investigator's assessment are new. And I'm satisfied that the investigator addressed these themes fully in their opinion letters. I'm also not making my decision based on any new information provided by Mr T. So, it follows that I can issue a final decision.

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, D C Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests. And having looked at all the evidence available, I'm not persuaded that it was in his best interests.

Financial viability

D C Financial carried out a transfer value analysis report (as required by the regulator) showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). And this was based on his existing scheme benefits. But at the time of D C Financial's written advice of 11 September 2017, the Regulated Apportionment Arrangement ('RAA') (under pensions law, a RAA is a restructuring mechanism which allows a financially troubled employer to detach itself from its liabilities in respect of a DB pension scheme) was approved by the Pensions Regulator. This meant scheme members would have a choice - either move into a new scheme (BSPS2) or remain in the existing scheme and move with it to the PPF.

This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant - the existing scheme was no longer an option. So analysis of that scheme wasn't helpful to Mr T. I think it's reasonable to say that, in light of the announcement, D C Financial should've waited for the details of the new scheme and used the BSPS2 figures instead so Mr T had all the relevant information to make an informed decision.

I can see that D C Financial has argued that BSPS2 was very far from being a certainty at the time of the advice, so the only comparison it could provide was the benefits available to Mr T through the PPF. But I think D C Financial is overstating the chance of the BSPS2 not happening. As I said above, the RAA had been formally approved and in my view all of the available information indicated that the new scheme would go ahead. So for these reasons I still think D C Financial should've waited and taken the benefits available to Mr T through the BSPS2 into account in formulating its advice so that he was able to make a properly informed decision.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. 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 T was 47 at the time of the advice and the advice paperwork records that he would like to retire at 55 – albeit it also says that he was prepared to work for longer. The TVAS dated 23 August 2017 set out the relevant critical yields; at age 65 it was 7.52% if he took a full pension through the existing scheme and at age 55 it was 13.09%. The TVAS didn't provide the critical yields for a reduced pension and tax-free cash. The critical yields required to match the benefits provided through the PPF at age 65 were 4.97% if Mr T took a full pension and 4.56% if he took tax free cash and a reduced pension. The TVAS didn't set out the critical yields at age 55.

But as I've said above, Mr T remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should've been provided. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat. But, I still think they would've likely been higher than those reflecting the PPF benefits.

This compares with the discount rate of 3.4% per year for 7 years to retirement in this case For further comparison, 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 T's recorded 'cautious to moderate' attitude to risk and also the term to retirement. In my view, and contrary to D C Financial's view, there would be little point in Mr T 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 the critical yield assuming Mr T took a full pension at 55 through the existing scheme was 13.09%. Unfortunately D C Financial didn't produce a figure based on Mr T taking a full pension at 55 through the PPF. But if Mr T were to opt into the BSPS2 and take the same benefits at 55, I think the critical yield would've been somewhere between that of the PPF (had it been provided) and the existing scheme but closer to the existing scheme of 13.09%. Given this rate was significantly above both the discount rate and the regulator's upper projection rate, I think Mr T was most likely to receive benefits of a lower overall value than those provided by the BSPS2 if he transferred to a personal pension, as a result of investing in line with his cautious to moderate attitude to risk.

In my view, to have come close to achieving the level of growth required to exceed the benefits provided by the BSPS2 if he transferred to a personal pension, would have required Mr T to take a higher level of investment risk than he indicated he was prepared to take. And while by D C Financial only produced a critical yield figure assuming Mr T took a full pension at age 65 through the PPF and not at 55 as well, I think they were likely to be higher than those at 65 given the longer period the benefits would be in payment. So I don't think the situation was much different here - I think the opportunity to improve on the benefits provided by the PPF was limited if Mr T transferred out of the BSPS.

Given Mr T was likely to receive lower overall retirement benefits by transferring to a personal pension, for this reason alone I don't think a transfer out of the DB scheme was in his best interests.

D C Financial has said that during the time it managed Mr T's pension, it achieved growth of 5.28%, which is higher that the critical yield to match Mr T's benefits through the PPF at 65, and it says it sees no reason why this wouldn't have continued with suitable advice. But the advice was predicated on Mr T retiring at 55. I've already said that D C Financial didn't produce a critical yield figure for the PPF at 55, but I think it's likely it would've been higher than the figure at 65. So given this and the fact that the critical yield figure for the BSPS2 was likely higher still, I think this only supports my view that the transfer was not financially viable and Mr T was likely to be worse off in retirement as a result.

I can see that D C Financial says that the critical yield should not be a substantive consideration when looking at whether advice was suitable. It also says the critical yield is of limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity and Mr T didn't want an annuity. But crucially the regulator required D C Financial to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr T could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another 8 years and perhaps longer. It's entirely possible that Mr T would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

But I accept that financial viability isn't the only consideration when giving transfer advice, as D C Financial has argued in this case. There might be other considerations, which mean a transfer is suitable and in Mr T's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

D C Financial's suitability report said that Mr T would like to retire at 55 but was unhappy with the high penalties imposed by the BSPS for doing so. It also said he wanted the flexibility to be able to take tax-free cash but not have to take an income at the same time.

But I don't think Mr T knew with any certainty whether he required flexibility in retirement. While Mr T was 47 and it wouldn't be unreasonable for him to start to make plans for his retirement, based on what I've seen, he didn't have any concrete retirement plans – in fact I don't think he had any real plan. And I think this is supported by what's recorded in the advice paperwork where it say that despite Mr T's preferred retirement age being 55 he was prepared to work for longer - until 66 - if he needed to. So it strikes me that, like most consumers, if asked, Mr T was interested in retiring early - but his was a 'nice to have' and not a specific or firm objective of Mr T's.

I've not seen anything to show or suggest Mr T needed variable income throughout retirement or that he needed access to a lump sum and delay taking an income. There was no reason noted for requiring access to a lump sum. Mr T's mortgage – which seems to have been his only major debt at the point of the advice – had seven years remaining, so this was due to be repaid before he was thinking about accessing his pension benefits. So again, when asked, Mr T might've indicated he liked the idea of taking a lump sum and delaying taking an income but I don't think this had been decided.

For these reasons 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 T to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

D C Financial's suitability report said that Mr T was unhappy with the penalty imposed by the BSPS for taking early retirement and he thought it was too high. What the adviser was referring to here was the actuarial reduction that would apply to Mr T's DB scheme, or the PPF, if he took his benefits early at age 55. The TVAS report estimated that if Mr T took a full pension under the existing scheme at age 65 his starting pension would be £21,876 a year. And at age 55 his starting pension would be £11,901. Because of the reduced revaluation factors, under the BSPS2 these figures would be lower, but in my view still close to these figures. Both would continue to escalate while in payment. Under the PPF Mr T's starting pension at age 65 was estimated to be £18,204 – no figure was provided for age 55.

I accept the idea of potentially receiving less income a year wasn't something Mr T would be happy about. 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 an income at age 55 Mr T would've been receiving his pension for 10 years longer. So it's a trade-off, rather than a penalty – in my view the word penalty implies the DB scheme was inferior. In simple terms, it meant that Mr T couldn't have the same pension he was due at 65 at age 55 – he'd have to accept less because it would potentially be paid for longer. And I think this should've been made clearer to Mr T.

Mr T's income need was recorded as being £1,800 a month net or just over £23,500 gross a year. I've already said that I don't think the transfer to a personal pension arrangement was financially viable. And it's clear that at age 55 Mr T's income need wouldn't have been met by either the BSPS2 or the PPF if the scheme hadn't gone ahead. And while Mr T and his employer were contributing to his new workplace Defined Contribution ('DC') scheme – 20% combined contribution – which at 55 had the potential to produce a pension fund of around £60,000 (not accounting for growth) this was unlikely to provide the difference Mr T needed.

But crucially as I said above, Mr T's plans to retire at 55 were not set in stone. At age 65 the likely income available through the BSPS2 was much closer to his target income. And given the extra years' contributions to his DC scheme, Mr T would've likely had a not insignificant pension to draw on flexibly, as and when he needed. So I think any shortfall could've been met by accessing income and/or lump sums from here – certainly until his state pension became payable. So I think D C Financial ought to have pointed out to Mr T that his income target wasn't achievable or realistic at 55, but that at 65 it was, so that he could revise his plans and accept that he'd need to work for longer, which is what it's recorded he said he was prepared to do in any event.

If the BSPS2 hadn't gone ahead, he would've moved with the scheme to the PPF. At age 65 D C Financial indicated he'd be entitled to a pension of just over £18,200. This was likely lower that the pension he'd be entitled to under the BSPS2. But I don't think it was substantially lower such that it should've made a difference to the recommendation. As I've said above, Mr T would've had his DC scheme to draw on flexibly until his state pension became payable.

Overall, because Mr T's plans for retirement were not finalised, I don't think it was in Mr T's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed at the time.

Death benefits

The advice paperwork records that Mr T was concerned about the 'inflexible' death benefits of the existing scheme him and he wanted to leave his pension fund to his family.

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 T. But whilst I appreciate death benefits are important to consumers, and Mr T 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 T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not as a legacy provision tool. And I don't think D C Financial explored to what extent Mr T 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 T was married and so the spouse's pension provided by the BSPS2 scheme would've been useful to his spouse if Mr T predeceased her. I don't think D C Financial made the value of this benefits clear enough to Mr T. They were guaranteed and escalated – the spouse's pension under the BSPS2 would also be calculated as if no tax-free cash had been taken. Furthermore, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was – so if investment returns were poor and/or Mr T lived a long life, there may not have been a large sum left, if any at all, to pass on when he died. In any event, D C Financial should not have encouraged Mr T to prioritise the potential for higher or different death benefits through a personal pension over his security in retirement.

Furthermore D C Financial recorded that Mr T had death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his spouse to receive if he hadn't already done so. And it also knew that Mr T was paying into the DC pension scheme and he would've been able to nominate his spouse and/or children as beneficiaries of this plan too – again if he hadn't already done so.

But if Mr T genuinely wanted to leave a legacy for his family over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, I think D C Financial should've instead explored additional life insurance. And in my view the starting point ought to have been to ask Mr T how much he would ideally like to leave to his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which I see no reason why it wouldn't have been affordable given Mr T's surplus monthly income and his good health.

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 T. And I don't think D C Financial did enough to explore or highlight the alternatives available to Mr T to meet this objective.

Control or concerns over financial stability of the DB scheme

I have no doubt that Mr T was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried for his pension given the general uncertainty. There was also lots of negative sentiment about the PPF.

So it's quite possible that Mr T was leaning towards the decision to transfer because of the concerns he had about his employer and what might happen. But it was D C Financial's obligation to give Mr T an objective picture and recommend what was in his best interests.

As I've already explained, at the time of the advice it seemed likely the BSPS2 was going ahead. So, the advice should've been delayed to properly take the benefits available to Mr T through the BSPS2 into account, and I think this would've alleviated Mr T's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, I think that D C Financial should've reassured Mr T that the scheme moving to the PPF wasn't as concerning as he thought or was led to believe.

As I set out above, the income available to Mr T through the PPF would've still provided a solid base, which his other means could supplement to likely meet his income need at retirement. He was also unlikely to be able to exceed this 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 Mr T's concerns should've led to D C Financial recommending he transfer out of the DB scheme altogether.

Summary

I accept that Mr T was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr T. But as I said earlier, D C Financial wasn't there to just transact what Mr T might have thought he wanted. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.
Ultimately, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF at a time when I don't think his retirement plans were formulated. By transferring to a personal arrangement Mr T was likely to receive lower overall retirement benefits at his chosen retirement age. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr T's best interests for him to transfer his DB scheme to a personal pension at this time.

So, I think D C Financial should've advised Mr T that he should not transfer the benefits of his DB scheme to a personal pension arrangement. And if things had happened as they should have and D C Financial had waited until the details of the BSPS2 had been known before formulating its advice, it should've recommended that Mr T opt into the BSPS2. I appreciate that the BSPS2 wasn't guaranteed to go ahead at this time. But I think everything pointed to it going ahead. Because Mr T's retirement plans were not set in stone and he said he was prepared to work up to 66 if needed, 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, as it wouldn't be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr T would've retained the ability to transfer out of the scheme nearer to his retirement age - if he needed to. Also, Mr T's spouse's pension 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 T chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

Of course, I have to consider whether Mr T would've gone ahead anyway, against D C Financial's advice. D C Financial says that, considering Mr T was fully aware of the benefits he was sacrificing and bearing in mind the objectives he was keen to achieve, even if they'd recommended against transferring, he would've continued with the transfer as an insistent client.

I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring out of the BSPS against D C Financial's advice. I say this because, while Mr T was motivated to transfer when he approached D C Financial, on balance, I still think he would've listened to and followed D C Financial's advice if things had happened as they should have. Mr T was not an experienced investor who, in my view possessed the necessary skill, knowledge or confidence to go against the advice they were given in pension matters. So, if D C Financial had provided Mr T with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr T's concerns about his employer were so great that he would've insisted on the transfer 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. If D C Financial had explained that Mr T could meet his income needs in retirement by re-considering his retirement age as he said he was prepared to do and so not risk his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr T would have insisted on transferring out of his scheme against D C Financial's advice.

In light of the above, I think D C Financial should compensate Mr T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BSPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £150 for the distress and inconvenience the matter has caused Mr T.

So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish D C Financial – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr T. Taking everything into account, including that I consider Mr T's retirement provision is of great importance to him, I think the unsuitable advice has caused him some distress. So I think an award of £150 is fair in all the circumstances.

Finally I can see that D C Financial says that it shouldn't be responsible for any losses as a result of any subsequent 'bad investment advice' – a reference to any losses stemming from those investments after it ceased managing Mr T's pension investment. But the investments would not have arisen at all were it not for D C Financial's unsuitable advice. So, I don't agree that its responsibility for loss stemming from its advice should be capped when it ended its agreement with Mr T.

Putting things right

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 T 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.

Mr T would like his complaint to be settled in line with new guidance /rules. I consider it's fair that D C Financial calculates Mr T's redress in line with new guidance and rules when they come into effect.

A fair and reasonable outcome would be for the business to put Mr T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider if things had happened as they should have and D C Financial had waited until the details of the BSPS2 had been known before formulating its advice, it should've recommended that Mr T opt into the BSPS2. So D C Financial should use the benefits offered by BSPS2 for comparison purposes.

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 T.

D C Financial 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, compensation should be based on Mr T taking benefits at age 65.

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 T'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 T 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 T within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and D C Financial has received notification of Mr T'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 D C Financial to pay Mr T.

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

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 require D C Financial Limited to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £160,000.

D C Financial Limited should also pay Mr T £150 for the distress and inconvenience caused in this matter.

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

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

If Mr T 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 T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 14 February 2023.
Paul Featherstone
Ombudsman