DRN-3415943

Financial Ombudsman Service

The complaint

Mr E complains about the suitability of the advice provided by D C Financial Limited ("D C Financial") in January 2018 to transfer the value of his safeguarded benefits in the British Steel Pension Scheme ("BSPS") to a personal pension plan ("PPP").

Mr E is represented in this complaint by a law firm ("the Representative").

What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both the Representative and D C Financial. I don't intend to repeat here what our investigator stated but will instead provide a summary.

In March 2016, Mr E's employer, Tata Steel UK Ltd ("Tata Steel"), announced that it would be examining options to restructure its business including decoupling the BSPS from the company. The BSPS was a defined benefits ("DB") pension scheme that provided a guaranteed lifetime income to members. The consultation with members referred to possible outcomes regarding their safeguarded benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of DB pension schemes when their employer becomes insolvent. Tata Steel closed the BSPS to further benefit accrual from 31 March 2017.

In May 2017, the PPF announced that the terms of a Regulated Apportionment Arrangement ("RAA") had been agreed – this was approved by The Pensions Regulator in August 2017. Under the announced plans, Tata Steel agreed to set up and sponsor a new DB pension scheme, the BSPS2, subject to certain conditions relating to funding and size being satisfied.

In October 2017, these changes were communicated to BSPS members, including Mr E, under the *'Time to Choose'* communication exercise. This explained that BSPS members had three options regarding their safeguarded benefits:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

Options 1 and 2 would've enabled Mr E to retain guaranteed pension income, albeit at a lower level than provided by the BSPS.

Members had to decide which option they wanted by 22 December 2017 – those that didn't choose an option remained in the BSPS and were ultimately transferred to the PPF. The details of Mr E's safeguarded benefits in the BSPS at that time were as follows:

- He had accrued 8 years and 7 months' qualifying service between August 2008 and March 2017;

- The scheme pension provided was based on his final salary, pensionable service and benefit accrual rate – as at the date of leaving the scheme in March 2017, his

annual scheme pension was £4,360.09. The scheme pension comprised several elements, each part of which would be revalued by a prescribed amount over the term to the scheme normal retirement age of 65 and, once in payment, would escalate annually by a prescribed amount.

- Payment of benefits before 65 would be subject to an early retirement reduction on a sliding scale – in simple terms, the earlier benefits were taken, the greater the reduction applied to the scheme pension. Broadly, this meant a 30% reduction would apply to the scheme pension if benefits were taken at age 55 and a 18% reduction at age 60. The reduction was applied to reflect the fact that the scheme would have to support the income for longer than anticipated, and to protect the interests of scheme members generally;

- The revaluation and escalation rates were guaranteed in line with the BSPS rules;

- The estimated revalued annual scheme pension payable by the BSPS was £5,521 at age 65 and £4,012 at age 60;

- The cash equivalent transfer value of his safeguarded benefits was £92,691.85.

Mr E was concerned about what the announcement by Tata Steel meant for the security of his safeguarded benefits in the BSPS. He didn't want to be transferred to the PPF. He contacted D C financial for advice. He initially met one of its advisers in November 2017. A fact find document and attitude to risk questionnaire were completed which recorded the following information about Mr E:

- He was aged 55, in good health, married and had two financially independent children aged 35 and 31. His wife was aged 53 and also in good health;

- He was employed by Tata Steel and was paid gross annual income of about £36,000. He didn't have any plans to retire in the foreseeable future but instead envisioned continuing working for Tata Steel until age 65. There wasn't any reference to Mr E wanting to retire early. His desired level of retirement income wasn't recorded. His wife was employed on a part-time basis by a retail company.

- In addition to the value of his safeguarded benefits in the BSPS, he had been a member of Tata Steel's defined contribution ("DC") pension scheme since March 2017. The total annual contribution into his DC plan was 16% of his gross annual salary. This would increase in line with changes to his salary. In addition, he had some paid-up DC pension plans valued, in total, at about £65,000 and was in receipt of a DB pension of £82 per month which had started at age 50. His wife didn't have any private or workplace pension arrangements;

- His assets comprised the marital home valued at £125,000 which was owned outright. Other than his home and pension arrangements, he didn't have any savings or investments;

- He didn't have any debts or liabilities. His monthly outgoings were about £1,200 which left surplus monthly income of around £900;

- He had very limited knowledge and experience of investments. He hadn't previously obtained financial advice. His risk profile was determined to be *'Cautious to Moderate'*.

In the fact find document, it was noted:

"Reasons to consider a transfer:

- *Trust and uncertainty*
- *Feels flexible income could be more beneficial*
- *Death benefits more appealing"*

In January 2018, D C Financial issued a suitability report to Mr E in which it recommended that he transfer the value of his safeguarded benefits in the BSPS to a PPP. The report confirmed Mr E's reasons for wanting to transfer to a PPP, as follows:

- *"You are uncertain of the future of the scheme and you want control of your own pension fund.*

- *You are concerned of the BSPS entering the Pension Protection Fund, and losing the flexibility of accessing your fund. Flexibility is important to you.*

- *Concern over benefits being cut further.*

- *To take any tax-free cash, you would have to start taking an income from the British Steel Pension Scheme. Penalties are imposed by the BSPS for accessing benefits before the normal scheme retirement age of 65.*

- *The inflexible death benefits concern you - after the 50% spouses pension, the pension ceases. You feel it is important to be able to pass on any unused pension fund to your children and/or grandchildren."*

To align with Mr E's *'Cautious to Moderate'* risk profile, D C Financial recommended that 50% of the transfer value be invested in the PPP's provider's Cautious fund and that it actively managed the other 50%. The costs associated with the recommendation were set out in the suitability report, as follows:

Initial charge

- £2,317.29 – initial adviser charge payable to D C Financial

Ongoing annual charges deducted from the PPP fund value

- 1% ongoing adviser charge payable to D C Financial
- 0.25% product charge payable to the PPP provider
- The underlying fund charges for the PPP's provider's Cautious fund and the funds to be actively managed by D C Financial weren't stated in the suitability report

Mr E accepted the recommendation, following which the transfer to the PPP was completed after the provider received the transfer value of £92,691.85.

This complaint

In 2021, the Representative, on behalf of Mr E, complained to D C Financial about the suitability of its pension transfer advice. D C Financial didn't uphold this complaint. It stated that its recommendation was suitable for the following reasons:

- Mr E had lost trust in Tata Steel and was concerned about the value of his preserved

benefits being reduced further or transferred to the PPF – he wanted to remove these risks by transferring away;

- He was given sufficient time and opportunity to read through the *'Time to Choose'* pack provided to him by the BSPS. The information in the pack was repeated in its suitability report. So it was satisfied that he fully understood the options open to him before deciding to proceed with the pension transfer;

- The early retirement reductions applied by the BSPS concerned Mr E. He wanted the flexibility to choose when and how to take benefits without suffering an early retirement reduction;

- It made Mr E made aware of the different format of death benefits provided by the BSPS2, PPF and PPP options. In the event of his earlier death, he didn't want his wife to be limited to receiving a 50% spouse's pension and then the benefit ceasing on her death. Rather, he wanted his wife to benefit from the full remaining PPP fund value with the potential that this could be passed on to their children. Life cover was discussed but discounted because Mr E didn't want an ongoing cost;

- Mr E had other pension arrangements he could rely on such as his other DC pension funds, a small DB pension income of £82 per month and expected State pension. In addition, he had recently joined the Tata Steel DC pension scheme where 16% of his annual salary was being invested. Therefore, at retirement, he wouldn't be solely reliant on his preserved benefits in the BSPS;

- The recommended funds in the PPP aligned with his *'Cautious to Moderate'* risk profile and met his recorded objective for the value of his fund to grow faster than inflation; and

- It was satisfied that its recommendation met Mr E's objectives regarding control, flexibility and maximising death benefits. It commented that the value of Mr E's PPP had increased by 18.36% since the transfer and that he had always expressed satisfaction with performance until this complaint.

One of our investigators considered this complaint and recommended that it be upheld. This was because he thought that D C Financial's recommendation to transfer wasn't clearly demonstrated to be in Mr E's best interests. He noted that the critical yield figures attached to the transaction strongly indicated that Mr E would be financially worse off as a result of the pension transfer. Ultimately, he wasn't persuaded that it was suitable for Mr E, who was an inexperienced investor, to relinquish guaranteed income available under the BSPS2 and instead take on the investment risks associated with the pension transfer to a PPP for what he considered to be generic objectives relating to control, flexibility and death benefits.

To put things right, our investigator recommended that D C Financial carry out a redress calculation in line with the FCA's *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* on the basis that Mr E opted for the BSPS2 and would be a 20% income taxpayer in retirement. In addition, he recommended that D C Financial pay Mr E £300 compensation for the trouble and upset caused by its unsuitable recommendation and the realisation that he's likely suffered a significant financial loss.

The Representative, on behalf of Mr E, responded and stated that it agreed with the uphold outcome. It agreed that the BSPS2 should be used for comparison purposes and on the

basis that Mr E would likely take benefits at age 65. And it also requested that D C Financial provide it with a breakdown of the loss assessment in a simple, easily understandable format.

D C Financial didn't accept our investigator's assessment and requested that this complaint be referred to an ombudsman for review. In summary, it remained satisfied that its advice was suitable to meet Mr E's objectives. It later stated that any redress calculation should use the PPF as the comparator scheme and not the BSPS2, as suggested by our investigator. This was because, in its view, the BSPS2 didn't exist at the time of its advice and was merely a proposal and not guaranteed to go ahead. And so it wouldn't be an appropriate comparator for the purposes of assessing redress.

While waiting for this complaint to be allocated to an ombudsman, our investigator contacted the parties in connection with the FCA's consultation launched on 2 August 2022 regarding new pension transfer redress guidance. The investigator asked the Representative to confirm with Mr E that in the event this complaint is ultimately upheld, whether he preferred redress to be calculated on the current methodology or the updated guidance expected to be implemented in early 2023. The investigator told the Representative that if we didn't receive an answer that we'd assume Mr E would prefer redress on the current methodology set out in *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. As at the date of this final decision, the Representative didn't confirm which option Mr E preferred. In its response, D C Financial questioned why Mr E was being asked to choose to his preferred redress option when the merits of this complaint were still in dispute.

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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by D C Financial and the Representative on behalf of Mr E. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

The FCA's suitability rules and guidance

D C Financial was authorised and regulated by the FCA at the time it provided its recommendation to Mr E. This meant that when it advised him it was required to follow the rules and consider the guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, D C Financial was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr E. The suitability rules and guidance that applied when D C Financial provided its recommendation to Mr E were set out in COBS 9. The purpose of the rules and guidance are to ensure that businesses take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment

objectives and risk profile. To ensure that this is the case, and in line with the requirements in COBS 9.2.2R, the business must gather the necessary information for it to be confident its advice is suitable. Broadly speaking, this section of COBS 9 sets out the requirement for a regulated advisory business to undertake a “fact find” process.

There were also specific requirements and guidance relating to pension transfers involving safeguarded benefits, as was applicable to Mr E’s case – these were contained in COBS 19.

COBS 19.1.2R required the following:

> *“A firm must:*
>
> *(1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme or other pension scheme with safeguarded benefits with the benefits afforded by a personal pension scheme, stakeholder pension scheme or other pension scheme with flexible benefits, before it advises a retail client to transfer out of a defined benefits pension scheme or other pension scheme with safeguarded benefits;*
>
> *(2) ensure that that comparison includes enough information for the client to be able to make an informed decision;*
>
> *(3) give the client a copy of the comparison, drawing the client’s attention to the factors that do and do not support the firm’s advice, in good time, and in any case no later than when the key features document is provided; and*
>
> *(4) take reasonable steps to ensure that the client understands the firm’s comparison and its advice.”*

Under the heading “Suitability”, COBS 19.1.6G set out the following:

> *“When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can* ***clearly demonstrate, on contemporary evidence****, that the transfer, conversion or opt-out is in the client’s best interests.”* [my emphasis added]

COBS 19.1.7G also stated:

> *“When a firm advises a retail client on a pension transfer, pension conversion or pension opt-out, it should consider the client’s attitude to risk including, where relevant, in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.”*

And COBS 19.1.8G stated that:

> *“When a firm prepares a suitability report it should include:*
>
> *(1) a summary of the advantages and disadvantages of its personal recommendation;*
>
> *(2) an analysis of the financial implications (if the recommendation is to opt-out); and*

(3) a summary of any other material information."

Businesses are required to follow these rules and consider the guidance because the FCA considers safeguarded benefits to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension scheme is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

In assessing the suitability of D C Financial's recommendation, it's necessary for me to have due regard to the FCA's rules and guidance.

Mr E's situation

The situation for Mr E wasn't normal because the existing DB pension scheme, the BSPS, was closing. So he was essentially forced to transfer the value of his safeguarded benefits to a new scheme. He had three options, as set out in the *'Time to Choose'* pack issued to him in October 2017:

1. Transfer to the PPF;
2. Transfer to the BSPS2; or
3. Transfer to an alternative pension plan such as a PPP.

It's undeniable that it was a period of great uncertainty for individuals such as Mr E. Many of these individuals were in a vulnerable position due to the uncertainty surrounding the future of the BSPS. I think the uncertainty only served to emphasise the need at that time for a balanced assessment of the options available and ultimately the provision of suitable advice. It's my view that any concerns Mr E had about the security of his safeguarded benefits should've been addressed and appropriately managed by the professional party in the transaction, D C Financial.

Options 1 and 2 would've enabled Mr E to retain guaranteed pension income, albeit at a lower level than provided by the BSPS. As set out in the *'Time to Choose'* pack, there were differences between the PPF and the BSPS2. For deferred members below the scheme normal retirement age, like Mr E, the PPF would provide compensation based on 90% of their accrued pension at the scheme normal retirement age (in effect a 10% reduction in benefits). The BSPS2 didn't apply such a reduction. The BSPS2 also provided the potential for discretionary increases to the accrued pension, a higher level of spouse's pension and the option to transfer to an alternative pension to convert to flexible benefits at a later date when needs could be determined with greater accuracy than at 55 – the PPF didn't offer these additional features.

So while the situation was somewhat unusual, Mr E still had the option to retain guaranteed benefits in either the PPF or BSPS2. Due to his age and circumstances, it's my view Mr E would've been better off choosing the BSPS2 instead of the PPF. Given the FCA's view on safeguarded benefits and what was known at that time, it's my fair and reasonable opinion that D C Financial should've started its advice process by assuming the BSPS2 was likely to be the most suitable option for Mr E and to only recommend a transfer to the PPP if it could clearly demonstrate it was in his best interests.

Mr E's objectives

Based on the fact find document and suitability report, Mr E had three broad objectives regarding his preserved benefits, summarised as follows:

- **Control** – He was concerned about the level of his benefits being reduced further or the BSPS falling into the PPF which would result in a 10% reduction in his benefits. He had lost trust in Tata Steel. As a result, he wanted control over his pension benefits by transferring to a PPP.

- **Flexibility** – He considered the ability to take flexible income and tax-free lump sums from a PPP to be more beneficial than the rigid benefit structure of the alternative options. He was also keen to avoid being penalised for taking benefits earlier than age 65. He was concerned that if he didn't transfer to a PPP at that time that he could lose the option of flexible benefits by the time he retired.

- **Death benefits** – He was concerned that the 50% spouse's pension would cease on his wife's death. He was important to him that any unused benefits be passed on to his children.

I recognise that Mr E's safeguarded benefits was ultimately his money to do with as he saw fit. However, he was relying on D C Financial to provide expert, balanced information and advice, taking into account all the information available to it at that time – so that he could then make an informed decision. I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or DB pension scheme but, as the professional party, D C Financial was tasked with rationally addressing those concerns and providing an appropriately balanced view of the available options.

In my view, financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it has a choice not to facilitate the transaction.

Transfer value analysis

One of the key components in determining the suitability of a pension transfer is assessing the financial viability of the proposed transaction. The transfer value analysis system ("TVAS") rules applied at the time D C Financial advised Mr E. This required it to carry out a transfer value analysis to calculate the 'critical yield' applicable to the proposed transfer. The critical yield is the annual rate of investment return required on the invested transfer value, after charges, to match the capitalised value of the benefits offered by the DB pension scheme on the assumption that the value of the alternative pension is used to secure a lifetime annuity at the scheme normal retirement age – the higher the critical yield, the less likely that the alternative pension will achieve sufficient investment growth to match the revalued pension payable by the DB pension scheme.

In its suitability report issued in January 2018, D C Financial quoted the following critical yield figures to Mr E:

Scheme	At age 60 based on taking a full pension	At age 65 based on taking a full pension
BSPS	18.74%	11.01%
BSPS2	15.68%	9.15%
PPF	14.56%	8.07%

D C Financial's recommendation to Mr E was provided to him after the FCA gave instructions in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'* 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 on our website. While 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've been considered reasonably achievable when the advice was given in this case. The closest discount rate which I'm able to refer to and published by this service for the period before October 2017 is 3.7% based on Mr E taking benefits at the scheme normal retirement age of 65. Furthermore, the FCA's projection rate for pensions at the time was 8% per year for the upper rate, 5% per year for the middle rate and 2% per year for the lower rate. These facts indicate that the critical yield figures attached to the proposed transfer could be regarded as very high, implying significant investment growth was required by the PPP over the period to age 65 to match the relinquished benefits.

Given the critical yield figures applicable in this case and that Mr E's PPP was invested to align with his *'Cautious to Moderate'* risk profile, I think it was very unlikely that the PPP would provide benefits that matched the relinquished benefits, let alone exceed them. And it seems that D C Financial agrees because in its suitability report it stated, *"The critical yield required is exceptionally high and it would be very unlikely difficult that an investment could provide a return to match the benefits you are giving up".* So, from an economic point of view, D C Financial agrees with me it was very likely Mr E would be financially worse off by transferring on a like-for-like basis when compared to the alternative BSPS and PPF options.

Of course, financial viability isn't the only consideration when giving pension transfer advice, as was set out in COBS 19.1.7B (G). A reasonable prospect of the critical yield being met or exceeded wouldn't necessarily mean that the transfer was suitable, and conversely, there might be other considerations which mean a pension transfer is suitable, despite providing overall lower benefits. I'll now go on to consider this in the context of Mr E's recorded objectives.

<u>Control objective</u>

It's clear that Mr E's main motivation for considering a pension transfer was due to his concerns about the BSPS and the risk that this might fall into the PPF. I accept that such concerns were common among steelworkers at the time, and that it would've been a major motivation behind many of them transferring out. So I can understand why Mr E wanted to have control over his benefits by transferring to a PPP.

That being said, D C Financial's advice was provided in January 2018, after the *'Time to Choose'* pack had been issued to members. I think that the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits. But, in any event, I don't consider a transfer to the PPF was an outcome for Mr E to avoid at all costs. I'll explain why.

The PPF was introduced by the government in 2005 as a 'lifeboat' scheme to protect members of DB pension schemes with the promise of providing a minimum level of benefits. The revaluation and escalation rates are set by law. Depending on his age on transfer to the PPF, Mr E could expect to receive a minimum of 90% of his scheme pension, although this would be affected by the revaluation and escalation rates under the PPF. This contrasted with the recommended PPP where there's no promise of a minimum level of benefits payable. At the time of D C Financial's recommendation, the PPF's financial position remained robust. So there wasn't any reason at that time to question the financial viability of the PPF to provide benefits in the future.

At the time of the advice it was recorded that Mr E didn't have any immediate plans to retire. Had D C Financial advised him to transfer to the BSPS2 he would've maintained safeguarded benefits and retained the option to transfer to a PPP at a later date, if then deemed suitable, when he actually required retirement benefits.

A transfer to the BSPS2 would've also removed any immediate concerns Mr E had about the PPF. After all, the whole reason the BSPS2 was conceived was to provide a new long-term DB pension scheme for former members of the BSPS. And if it was the case, in the future, that the BSPS2 was at risk of being transferred to the PPF, then I think it likely that, similarly to the BSPS, members would be given the opportunity to transfer out to a PPP before any transfer to the PPF occurred. So I don't think that there was any immediate concern about options disappearing for Mr E or that there was an urgency to transfer to a PPP at that time to avoid a transfer to the PPF.

If Mr E was concerned about his safeguarded benefits being transferred to the PPF which would result in him losing 10% of his scheme pension, then I question why he would accept the risk of transferring to a PPP which exposed him to unlimited downside risks where the loss could be significantly greater than 10%. This simply doesn't make sense to me and suggests that he didn't have the knowledge and experience to understand the features, risks and benefits of the PPF compared to the pension transfer. He was relying on D C Financial to provide expert advice on this point, but I think it failed to do this because the suitability report doesn't deal with Mr E's concerns about the PPF. So he likely thought that a transfer to the PPP was the best course of action.

In summary, I think that D C Financial failed to adequately allay Mr E's misapprehensions about the security of his preserved benefits and that he therefore made the decision to transfer to the PPP from an uninformed position.

Flexibility objective

The evidence confirms that Mr E didn't have any plans to retire in the foreseeable future but instead envisioned continuing working for Tata Steel until age 65. There wasn't any reference to him wanting to retire early. And his desired level of retirement income wasn't recorded. So it may well have been the case that the income provided by the BSS2 would've met Mr E's income need but this is unclear.

I think it's fair to say that there wasn't specific flexible or early retirement objectives attached to the pension transfer. Rather, it seems that Mr E simply wanted the option to take flexible benefits at an indeterminate point in the future should he need it. I don't think it was in his best interests to suffer a loss of guaranteed benefits for the sake of an option he wasn't certain to need.

D C Financial portrayed the PPP option in the suitability report as allowing for early retirement earlier than age 65 without the "penalties" which would be applied to the PPF or BSPS2 options. And in responding to this complaint it stated that Mr E was concerned about the early retirement reductions applied to the scheme pension in support of its recommendation to transfer. But, as noted above, there wasn't any evidence Mr E intended to retire early, so the prospect of an early retirement reduction being applied to the scheme pension was, in my view, irrelevant since it was unlikely to apply to his situation based on what was recorded about his future plans. In any event, the reality was of course that the PPP would've had less time to grow if accessed earlier than 65 and any resulting income would need to last longer. I cannot see that this was adequately explained to Mr E so that he could understand accessing any of the available options early would likely lead to reduced retirement income during his lifetime compared to taking benefits at age 65. So I think he was uninformed regarding this.

I think it's clear that Mr E was attracted to a flexible arrangement. But I'm not convinced, based on the evidence provided, that it was evident at age 55 he had a genuine need to access his safeguarded benefits flexibly with varying levels of income and lump sums during retirement bearing in mind he had access to other flexible DC benefits. There simply wasn't any identifiable need for flexibility that outweighed the loss of guaranteed benefits at that time.

But if it's the case that Mr E genuinely required flexibility in retirement then it's my view that he could've used his other pension arrangements to achieve this. I note that he had other DC pension savings which, at that time, were valued at about £65,000 and, in addition, he was an active member of the Tata Steel DC pension scheme. Mr E and Tata Steel were, in total, contributing 16% of his gross annual salary of about £36,000 into his DC pension plan every year, which was about £5,700 in monetary terms. This would increase in line with increases in his salary. As noted above, Mr E envisioned continuing working for Tata Steel until age 65. And in the event he left that employment, I think it's likely that he'd find alternative employment and, with the legal requirements of auto-enrolment, would join a different DC pension scheme and pay a minimum of 8% of his earnings into it. So over the 10-year period to age 65, it's likely that Mr E would build up additional DC pension savings.

Therefore, from age 65, any flexible needs could've been met by his substantial other DC pension savings. This would then be supplemented by the guaranteed pension income payable by the BS2 from age 65, followed by the State pension from age 67. So, from 65 onwards, most of Mr E's core retirement income needs could've been met by guaranteed and escalating pensions which would've offered some inflation protection unlike the recommended PPP.

Transferring to the PPP led to the investment, inflation and longevity risks associated with providing the retirement benefits moving from the DB pension scheme to Mr E. But I don't think he needed to take on these risks at that time for the reasons explained above.

The course of action recommended by D C Financial led to Mr E concentrating most of his retirement benefits on a DC basis which offered no guarantees but was based entirely on investment performance. The alternative, blended approach I've suggested likely would've enabled Mr E to achieve any flexible-related objectives he had but with significantly less risk. I haven't seen evidence that D C Financial adequately considered and discounted this alternative course of action in meeting Mr E's flexible objective.

The available evidence simply doesn't support the position as to why flexibility would've been a sufficiently compelling reason for Mr E to relinquish valuable benefit guarantees at that time.

In conclusion, while I understand Mr E may have liked the idea of future flexibility, I don't think D C Financial clearly demonstrated why it was in his best interests to relinquish his safeguarded benefits at that time to achieve this. I simply don't agree the perceived advantage of flexibility and control of income outweighed the guaranteed benefits offered by the BSPS2.

Death benefits objective

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 recommended PPP offered flexible death benefits. Based on the applicable tax rules, if death occurred under 75 the benefits are paid free of income tax – after 75 the benefits are taxed at the beneficiary's marginal rate of income tax. It's fair to say that immediately following the transfer to the PPP and for the period until Mr E withdrew benefits, the death benefits available would be significant (subject to investment performance) due to the simple fact he hadn't accessed and depleted the fund value.

But Mr E was recorded as being in good health. So he could expect life expectancy into his 80s. There weren't any immediate health concerns that indicated a pension transfer was a suitable course of action at that time.

The value of Mr E's safeguarded benefits would represent a significant proportion of his retirement provision by the time he came to retire. And so he'd likely start using this money to meet his income and lump sum needs as soon as he retired. Withdrawing money from the PPP to meet his income and lump sum needs from age 65 would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected.

If it was a genuine objective for Mr E to provide a lump sum to his wife and children on his death, then life cover could've achieved the same objective of providing a lump sum while enabling him to maintain safeguarded benefits in the BSPS2. In its suitability report, D C Financial stated, *"In discussing the death benefits, we had considered the option of implementing life cover to protect your family rather than relying on the death benefits from the pension scheme. We had agreed that you wanted to ensure that any accrued benefits under the pension were not lost, rather than the added cost for an additional lump sum death benefit under a life policy."*

However, I cannot see any evidence that D C Financial quantified Mr E's death lump sum need, over what term, how this might change over time, how it might be met by other means or present personalised life cover quotes to him to enable him to make an informed decision. I note that Mr E had disposable income available every month after paying his bills which he could've used to pay for life cover to achieve the death lump sum objective. Pure life cover for a defined term is generally cheap and some cover may have been affordable for Mr E given he was aged 55 and recorded as being in good health. And if put in trust the policy proceeds would fall outside Mr E's estate for inheritance tax purposes, similar to a PPP.

But, in any case, I note that through his employment, Mr E had life cover based on a multiple of four times' his salary, meaning a lump sum of about £144,000 would be paid in the event he died while still employed by Tata Steel – this was payable regardless of whether his safeguarded benefits were transferred to BSPS2, PPF or a PPP. In addition, the value of his DC pension savings, then valued at about £65,000, would likely be paid as a lump sum to his nominated beneficiary(ies). So it seems to me that in the immediate future, certainly while Mr E remained employed by Tata Steel, that a lump sum of at least £200,000 would be paid on his death. As noted above, Mr E intended to remain employed by Tata Steel, so I think it's fair to say that there wasn't any expectation the death in service benefit would disappear in the foreseeable future.

This leads me to conclude that there wasn't any immediate need to transfer at that time to provide death benefits in a different format bearing in mind the cover already in place while Mr E remained employed by Tata Steel.

It's my view that Mr E had no health issues at the time D C Financial advised him which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of an enhanced safety net for his wife and children. So I'm

not convinced there was any real merit in Mr E transferring to a PPP at that time to provide a lump sum death benefit.

Conclusion

Mr E was recorded as never having previously obtained financial advice and had very little understanding or knowledge of investing. That seems accurate based on the evidence. His attitude to risk was on the cautious side of medium, so I think it's reasonable to conclude that the guarantees attached to his safeguarded benefits would've been valuable for him.

In conclusion, I haven't seen any evidence that shows the pension transfer to the PPP served any actual need, or that Mr E gained any clearly defined advantage compared to the alternative option of transferring to the BSPS2. And so I'm not persuaded that a pension transfer was clearly in his best interests. As a result, I think it's fair and reasonable to uphold this complaint.

If properly informed, would Mr E have transferred anyway?

In potential mitigation of D C Financial's advice, I've also thought about whether Mr E, if placed in a fully informed position, would nevertheless have decided to transfer the value of his safeguarded benefits to a PPP. This was a complex transaction involving many factors which Mr E, as a layperson, wouldn't have been familiar. It's my view, given his lack of investment knowledge and experience, that he was heavily reliant on D C Financial, as the professional party in the transaction, to take those factors into account and provide suitable, balanced advice. Given Mr E's reliance on D C Financial to provide expert advice, I think it's unlikely, on balance, he would've transferred against its advice had it advised him to opt for the BSPS2.

Putting things right

A fair and reasonable outcome would be for D C Financial to put Mr E, as far as possible, into the position he would now be in but for the unsuitable advice he was given. My view is aligned with that of our investigator in that, had Mr E been properly advised, he would've opted for the BSPS2 rather than the PPF.

As noted above, while some information on the benefits of BSPS2 were still to be confirmed, I think that by January 2018 the risk of the BSPS falling into the PPF had receded by a large extent by that point, as the RAA had been approved and the BSPS2 was being proposed primarily because it could provide benefits in most situations that were higher than PPF benefits.

I acknowledge D C Financial's comment that the BSPS2 didn't exist at the time of its advice in January 2018 and was merely a proposal and not guaranteed to go ahead. And so it doesn't think the BSPS2 would be an appropriate comparator for the purposes of assessing redress. I disagree. Firstly, when formulating its recommendation, D C Financial analysed and considered the benefits payable by the BSPS2 as one of three potential options for Mr E. So, on one hand, it considered the BSPS2 as a possible alternative option for Mr E at the time it advised him but, on the other hand, it wants this service to disregard that option for redress purposes. That doesn't make sense to me and is illogical.

It's my view that had he been given suitable advice, Mr E would've transferred to the BSPS2 and his benefits would now be preserved in that scheme. And so, with the aim of placing him into the correct financial position, I think it's fair and reasonable that the benefits offered by the BSPS2 should be used for comparison purposes.

As such, the calculation on the basis of entering the BSPS2 should be carried out using the most recent financial assumptions at the date of the actual calculation. This should be on the basis Mr E takes benefits at the BSPS2 normal retirement age of 65 to align with his recorded circumstances.

FCA consultation

On 2 August 2022, the FCA launched a consultation on new DB pension 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 stated that it considers the current redress methodology in Finalised Guidance (FG) 17/9 remains appropriate and fundamental changes aren't necessary. However, its review identified some areas where it 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 stated that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 while the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr E whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance and rules to be published. He didn't make a choice. So, as set out previously, I've assumed in this case he doesn't want to wait for any new guidance. I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr E.

D C Financial must therefore undertake a redress calculation in line with the FCA's pension review guidance as updated by it in its *'Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers'*. This calculation should be carried out as at the date of this final decision and using the most recent financial assumptions. In accordance with the FCA's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr E's acceptance of this final decision.

D C Financial may wish to contact the Department for Work and Pensions ("DWP") to obtain Mr E'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 BSPS on Mr E's SERPS/S2P entitlement.

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

If a payment into the PPP isn't possible or has protection or allowance implications, it should be paid directly to Mr E 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've been taken as tax-free cash and 75% would've been taxed according to his likely income tax rate in

retirement – presumed to be 20%, as previously stated by our investigator. So making a notional deduction of 15% overall from the loss adequately reflects this.

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

In addition, D C Financial should pay Mr E £300 for the distress and inconvenience this matter has caused him.

The compensation amount must, where possible, be paid to Mr E within 90 days of the date D C Financial receives notification of his acceptance of this final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of this final decision to the date of settlement for any time, in excess of 90 days, that it takes D C Financial to pay Mr E.

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. 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 E the compensation amount as set out in the steps above, up to a maximum of £160,000. Where the compensation amount doesn't exceed £160,000, I would additionally require D C Financial Limited to pay Mr E 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 E 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 E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E. If Mr E accepts this final decision, the money award becomes binding on D C Financial Limited. My recommendation wouldn't be binding. Further, it's unlikely that Mr E can accept this final decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept this final decision.

D C Financial Limited must provide to the Representative a breakdown of the loss assessment in a simple, easily understandable format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 February 2023.

Clint Penfold
Ombudsman