

## The complaint

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

In October 2017 Mr C's employer sent out 'Time to Choose' information asking members of the DB scheme what they wanted to do with their preserved benefits – either remain in the BSPS which would then move to the PPF, join the 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 C was concerned about what the announcements meant for the security of his DB scheme, so he sought advice. Mr C met with D C Financial in November 2017 and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr C was single, he owned his own home, which had an outstanding mortgage on it of around £90,000 with 29 years remaining; he had around £6,000 as a cash reserve; and his preferred retirement age was 57. D C Financial also carried out an assessment of Mr C's attitude to risk, which it deemed to be 'moderately aggressive.'

On 13 December 2017 Mr C had a follow up meeting with D C Financial during which it appears its recommendation was discussed and I can also see that D C Financial noted that Mr C's employer had confirmed it had received Mr C's returned 'Time to Choose' option form to join the new BSPS2. On 14 December 2017 D C Financial issued its written advice to Mr C to transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in a portfolio of investment funds, which D C Financial deemed matched Mr C's attitude to risk. In summary D C Financial's reasons for the recommendation were to provide Mr C with flexibility in retirement, control, the ability to vary income provide flexible death benefits to alleviate his concerns about the DB scheme including moving to the PPF.

Mr C accepted the recommendation and around £21,600 was subsequently transferred to Mr C's new personal pension.

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

D C Financial didn't uphold Mr C's complaint. In summary it said the transfer was suitable and that based on Mr C's needs and objectives it was in his best interests. It said it provided him with clear advice setting out the benefits as well as the risks of transferring ensuring Mr

C was aware of and comfortable with the risks of transferring. It added that the Financial Conduct Authority ('FCA') had carried out a review of several of its files involving transfers from the BSPS and it had raised no concerns as a result.

Dissatisfied with its response Mr C asked this service to consider his complaint. And an investigator upheld it and said D C Financial should pay Mr C compensation. In summary they said given the growth rate required to match Mr C's DB scheme benefits at 65 was 5.90%, they didn't think it was likely Mr C would match let alone exceed the growth required. They also expressed concerns about D C Financial's assessment of Mr C's risk profile and capacity for loss. It didn't think D C Financial had done enough to address Mr C's concerns about his pension benefits or that it had properly explored the BPS2 with him. They said that given Mr C's age he didn't know what his retirement needs were, so there was no need for him to make a decision about transferring and take on the investment risk that came with transferring. They also said death benefits shouldn't have been prioritised over Mr C's own financial benefits in retirement. Finally they said because Mr C opted into the BPS2, compensation should be based on a comparison of the benefits provided by the BPS2.

D C Financial disagreed. In summary it said the investigator had referred to the wrong income figures and critical yields in their assessment – they'd used the existing BPS scheme information and not the BPS2. It said it had discussed the BPS2 with Mr C pointing to an extract from its suitability report. It said the correct critical yields – those of the BPS2 – were similar to the discount rate quoted by the investigator, and as a moderately aggressive investor it would be fair to assume a return of between the mid and upper regulator's projection rate, which is above the critical yield. It said while past performance doesn't guarantee future performance, the portfolio it recommended had returned 10.75% on a five-year annualised basis at the time of the advice and this shouldn't be disregarded. It says Mr C's attitude to risk was discussed and agreed using a 13-question risk profiler and it disagreed that he didn't have capacity for loss – it argues that he had substantial capacity for loss given a number of factors. And these included the relatively small value of the pension; Mr C's time to retirement; his workplace pension and the potential value of this over 38 years. It said the transfer met Mr C's objectives all of which were set out in the advice paperwork and agreed by Mr C.

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

D C Financial provided a further submission for the ombudsman's consideration. In summary it said that the investigator was wrong in their conclusion that the BPS2 was certain to go ahead pointing to evidence which said otherwise, including the 'Time to Choose' information provided to BPS members in 2017. It asked what more it could have done to fully explain the income Mr C was giving up and it repeated the points it previously made about Mr C's reasons for wanting to transfer; the incorrect critical yields referred to; Mr C's capacity for loss; and its belief that the transfer advice was suitable supported by the fact Mr C's benefits have improved since transferring.

### **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.

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 C's best interests. And having looked at all the evidence available, I'm not persuaded that it was in his best interests.

#### *Financial viability*

I can see D C Financial has said the investigator referred to the wrong critical yields in their assessment of the complaint using those produced for the benefits available under the BPS and not the BPS2. Because at the time of the advice it was clear Mr C didn't have the option to remain in the existing BPS – he either needed to opt into the BPS2, which I can see he did as a precautionary measure, or move with the scheme to the PPF - analysis based on the existing scheme wasn't relevant or helpful to Mr C. So I agree it is the critical yields associated with the benefits available through the BPS2 which are relevant here.

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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

I can see that D C Financial has said it disagrees with the use of discount rates. But I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable

under a personal pension by using reasonable assumptions. The discount rate would be considered a reasonable assumption of likely returns. And businesses were free to refer to it. So, whilst I agree businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr C was 27 at the time of the advice and the fact-find records that his preferred retirement age was 57 – although other references in the advice paperwork say Mr C wanted to retire at 57 – 65. The Transfer Value Analysis report ('TVAS') dated 12 December 2017 set out the relevant critical yields; at age 65 it was 5.22% if Mr C took a full pension and at age 55 it was 6.03%. The critical yields required to match the benefits provided through the PPF were 4.92% assuming Mr C took a full pension at age 65 and 6.03% if he took a full pension at age 55.

It's not entirely clear to me why D C Financial produced critical yield figures comparing the benefits Mr C would receive through the BSPS2 and PPF at age 55 when he'd indicated his preferred retirement age was 57. It strikes me that for D C Financial to have properly advised Mr C and to put him in a fully informed position, including explaining what income he was giving up by transferring, it ought to have compared the benefits available to him at age 57.

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 4.7% per year for 37 years to retirement (to age 65) – it was the same rate per year for 29 years to retirement based on a retirement age of 57. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's recorded 'moderately aggressive' attitude to risk and also the term to retirement. In my view there would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Here, the critical yield assuming Mr C took a full pension through the BSPS2 at age 55 was 6.03%. On the basis that at age 65 the critical yield was 5.22%, if Mr C were to take the same benefits at age 57, which is what he indicated his preferred retirement age was and what I think the advice was primarily based on, the critical yield would've been somewhere between 6.03% and 5.22%, but most likely closer to 6.03%. And this figure was higher than the discount rate and higher than the regulator's middle projection rate.

I can see that D C Financial classified Mr C as a 'moderately aggressive' risk investor. I've thought carefully about this. On the one hand Mr C does not appear to have had any real investment experience – the fact-find recorded as much. But on the other hand he was young and the term to retirement was long. So taking all of this into account, I think Mr C's assessed attitude to risk of 'moderately aggressive' as defined wasn't unreasonable and was broadly in line with the level of risk I think Mr C was prepared to take.

But despite that, I think the opportunity to improve on the benefits provided by the BSPS2 at Mr C's target retirement date was limited if he transferred out of the scheme and invested in line with this attitude to risk. Achieving a growth rate of around 6% was the rate to effectively stand still. To improve on the benefits available to Mr C in the BSPS2 required growth in excess of this each and every year until retirement - in my view it required consistent returns closer to or at the level of the upper projection rate.

I think it's likely, at best, Mr C would end up receiving benefits of broadly the same overall value as a result of investing in line with his stated attitude to risk. In my view, to have come

close to achieving the level of growth required to exceed the benefits provided by the BPS2 if he transferred to a personal pension, would have required Mr C to take a higher level of investment risk than I think he indicated he was prepared to take. There of course still remained the real risk that Mr C might end up with benefits of a lower overall value than those provided by the BPS2. And given the likely critical yield required to match Mr C's benefits through the PPF at age 57, I don't think the situation was very different here - I think the opportunity to improve on the benefits provided by the PPF was limited if Mr C transferred out of the BPS.

I can see in the suitability report that D C Financial expressed an opinion on the likelihood of the critical yields being achieved – it said: *“The critical yield required is high and it would be very unlikely that an investment could consistently provide a return to match the benefits you are giving up.”* But this was said in the context of the critical yields calculated against the existing BPS - at age 65 it was 5.90% and at age 55 it was 6.69%. D C Financial didn't offer an opinion on the likelihood of an investment being able to achieve the critical yields against the BPS2 – albeit I think it ought to have done. But given I think the critical yield at age 57 was around 6%, and it believed a rate of 5.9% was high and unlikely achievable consistently, it seems likely to me that D C Financial's opinion on the BPS2 critical yield at age 57 (had it produced one) would have been broadly the same.

D C Financial has said that the five-year annualised past performance of the recommended fund and the performance achieved during the period it was Mr C's adviser exceeds the critical yield. And it says this shouldn't be discounted. But it doesn't appear the adviser believed it was achievable at the time of the advice. And I don't think past performance is a guarantee for future performance - I still consider the discount rate and the regulator's standard projection rates to be more realistic in this regard over the longer term rather than projecting historic returns forward, particularly over such a long period as in this case.

But even if I accept that the transfer had the potential to be financially viable, and I accepted D C Financial's argument about Mr C's capacity for loss, crucially I don't think Mr C needed or it was in his best interests to take on any investment risk with his guaranteed BPS benefits. I say this because it's likely Mr C's income needs in retirement could be reasonably met by the DB scheme income together with the income from the pension benefits he'd be accruing in his workplace scheme over the next 30 or perhaps more years, which would already be subject to investment risk. And importantly, because financial viability isn't the only consideration here, I don't think there were any other objectives or compelling reasons which meant the transfer was suitable in Mr C's case. I've addressed these considerations below.

#### *Flexibility and income needs*

One of the main reasons for the recommendation was to provide Mr C with flexibility – the ability to control his benefits and to vary his income as his circumstances dictated.

But I don't think Mr C knew with any certainty whether he required flexibility in retirement. And in any event I don't think he needed to transfer his DB scheme benefits to achieve it. Crucially Mr C was only 27 at the time of the advice. And based on what I've seen, he didn't have concrete retirement plans – in fact I don't think he had any real plans. And I think this is supported by what's recorded in the advice paperwork that followed the initial fact-find where it says Mr C wanted to retire between 57 and 65. So I don't think early retirement for example was a specific objective of Mr C's. I think Miss C's retirement was so far in the future that he couldn't reasonably have had any firm plans. As Mr C still had the majority of his working life in front of him before he could think about accessing his pension, 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 C to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

I accept Mr C might have wanted to retire early, but he already had this option available to him - he didn't have to transfer out to achieve this. I accept that Mr C couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr C had to take those benefits at the same time. But again, nothing indicates that Mr C had a need to take a cash lump sum and defer taking his income – for example because he had a mortgage that needed repaying at the time - or to vary his income throughout retirement. It strikes me that 'flexibility' was simply a feature or a consequence of transferring to a personal arrangement rather than a genuine objective of Mr C's.

Importantly here, and as I referred to above, Mr C was contributing to his workplace defined contribution scheme. In addition to the contribution his employer was making meant that a total of 20% of Mr C's salary was being invested here. It was recorded that Mr C's pension was already worth around £8,600. And while Mr C was unhappy with how his employer had handled the BSPS, there was no indication that he intended to change employer prior to retirement. So given Mr C had the potential for at least another 30 years' contributions and probably more - without accounting for growth or salary increases, this had the potential to be worth in excess of £225,000 and likely substantially more. In my view, this is the part of Mr C's pension provision where I think he could've afforded to, and it was appropriate for him to take a moderately aggressive investment approach. This is where I think D C Financial ought to have focused its investment advice on ( I understand D C Financial did subsequently do this) to help with the growth of this fund and to help Mr C meet his overall objectives.

The nature of a DC scheme means this already provided Mr C with flexibility – he wasn't committed to take these benefits in a set way. Mr C could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr C retained his DB pension, this combined with his new workplace pension, would've given him the flexibility to retire early - if that's what he ultimately decided – and would likely meet his income needs.

So in any event, Mr C didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr C did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still many years away. And because Mr C had taken the decision to opt into the BSPS2, he would've retained the ability to transfer out nearer to retirement, *if* indeed it was required. This ought to have been clearly explained by D C Financial.

Turning to Mr C's income need – it's clear that Mr C didn't know what his income need in retirement would be. D C Financial simply recorded: "*Not sure due to term to retirement.*" And in my view this is a key point – why did Mr C need to transfer now when he didn't know what his plans were? But as I said above, there's nothing to indicate that Mr C needed variable income.

By the time Mr C indicated he was considering retiring, he was due to be mortgage free, so his outgoings would've reduced. And I don't think it is unreasonable to assume that his overall income requirement would be lower than his salary at the time of the advice.

The income Mr C could expect from the BSPS2 at 65 was £2,346 and at 55 around £1,400. Through the PPF, the amount at 55 was broadly the same and at 65 it was around £2,100. Although relatively small and it's clear this wouldn't have met Mr C's retirement income need in full, I think it nevertheless still provided a useful and guaranteed income element. And

importantly an element upon which Mr C could use with his other pension provision, to meet his overall need rather than risk it to achieve things. As I said above, Mr C would've likely had a significant pension to draw on flexibly – at age 57 a fund worth at least £225,000 and probably more if he delayed his retirement. And this fund could've been used flexibly to meet Mr C's needs, allowing him to take the DB scheme benefits together or at age 65 if he so chose – and not incur an actuarial reduction. It's also the case that the amount Mr C took from the DC scheme could've been reduced once he reached state pension age. So, I think it's also the case that Mr C didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

I can see that D C Financial says Mr C didn't want his DB pension benefits restricted to CPI inflation, he wanted to target growth above it. I've already said in the section above that I think the opportunity to improve on Mr C's DB scheme benefits by transferring to a personal pension arrangement was limited. And while I accept the annual increases were lower in the BSPS2, importantly they were guaranteed. As I've also already said, I think that Mr C's objective of targeting growth above inflation ought to have been focused on his DC scheme investment approach to help achieve the growth he needed to meet his needs - I don't think Mr C needed to risk his DB scheme benefits to achieve things. I think if this had all been clearly explained to Mr C, I don't think he would've been concerned about things.

Overall, because Mr C's retirement was so far in the future and because his plans or needs weren't known, I don't think he had a need for flexibility at the time of the advice, which justified him risking his guaranteed benefits for. So I don't think it was a suitable recommendation for Mr C to give up his guaranteed benefits when he did.

#### *Death benefits*

The suitability report said that Mr C wanted flexible death benefits – it said that as Mr C wasn't married the scheme's death benefits were poor.

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 C. But I'm mindful that Mr C was single at the time with nobody dependent on him - so it strikes me as a little odd that he was concerned about the 'inflexible' death benefits of the DB scheme and was seeking something different.

That said, I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his BPS benefits to a personal pension because of this. But the priority here was to advise Mr C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement - not as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr C's security in retirement. And I say potential, because the sum left on Mr C's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

While Mr C was single at the time, he was young and could've married later on. In which case the spouse's pension provided by the BPS2 scheme would've been useful to his wife if Mr C predeceased her. They were guaranteed and escalated – under the BPS2 the spouse's pension would also be calculated as if no tax-free cash had been taken. It's also the case that it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

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 C and I can't see why this was a priority for Mr C.

### *Control and concerns about financial stability of BPS*

The suitability report records that Mr C was concerned about the DB scheme moving to the PPF. It says Mr C wanted control because of a lack of trust both with his employer and the scheme. I can also see that in its submission following the investigator's assessment, D C Financial has said, despite what the investigator said, the BPS2 was not guaranteed and this was an important factor that needed acknowledging when considering why a transfer might be suitable in this case.

I have no doubt that Mr C was concerned about his pension. There was a sense of general uncertainty and there was also lots of negative sentiment about the PPF. I think this is likely the reason Mr C sought advice in the first place and it's possible that Mr C was considering transferring because of these concerns about his employer and what might happen – I think many of colleagues were doing the same thing. But I think to a greater degree this risk was already understood and accepted by Mr C, as he'd already chosen to opt in to the BPS2, knowing he would move to the PPF if the new scheme didn't go ahead.

In any event, it was D C Financials' duty to give Mr C an objective picture and recommend what was in his best interests. I accept, as D C Financial has pointed out on several occasions, that the new BPS2 scheme wasn't guaranteed to go ahead at the time of the advice. And I accept it was certain to go ahead. But I think D C Financial is overstating the chance of the BPS2 not happening. The restructuring of BPS had been ongoing for a significant amount of time by the time Mr C received advice. Mr C had received his "Time to Choose" pack – with joining the new scheme as one of the options, which he opted to do. And details of the scheme had been provided - the BPS2 would've offered the same income benefits as the BPS but the annual increases would've been lower. So, I think the relevant parties, not least the trustees, were confident at that point that it would go ahead. And I think this is what D C Financial should've been clear with Mr C to help alleviate his concerns.

I've also noted D C Financial's comments about Mr C's negative perception of the BPS2 because he didn't trust his employer. And while D C Financial has said Mr C was aware the BPS board of trustees were independent, I think it ought to have reassured Mr C in its written advice that as an independent board of trustees, they were responsible for managing the scheme and they were required to act in members best interests.

In terms of Mr C's specific concerns about the scheme moving to the PPF, despite the 10% reduction in starting benefits and the fact the increases in payment in the PPF were lower, importantly the income was still guaranteed. And the income available to Mr C through the PPF wasn't significantly lower such that it would've made a difference to the recommendation - there was limited opportunity to be able to exceed this by transferring out. So I think D C Financial ought to have specifically reassured Mr C that, even if there was a chance the BPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or was led to believe.

Mr C might not have been able to later transfer out of the PPF – but for the reasons I've set out earlier, I don't think Mr C would've needed to, to achieve his goals. So, I don't think that these concerns should've led to D C Financial recommending Mr C transfer out of the DB scheme altogether.

### *Summary*

I accept that Mr C 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 C. But D C Financial wasn't there to just transact what Mr C might have thought he wanted or sounded like a good idea. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr C was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. While the transfer to a personal arrangement had the potential to be financially viable, crucially I can't see why Mr C needed to risk his DB scheme benefits to meet his need. And I don't think there were any other particular or compelling reasons to justify a transfer at this time. For these reasons, I don't think it was in Mr C'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 C that he should not transfer the benefits of his DB scheme to a personal pension arrangement and that his decision to opt into BSPS2 was suitable for him in the circumstances.

Of course, I have to consider whether Mr C would've gone ahead anyway, against D C Financial's advice.

I've considered this carefully, but I'm not persuaded that Mr C would've insisted on transferring out of the BSPS against D C Financial's advice. I say this because, while Mr C 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 and they'd recommended his choice to opt into the BSPS2 was the right one. Mr C was not in my view an inexperienced investor who possessed the necessary skill, knowledge or confidence to go against the advice they were given. I'm also mindful that because of the transfer value of Mr C's pension, he didn't need to seek advice to effect a transfer – yet he chose to do so. So, if D C Financial had provided Mr C 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 C'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 C could meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr C 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 C 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 £300 for the distress and inconvenience the matter has caused Mr C.

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 C. Taking everything into account, I think the unsuitable advice has caused him some distress. So I think an award of £300 is fair in all the circumstances.

## Putting things right

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 C 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 C has chosen not to wait for the new rules / 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 C.

A fair and reasonable outcome would be for the business to put Mr C, as far as possible, into the position he would now be in but for D C Financial's unsuitable advice. Because Mr C had already opted into the BSPS2, and if suitable advice had been given, this would've supported Mr C's choice. So D C Financial should use the benefits offered by BSPS2 for comparison purposes.

D C Financial must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, as per the usual assumptions in the FCA's guidance, compensation should be based on a normal retirement age of 65 in this case.

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 C's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr C'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 C 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 C within 90 days of the date D C Financial 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 D C Financial to pay Mr C.

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 D C Financial to carry out a calculation in line with the updated rules and/or guidance in any event.

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 C 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 C £300 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 C 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 C 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 C the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr C.

If Mr C 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 C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 20 February 2023.

Paul Featherstone

**Ombudsman**