

The complaint

Mr W complains about the advice given by D C Financial Limited to transfer the benefits from his defined-benefit ('DB') scheme with British Steel ('BSPS') and another deferred DB scheme 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 W's employer announced that it would be examining options to restructure its D C Financial, 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, 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).

Around the same time, and concerned about what the recent announcements by his employer meant for the security of his pension, Mr W sought advice. Mr W met with D C Financial in October 2017 and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr W was 41 years old; he was working full-time; he was single; he rented his home; he had no liabilities; and he had a small amount of cash savings. D C Financial also carried out an assessment of Mr W's attitude to risk, which it initially deemed to be 'aggressive' – a score of 8 on a scale of 1 to 10. But it was agreed to proceed on the basis of a 'moderate to aggressive' approach – a score of 7 out of 10.

On 15 November 2017 D C Financial advised Mr W to transfer his BSPS benefits and his other DB scheme benefits into a personal pension arrangement and invest the proceeds in investment funds, which D C Financial deemed matched Mr W's attitude to risk. In summary the suitability report said the reasons for the recommendation were: to provide Mr W with flexible income; the ability to retire at 55 and suffer no reductions; to provide better death benefits; and to avoid the funds going into the PPF.

Mr W's pension transfer completed in the first quarter of 2018 and around £164,000 was received into the new personal pension.

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

D C Financial didn't uphold Mr W's complaint. In summary it said the advice was suitable and in Mr W's best interests having regard for his stated needs and objectives. It said it provided Mr W with clear advice setting out the risks and benefits of transferring to ensure that Mr W was both aware of and comfortable with the risk of transferring away from the guaranteed benefits his DB schemes provided.

Dissatisfied with its response, Mr W asked this service to consider his complaint.

In submitting its business file to us, D C Financial provided a substantive accompanying note, which I have read in full. But in summary it said it said the BPS2 did not exist at the time, so it couldn't have recommended Mr W 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 W didn't intend to purchase an annuity, so the comparison is flawed. It said the past performance and what had happened since the advice, which shouldn't be disregarded, showed that the level of growth was achievable. It said, in any event, 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 schemes, the advice would still have been suitable as it provided Mr W with flexibility. Overall it said it still felt that the recommendation to transfer was suitable as it allowed Mr W 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 W'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.

An investigator considered the complaint and upheld it and said D C Financial should pay Mr W compensation. In summary they said they didn't think the advice was suitable. They said, given the growth rates required to match both of Mr W's DB scheme benefits, he was likely to be worse off in retirement as a result of transferring whether he retired at his preferred retirement age or the schemes' normal retirement age. They also didn't think Mr W was prepared to take a 'moderate to aggressive' attitude to investment risk – they thought a medium or moderate risk approach (a score of 6 out of 10) was more appropriate given his circumstances at the time. They also didn't think there were other compelling reasons for the transfer – for example they said there was nothing to show Mr W needed flexibility or why he wouldn't want a guaranteed income in retirement; there was no reason why Mr W wanted to take a cash lump sum at 55, but if he did need it there was no advantage to transferring at this time given he was only 41; death benefits shouldn't have been prioritised over providing Mr W with security in retirement; and Mr W's concerns about the BPS2 and the PPF could have been allayed by D C Financial given the information that was available at the time. They said if things had happened as they should have, Mr W would've transferred his BPS benefits to the new BPS2 and remained in his other DB scheme.

D C Financial disagreed. In summary it said Mr W was told he would lose the guaranteed benefits he had and any right to potential future increases. It said despite the warnings Mr W confirmed his objectives of more flexibility, the ability to retire early, better death benefits and to avoid entering the PPF. It said it believed the transfer was in his best interests. It said that, up until Mr W left the services of D C Financial it had achieved growth of 8.99% significantly above the required critical yield. It went on to say that the investigator misunderstood its view on annuities saying that it would never argue that anyone would not wish to take an annuity, but the decision can only be made at the time of considering drawing benefits. And finally it said the investigator had failed to understand the fearful situation with British Steel at the time.

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 submission with its business file. It said that the regulator, the Financial Conduct Authority ('FCA'), previously undertook a review of its advice process in relation to members of the BPS 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 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 submissions both prior to and 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 W.

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 W'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 produced two transfer value analysis reports ('TVAS') as required by the regulator, showing how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as both his DB schemes – referred to as the critical yield. But from what I can see, the one in relation to his BSPS scheme was based on Mr P's existing BSPS scheme benefits. But at the time this was produced – 24 October 2017 – it was clear that Mr W didn't have the option to remain in the existing BSPS – he either needed to opt into a new scheme (BSPS2) or move with the existing scheme to the PPF.

This means that at the time of the advice, basing the analysis on the existing scheme was somewhat redundant. So analysis of that scheme wasn't helpful to Mr W. I think it's reasonable to say that D C Financial should've used the BSPS2 figures instead so Mr W had all the relevant information to make an informed decision. By the time of the analysis Mr W should've received his 'Time to Choose' information, so I think the information was available. But if for any reason it wasn't, D C Financial should've waited until it was available.

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 W through the PPF. But I think D C Financial is overstating the chance of the BSPS2 not happening. As I said, Mr W had likely already been sent his 'Time to Choose' information where details of the scheme had been provided; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. I think the relevant parties, not least the trustees, were confident at that point that the BSPS2 would go ahead. Of course, it's possible this may not have gone ahead – but I still think D C Financial should've used the benefits available to Mr W through the BSPS2 into account in formulating its advice so that he was able to make an informed decision.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how D C Financial 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 D C Financial 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.

Mr W was 41 at the time of the formal written advice and the paperwork records that he wanted to retire at 55 / 57 – although I note the suitability report specifically said Mr W wasn't planning to retire until at least age 57. The TVAS dated 24 October 2017 set out the relevant critical yields in relation to Mr W's BSPS scheme benefits; at age 65 it was 6.39% if Mr W took a full pension and at age 55 it was 8.59%. 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 4.65% assuming Mr W took a full pension and 4.32% if he took tax free cash and a reduced pension. And at age 55 they were 7.06% and 6.63% respectively.

It's not entirely clear to me why D C Financial produced critical yield figures comparing the benefits Mr W would receive at age 55 when the suitability report said he wouldn't retire until

at least 57. It strikes me that for D C Financial to have properly advised Mr W and to put him in a fully informed position, it ought to have compared the benefits available to him at age 57, which I can see is what it did for his other scheme benefits.

But also, as I said above, Mr W remaining in the existing BSPS 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, so I think they would've been somewhere between those of the BSPS and the PPF - but closer to the BSPS.

The TVAS report dated 2 November 2017 set out the relevant critical yields in relation to Mr W's other deferred DB scheme benefits; at age 63 it was 7.13% assuming Mr W took a full pension and at age 57 it was 7%. 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 57 were 6.5% assuming a full pension was taken and 6.23% for a reduced pension with a cash lump sum.

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 4.1% per year for 13 years to retirement (age 55) or 4.3% for 15 years to retirement (age 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 W's 'moderate to aggressive' attitude to risk and also the term to retirement. In my view, and contrary to what D C Financial argues, there would be little point in Mr W giving up the guarantees available to him through his DB schemes only to achieve, at best, the same level of benefits outside the schemes.

Here, the critical yield assuming Mr W took a full pension through his existing BSPS scheme at age 55 was 8.59%. The critical yield if Mr W took the same benefits through the PPF at age 55 was 7.06%. So, if Mr W were to opt into the BSPS2 and take the same benefits at age 55 the critical yield would've been somewhere between those figures, and likely closer to 8.59%. As I said above, it would've been helpful to see the figures at age 57. And while I think they would've been lower than these, I don't think they would've been substantially lower. In relation to Mr W's other DB scheme, if Mr W took a full pension at age 57 it was 7%. In both cases, these figures were higher than both the discount rate and the regulator's middle projection rate. And in one example higher than the regulator's upper projection rate.

I can see that D C Financial classified Mr W as a 'moderate to aggressive' risk investor – a score of 7 out of 10 having reduced it from a score of 8. But despite D C Financial adjusting it downwards, because it's not clear to me that Mr W had much if any real investment experience, given his age and circumstance at the time, I'm not persuaded this accurately reflected the level of risk I think Mr W was prepared to take with his pensions. I think a medium or moderate risk attitude was appropriate here and more in line with the level of risk I think Mr W was prepared to take with his pensions.

Given this, I think Mr W was most likely to receive benefits of a lower overall value than those provided by the BSPS2 and his other DB scheme as a result of transferring to a personal pension and investing in line with a medium or moderate attitude to risk. And if the BSPS2 hadn't gone ahead and Mr W had moved with the scheme to the PPF, given the critical yields here, I don't think the situation was any different. Even at age 65 I think the opportunity to improve on the benefits available through the PPF was limited.

I'd add here that, even if I was persuaded that Mr W was prepared to take a 'moderate to aggressive' investment approach as D C Financial classified him being willing to take (which for the avoidance of doubt I am not) I think the opportunity to improve on his DB scheme benefits was limited. The critical yields of 7% through to 8.59% were the returns required each and every year to retirement to provide the same benefits as Mr W was considering giving up – so effectively these were the returns required just to stand still. To improve on the benefits from his DB schemes would require consistent returns in excess of these, which I think would be considered unlikely.

I can see that D C Financial says that the critical yield should not be a substantive consideration when looking at whether the 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 W 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 W 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 16 years and perhaps longer. It's entirely possible that Mr W would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB schemes).

D C Financial has said that during the time it managed Mr W's pension, it achieved growth of 8.99%, which is higher than the required critical yield. It says it sees no reason why this wouldn't have continued with suitable advice and it shouldn't be disregarded. But as D C Financial knows, past performance is no guarantee for future performance - so I consider the discount rates and the regulator's standard projection rates to be more realistic in this regard in the longer term rather than projecting historic returns forward, particularly given the relatively long investment period in this case.

Given Mr W 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 either DB scheme was in his best interests. Of course, 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 W's best interests, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

It appears the main reason D C Financial recommend the transfer was because Mr W wanted flexibility – the ability to access a cash lump sum and draw a flexible income.

But I don't think Mr W knew with any certainty whether he required flexibility in retirement. Mr W was only 41 at the time of the advice, and while it wouldn't be unreasonable for him to start to think about 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.

I've not seen anything to show or suggest Mr W needed variable income throughout retirement or that he needed access to a cash lump sum and delay taking an income. There was no reason given in the advice paperwork why Mr W required access to a lump sum at 57. Mr W didn't own a home, so he didn't for example have a mortgage that he needed to repay at this time. So it strikes me that, if asked, like most consumers Mr W liked the idea of flexibility - but I think this was a 'nice to have' or a feature or a consequence of transferring to a personal pension arrangement rather than a genuine objective.

For these reasons I think it was too soon to make any kind of decision about transferring out of the DB schemes. So, I don't think it was a suitable recommendation for Mr W to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

I can see D C Financial also recommended the transfer to allow Mr W to take his benefits early without reduction describing the DB schemes as imposing penalties in the suitability report. I think D C Financial was referring to the actuarial reduction that would take place to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 63 and 65 – the schemes' normal retirement ages – would've been less. But by taking an income at age 57 Mr W would've been receiving his pension for longer. So it's a trade-off, rather than a penalty – in my view the word penalty implies the DB schemes were inferior, which I think was unfair. In simple terms, it meant that Mr W couldn't expect to have the same pension he was due at 63 / 65 at age 57 – 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 W.

Mr W's income need at retirement was recorded as being around £24,000 net a year, which would equal £2,000 a month. I don't know whether this meant to read £24,000 *gross* a year – but it strikes me that for a single person even the gross amount was quite high. At a gross amount, this would still mean Mr W's expenditure would be around the same level as when he was working. I accept Mr W didn't own his own home so his rental expenditure would continue into retirement – but I consider that Mr W's expenditure overall would likely be lower in retirement.

I would've expected D C Financial to have interrogated this to determine whether £24,000 a year was what Mr W actually needed to fulfil his retirement goals. I think this should've involved a thorough expenditure in retirement analysis. But I can't see D C Financial did so. Instead it appears to have simply said: *"Your required level of income in retirement is to be around £24,000 net per annum. As you are at least 16 years from retirement it is difficult to know what your funds would be at that point and if this would be possible."* But if D C Financial didn't think Mr W's plans were realistic, it should've made that clear to him. And if it had done so, this would've given Mr W the information and opportunity to re-consider things, including re-thinking his target retirement date and/or income, which I see no reason why he wouldn't have done given he had no concrete plans.

With that in mind, at age 65, under the existing BSPS, Mr W would receive an annual pension of just under £11,000 (under the BSPS2 this would likely be slightly less.) His other DB scheme would provide around £2,000 (payable from age 63). While this wouldn't have met his income needs in full, I think it would've provided a solid and guaranteed foundation - I think any shortfall could've been met by Mr W accessing income or tax-free cash from his DC scheme, which would've likely met his true income need until his state pension became payable.

Mr W and his employer were contributing to his DC pension scheme at a combined rate of 16% of his salary. And over the 24 years' of contributions, this had the potential to achieve a pension fund in excess of £130,000 not accounting for growth or salary increases. So Mr W would've likely had a not insignificant pension to draw on flexibly as and when he needed, to top up his income or take additional lump sums. So I also think it's the case that Mr W didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

As I said earlier on, I accept at the time of the advice, the BSPS2 hadn't been established. Although I think the communications sent out by the scheme trustees were very optimistic that the scheme operating conditions would be met, it wasn't certain. And if Mr W had opted into the BSPS2 and it hadn't gone ahead, he would've moved with the scheme to the PPF.

At age 65 according to D C Financial's analysis Mr W would've been entitled to a pension of £8,775 a year. This was lower than 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 W would've had his DC scheme to draw on until his state pension became payable. So, I still think Mr W could've likely met his needs in retirement even if the BSPS2 hadn't gone ahead and he'd had to move with it to the PPF.

Overall, because Mr W's plans for retirement were far from known, and I think it's likely he could've met his income needs in retirement by remaining in his DB scheme and through the BSPS2 or the PPF if D C Financial had been realistic with him, I don't think it was in Mr W's best interests for him to transfer his pensions just to have flexibility, that I'm not persuaded he really needed at the time.

Death benefits

The advice paperwork records that Mr W was concerned about the 'inflexible' death benefits of the existing scheme him and he wanted to leave his pension fund to his children.

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 W. But whilst I appreciate death benefits are important to consumers, and Mr W 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 W 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 W's security in retirement. And I say potential, because the sum left on Mr W'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.

D C Financial recorded that Mr W had generous 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 children to receive if he hadn't already done so. And it also knew that Mr W was paying into the DC pension scheme and he would've been able to nominate his children as beneficiaries of this plan too – again if he hadn't already done so. So it's possible that Mr W already had sufficient lump sum death benefits to enable his family to be catered for as he intended in the event of his death.

But if Mr W 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 this he could've been in the form of a whole of life basis and written it in trust for the benefit of his children. Given Mr W's age, health and disposable income, I see no reason why this wouldn't have been affordable.

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 W.

Control or concerns over financial stability of the DB schemes

I have no doubt that Mr W was concerned about his BSPS 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 W 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 W 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 properly taken the benefits available to Mr W through the BSPS2 into account, and I think this would've alleviated Mr W's concerns about the scheme moving to the PPF.

In any event, even if there was a chance the BSPS2 wouldn't go ahead, and/or his other DB scheme moved to the PPF, I think that D C Financial should've reassured Mr W that the schemes 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 W 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 W's concerns should've led to D C Financial recommending he transfer out of the DB schemes altogether.

Summary

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

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income - whether through the BSPS2 or the PPF in relation to his BSPS benefits - at a time when I don't think his retirement plans were in any way formulated. By transferring to a personal arrangement Mr W was likely to receive lower overall retirement benefits at 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 W's best interests for him to transfer his DB schemes to a personal pension at this time; particularly not when he had the opportunity of opting into the BSPS2 in relation to his BSPS pension benefits.

Once again, I appreciate that the BSPS2 hadn't been confirmed when the advice was given. But I think it was clear to all parties that it was likely to be going ahead. Mr W had many years before he expected to retire, and he didn't know what his needs in retirement would likely be. So, 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 W would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, the annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think D C Financial should've advised Mr W to opt into the BSPS2 in relation to his BSPS pension and remain in his other DB scheme.

Of course, I have to consider whether Mr W would've gone ahead anyway, against D C Financial's advice, which is what D C Financial says. It argues that Mr W would've carried on as an insistent client.

I've considered this carefully - but I'm not persuaded that Mr W would've insisted on transferring out of the BPS against D C Financial's advice. I say this because, while I accept Mr W was motivated to transfer when he approached D C Financial, on balance, I still think Mr W would've listened to and followed D C Financial's advice if things had happened as they should have and he'd been advised to opt into BPS2 and retain his other DB scheme pension.

Mr W was not in my view someone who could reasonably be described as an experienced investor, or someone who possessed the necessary skill, knowledge or confidence to go against the advice they were given; particularly in what is a complex pension matter. So, if D C Financial had provided him with clear advice against transferring out of his DB schemes, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr W'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 properly considered Mr W's retirement income need and explained that he could likely meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr W would have insisted on transferring out of his schemes against D C Financial's advice.

In light of the above, I think D C Financial should compensate Mr W for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And in relation to his BPS benefits, as per the above it is the benefits available to him through the BPS2 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 W.

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 W. Taking everything into account, 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 W'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 limited to when it ended its agreement with Mr W.

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 - <https://www.fca.org.uk/publication/consultation/cp22-15.pdf>

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

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

A fair and reasonable outcome would be for the D C Financial to put Mr W, as far as possible, into the position he would now be in but for D C Financial's unsuitable advice. If suitable advice had been given, Mr W would most likely have opted into the BPS2 and remained in his other DB scheme. So in relation to his BPS benefits, it is the benefits under the BPS2 which should be used 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, if suitable advice had been given I think it's likely Mr W would take his benefits at his schemes' normal retirement age. So, compensation should be based on his normal retirement ages of 63 and 65 respectively.

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 W's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W'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 W 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 W 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 W.

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 D C Financial pays the balance.

My final decision

Determination and money award: I uphold this complaint and require D C Financial Limited to pay Mr W 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 W £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 W 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 W 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 W the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr W.

If Mr W 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 W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 21 February 2023.

Paul Featherstone

Ombudsman