

The complaint

Mr M complains about the advice given by D C Financial Limited (DCF) to transfer the benefits from his defined-benefit ('DB') occupational pension 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, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the British Steel Pension Scheme ('BSPS') from the company. The consultation with members referred to possible outcomes regarding their preserved pension 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 defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

In May 2017, the Pension Protection Fund (PPF) made the announcement that the terms of a Regulated Apportionment Arrangement (RAA) had been agreed. That announcement said that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr M's employer would be set up – the BSPS2.

In October 2017, members of BSPS were being 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 choices was 11 December 2017 (and was later extended to 22 December 2017).

Mr M approached DCF in July 2017 to discuss his pension and retirement needs. He was also concerned about the situation with the DB scheme. He thought that it was funded poorly, and he had little confidence in it. And the penalty for early retirement was too high at 30%.

DCF completed a fact-find to gather information about Mr M's circumstances and objectives. In summary this showed that:

- Mr M was aged 45 and married, he and his wife had no dependents.
- Mr M was employed by Tata Steel earning £41,000 per year. Mrs M was also employed and earning £20,000 per year
- Mr and Mrs M owned their own home outright.
- They had approximately £100,000 in cash, and cash based investments.
- Mr & Mrs M had life insurance with a sum assured of £60,000 and Mr M also had life cover of four times his salary from his employer's new pension scheme.

In respect of his pensions, Mr M had his deferred membership in the BSPS and he'd also recently joined his employers new defined contribution (DC) scheme. The fact find says that both him and his employer were contributing a total of 20% of his salary into this each month.

DCF also carried out an assessment of Mr M's attitude to risk, which it said in the suitability report was 'moderate'.

On 8 August 2017, DCF advised Mr M to transfer his pension benefits into a personal pension and invest the proceeds across a range of funds. Mr M transferred £379,748.50 into the personal pension plan.

The suitability report said the reasons for this recommendation were:

- Mr M wanted to retire at age 55 and the transfer would enable this. He wanted to avoid the penalties that the BSPS scheme had for early retirement.
- Mr M was uncertain about the future of the scheme and he wanted control of his pension. He didn't want his pension to end up in the PPF.
- Mr M wanted to improve on the death benefits the BSPS offered. He wanted to leave his fund to his dependents.

Mr M signed a document to confirm that he understood the risks of the transfer. And a summary document was provided to him that outlined the 'pros and cons' of the transfer and staying with the BSPS.

Mr M complained in 2021 to DCF about the suitability of the transfer advice because he thought the advice was flawed and it was likely to have led to him suffering significant financial losses.

DCF didn't uphold Mr M's complaint. It said that it considered his circumstances in full and it gave clear and suitable advice which included a transfer value analysis report (TVAS). It ensured that Mr M was aware of, and comfortable with, the risks of the DB transfer.

Mr M referred his complaint to our service. An Investigator upheld the complaint and recommended DCF pay compensation. He didn't think that the advice was suitable for Mr M as it wasn't clearly demonstrated that his circumstances were fully considered, or why the transfer would be in his best interests and meet his aims. He would likely lose out financially due to the advice and there weren't any good reasons given to outweigh this. His options, in particular regarding the BSPS2 scheme, weren't fully considered or documented. He thought Mr M should have been advised to stay in his DB scheme and, ultimately, he would have opted to join the BSPS2.

DCF disagreed, saying:

- It could not have advised Mr M to join the BSPS2. This was because it didn't exist at the time and it wasn't certain that it would in the future. It wasn't created until 31 January 2018.
- The most likely outcome at the time of advice was that Mr M would need to join the PPF. Mr M didn't want this, he wanted to control his pension benefits.
- The industry regulator has reviewed some of its pension transfer advice cases and it didn't find any problems. It has kept pace with regulatory developments and ensured that the advice it gave was reasonable.
- The Financial Ombudsman Service shouldn't rely just on critical yields to determine if the advice was suitable. These should not have been the focal point of the advice. Mr M was not looking to purchase an annuity.
- He wanted to use his funds flexibly, for example, he wanted to spend less when his state pension became payable.

- Discount rates also shouldn't be the focal point of the advice. That said, overall, the performance needed may have been achievable. His funds have performed well and should continue to do so.
- Mr M was informed that his pension was subject to investment growth, and he agreed with this.
- Mr M was fully informed about all aspects of the advice at the time of sale. DCF advised Mr M that the critical yields were unlikely to be achieved.
- He would have proceeded in any event due to his concerns with the BSPS scheme.
- And in respect of any loss suffered DCF feels that that this should be considered against the PPF rather than BSPS2 as this scheme didn't exist at the time of advice.

Mr M, via his representative, also responded and broadly agreed. He said that he didn't think his attitude to risk was as high as medium as he didn't hold any investments at the time of sale. He didn't need to access a lump sum and he wasn't set on retiring at age 55. He says the critical yield wasn't discussed and his single biggest driver was not wanting to be worse off in retirement.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

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

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 DCF'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 largely the same reasons given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DCF should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCF has strongly argued that BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr M through the PPF. It is of course possible that the BSPS2 may not have gone ahead, and there was no certainty at the time of advice about this.

But I think the situation surrounding the DB scheme and the BSPS2 seems to have been largely ignored in the advice process. This is wrong, given the importance of the events within the scheme. And even if the full details of the BSPS2 weren't known at the time of advice DCF would have been aware that it was likely to be set up and have had some idea of what it would have provided. And this should have been factored into the advice so that Mr M was able to make an informed decision.

In August 2017 DCF carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

Just to reiterate this was based on his existing scheme benefits and the PPF. Mr M didn't have the option to remain in the BSPS – he either needed to opt into the BSPS2 or move with the scheme to the PPF.

The critical yield applicable to the BSPS2 benefits wasn't calculated. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat in comparison to the BSPS. But I still think they would've likely been higher than those reflecting the PPF benefits and are likely to have been closer to those of the BSPS benefits, particularly at age 65.

That said I think it's reasonable to say that the information it provided shows that the transfer wasn't in Mr M's best interests from a financial viability perspective anyway, even without further information about the BSPS2. I'll explain why.

Mr M was 45 at the time of the advice and wanted to retire at 55. The critical yield required to match Mr M's benefits at age 65 was 6.31% if he took a full pension. The critical yield to match Mr M's benefits at age 55 was 9.46%, again based on a full pension.

Mr M has said that he didn't want a lump sum from his pension as he had adequate savings, and he was building up a fund in his employers DC scheme. So, it was reasonable here not to show critical yields where tax free cash was taken.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 4.16% per year if Mr M took a full pension and 3.78% per year if he took tax free cash and a reduced pension. It's reasonable to assume that the critical yields at age 55 would be much higher.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful

indication of what growth rates would have been considered reasonably achievable when the advice was given

The discount rates in this case were and was 4.5% per year to Mr M's age 65 and 3.8% per year to his age 55. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

Mr M has said his attitude to risk may not have been as high as moderate. But he would be investing a significant amount over a reasonable length of time. And he did have some other assets, and so had some capacity for loss. I can accept that Mr M may have been at the lower end of this risk categorisation, but I think it's reasonable for DCF to have said that Mr M could take some risk with his pension. So, for the avoidance of doubt, I don't think DCF incorrectly assessed Mr M's attitude to risk.

I've taken this into account, along with the composition of assets in the discount rate, Mr M's 'moderate' attitude to risk and also the term to retirement. There would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But the lowest critical yield here was 3.78% and this was on the basis that Mr M retired very early and took tax free cash from the PPF. Mr M has said that he didn't want to take any tax free cash, or to go to the PPF.

The critical yields that match his needs are far higher than this. And the figure that most closely aligns with his recorded aims, albeit from the BPS, is 9.46% above. This is far higher than the discount rate and is above the industry regulators upper projection rate.

So, I think Mr M was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. This would be the case even if the scheme moved to the PPF and he didn't take tax free cash.

DCF has provided cashflow models which it says show Mr M would've been able to meet his needs despite the high critical yields. I've considered these, but DCF's models show that, assuming a medium rate of return, and Mr M taking the same benefits as the BPS scheme, that his fund would run out at his age 93. So, if there was a period of poor returns or Mr M lived a long life, his fund was at risk of running out before he died.

Also, as DCF will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

And DCF also provided an estimate of the fund values he would need to replicate the benefits he was giving up in the DC scheme. At age 65 this was £937,145.50 and at age 55 it was £769,896.87. These were far higher than the transfer value, and what it's reasonable to assume his fund would grow to. So, they give a revealing insight into the value of the benefits Mr M gave up when he transferred out to a personal pension plan.

And it was recognised at the time of sale that Mr M would be very unlikely to equal or better the BPS pension. The suitability letter said the *'critical yield required is high and it would be very unlikely that an investment could provide a return to match the benefits you are giving up.'*

DCF says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings on this, I think it 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. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr M's attitude to risk, which leads me to believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

DCF also says that 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 on the same basis as the benefits provided by the DB scheme. DCF says Mr M didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required DCF 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 M 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 ten years. It's entirely possible that Mr M would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme). And he's essentially said that this is what he did want.

DCF has said that the fund has at times performed well, which I don't disagree with. But even though the fund has performed well it hasn't really performed at the levels needed to replicate the benefits Mr M gave up, for example it's not provided the 9.46% a year it would need to match the DB pension benefits at age 55.

For this reason alone, a transfer out of the DB scheme wasn't in Mr M's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as DCF has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

DCF says that Mr M wanted to take his pension benefits flexibly at retirement. In considering this I think it's reasonable to firstly say there was very little detail recorded about Mr M's circumstances at the time of sale. And there was very little analysis, or information about, his retirement wants or needs.

If DCF had taken a more detailed look at Mr M's retirement circumstances it could have provided robust planning as to how they could meet his aims or challenged them if his aims weren't realistic or achievable. For example, I don't think it's reasonable to say that DCF seriously looked into, or challenged, Mr M's objective of early retirement and questioned how realistic that was for him. So, I don't think it met its obligations to determine his objectives in the light of what he would be giving up. Given the amount of information recorded, it's difficult to see how DCF could have properly advised Mr M.

That said it seems the main reason that DCF recommended this transfer was for the flexibility and control it offered Mr M. The point of sale documentation shows that Mr M wanted to retire at age 55, if possible, but he anticipated his income needs falling from state pension age. So, varying his income could be useful. In contrast Mr M has recently said he wanted to retire as early as possible, but maximising his income was a priority rather than retirement at a certain time.

It's evident that Mr M could not take his DB scheme benefits flexibly in this way. Although he could choose to take tax free cash and a reduced annual pension, Mr M had to take those benefits at the same time. But I'm not persuaded that Mr M had any concrete need to take

tax free cash and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective. And, as above, it seems Mr M was willing to retire when the time was right rather than having a set age.

It was recorded that Mr and Mrs M wanted their income in retirement is to be around £36,000 per year. But there isn't any information about how this figure was arrived at. It looks like it was based on Mr and Mrs M's current net income. This can be a useful starting point, but the fact find recorded that their current expenditure was £1,500 per month and they were saving the rest each. It's not clear why they would need to replicate a situation where they would save this amount in retirement. And Mr and Mrs M didn't have any children and their house was fully owned. It's hard to see why any planning should be based on this seemingly arbitrary, and probably incorrect, amount.

That said, it was noted that the DB scheme would provide around £25,000 at Mr M's age 65 (based on the BPS). And Mr M would also receive his state pension of around £9,000. He would also have his DC scheme benefits, plus his savings, which could be used either to provide an income or more flexibly. So, it's evident that Mr M would have enough to meet his income aims at 65.

But Mr M had expressed a preference to retire earlier than this. I need to look at whether the advice was reasonable when this is considered. The TVAS showed that, at age 55, Mr M would receive a pension of around £13,500 from the BPS. On the face of it this income was less than he said he needed. DFC have essentially said that the personal pension was a way for Mr M to retire early despite this. As he could use the fund flexibly and take, for example, a greater income at the start and then reduce this when his other provisions and state pension became payable.

But this doesn't give the full picture here. He was a member of his new employers DC scheme and he and his employer were contributing 20% of his salary each month into this, and he was looking to increase this. If he remained in this over the next ten years, and his salary remained the same, both him and his employer would have contributed over £100,000 into it. And this would likely be increased by some investment performance.

Mrs M had a DB scheme entitlement herself. And she was around six years older than Mr M it may have been that she could retire fully from her work when Mr M was aged 55, her normal scheme retirement date was recorded as 60. It's not clear exactly what benefits this would provide, and I think this is a significant failing on DCF's part as it couldn't have advised Mr M on his income needs in retirement without knowing this. But given her income, and the length of time she had been in it, it was likely to be significant.

And Mr and Mrs M already had savings of over £100,000. And they were also saving £1,500 a month which again, over ten years, would be £180,000 – plus any interest or investment returns. Overall, it's likely they would have significant resources that could be used flexibly from Mr M's age 55 onwards.

I think the right advice here would be for Mr M to remain in his DB scheme and anticipate that his would form a core guaranteed income. And Mr and Mrs M could continue to build up funds and other provision elsewhere to enable them to be flexible about their retirement when they had a better idea what they wanted to do. As our Investigator outlined, it's entirely possible that Mr and Mrs M could have saved up enough to enable them to make up any income shortfall their pension arrangements would leave them with at early retirement. I don't think advising them to transfer their DB scheme increased Mr M's flexibility, due to the lower income provided, I think it decreased it.

DCF persistently referred to the DB scheme providing a lower income at retirement if Mr M retired early. It described this as a 'penalty'. But I don't think this is fair or balanced. Whilst the initial income from the DB scheme would be lower at early retirement this is to reflect the longer term that it would be in payment. It doesn't necessarily mean that Mr M will receive less overall, and it isn't a penalty. And I think describing it in this way meant it wasn't providing Mr M with information that was clear, fair and not misleading.

DCF has said that once Mr M's state pension became payable he would want to reduce the amount of income he took. And he wouldn't have been able to do this if he took benefits in the DB scheme, and he would probably have too much income.

Even if Mr M didn't need all of the income Mr M's DB scheme provided once their state, and other pensions, became payable this isn't a good reason to transfer in itself. This income could have been an important foundation for their retirement, providing a guaranteed amount that would've covered Mr and Mrs M's main expenses, income received above this could've allowed them to enjoy their retirement fully.

Overall, I'm satisfied Mr M could have met his income needs in retirement by maintaining the guaranteed income available to him through the PPF or the BSPS2. So, I don't think it was in Mr M's best interests for him to transfer his pension just to have flexibility that he didn't really need. And if Mr M found that his circumstances changed and he did in fact need flexibility, if he'd opted to go into the BSPS2 he would've retained the ability to transfer out closer to his actual retirement age. So, ultimately, I think any need for flexibility could've been addressed nearer to his retirement.

Death benefits

One of Mr M's objectives was to have lump sum death benefits. Again, there was no real detail around this, and Mr M has recently said it wasn't really an objective. As I've outlined above, Mr and Mrs M already had significant savings and Mrs M had her own pension provision. So, I'm not persuaded this was anything more than a generic 'nice to have'.

That said 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 were likely an attractive feature to Mr M. But whilst I appreciate death benefits are important to consumers, and Mr M 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 M about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DCF explored to what extent Mr M was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr M was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr M predeceased her. I don't think DCF made the value of this benefit clear enough to Mr M. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum particularly if Mr M lived a long life. In any event, DCF should not have encouraged Mr M to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr M genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think DCF should've instead explored life insurance. That said he already seems to have had life

insurance and death in service benefits, so it's not clear why he would need more than he already had.

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 M.

Control or concerns over financial stability of the DB scheme

It's clear that Mr M, like many employees of his company, was concerned about his pension. His employer had recently made some announcements about its plans for the scheme and he was worried his pension would end up in the PPF. He'd heard negative things about the PPF and it's recorded that he said he preferred to have control over his pension fund.

So, it's quite possible that Mr M was also leaning towards the decision to transfer because of the concerns he had about his employer and his negative perception of the PPF. However, it was DCF's obligation to give Mr M an objective picture and recommend what was in his best interests.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that DCF should've reassured Mr M that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr M through the PPF would've still provided enough to meet his recorded aims. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to DCF recommending Mr M transfer out of the DB scheme altogether.

I also think Mr M's desire for control over his pension benefits was overstated. Mr M was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr M – it was simply a consequence of transferring away from his DB scheme.

It seems to me that Mr M's stated desire for 'control' related more to moving his pension away from an employer that he didn't trust than to any resolution on his part to begin to manage his investment.

But it ought to have been explained that Mr M's employer and the trustees of the BSPS2 were not the same. And in any event, Mr M was not intending to leave his employment and his DC pension remained connected to his employer – so transferring out of the scheme didn't achieve a 'break' from his employer. So had DCF explained that Mr M's belief regarding the control Mr M's employer had over his pension was misplaced, I think he would have been reassured by this.

Would Mr M have joined the BSPS2 going forward

My decision is that Mr M should have been advised to stay in the DB scheme. 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. As I've outlined above, Mr M would need to choose whether to move to the PPF, or go to the BSPS2, in the near future.

I don't think that it would've been in Mr M's 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. Even though Mr M did want to retire early, I'm not persuaded that he would have needed to take the benefits from his DB scheme if he did

this. And by opting into the BSPS2, Mr M would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to.

Also, Mr M was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr M chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

So I think if DCF had advised Mr M to stay in the BSPS scheme he would have opted in the future to join the BSPS2. And so, this is what compensation should be based on.

Suitability of investments

DCF recommended that Mr M invest in a range of funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr M, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr M should have been advised to remain in the DB scheme and so the investments in these funds wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr M. But DCF wasn't there to just transact what Mr M might have thought he wanted. The adviser's role was to really understand what Mr M needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr M was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 or the PPF. By transferring to a personal pension Mr M was, in my view, likely to obtain lower retirement benefits at either age 55 or 65. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr M's best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2 in the future.

So, I think DCF should've advised Mr M to remain in his DB scheme.

Of course, I have to consider whether Mr M would've gone ahead anyway, against DCF's advice. DCF argues that this is the case saying that Mr M would still have gone ahead with the transfer as it met his needs and he was concerned about his benefits moving to the PPF. DCF says that regardless of the advice given, Mr M made an informed choice to proceed with the transfer.

I've considered this carefully, but I'm not persuaded that Mr M would've insisted on transferring out of the DB scheme, against DCF's advice. Mr M seemed to be a relatively inexperienced investor and this pension accounted for the majority of his non state retirement provision at the time. So, if DCF had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr M's concerns about his employer and moving to the PPF 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. And if DCF had explained Mr M was unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in

retirement without risking his guaranteed pension, I think that would've carried significant weight.

I accept that DCF disclosed the risks of transferring to Mr M and provided him with a reasonable amount of information in the suitability report. But ultimately it advised Mr M to transfer out, and I think Mr M relied on that advice.

In light of the above, I think DCF should compensate Mr M for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Our Investigator recommended that DCF also pay Mr M £300 for the distress caused by the unsuitable advice. I don't doubt that Mr M has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

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 M whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect.

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

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

A fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for DCF's unsuitable advice. I consider Mr M would have most likely remained in his DB scheme and then joined the BSPS2 if suitable advice had been given. So, compensation should be based on the BSPS2.

DCF 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, Mr M has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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

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

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

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

DCF should also pay Mr M £300 for the distress and inconvenience the unsuitable advice caused him.

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 M the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr M 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 M 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 M the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr M.

If Mr M 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 M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 7 March 2023.

Andy Burlinson
Ombudsman