DRN-3564758

The complaint

Mr D complains about the advice given by D C Financial Limited ('DCFL') to transfer the benefits he held in the British Steel Pension Scheme ('BSPS') to a self-invested personal pension ('SIPP'). The BSPS is a defined benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him.

Mr D is being represented by a third party but for ease of reading this decision I'll largely refer to representations as being made by Mr D.

What happened

In March 2016, Mr D'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 September 2017, the BSPS provided Mr D with a summary of the transfer value of his scheme benefits. This said his benefits had a cash equivalent transfer value ('CETV') of £304,880.99. And 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 the BSPS2 or transfer their BSPS benefits elsewhere.

Mr D approached DCFL in late October 2017 for advice about his BSPS pension.

DCFL sent Mr D a fact-finding document and asked him to complete this prior to its initial meeting with him. This was then discussed at the initial meeting held between DCFL and Mr D. The completed fact find noted that Mr D was 41, in good health unmarried but co-habiting with his partner and had two dependent children. He owned his own home with an outstanding mortgage of approximately £50,000 which was due to be repaid before he reached retirement. His income was recorded as exceeding his outgoings comfortably each month.

In addition to the benefits held in the BSPS, Mr D was also a member of his employer's new defined contribution pension scheme. And he and his employer were making combined contributions to this of 16% of his salary. That pension arrangement had only recently begun and the BSPS benefits made up the significant majority of his retirement provisions at that time.

Mr D said he was concerned about the security of his pension and didn't trust his employer to manage it any longer. It was also recorded that he was interested in more flexible death benefits to pass the pension to his children, he hoped to potentially retire around age 59/60 and hoped to grow his fund on a low / medium risk basis.

DCFL says, at that meeting the advantages and disadvantages of the PPF, the BSPS2 and transferring to a personal pension were discussed. And DCFL also carried out an assessment of Mr D's attitude to risk, which it deemed to be 'cautious to moderate'.

DCFL says Mr D contacted it on 23 November 2017 to arrange a further meeting as he wanted to transfer his pension.

A meeting then took place on 29 November 2017. I understand at that meeting a recommendation was given by DCFL that Mr D transfer his pension benefits to a SIPP.

Documents were signed during that meeting to enable the transfer to take place including an application form for the new provider and discharge forms required by the trustees of the BSPS. DCFL also wrote to the trustees of the BSPS on the same day, saying it had provided Mr D with regulated advice.

A written summary of the advice given by DCFL was not produced until 6 December 2017 – after the application had been submitted. The suitability report said the reasons for DCFL's recommendation were that Mr D did not trust his employer to manage the pension, wanted to avoid going into the PPF and felt the BSPS2 was not favourable. It said he felt the penalties imposed for early retirement by the BSPS2 and PPF were too high and he was interested in retiring at age 60. It was noted though, due to how long it would be until Mr D retired, he didn't know what his income requirements in retirement would be.

DCFL said Mr D wanted control over his pension, was concerned about the lack of flexibility and the potential for benefits to be cut further by the BSPS and was also interested in potentially accessing tax-free cash ('TFC'), when he reached the age at which he was allowed to, but not immediately taking an income – so wanted flexibility in how his benefits could be drawn. And the 'inflexible' death benefits of the existing scheme concerned him. Based on this it recommended transferring as it felt this best met his objectives, addressed his concerns and his attitude to risk meant he had the capacity to accept the risks involved. DCFL would also provide ongoing servicing of the pension, at a cost.

The transfer went ahead in line with DCFL's recommendation in March 2018. DCFL provided ongoing servicing until 2021.

Mr D complained in 2021 to DCFL. He said the advice was unsuitable and he thought a transfer should not have been recommended because the SIPP was highly unlikely to match the guaranteed benefits that he could've received through the BSPS2.

DCFL didn't uphold Mr D's complaint. It said transferring had achieved his objectives of control of his pension, which he wanted because of a distrust of his employer, avoiding actuarial reductions for retiring early and achieving alternate death benefits better suited to his situation. It also said Mr D had been keen to achieve growth in his pension and that the recommended portfolio, which was in line with his attitude to risk, had done that, at a rate greater than the critical yield or the revaluations that would've been provided through the BSPS2 or PPF. So, it felt the advice to transfer was suitable.

Mr D referred his complaint to our service. An Investigator upheld the complaint and required DCFL to pay compensation and £200 for the distress caused. He didn't think a transfer was in Mr D's best interests or that he was likely to be better off as a result. And given Mr D's retirement income needs were unknown, he didn't think giving up a guaranteed, escalating pension was suitable. He also didn't feel Mr D had a genuine need for flexibility at the time of the advice, that the alternate death benefits justified the transfer or that DCFL did enough to address Mr D's concerns about the ongoing management of the DB scheme. Overall, he felt Mr D did not need to transfer out of his scheme when he did and should have been advised join the BSPS2.

DCFL disagreed. It said the BSPS2 was not certain to proceed at the time and that to say this should've been recommended is unreasonable. DCFL said it doesn't think the critical yield and whether this was achievable should be a substantive consideration when looking at suitability. It also said it was unfair to say it should've had regard for discount rates published by our service as it wasn't required to do so. 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 D didn't intend to purchase an annuity. In any event it said even if growth achieved through transferring meant the benefits of the new pension were the same as, or even slightly less than the DB scheme, the advice would still have been suitable as it provided flexibility – which was one of Mr D's key objectives. And the past performance and what had happened since the advice, which it says shouldn't be disregarded, showed that this level of growth was achievable. Overall DCFL still felt that the recommendation to transfer was suitable as it allowed Mr D to achieve his goals and avoid moving to the PPF - which he had been clear about. DCFL also argued it was not responsible for any losses since it had stopped providing ongoing servicing.

Mr D's representatives largely accepted the Investigator's findings. But they said they didn't think making an *overall* 15% notional deduction from the compensation amount to account for income tax was fair as this didn't account for charges Mr D has incurred through the SIPP.

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.

DCFL has said that the regulator, the Financial Conduct Authority ('FCA'), previously undertook a review of its advice process in relation to members of the BSPS and didn't highlight any concerns. It has therefore questioned how our service can come to a different conclusion – that transfer advice was unsuitable. But our role is different to that of the FCA. It is to look at the individual circumstances of a complaint, not a business' processes and practices as a whole, and decide what we consider is fair and reasonable. That is what I've done here.

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 DCFL'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 FCA states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, DCFL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

DCFL has strongly argued that the critical yield should not be a substantive consideration when looking at whether advice was suitable.

The primary purpose of a pension is to provide for the pension holders retirement – by way of an income. How the income that the pension holder could expect to receive after transferring compared to the guaranteed benefits they were due under their existing arrangements is, in my view, an important consideration as to whether they would be better off by transferring. Which in turn is important when determining if a transfer was in the pension holders' best interests. And indeed, the FCA required such a comparison to be undertaken and shared with the pension holder – COBS 19.1.2 – and for a transfer value analysis ('TVAS') report, providing analysis of this, to be conducted.

A critical yield, which is usually calculated when compiling a TVAS, is an estimate of the growth rate required of a new pension to allow the pension holder to purchase equivalent benefits to those they were guaranteed under their existing arrangements. So, I think this is an important indicator of whether someone would be better off by transferring. Whether a transfer is financially viable – likely to result in the pension holder being better off or not in terms of retirement income – is not the only consideration when looking at whether advice was suitable. And it isn't the only thing I've thought about here. But I still think it, and in turn the critical yield and whether this was achievable, are relevant and important considerations.

DCFL has said that Mr D didn't intend to purchase an annuity. And that is a further reason the critical yield is of little relevance here. But at the time of the advice Mr D was 41. So, it was over 13 years until he could take any of his pension benefits. The suitability report also noted that Mr D's income requirements in retirement were unknown – because of how long it was until he was due to retire. I think this means it was too early for Mr D to have made a definitive decision or be able to say with any certainty that he wouldn't want at least some guaranteed income in retirement. So, I don't agree that the critical yields weren't relevant.

DCFL has also said that the BSPS2 was not certain to go ahead, and this wasn't a genuine option at the time. So, only the critical yields for the PPF are relevant here. But I think DCFL is overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the time Mr D took advice. Mr D had received his "time to choose" pack – with joining the new scheme one of the options. And details of the scheme had been provided; the BSPS2 would've offered the same income benefits as the BSPS 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. I also note that, in one of the TVAS reports that DCFL instructed, comparisons were made to the estimated benefits under the BSPS2 (with the other providing a comparison to the BSPS, even though remaining in that scheme, as it was, wasn't an option). And the potential benefits under the BSPS2 were mentioned in the suitability report.

With all of this in mind, I think a comparison to the benefits the BSPS2 was likely to provide was a relevant consideration.

The TVAS report looking at the potential benefits under the BSPS2 said that the critical yield if Mr D took a full pension at age 65 was 4.99%. It also indicated he'd need a fund totalling £684,132.93 at age 65 to purchase an annuity matching the benefits available under the BSPS2 at that time – so his CETV would need to more than double in size. And if he was to retire at age 60, the critical yield to match a full pension under the BSPS2 at that point was 5.59%, and he'd need a fund of £641,192.93. No figures were calculated for what would be required if Mr D elected to take TFC and a reduced pension at either age.

Critical yield figures were also calculated for the growth that would be required to match the benefits Mr D would be due under the PPF at ages 60 and 65. If Mr D took a full pension at age 65 under the PPF, the critical yield was said to be 4.17%. Or if taking TFC and a reduced pension, 3.93%. To match the full pension under the PPF at age 60 the critical yield was 4.77%. And for the reduced pension and taking TFC at that age, the critical yield was 4.52%.

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.

DCFL says there was no requirement for it to have regard for the discount rate. 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, as I've mentioned already, 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 D was 41 at the time of the advice. It has been suggested he wanted to retire at age 60. And, as I've said, the TVAS report looked at the scenarios of retiring at age 60 and 65.

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 4.6% per year for 23 years to retirement (which would be the case if Mr D retired at age 65). For 18 years to retirement, the case if he retired at 60, the discount rate was 4.4%. 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 D's 'cautious to moderate' attitude to risk and also the term to retirement. Contrary to what DCFL has said, I think there would be little point in Mr D giving up the guarantees available to him through a DB scheme only to achieve, at best, the same level of benefits outside the scheme – essentially introducing significant additional risk to achieve only at best the same position. But here, I think Mr D was always likely to receive benefits of a lower overall value as a result of transferring and investing in line with his attitude to risk than those he would've been guaranteed under the BSPS2. And in respect of the PPF it also appears he was unlikely to improve on the guaranteed benefits he'd have been due.

DCFL has said the past performance of the recommended fund and the performance between the transfer being completed and the complaint show that this was achievable. And it says this shouldn't be discounted. But 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.

So, from a financially viability perspective, I don't think a transfer was in Mr D's best interests. DCFL has said it indicated in the suitability report that it felt the critical yield was quite high and was unlikely to be achieved. But Mr D accepted the risks involved and there were other considerations that meant the transfer was suitable, despite providing overall lower benefits. I've considered this below, but I would just say that highlighting a risk does not mean that the advice that follows is suitable.

Flexibility

DCFL says Mr D was interested in retiring before the normal retirement date of the DB scheme – and was unhappy with idea of an actuarial reduction being applied if he did so. It also said he wanted the flexibility to be able to take TFC but not have to immediately take an income. And he wanted the ability to vary the income he took from these benefits in retirement.

I don't doubt that most consumers, if asked, would be interested in retiring early. But again, Mr D was 41 at the point of the advice – still a significant time away from being able to take retirement benefits. As I've said, the suitability report noted his income needs in retirement were also unknown. So, while Mr D may have been interested in taking early retirement, on balance I don't think his plans around this were concrete at the time.

Likewise, I don't think being able to access TFC was a need at the point of the advice. There was no reason noted for requiring access to a lump sum. Mr D's mortgage – which seems to have been his only major debt at the point of the advice – was due to be repaid before he could've accessed pension benefits. So again, when asked, Mr D might've indicted he had thought about taking a lump sum and that this may be of interest. But I don't think this had been decided.

DCFL has said that Mr D was not willing to accept a reduction in his pension for retiring early – and an actuarial reduction would've been applied by the BSPS2 or the PPF if he took his benefits at age 60. The TVAS report estimated that if Mr D took a full pension with no TFC under the BSPS2 at age 65 his starting pension would be £19,362 per year. At age 60 his starting pension would be £14,906. Both would continue to escalate while in payment. Under the PPF his starting pension, without TFC, at age 65 was estimated to be £17,569 and at age 60 would be £14,226.

I don't doubt the idea of potentially receiving less annually was not something Mr D would be happy about. But an actuarial reduction is intended to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by taking an income at age 60 Mr D would've been receiving his pension for five years longer. It is a trade-off, rather than a penalty. And I think if this had been made clearer to Mr D, he may well have been less concerned than DCFL has suggested.

Likewise, while taking benefits flexibly under a personal pension would allow Mr D to decide the level of his income 'without penalty' the amount he could take was entirely dependent on the sum available under the pension plan. And what he took would deplete the plan – potentially leaving him with less than he might need later. Whereas the DB scheme benefits, regardless of which point they started, were guaranteed for life.

Even if though Mr D had still been unhappy with the idea of accepting a reduction in his guaranteed pension, I don't think that means he needed to transfer when he did.

Mr D's income requirements in retirement were unknown. But by the time he retired he was scheduled to be mortgage free so his outgoings would've been reduced. And it's not unreasonable, in my view, to expect his requirements were likely to be lower than his salary at the time of advice. Mr D was a member of the new defined contribution pension scheme his employer had put in place after the BSPS had closed. And, although he was unhappy with how his employer had handled the BSPS, there was no indication he intended to change employer prior to retirement.

It was over 18 years until he was apparently considering retirement. He and his employer's contributions to this new scheme were equivalent to 16% of his salary. The fact find said that this equated to roughly £200 per month from Mr D and £400 from his employer. But it also said that the annual contributions were around £6,000. Even using the lower of these two though – and before even accounting for increases in salary, investment growth or Mr D increasing his contributions – by age 60 this fund would've been almost £110,000. And this fund could've potentially been used flexibly from age 60, to meet Mr D's initial needs, allowing him to take the DB scheme benefits at age 65 if he so chose – and not incur an actuarial reduction. Or they could've been taken together if Mr D's concerns about the actuarial reduction had been allayed by the fact he'd have been receiving his pension for longer. And the amount he took from the DC scheme could've been varied to meet his needs and reduced once he began to receive the state pension.

Taking all of this into account, given the time until he was intending to retire, I don't think Mr D's plans or needs were known and certainly were not finalised. So, I don't think he had a need for flexibility at the time of the advice. And I don't think it was a suitable recommendation for Mr D to give up his guaranteed benefits when he did. If Mr D later had reason to transfer out of his DB scheme I understand that this would've been allowed under BSPS2. And he could've done so closer to retirement.

Death benefits

DCFL says Mr D wanted alternative death benefits. He and his partner were not married, so she would not have benefited from the spouse's pension the DB scheme provided. And it says he was unhappy with the rigid nature of the death benefits provided by the DB scheme and the idea of leaving his fund as a lump sum to his partner and children appealed to him.

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 D. But whilst I appreciate death benefits are important to consumers, and Mr D 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 D about what was best for his retirement provisions. Because a pension is primarily designed to provide income in retirement.

Mr D was not married at the time of the advice, so his partner may not have qualified for a spouse's pension under the PPF or the BSPS2. But they were still young and could've later gotten married. In which case the spouse's pension – a guaranteed amount payable for life which escalated – could've been very useful if Mr D predeceased his partner. It doesn't appear that DCFL enquired about whether this may happen but I haven't seen anything to suggest that it had been ruled out. The BSPS2 and PPF both would also have provided children's pensions until they reached adulthood / left full time education. And again, this guaranteed amount could have proved useful, should it have been required.

The CETV figure would no doubt have appeared attractive as a potential lump sum. But the sum remaining on death following a transfer, as well as being dependent on investment performance, would've also been reduced by any income Mr D drew in his lifetime. Mr D was recorded as being in good health, so there was nothing to suggest he was less likely to live until at least his average life expectancy. And given the implication was that Mr D would draw a pension 'without penalty' from age 60 and only scale back when he began to receive his state pension, it appears likely the fund would've been significantly depleted by the time Mr D reached his average life expectancy. So, the pension may not have provided the legacy that Mr D may have thought it would.

The fact find also recorded that Mr D had death in service benefits from his current employer, which appear to have been a more appropriate method by which to leave a legacy to his estate. The new defined contribution pension he was contributing to also provided alternative forms of death benefit to his DB schemes. And, if Mr D didn't think these were enough and genuinely wanted to leave a further legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think life insurance should've been considered. But I can't see that this was discussed.

Overall, I don't think the different death benefits available through a transfer to a personal pension justified introducing significant additional risk when in all likelihood Mr D's pension benefits were unlikely to improve. And I don't think that insurance was properly explored as an alternative.

Control and concerns over financial stability of the DB scheme

I think Mr D's desire for direct control over his pension benefits was overstated. Mr D 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. Indeed, DCFL continued to manage his SIPP on his behalf after the transfer. So, I don't think that this was a genuine objective for Mr D – it was simply a consequence of transferring away from the BSPS.

I think this objective was more linked to the uncertainty about the BSPS. It's clear that Mr D, like many employees of his company, was concerned about his pension. His employer had been consulting on its plans for the scheme for some time. And there appears to have been a general mistrust and lack of optimism regarding the likelihood of a solution. I also don't doubt Mr D was worried his pension would end up in the PPF or that he'd heard negative things about the PPF and this was why he said he preferred to have control over his pension fund. It's also quite possible that Mr D 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 DCFL's obligation to give Mr D an objective picture and recommend what was in his best interests.

As I've explained, by this point details of BSPS2 were known and it seemed likely it was going ahead. The "Time to Choose" paperwork was clear that opting into that scheme was an option – so, I'm satisfied it was envisaged that this would go ahead. And I think this should've alleviated some of Mr D's concerns about the scheme moving to the PPF.

But even if there was a chance the BSPS2 wouldn't go ahead, I think that DCFL should've reassured Mr D that the scheme moving to the PPF wasn't as concerning as he thought. He didn't have firm retirement plans. But, as I've explained, it appears likely his other provisions, in conjunction with the pension payable under the PPF, would've provided what he needed in retirement. Although the increases in payment in the PPF were lower, it would still have provided a guaranteed income for the rest of his life that was not subject to any investment risk. By transferring he was taking on additional risk and, as I've explained, I don't think he was likely to be better off by transferring, such that taking this risk was in his interests. So, I don't think that these concerns should've led to DCFL recommending Mr D transfer out of the DB scheme altogether.

Suitability of investments

DCFL recommended that Mr D invest his SIPP in a particular way. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr D, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr D should, in my view, have been advised not to transfer so the investments wouldn't have arisen if suitable advice had been given. DCFL has said that it shouldn't be responsible for any losses stemming from those investments after it ceased managing the SIPP on Mr D's behalf. But again, the investments would not have arisen at all were it not for DCFL's advice. So, I don't agree that it's responsibility for loss stemming from its advice ceased when it ended its agreement with Mr D.

Summary

I don't doubt that the flexibility, control and the alternative death benefits on offer through a personal pension would have sounded like attractive features to Mr D. But DCFL wasn't there to just transact what Mr D might have thought he wanted. The adviser's role was to understand Mr D's circumstances, separate his potential concerns stemming from the ongoing uncertainty and unfinalized potential plans from his genuine needs and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring, I don't think Mr D was likely to improve his benefits, but his fund, which at that point was the majority of his retirement provisions, would be subject to additional risk. I don't think he needed flexibility to achieve his objectives and I certainly don't think a decision on this needed to be made at the time it was – given how long he had until his retirement. And I also don't think the alternate death benefits he could potentially receive made transferring in his best interests. So, I don't think he should've been advised to transfer.

DCFL says the BSPS2 was not certain to proceed and that it is unreasonable for us to say Mr D should've been advised to join this scheme as it wasn't a genuine option. 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. And the "Time to Choose" documentation confirmed that scheme members could opt into the BSPS2 but still change their mind and transfer prior to March 2018. So, contrary to what DCFL has said, I do think this was an option that DCFL could've recommended at the time.

Mr D had over 18 years before he reached the age at which he'd indicated he might like to retire. But his plans were in any event unconfirmed. 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 D would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think DCFL should've advised Mr D to opt into the BSPS2.

Of course, I have to consider whether Mr D would've gone ahead anyway, against DCFL's advice. DCFL says Mr D made an informed decision to transfer, so it thinks he would've chosen to do so even if it had advised him against it.

I've considered this carefully. Mr D was no doubt unhappy with the situation regarding the BSPS. And may have had a negative opinion of his employer and how it had communicated and dealt with him and his colleagues. The BSPS scheme and its trustees were though not the same as his day-to-day employer. And Mr D was an inexperienced investor who sought independent advice and guidance.

I've seen documents that suggest Mr D and DCFL discussed the "pros and cons" of transferring. And a document was completed indicating Mr D had been made aware of the risks involved. But ultimately DCFL advised Mr D to transfer out, and I think Mr D relied on that advice.

I'm not persuaded that Mr D's concerns about his employer or the PPF were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. And if DCFL had explained that Mr D was always unlikely to exceed the guaranteed benefits available to him by transferring, that the time to retirement and uncertainty over his requirements meant transferring at that time was not in interests and that the other things he'd expressed worry about were not things he needed to be as concerned about as he was, I think that would've carried significant weight. So, I don't think Mr D would have insisted on transferring out of the DB scheme.

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

Our Investigator recommended that DCFL also pay Mr D £200 for the distress caused by the unsuitable advice. I don't doubt that Mr D has been caused distress and concern by finding out the advice may not have been suitable – particularly given the circumstances and uncertainty under which he first asked for this advice. And I'm conscious this upset wouldn't have happened but for the unsuitable advice. So, in the circumstances, I think the award the Investigator recommended in respect of this is fair.

I've thought about Mr D's representative's point regarding the 15% deduction from any redress payable, to take into account the tax Mr D would've paid had this been taken as income. It believes this is unfair as it doesn't account for the charges that would've been deducted from the fund value over that time. While I appreciate the representative feels this may unfairly reduce the redress payable, I'm mindful that it is not possible to provide exact compensation in these circumstances, as the only way to achieve this would be to put Mr D back into the scheme as if the transfer out hadn't happened. So, overall, I remain of the view that the redress proposed fairly compensates Mr D for the impact of the unsuitable advice he received.

Putting things right

A fair and reasonable outcome would be for the business to put Mr D, as far as possible, into the position he would now be in but for DCFL's unsuitable advice. I consider Mr D would have most likely opted to join the BSPS2, rather than transfer to the SIPP if he'd been given suitable advice. So, DCFL should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice. The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

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 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr D whether he preferred any redress to be calculated now in line with current guidance or wait for any new guidance / rules to be published. Mr D 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 D. DCFL 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 D 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 D's acceptance of the decision. A copy of the calculation should be shared with Mr D and his representative.

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

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

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

In addition, DCFL should pay Mr D £200 for the distress caused by the disruption to his retirement planning.

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

If Mr D 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 D can accept my decision and go to court to ask for the balance. Mr D 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 D to accept or reject my decision before 20 December 2022.

Ben Stoker
Ombudsman