DRN-3595352

The complaint

Mr D complains about the advice D C Financial Limited (DCFL) gave 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.

Professional representatives have helped Mr D to bring this complaint. But, for ease of reading, I will refer to the representatives' comments as being Mr D's.

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')[1], or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the 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 D's employer would be set up – the BSPS2.

Mr D approached DCFL for advice. He had accrued BSPS pension benefits from two separate periods of employment. DCFL gathered information about his entitlement under both periods of employment and obtained two transfer value analysis (TVAS) reports for each of those. It completed a fact-find with him and an assessment of his risk appetite. It also received an illustration from a named personal pension provider of what Mr D's pension might be worth if he transferred his benefits into it. Amongst other things, DCFL noted that:

- Mr D was 46 years old, in good health with four dependent children and planning on marrying in 2018.
- He was employed earning £33,500 a year with a net income of £2,025 a month and regular outgoings of £1,950.
- His fiancé was also working and earning around £24,000 a year.
- He had a mortgage of £46,000 outstanding on his home with a value of £90,000. His mortgage had a remaining term of 17 years.
- He had £900 in savings and no debts beyond his mortgage.
- Since April 2017 Mr D and his employer had together contributed 16% of his salary into a group money purchase pension scheme.
- He had death in service benefits of four times his salary.
- He had two other small pension pots, which – together – were worth £24,465.
- He required a net income in retirement of £1,600 a month (£21,125 a year gross).

[1] 1 The PPF acts as a 'lifeboat' for insolvent DB pension schemes. It pays compensation to members of eligible schemes for their lifetime. The compensation levels are, generally, around 90% of the level of the original scheme's benefits for deferred pensions. But the PPF's rules and benefits may differ from the original scheme.

- He had a cautious to medium attitude to risk.
- His preferred retirement age was 60.

DCFL met with Mr D again on 28 September 2017. It recommended he should transfer the benefits from his two DB pensions into a named personal pension. Mr D also agreed to transfer the two small pension pots to the personal pension. On 4 October 2017 DCFL sent Mr D a suitability report setting out the reasons for its recommendation. Amongst other things it said:

- Mr D's two DB pension pots had a total cash equivalent transfer value ('CETV') of £277,073. But that sum was after a deduction of 8% because the scheme was underfunded. However, the reduction had gone down to 5% and Mr D's CETV was now £286,108. That sum was guaranteed until 11 December 2017.
- At 65 the DB scheme would pay him a pension of £18,897 a year, or £13,644 a year if he retired at 60.
- By transferring out of the DB scheme Mr D would be giving up the guaranteed benefits it entitled him to.
- Mr D wanted to transfer:
    - in order to access his funds flexibly and penalty free;
    - he was concerned about the future of the scheme;
    - he didn't want his pension pots to enter the PPF; and
    - the scheme's death benefits were inflexible.
- The growth rate required (the critical yield) to match the benefits from the DB scheme was 6.29% at age 65 and 7.05% at age 60.
- It was very unlikely that an investment could provide a return to match the benefits Mr D would be giving up.
- The critical yield required to match the benefits should the pension move into the PPF was 2.8% at age 65
- It said the two TVAS *"were calculated using the old* [employer's] *CETVs. The new transfer values would result in slightly decreasing the required critical yields*".
- His desired income in retirement of £21,125 was considerably higher than the DB scheme pension at age 60.
- Mr D's state pension entitlement would provide him a secure inflation protected income in retirement.
- There were advantages and disadvantages of a transfer which it explained along with the risks, which Mr D was prepared to accept.
- DCFL would charge Mr D 2.5% of the transfer value for its advice and arranging the transfer. It would charge him a further fee of 1% of the fund value for ongoing advice.
- The personal pension provider would charge Mr B a platform fee 0.25% and fund charges of between 0.63% to 1.25% depending on the particular fund Mr D had invested in.

Mr D signed to say he had read and understood the suitability report on 9 October 2017. Around the same time the DB administrators wrote to scheme members and sent them a "time to choose" pack. Those gave members three options:

- To stay in the BSPS and move with it to the PPF.
- To opt to move their benefits to the BSPS2.
- To transfer out of the scheme and into a private arrangement.

In December 2017 the personal pension provider confirmed it had received £286,108 from the BSPS transfers.

Mr D complained about DCFL's advice in 2021. In short Mr D said he believed the advice to transfer out of his DB scheme wasn't suitable for him. DCFL didn't uphold Mr D's complaint. It said it had completed a comprehensive review and its advice met Mr D's stated needs and objectives and as such was in his best interests.

One of our investigators looked into Mr D's complaint. He upheld it and recommended DCFL pay compensation including an additional £300 to address Mr D's distress and inconvenience resulting from the unsuitable advice. Amongst other things our investigator thought that DCFL should have advised Mr D to opt into the BSPS2 rather than transfer to a personal pension.

DCFL didn't agree. Amongst other things it said:

- At the time of its advice the BSPS2 was still only a possibility.
- Our investigator's assessment of the complaint didn't recognise the fear and uncertainty scheme members felt about the situation with their employer and their pensions.
- Mr D was "*adamant*" that in the event of his death he wanted the funds remaining from his pension to be passed to his family.
- A transfer was the only way to achieve Mr D's objectives.
- The regulator had carried out a review of some of its files and not raised any concerns.
- If compensation was to be awarded it should be done on a comparison with the benefits of the PPF rather than the BSPS2.
- DCFL was no longer providing advice for Mr D and shouldn't be liable for any losses as a result of advice given by an adviser it wasn't responsible for.

The investigator wasn't persuaded to change his 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.

At the time of the events complained about DCFL also arranged for the transfer of Mr D's two small personal pension pots, as well as his DB scheme funds. But, as Mr D hasn't complained about the transfer of the two small pots I don't intend to comment on the merits of that action.

In bringing this complaint and responding to it both Mr D and DCFL have made a number of points. I've considered carefully everything on file. But in this decision I don't intend to address each and every point individually and instead will focus on the matters which I see as being at the heart of Mr D's complaint and the reasons for my decision.

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 broadly similar reasons to those our investigator gave.

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, DCFL should have only considered a transfer if it could clearly demonstrate that it was in Mr D's best interests. And having looked at all the evidence available, I'm not satisfied that it was.

Uncertainty and distrust

In DCFL response to our investigator's assessment of the complaint it highlighted that many scheme members like Mr D had concerns over their employer's future and the future of their pensions. It's added that, at the time, the BSPS2 hadn't yet been put in place and was still only a possibility.

I'm aware that many BSPS members like Mr D had serious concerns about their employer's future and the effect this would have on their pension pots. The situation was evolving after the BSPS closed in March 2017. There was also some widespread trepidation about what moving pensions to the PPF meant for members. It's also well known that this was a period of uncertainty for people like Mr D. But this only serves to emphasise the need at that time for a balanced assessment of the options available and ultimately the need for suitable advice.

I understand there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of an employer or pension scheme. But DCFL was tasked with rationally addressing those concerns and providing an appropriately balanced view of all the available options. And in order to recommend that Mr D should transfer out of his DB scheme DCFL needed to be able to clearly demonstrate that doing so was in his best interests.

I don't dispute that when Mr D approached DCFL there was still the possibility that his pension could move to the PPF. And DCFL has argued it couldn't be sure – at the time of its advice – that the BSPS2 would go ahead. But I think DCFL overestimated the chance of the BSPS2 not happening. I note that Mr D sought advice before he'd received his "*time to choose*" pack. But, some months earlier, in May 2017, the PPF announced that the terms of the RAA had been agreed. Under the announced plans, Mr D's employer agreed to set up and sponsor the BSPS2, subject to certain conditions relating to funding and size being satisfied. The Pensions Regulator approved the RAA on 11 August 2017.

Subsequently on 28 August 2017 the BSPS administrators provided scheme members, including Mr D, with an important update in respect of BSPS transfer values. The update said an expected payment into the BSPS of £550 million by Mr D's employer, as part of its agreement with The Pension Regulator, was likely to result in an improvement to transfer values. And for those with unexpired transfer values, like Mr D, administrators would issue updated valuations in October 2017, which would be guaranteed until at least December 2017. The confirmation that Mr D's employer had made the payment referred to was announced on 11 September 2017. That was over two weeks before DCFL made its recommendation.

So, I don't think it was the case that DCFL or Mr D were in a position whereby they couldn't wait for details of the BSPS2. And given that the whole purpose of the RAA was to prevent the entirety of the BSPS entering the PPF, I think that DCFL should have been aware that it was more likely than not that the BSPS2 would go ahead. In those circumstances, while entry into the PPF was still a possibility, I think DCFL should have explained to Mr D that this was unlikely to be Mr D's only option and taken the necessary steps, including deferring giving its advice until more details of the BSPS2 was known. But it didn't do that.

Further, even if Mr D remained concerned about the possibility, even if it was a slim one, of the BSPS2 not happening or itself moving into the PPF at a later date, I think DCFL should have addressed that concern. A move to the PPF would mean, on a general basis, a reduction of around 10% in retirement income and less generous yearly indexed pension increases. But for those taking early retirement the PPF could have been more beneficial.

But, as I go into in more detail below, I think that some key information is missing from DCFL's TVAS and suitability report. And as such it wouldn't be easy for Mr D to make a direct comparison between the benefits from the PPF and those expected from the BSPS. And, while I understand that the prospect of pension benefits moving to the PPF was for some people rather daunting, it's probably the case that it wasn't as significant as many BSPS scheme members believed it to be. And it's certainly possible that Mr D could have met his needs in retirement and retained guaranteed benefits if the BSPS2 hadn't gone ahead and he'd had to move his pension to the PPF. But, I'm not persuaded that the uncertainty that Mr D experienced when he entered into the advice process was sufficient reason to recommend that he should transfer his safeguarded benefits from a DB scheme, even one with the possibility of going into the PPF. That's because, to do so would expose those funds to the volatilities and risks of the investment markets. So, I don't think those concerns should have led to DCFL recommending Mr D transfer out of the DB scheme altogether.

DCFL's advice process

DCFL obtained transfer value analysis (TVAS) reports (as the regulator required) for each of Mr D's two periods where he contributed to his DB scheme. Those showed how much Mr D's pension fund would need to grow by each year (the critical yields) in order to provide the same benefits as each of those periods from his DB scheme. But, those critical yields were based on his existing scheme benefits and Mr D 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.

I accept that at the time DCFL drafted its suitability report it didn't know the precise details of the BSPS2. But, as I've said above, DCFL could have deferred giving advice until those were known. In any event what was assumed was that the benefits of the BSPS were thought to be better than those proposed in the BSPS2. And the BSPS2 was thought to be of greater benefit than the funds going into the PPF for the scheme's normal retirement age of 65. So, in reality, the growth rates required to match the BSPS2 benefits were likely to be somewhere between those required for the PPF and those for the BSPS. And while it was possible that the BSPS2 might not have gone ahead, given that it was more likely than not that it would, as I've said above, I think DCFL should have factored in the likely benefits available to Mr D through the BSPS2 before it gave its advice. Had it done so Mr D would have been in a better place to make an informed decision.

But, not only did DCFL not wait for further information about BSPS2 to become available, it also gave its advice with only limited details from the BSPS. I've provided an analysis of the suitability of that advice below. But, I think I need to also comment on the timing and the manner in which DCFL provided its advice.

DCFL met with Mr D for a second time on 28 September 2017. At that meeting, DCFL discussed the findings from its TVAS reports and gave Mr D information about the proposed named personal pension. It recommended that Mr D should transfer his DB benefits to the named pension. Mr D then confirmed he wanted to go ahead with the transfer and he signed the relevant forms to allow that to happen. DCFL then sent Mr D a letter, on 4 October 2017 setting out the reasons for its recommendation.

I appreciate that, at that time, the regulator's rules didn't require DCFL to issue its suitability report before completing the transaction. So it wasn't acting outside of its regulatory requirements by sending the suitability report after Mr D had already signed the papers to go ahead with the transfer. But a much fairer process would have been for DCFL to provide its advice as a whole. That advice should have considered the overall picture – including an analysis of moving to the PPF, moving to the BSPS2 or transferring out of the DB scheme altogether. DCFL should have presented those options together in one document and given Mr D the chance to digest that information before going ahead with the transfer. But DCFL didn't send Mr D its suitability report until after Mr D had already signed to say he wanted to go ahead with the transfer.

DCFL would no doubt argue that it explained the content of its suitability report to Mr D when it met with him. And, as it believed he was clear about his objectives and his means of meeting those it put the wheels in motion to sort out the transfer without first putting its detailed analysis to him in writing. But, transferring out of a DB scheme is a one-off event. Once transferred there's no going back, the benefits of the DB scheme are usually lost forever. So, I think DCFL should have ensured that Mr D had sight of all the information he needed in order to make an informed choice in advance of him making that decision. And that included the information within DCFL's suitability report and the information from the named personal pension provider. But DCFL didn't do that.

However, even if that hadn't been the case and DCFL had sent Mr D its suitability report before asking him to sign the documents to arrange the transfer, I still don't think it gave him enough information to fully consider his options.

DCFL's suitability report refers to Mr D's desire to retire at age 60. And it said its recommendation would allow him to achieve that aim. But it provided very little information in its reports about how he would achieve that and what he would be giving up in order to do so. There was certainly very little in the way of analysis of the relevant benefits from a personal pension at age 60 and how long his funds would last him if he started drawing down funds from it in its suitability report .

Also, putting aside the lack of information from the BSPS2 for one moment, there are other omissions. DCFL's transfer value analysis reports show Mr D's projected yearly pension from the BSPS at ages 65 and 60. But the TVAS reports don't show what his entitlement to tax free cash ('TFC') would be from the BSPS at those ages, nor does it show by how much those would reduce the yearly pension entitlement or the critical yields to match those. It's possible that DCFL's TVAS provider omitted TFC figures from the TVAS reports because the BSPS administrators hadn't provided those figures when giving Mr D his CETV quotes. But if that was the case then DCFL should have asked the administrators for those figures before giving its advice or asked for those to be included within its TVAS using known commutation figures. That way it could have ensured it gave Mr D all the information he needed in order to make an informed choice. But it didn't do so.

For example, the PPF was known to have different early retirement factors to the BSPS (and the BSPS2), in particular when calculating TFC. The TVAS reports do show TFC figures if Mr D's pension had gone into the PPF. They also show that Mr D could expect a yearly pension from his DB scheme of £13,644 if he took his pension from it at age 60. In contrast the PPF showed it would pay him a yearly pension of £12,966, which would indicate that the BSPS benefits were around 5% higher than the PPF at age 60. But that's without comparing the TFC figures. But DCFL's reports only show the TFC figures for the PPF. They don't show what Mr D might have received in TCF from the BSPS. And DCFL's suitability report makes very little reference to the benefits from the PPF at age 60. So Mr D couldn't have considered those to see if the TFC figures were significantly higher in the PPF. That's important as, if they had been and he was certain he wanted to retire at 60, then it may have been in his interests to allow his pension to move to the PPF.

Further, the two TVAS reports had quite different critical yields to match their benefits as I've shown in the table below. But, in its suitability report, DCFL only ever referred to the lower of these two figures from the first pension period. But that wasn't a fair way of showing what the actual critical yield figure would be when combining the two and in some instances the critical yield from the second pension period was more than double that from the first. So I don't think it was reasonable for DCFL to only refer to the lower figure.

Critical Yield for	BSPS Age 65 – full pension	Age 60 – full pension	PPF age 65 full pension no TFC	PPF age 65 after taking TFC	PPF age 60 – full pension	PPF age 60 after taking TFC
First pension period	6.29%	7.05%	2.98%	2.69%	3.3%	2.98%
Second pension period	7.58%	8.86%	5.56%	5.25%	7.04%	6.68%

That said, as I refer to below, DCFL itself recognised that the critical yields were not achievable, so it might not have placed too much emphasis on the figures. But in only showing one set of figures, it didn't present the information to Mr D in a way that was clear, fair and not misleading.

Financial viability

The table above shows that the relevant critical yield at age 65 for Mr D taking a full pension from the BSPS without TFC was somewhere between 6.29% and 7.58%. The critical yield required to match the benefits provided through the PPF at age 65 was between 2.98% and 5.56% if Mr D took a full pension. While DCFL didn't, incorrectly in my view, present the BSPS2 figures, even without those we can assume the lower annual increases under the BSPS2 would have likely decreased the critical yields compared to the BSPS. But, I think those would've likely been higher than the critical yield matching the PPF benefits, particularly at age 65.

DCFL sent Mr D its suitability report around the time that 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 that our Service was publishing discount rates on our website. 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 in this case.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 4.4% a year for over 18 years to retirement. 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% a year. And it’s notable that the discount rate would drop to 4.1% when adjusted for Mr D retiring at age 60.

I've taken these figures into account, along with the composition of assets in the discount rate, Mr D’s attitude to risk and also the term to retirement. There would be little point in Mr D giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

I note that a discount rate of 4.4% is higher than the critical yield required to match the PPF benefits from the first pension period. But I don’t think that means that a transfer was financially viable, even when compared with Mr D’s pension moving to the PPF. As I've said above, the critical yields below the discount rate are all for the first pension period only. And the critical yields from the second pension period are all higher than the discount rate and the regulator’s middle projection rate. And after factoring in both sets of figures for the two pensions periods I think the critical yield is likely to be equal to or higher than the discount rate when comparing against the PPF. But, in any event, that ignores the potential benefits from the BSPS2. And, as I've already said, it’s likely that the BSPS2 benefits would have been higher than the comparison to the PPF at age 65. So the critical yield would likely have been nearer to the BSPS figures than the PPF. And in those circumstances it’s unlikely that the discount rate would have met or exceeded the critical yield required to match the benefits from the BSPS2.

In addition, Mr D’s DB benefits would not be reduced by fees. Indeed they were index linked to guarantee they would increase each year. In contrast not only would investment in a personal pension be reliant on growth, the funds would also be reduced by fees and charges. For example the named personal pension provider produced illustrations (in September and December 2017) for what Mr D’s pension pot might be worth in the future. In producing the September illustration it assumed growth at the mid level of 4.3% a year, reduced by inflation of 2.5% a year (1.88% a year net growth). But it also made an adjustment to allow for the charges and fees Mr D would be required to pay. And those would reduce the growth by 2.18% a year, which was more than the anticipated growth after adjusting for inflation. The illustration showed that from a starting investment of £277,073 (the figure before the DB administrators revalued it), after 10 years Mr D’s pension pot might be worth around £260,000, or around £17,000 less than his initial investment. And by age 75, that sum could have reduced further to around £251,000 or £26,000 less than the initial investment.

The December 2017 illustration included the revalued DB scheme funds; the investments from Mr D’s two small pension pots and assumed a lower percentage growth rate. That showed a loss in real terms of around £31,000 after 10 years falling further to a loss of about £62,000 by age 75 and that was if the fund grew at the middle rate. So, if projected performance had been at the lower rate the predicted losses would likely have been higher.

As such I think Mr D 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 his attitude to risk. Further, if there was a sustained period of poor performance then there was a very real chance that Mr D's fund would grow at a much slower rate or he could suffer losses. And while DCFL did point out these risks to Mr D I believe it should have advised him that opting into the BSPS2 (the benefits under which would be guaranteed and escalated) rather than relying on investment growth in a personal pension would have been better suited to his needs. So, I don't think it was in Mr D's best interests for him to transfer his pension.

Indeed it's notable that DCFL itself said that achieving the critical yield was unlikely to be realistic. So it clearly recognised that Mr D would be unlikely to match the benefits from the DB scheme by transferring to a personal pension. But it made the recommendation to do so anyway.

For this reason alone a transfer away from the DB scheme wasn't in Mr D's best interests. Of course financial viability isn't the only consideration when giving transfer advice. And DCFL has argued that by transferring Mr D was able to achieve his other objectives.

Of course, financial viability isn't the only consideration when giving transfer advice. So I've gone on to consider whether DCFL has clearly demonstrated that the advice to transfer was in Mr D's best interests. When doing so I've been mindful that DCFL's role was to find out what Mr D's wants and needs were and why. Its role wasn't simply to do what Mr D wanted without appropriate analysis and challenge of his motives for doing so, in order to ensure its recommendation was in his best interests.

Flexibility and early retirement

DCFL said that by transferring Mr D could enjoy flexible access to his pension income, which would allow him to retire early. But having considered the evidence, I don't think Mr D needed to transfer his DB scheme to a personal pension in order to have flexibility in retirement.

I don't doubt that, when asked, Mr D told DCFL that he would prefer to retire at age 60. And I can fully understand that desire. I think most people would say when asked that they would like to retire early if given the chance. I also think most people would understand that having the opportunity to retire early isn't worth compromising their income security over the remainder of their life for. It seems to me that this is something Mr D was likely to reassess once he neared age 60.

Further, as I've said above DCFL's suitability report contains very little in the way of analysis to show exactly how Mr D could achieve early retirement at age 60. The suitability report says that a deduction of £21,125 a year represented 7.62% of Mr B's DB scheme funds, In fact that was before the fund was revalued to £286,108 and the actual figure should have been 7.38%. But at that rate of deduction Mr D's personal pension fund would only last him around 13 years or until he was 73 years old. But that doesn't factor in fund growth.

DCFL said in its suitability report that Mr D's objectives over the next 14 years would be to grow his investment while continuing to contribute to his group money purchase pension scheme. It added that he could reduce the amount he took from his personal pension once his state pension became payable. So it seems that DCFL was relying on Mr D taking his desired income of £21,125 a year at age 60 from his personal pension fund and then reducing that sum by an amount equivalent to his state pension once that became payable at age 67. But the suitability report doesn't set this out explicitly or have graphs, tables or models to show how that would affect the amounts remaining within his pension pot at key dates or to show if in fact it was actually realistically achievable.

While DCFL didn't provide any predicted figures for how much Mr D's personal pension might be worth in the future, as I've said above, the named personal pension provider gave him two such illustrations. Neither gives figures for Mr D's preferred retirement age of 60. But, by age 56 (ten years after investment) they both show the pension pot actually reducing in size in today's terms. And while I appreciate that this is only a prediction and as such not wholly reliable, it doesn't support DCFL's arguments that transferring would enable Mr D to retire at 60, or certainly not without the possibility of depleting his funds significantly earlier than he would like to.

But it's possible that Mr D could have met his predicted needs in retirement and still taken early retirement while opting into BSPS2. There is very little detail on file about what Mr D's fiancé's (now his wife) income would be when she came to retirement age. So, it's not clear whether Mr D would need to support her, or she him, in retirement. But, as I don't have those figures to hand I've only considered Mr D's expressed income needs of £21,125 a year gross as being for him personally. The TVAS results were that Mr D would have an income from the BSPS of £13,644 at age 60. His income from the BSPS2 was likely to be lower and could have been nearer to the PPF estimated income in the TVAS of £12,966 a year. That would be an income shortfall of around £8,150 a year.

But the DB scheme wouldn't have been Mr D's only source of income. He was also paying into his group money purchase pension scheme. And, if the contributions continued at 16% a year without ever changing or increasing, and without factoring in any growth, the fund could be worth around £75,000 by the time he reached 60. I appreciate that Mr D couldn't guarantee that he would stay in the same job until retirement. But if he changed jobs it's likely he would continue paying into a pension. Further Mr D also had the two other small pensions pots, which, at the time of DCFL's advice were worth around £25,000. Giving Mr D a fund – separate from his DB fund – of around £100,000. And that is without considering any investment growth. And, if he'd been insistent on retiring at age 60, then he could have used those funds to bolster his income until his state pension became payable at age 67. But I can't see that DCFL ever put this prospect to him.

In any event I don't think Mr D had a concrete need to take early retirement. As I've said above I can understand why he would want to retire at age 60. But, for most people, early retirement means a significant drop in income. And that would dramatically reduce most individuals' spending power and lifestyle choices. So, when faced with that prospect at an early retirement age, most people choose not to retire. Instead they opt to continue working to support their current and future lifestyle options. And that seems to be a more likely prospect for Mr D. But there's no evidence that DCFL seriously challenged his objective of early retirement. So I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

Mr D was still over 14 years away from age 60 and 18 from age 65. So he had no need to make an urgent decision to transfer out of his DB scheme, as he could have opted to move into the BSPS2. And, if he still felt that he wanted to retire before age 65, and felt that the income from the BSPS2 wasn't enough for his needs at that time, he could have considered transferring his DB benefits to another scheme at that point. But that wasn't a decision he needed to make when he did.

That said, it's true to say that Mr D couldn't have had the same level of flexible access to his DB funds as he could from a personal pension. While he could have chosen to take those early, if he'd wanted to take TFC, then he would have had to take that at the same time as drawing a regular income from his pension. Whereas the personal pension would allow Mr D to draw down funds as he saw fit. But while I can see why that might have been an attractive prospect to him, I'm not persuaded that Mr D had any concrete need to take TFC at all or to vary his income throughout retirement. And if Mr D did need flexible access to funds, he could have arranged to take those from his money purchase pension or from his two personal pension pots.

So while the option of drawing all his pension income flexibly might seem like something that would be nice to have, I can't see that Mr D had any genuine need for that flexibility that would be worth giving up guaranteed benefits for at the time that DCFL gave its advice. So I don't think it was in his best interests to transfer.

Death benefits

One of Mr D's key objectives when discussing the possibility of a transfer with DCFL was to maximise the benefits available to his family on his death. 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. That's because whatever was left within Mr D's personal pension at the date of his death would be passed on to his family. And, if that happened before his retirement or soon after then that would likely be a significant sum.

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. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of his DB scheme Mr D was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential of a lump sum for his family that they may not need for many years to come.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr D was to be married in 2018 and so the 50% spouse's pension provided by the BSPS2 scheme or the PPF would've been useful to his wife if Mr D predeceased her. And, in the unfortunate event he died while his children were still in education, the DB scheme would pay a dependents' benefit. And I don't think DCFL made the value of these benefits clear enough to Mr D. They were guaranteed and escalated – the spouse's pension would also be calculated as if no TFC had been taken under the BSPS2. Further, it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

The two CETVs plus the amounts from Mr D's small pension pots came to a total of over £311,000 invested in his personal pension. So Mr D might have thought that considerable fund guaranteed a significant lump sum for his family on his death. But, as demonstrated in the named pension providers illustrations, it was far from guaranteed that those sums would grow enough to provide Mr D with the pension he needed. And that would mean that there would be less available as a death benefit. Further, the fund would reduce as Mr D drew down money from it. So if Mr D had to rely heavily on withdrawals from his personal pension in the early years of his retirement, until his state pension became payable, then that could significantly reduce the amounts available to live off, let alone to leave as a legacy for his family.

If Mr D genuinely wanted to leave a legacy for his family, which didn't depend on investment returns, I think DCFL could have explored life insurance with him. Mr D already had a significant death in service benefit through his employer which would have been worth around £134,000. But if he wanted to improve on that position, particularly for after he retired, then he could have taken extra cover out on a whole of life basis. In response to our investigator's assessment of the complaint, DCFL said that such cover would have been prohibitively expensive. But, if Mr D genuinely wanted to leave a legacy for his family, but didn't want to pay a significant premium then DCFL's starting point ought to have been to ask Mr D how much he would ideally like to leave to his family. It could then have looked into cover on a whole of life basis, for that sum.

If DCFL did explore life insurance cover with Mr D, it hasn't documented it anywhere on the file I've seen. So I can't see to what extent DCFL challenged Mr D’s desire for death benefits over the security of income in retirement. And to my mind, the fact that life insurance wasn’t explored further suggests to me that greater death benefits wasn’t a genuine objective for Mr D, instead, it was simply a consequence of transferring his pension. 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 D.

The regulator’s review

DCFL told us the FCA had reviewed some of its files where it gave clients similar advice in circumstances akin to Mr D’s, but the FCA found no reason to question DCFL’s advice. The implication being that it had acted fairly when giving Mr D advice. I wasn’t party to what the FCA reviewed or what it found, nor do I need to be. While I'm required to consider the regulator’s rules, guidance and standards, my role is to decide whether DCFL has acted fairly and reasonably in all the specific circumstances of this complaint. And for the reasons given above, I'm satisfied that DCFL’s advice wasn’t suitable for Mr D as it wasn’t in his best interests. So I don't think DCFL acted fairly and reasonably.

Involvement of other firms or advisers

DCFL said that as it has ceased to provide Mr D with advice, it shouldn't be responsible for any losses after it stopped advising Mr D. But, if it wasn’t for DCFL’s advice Mr D’s funds would still be held within his DB scheme. And he wouldn't need financial advice and the funds wouldn't be a position to suffer losses. So, I don’t agree that DCFL’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 and potential for higher 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 really understand what Mr D needed and recommend what was in his best interests.

DCFL was in a good position to have analysed, tested, challenged and advised Mr D about what was in his best interests for retirement planning. It knows valuable pension pots like Mr D’s DB scheme were paid into with the intention of providing for retirement. And ultimately, I don’t think the advice DCFL gave to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2. By transferring to a personal pension Mr D was, in my view, likely to obtain lower retirement benefits. 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 D’s best interests for him to transfer his DB scheme to a personal pension when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn’t been confirmed when DCFL gave its advice. But it was becoming increasingly clear to all parties that it was likely to be going ahead. Mr D had at least 14 years to his preferred retirement age and over 18 years to the scheme’s normal retirement age. So his needs in retirement could have changed in the meantime. And by opting into the BSPS2 Mr D would have kept the ability to transfer out of the scheme nearer to his retirement age if he needed to. So, I think DCFL should have advised Mr D to opt into the BSPS2.

Of course, I have to consider whether Mr D would have gone ahead with the transfer anyway if it wasn't for DCFL's advice. And, after thinking about this carefully, I'm not persuaded he would have done so. That's because Mr D was an inexperienced investor and his BSPS pension accounted for a significant portion of his retirement provision at the time. So, if DCFL had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests and that he would likely be worse off as a result of doing so, I think he would have accepted that advice.

I'm also not persuaded Mr D's concerns about the future of his employer or the DB scheme was so great that he would have gone against DCFL's advice. That's because DCFL had the opportunity to clearly explain that the scheme trustees and his employer were not one and the same. And that the future of the pensions scheme was in the process of being taken out of the employer's hands. So DCFL could have allayed Mr D's concerns about the uncertainty of the scheme. And I don't think those would have been sufficient reason for Mr D to insist on a transfer.

It follows that I don't think DCFL's advice to Mr D to transfer out of his DB scheme was suitable for him. And I think it should have advised him to opt into the BSPS2 instead. So, I think DCFL should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And, as this matter has been a source of distress and inconvenience for Mr D, I think DCFL should also pay him £300 to address that.

Putting things right

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

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 published a policy statement 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 D 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 D would like his complaint to be settled in line with new guidance/rules. So, I consider it's fair that DCFL calculates Mr D's redress in line with new guidance and rules when they come into effect.

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 the unsuitable advice. I consider would have opted into the BSPS2 if DCFL had given suitable advice.

The basic objective of the amendments to the redress methodology still remains to put a consumer, as far as possible, into the position they would be in if the business had advised them to remain in the DB scheme, or in this case to opt into BSPS2. Having reviewed the FCA's consultation and policy statement, I'm satisfied that the changes still reflect a fair way to compensate Mr D.

DCFL must undertake a redress calculation in line with the updated methodology as soon as any new rules and/or guidance come into effect (rather than to calculate and pay any due compensation now in line with FG17/9).

For clarity while Mr D said he wanted ideally to retire at age 60, he's told us that he has no plans to retire at present. So, compensation should be based on him taking benefits at the scheme's normal retirement age of 65.

In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly once any new guidance/rules come into effect.

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 compensation amount must where possible be paid to Mr D within 90 days of the date any changes to DB transfer redress guidance or new rules come into effect and DCFL has received notification of his acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date any changes to DB transfer redress guidance or new rules come into effect to the date of settlement for any time, in excess of 90 days, that it takes DCFL to pay Mr D**.**

Income tax may be payable on any interest paid. If DCFL deducts income tax from the interest, it should tell Mr D how much has been taken off. DCFL should give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on

DCFL should provide details of its calculations to Mr M and his representative in a clear, simple format.

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 3 March 2023.

Joe Scott
Ombudsman