DRN-3626822

The complaint

Mr E complains about the advice given by D C Financial Limited (DCF) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Tata Steel UK Ltd announced that it would be examining options to restructure its business including decoupling the BSPS (the British Steel Pension Scheme, the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved pension benefits, one of which was a transfer to the Pension Protection Fund ("PPF") – the PPF is a statutory fund designed to provide compensation to members of defined benefit pension schemes when their employer becomes insolvent. The BSPS was closed to further benefit accrual from 31 March 2017.

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

Mr E approached DCF in August 2017 to discuss his pension and retirement needs. He was also concerned about the future of the BSPS.

DCF completed a fact-find in August 2017 to gather information about Mr E's circumstances and objectives. This showed that:

- He was age 48 and he was married with two non-dependent children
- He was employed at Tata Steel with an annual salary of £35,000. Mrs E wasn't currently employed.
- Mr and Mrs E owned their property which was worth £90,000, they had an outstanding mortgage of £53,000. They also had a car loan.
- Mr E was a member of his employer's defined contribution (DC) pension scheme. He and his employer were paying a total of 16% of his salary into this.

DCF also carried out an assessment of Mr E's attitude to risk. It was recorded that he had very little investment experience and no savings or investments. It said his attitude to risk was 'cautious to moderate'.

On 15 August 2017, DCF advised Mr E to transfer his pension benefits into a personal pension and invest the proceeds in a range of funds that met his attitude to risk. Mr E transferred £388,459.99 into the personal pension.

The suitability report said the reasons for this recommendation were:

- He was uncertain of the future of the BSPS scheme, and about whether his benefits would be cut further.

- He wanted control of his pension to ensure it provided the flexibility and benefits that he needed.
- Mr E wanted to retire at age 55 and start taking benefits.
- Mr E wanted to avoid the penalties associated with accessing the BSPS before the schemes normal retirement date (NRD).
- He was concerned about the inflexible death benefits. The BSPS only provided a spouse's pension whereas he wanted to be able to pass on any of his unused pension fund to his children.

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

While DCF and Mr E were going through the advice process, on 11 August 2017, Mr E's employer confirmed the terms of an agreement with the pensions regulator about the next steps for separating the BSPS from the company – which had been broadly agreed in May 2017 and included a lump sum payment into the pension fund – had been signed. This announcement included confirmation that agreement had also been reached about the sponsorship, by Mr E's employer, of the BSPS2.

Then on 25 August 2017, an important update was issued in respect of BSPS transfer values. This explained that the expected lump sum payment into the BSPS by Mr E's employer was likely to result in an improvement to transfer values. And for those with unexpired transfer values, as in Mr E's case, updated valuations would be issued around October 2017, which would be guaranteed until at least December 2017.

And on 11 September 2017 there was a further announcement, confirming the agreed payment had been made into the BSPS by Mr E's employers and the separation of the BSPS from the company had been completed. This set out that members would have to make a choice between staying in the BSPS or moving to the BSPS2 and explained that personalised information and illustrations would be provided in October 2017 to assist with that choice and that members would have until December 2017 to decide.

In October 2017, members of BSPS were sent a "Time to Choose" letter which gave them the options to either stay in BSPS and move with it to the PPF, move to BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choices was 11 December (and was later extended to 22 December 2017).

Mr E complained in 2021 to DCF about the suitability of the transfer advice. He didn't think the advice was right for him and he had probably lost out because of it.

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

Mr E referred his complaint to our service. An Investigator upheld the complaint and recommended that DCF pay compensation. Our Investigator said that, due to the critical yields, the transfer was likely to leave Mr E worse off in retirement. It wasn't likely that he wanted to take the risk of the transfer. His existing arrangements would have met his needs and he should have been advised that either the BSPS2 or the PPF weren't as detrimental as he thought they may be. Our Investigator thought that Mr E should have been advised to join the BSPS2.

DCF disagreed, saying:

- It could not have advised Mr E to join the BSPS2. This was because it didn't exist at the time and it wasn't certain that it would in the future. It wasn't created until 31 January 2018.
- The most likely outcome at the time of advice was that Mr E would need to join the PPF. He didn't want this, he wanted to control his pension benefits.
- The industry regulator has reviewed some of its pension transfer advice cases and it didn't find any problems with them. It has kept pace with regulatory developments and ensured that the advice it gave was reasonable.
- The Financial Ombudsman Service shouldn't just rely on critical yields to determine if the advice was suitable. These should not be the focal point of the advice. Mr E was not looking to purchase an annuity.
- He wanted to use his funds flexibly, for example, he wanted to spend less when his state pension became payable.
- Discount rates also shouldn't be the focal point of the advice. That said, overall, the performance needed may have been achievable. Mr E's funds have performed well and should continue to do so.
- Mr E was informed that his personal pension would be subject to investment growth and he agreed with this.
- Mr E was fully informed about all aspects of the advice at the time of sale. DCF advised Mr E that the critical yields were unlikely to be achieved.
- He would have proceeded in any event due to his concerns with the BSPS scheme and his employer.
- And in respect of any loss suffered DCF feels that this should be considered against the PPF rather than BSPS2 as this scheme didn't exist at the time of advice.

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

What I've decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of DCF's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

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

Financial viability

DCF was gathering information and ultimately advised Mr E at a time when there was significant uncertainty and updates being issued about what was happening with the BSPS and the BSPS2. This included confirmation that sponsorship of the BSPS2 was planned, that details of the scheme would follow and that members would have until December 2017 to make a choice. It was also explained that the expected payment into the BSPS by Mr E's employer was likely to result in an improvement to transfer values. And that members with unexpired transfer values would be sent updated valuations – again likely improved ones – which would be guaranteed until at least December 2017. And the lump sum payment to the BSPS was confirmed just before DCF gave Mr E advice.

However, DCF proceeded with the advice without really accounting for any of this. It didn't delay providing the advice so there were no comparisons carried out of the benefits the BSPS2 would potentially provide. And the advice was based on the CETV Mr E had received in July 2017, which was due to expire in October 2017.

Given what information the announcements indicated would be forthcoming, in order to give Mr E enough information to make a fully informed decision about what was in his best interests, I think DCF should have told Mr E to defer making a decision on the transfer until further details of the BSPS2 were known and revised transfer values received.

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. The announcements indicated that Mr E would be afforded time to think about his options – so the deadline in the original transfer quotation became less relevant. And waiting would've allowed DCF to carry out an analysis of the BSPS2 benefits, and to properly compare these to the alternatives, and base its advice on this. Because I think without doing this, DCF was acting on information which it knew to be limited, so it is difficult to argue that it could properly assess whether a transfer was in Mr E's best interests.

DCF has strongly argued that BSPS2 may not have gone ahead so the only comparison it could provide was with the benefits available to Mr E through the PPF. But I think DCF overestimated the chance of this not happening. And full details of the scheme were going to be provided in the very near future; the BSPS2 would've offered the same income benefits but the annual increases would've been lower. Of course, it's possible it may not have gone ahead, but I still think the benefits available to Mr E through the BSPS2 should've been factored in with this advice so that he was able to make an informed decision.

That said I think it's reasonable to say that the information provided shows that the transfer wasn't in Mr E's best interests from a financial viability perspective anyway. I'll explain why.

DCF carried out a transfer value analysis report (as required by the regulator) showing how much Mr E's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). Just to reiterate this was partly based on his existing scheme benefits and Mr E 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.

Mr E was 48 at the time of the advice and wanted to retire, at the earliest, at age 55, although he was open to working longer. The critical yield required to match Mr E's benefits at age 65 was 7.29% if he took a full pension. The same figure for a retirement at the age 55 was shown as 12.82%.

It's not clear why critical yields weren't calculated assuming Mr E took some tax free cash, as this was one of his objectives. Clearly DCF should have done this.

The critical yield to match the benefits available through the PPF at age 65 was quoted as 5.97% per year if Mr E took a full pension and 5.44% per year if he took tax free cash and a reduced PPF pension. There was no information about this for his age 55.

As I've said above, Mr E remaining in his existing DB scheme wasn't an option. So, the critical yields applicable to the BSPS2 benefits should also have been provided by DCF in time. The lower annual increases under the BSPS2 would've likely decreased the critical yields somewhat but, I still think they would've likely been higher than those reflecting the PPF benefits, particularly at age 65.

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

The relevant discount rates in this case were 4.3% per year for 16 years to retirement, that is his age 65. And it was 3.3% per year for six years to retirement, that is his age 55. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr E's 'cautious to moderate' attitude to risk and also the term to retirement. There would be little point in Mr E giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.44%, which was above both the discount rate and the regulator's middle projection rate, I think Mr E 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 lower attitude to risk. That's particularly the case given I think he ought to have been advised to join the BSPS2, and the critical yields applicable to the BSPS2 were likely to be higher those applicable to the PPF.

DCF has provided cashflow models which it says shows Mr E would've been able to meet his needs despite the high critical yields. I've considered these, but DCF's models show that, assuming a medium rate of return, and Mr E taking the same benefits from the BSPS scheme, that his fund would run out between his ages 91 to 94. So, if there was a period of poor returns, or Mr E lived a long life, his fund was at risk of running out before he died.

And DCF also provided an estimate of the fund values he would need to replicate the benefits he was giving up in the DC scheme. At age 65 this was £965,991.37 and at age 55 it was £782,897.25. These were far more than the transfer value, and what the transfer could reasonably be assumed to grow to. These give a revealing insight into the value of the benefits Mr E gave up when he transferred out to a personal pension plan.

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

DCF says that the critical yields are of limited relevance because they are based on the growth required to produce a fund large enough to purchase an annuity on the same basis as the benefits provided by the DB scheme. DCF says Mr E didn't want an annuity, it said he wanted to take his benefits flexibly. But the regulator required DCF to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr E could realistically say with any certainty whether he would want to take a regular income at retirement or not. He wasn't expecting to retire for at least another six years and probably beyond this. It's entirely possible that Mr E would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

DCF also says that it is unreasonable to base any findings on the discount rate because taking this into account was not required by the regulator when giving advice. While I haven't based my findings just on this, I think it a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2 the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. So, businesses were free to use the discount rate as this would be considered a reasonable assumption of the likely returns. And in any event, this has been considered in tandem with the regulator's published projection rates, which providers were required to refer to. And it is this combination, along with Mr E's attitude to risk, which leads me to believe he'd likely be worse off in retirement if he transferred out of the DB scheme.

DCF has said that the fund has at times performed well, which I don't disagree with. But, as DCF will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over a longer period of time. And even though I've been told the fund has performed well it hasn't really performed at the levels needed to replicate the benefits Mr E gave up, for example it's not provided the nearly 13% a year that it would need to replicate the DB pension at age 55.

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

Flexibility and income needs

I think it's reasonable to firstly say there was very little detail recorded about Mr E's circumstances at the time of sale. And there was very little analysis, or information about, his retirement wants or needs.

That said it seems the main reason that DCF recommended this transfer was for the flexibility and control it offered Mr E. The point of sale documentation shows that Mr E wanted to retire at age 55 but anticipated his income needs falling from state pension age. So, DCF said varying his income could be useful. He was open to working longer. But ideally, he wanted to take his tax free cash and pension from age 55, without penalty. He could repay any debt he had and travel with his wife.

It's evident that Mr E could not take his DB scheme benefits flexibly in this way. Although he could choose to take tax free cash and a reduced annual pension, Mr E had to take those benefits at the same time. But I'm not persuaded that Mr E had any concrete need to take tax free cash and defer taking his income, or to vary his income throughout retirement. To my mind this seems more of a 'nice to have' rather than a genuine objective. And, as above, it seems Mr E was willing to fully retire when the time was right rather than having a set age.

It was recorded that Mr E wanted his income in retirement to be between £20,000 and £21,700 per year. But I can't exactly see how this figure was arrived at. It looks like it was based on their current expenditure, whereas their actual needs in retirement might have been very different. For example, Mr and Mrs E wanted to repay their mortgage and travel. Which is a very different lifestyle to the one they had.

It was noted that the DB scheme would provide just over £23,839 at Mr E's age 65 (based on the BSPS). And Mr E would also receive his state pension of around £9,000 per year a few years later. He would also have his DC scheme benefits which could be used either to provide an income or used more flexibly. So, it's evident that Mr E would have enough to meet his income aims at 65, or very soon after. And his debts should have been repaid at this point.

The TVAS showed that, at age 55, Mr E would receive a pension of just under £13,000. On the face of it this income was less than he said he needed. And this doesn't consider the tax free cash that Mr E said he wanted.

DCF has essentially said that the personal pension was a way for Mr E to retire early despite this. As he could use the fund flexibly and take, for example, a greater income at the start and then reduce this when his other provisions and state pension became payable. Although, as I've said above, it didn't really provide enough detail to say this was a realistic option for Mr E.

And this doesn't give the full picture here. Mr E was a member of his new employers DC scheme and he and his employer were contributing 16% of his salary into this. If he remained a member for six to ten or so years, and his salary remained the same. He would build up a fund he could use flexibly. That said it's not clear from the point of sale how Mr E would be able to fund retirement this early, especially if he needed tax free cash to repay a significant amount of his mortgage.

So, it seems to me that one of the problems with the advice DCF gave is that it only looks at Mr E's retirement at ages of 55 and 65. Whilst it seems like it may have been possible for Mr E to retire at age 55 from the DB scheme this may not have been the best option for him. Many people would like to retire early. But, for most, 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 E. But there's no evidence that DCF seriously challenged Mr E's objective of retirement at age 55 and questioned how realistic that was for him. So, I don't think it met its obligations to challenge his objectives in light of what he would be giving up.

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

In summary, I think at whatever age Mr E took the benefits from his DB scheme it was likely to have been an important foundation for his retirement, providing a guaranteed amount that would've covered their main expenses. Meaning that any income received above this could've allowed him and Mrs E to enjoy their retirement fully.

So, I don't think the transfer from the DB scheme was in Mr E's best interests simply due to the increased flexibility it may have offered Mr E, which I'm not persuaded he needed. I think Mr E could've best met his income needs through the BSPS2 either at early retirement or the schemes' normal retirement date

And if Mr E found that his circumstances changed and he did in fact need flexibility, if he'd opted into the BSPS2 he would've retained the ability to transfer out closer to his actual retirement age. So, ultimately I think any need for flexibility could've been addressed nearer to his retirement.

Death benefits

Other than Mr E's general concerns about his employer and the scheme, and early retirement, it seems he was advised to transfer, in the main, due to the different death benefits a personal pension could offer.

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 E. But whilst I appreciate death benefits are important to Mr E, and he 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 him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think DCF explored to what extent Mr E was prepared to accept a lower retirement income in exchange for higher death benefits.

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

Furthermore, if Mr E genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think DCF should've instead explored life insurance. DCF says that Mr E couldn't have achieved his objective of leaving a lump sum to his wife and children without transferring his pension; I'm unable to agree. Transferring his pension was clearly not the only way for Mr E to achieve this objective. Life assurance ought to have been explored in the first instance – Mr E was in good health so it was likely to be affordable.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr E. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

It's clear that Mr E, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and he was worried his pension would end up in the PPF and his benefits would be reduced.

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

As I've explained, by this point some information about the BSPS2 was known and it seemed likely it was going ahead. So, the advice DCF gave Mr E should've properly encompassed the benefits likely to be available to him through the BSPS2. And I think this should've alleviated Mr E'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 DCF should've reassured Mr E that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr E through the PPF would've still provided a significant portion of the income he thought he needed at retirement, and he was unlikely to be able to exceed this by transferring out. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should've led to DCF recommending Mr E transfer out of the DB scheme altogether.

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

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

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

Suitability of investments

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

Summary

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

Ultimately, I don't think the advice given to Mr E was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr E was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr E shouldn't have been advised to transfer out of the scheme just to gain some flexibility, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. And I think DCF should've first recommended that he defer making a decision until further details of the BSPS2 were available and ultimately advised him against transferring.

I appreciate that the BSPS2 hadn't been confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr E had at least six years before he expected to retire, and he didn't really know what his needs in retirement would likely be. He seems to have had some ideas about what him and his wife wanted to do ideally, but no more than this. So, I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement.

And by opting into the BSPS2, Mr E would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr E was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr E chose to do so). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think DCF should've advised Mr E to opt into the BSPS2 in due course. And compensation should be based on this scheme.

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

I've considered this carefully, but I'm not persuaded that Mr E would've insisted on transferring out of the DB scheme, against DCF's advice. I say this because Mr E was an inexperienced investor with a lower attitude to risk and this pension accounted for the majority of his retirement provision. So, if DCF had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr E's concerns about his employer and 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. If DCF had explained that Mr E was more likely to meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr E would have insisted on transferring out of the DB scheme.

I accept that DCF disclosed the risks of transferring to Mr E and provided him with a significant amount of information about the transfer. But ultimately it advised Mr E to transfer out, and I think Mr E relied on that advice.

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

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

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

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr E whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance /rules to come into effect. He has chosen not to wait for any new guidance to come into effect to settle his complaint.

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

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

For clarity, Mr E 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 E's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr E’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 E 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 E within 90 days of the date DCF receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes DCF to pay Mr E.

It’s possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won’t apply.

If the complaint hasn’t been settled in full and final settlement by the time any new guidance or rules come into effect, I’d expect DCF to carry out a calculation in line with the updated rules and/or guidance in any event.

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 DCF pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require D C Financial Limited to pay Mr E 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 E 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 E any interest as set out above on the sum of £160,000.

<u>Recommendation:</u> If the compensation amount exceeds £160,000, I also recommend that D C Financial Limited pays Mr E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E.

If Mr E 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 E can accept my decision and go to court to ask for the balance. Mr E 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 E to accept or reject my decision before 8 March 2023.

Andy Burlinson
Ombudsman