

## **The complaint**

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

## **What happened**

In March 2016, Mr D's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a private pension arrangement.

Mr D was concerned about what the announcement by his employer meant for the security of his DB scheme, so he sought advice. In August 2017 Mr D met with D C Financial and it completed a financial planning questionnaire with him to gather information about his circumstances and objectives. In summary this recorded that Mr D was 27 years old; he was working full-time; he was single but soon to be married; he owned his own home with an outstanding mortgage of around £115,000 that had 16 years remaining; and he had cash savings of around £14,000. D C Financial also carried out an assessment of Mr D's attitude to risk, which it deemed to be 'moderate to aggressive' – a score of 7 on a scale of 1 to 10.

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

Mr D returned his 'Time to Choose' leaflet indicating he wanted to opt into the BSPS2.

Mr D contacted D C Financial again and in January 2018 it advised Mr D to transfer his BSPS benefits into a personal pension arrangement and invest the proceeds in investment funds, which D C Financial deemed matched Mr D's attitude to risk. In summary the suitability report said the reasons for the recommendation were to allow Mr D to control his pension fund; to provide income flexibility in retirement with the option of accessing a lump sum at age 57 but not immediately take an income; to provide the option of accessing benefits before 65 without penalty; to alleviate concerns about the BSPS2 not starting and to avoid the risk of entering the PPF; and to provide flexible death benefits.

Mr D's pension transfer duly completed and around £122,000 was received into the new personal pension.

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

D C Financial didn't uphold Mr D's complaint. Overall it said the recommendation was suitable. In summary it said Mr D wanted to transfer because he had a lack of trust in the

BSPS and he was concerned about entering the PPF. It said the transfer met Mr D's objectives of wanting to be able to retire early, take control of his pension and allow his family to benefit from his pension upon his death. It said neither the BSPS2 nor the PPF would have met Mr D's objectives. It said all the options were discussed with Mr D and the risk were explained and understood. It said it believed the critical yields were achievable at the time given Mr D's attitude to risk. And this has been borne out by a gross return of 9.61% per year to date, so Mr D has improved his pension benefits. Finally it said it believes Mr D had made up his mind to transfer and if it hadn't provided the transfer advice he would've kept trying other financial advisers until he found one who would help him.

Dissatisfied with its response Mr D asked this service to consider his complaint. And an investigator upheld it and said D C Financial should pay Mr D compensation. In summary they said they didn't think the advice was suitable. They said given the growth rate required to match Mr D's scheme benefits, he was unlikely to match them let alone exceed them as a result of transferring. They also didn't think there were other compelling reasons for the transfer – for example they said there was nothing to show Mr D needed flexibility given his age or that his retirement plans were known. They said there was nothing to indicate Mr D needed additional lump sum death benefits and in any event this shouldn't have been prioritised over providing Mr D with security in retirement. They also said that Mr D's concerns about the scheme could have been allayed by D C Financial given the information that was available at the time. They said if things had happened as they should have, Mr D would've transferred his benefits to the BSPS2.

D C Financial disagreed. In doing so it provided a substantive response, which I have read in full. But in summary it said the BSPS2 did not exist at the time so it couldn't have recommended Mr D transfer to it. It said it doesn't think the critical yield and whether this was achievable should be a substantive consideration when looking at suitability. If the critical yield was considered it said the only relevant comparison would be to the PPF. But it didn't think critical yields were relevant as Mr D didn't intend to purchase an annuity, so the comparison is flawed. In any event it said even if the growth achieved through transferring meant the benefits of the new pension were the same as, or even slightly less than the DB scheme, the advice would still have been suitable as it provided Mr D with flexibility. And the past performance and what had happened since the advice, which it says shouldn't be disregarded, showed that this level of growth was achievable. Overall it said it still felt that the recommendation to transfer was suitable as it allowed Mr D to achieve his goals and avoid moving to the PPF. It also argued that it was not responsible for any losses caused by 'bad investment advice' since it had stopped providing ongoing servicing of Mr D's pension. And it said if the ombudsman concludes that the advice wasn't suitable, it wants a provisional decision issued with an opportunity to consider and respond to before a final decision is reached.

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

### **What I've decided – and why**

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at

the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS').

And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

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

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

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

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

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

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly the same reasons as the investigator. My reasons are set out below.

I'd firstly like to briefly address something D C Financial raised in its response to the investigator's assessment. It said that the regulator, the Financial Conduct Authority ('FCA'), previously undertook a review of its advice process in relation to members of the BSPS and they didn't highlight any concerns. It said, whilst the advice was tailored for each matter, it applied a consistent approach to determining suitability and recording its advice. So it has questioned how our service can come to a different conclusion that the transfer advice was unsuitable.

My role and that of our service is different to that of the FCA. My role is to look at the individual circumstances of a complaint - not a business' processes and practices as a whole - and decide what I consider is fair and reasonable in all the circumstances of the complaint taking into account the considerations I listed above. And that is what I've done here.

I can also see that D C Financial has requested that I issue a provisional decision on this case before I make a final decision. But I don't think I need to do so. Having considered everything provided by both sides, I'm upholding the complaint for largely the same reasons given by the investigator. I'm not persuaded that any of the arguments raised by D C Financial in its submissions following the investigator's assessment are new. And I'm satisfied that the investigator addressed these themes fully in their opinion letters. I'm also not making my decision based on any new information provided by Mr D. So, it follows that I can issue a final decision.

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

#### *Financial viability*

For the sake of clarity, D C Financial produced a transfer value analysis report ('TVAS') as required by the regulator, showing how much Mr D's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme – referred to as the critical yield. And it based this on Mr D's benefits available under the BSPS2. Despite the fact the advice was provided after the deadline by which Mr D had to make a choice about whether he wanted to opt in to the new BSPS2 or remain in the scheme and move with it to the PPF, because Mr D had taken the decision to opt into the BSPS2, I'm satisfied it was appropriate for D C Financial to use the BSPS2 scheme benefits as the basis of the comparison in the report.

Despite this, D C Financial has argued that the BSPS2 was far from certain to go ahead and this wasn't a genuine option at the time. So only the critical yields for the PPF are relevant here. But I disagree. I think D C Financial is overstating the chance of the BSPS2 not happening. The restructuring of BSPS had been ongoing for a significant amount of time by the time Mr D received advice. Mr D had received his "time to choose" pack – with joining the new scheme as one of the options, which he opted to do. And details of the scheme had been provided - the BSPS2 would've offered the same income benefits as the BSPS but the annual increases would've been lower. So, I think the relevant parties, not least the trustees, were confident at that point that it would go ahead. I'm also mindful that, as I said above, D C Financial used the estimated benefits under the BSPS2 in one of the TVAS reports for comparison purposes. And the potential benefits under the BSPS2 were mentioned in the suitability report.

So taking all of this into account, I think a comparison to the benefits the BSPS2 was likely to provide was a relevant consideration.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

I can see D C Financial says there was no requirement for it to have regard for the discount rate. But I think it is a reasonable additional consideration when seeking to determine what level of growth was reasonably achievable at the time of the advice. Under COBS 19.1.2, the regulator required businesses to compare the benefits likely to be paid under a DB scheme with those payable under a personal pension by using reasonable assumptions. The discount rate would be considered a reasonable assumption of likely returns. And businesses were free to refer to it. So, whilst I agree businesses weren't *required* to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mr D was 28 at the time of the formal written advice and the paperwork records that he wanted to retire at 55 / 57 – although I note the suitability report specifically said Mr D wasn't planning to retire until at least age 57. The TVAS dated 3 January 2018 set out the relevant critical yields; at age 65 it was 5.13% if Mr D took a full pension and at age 55 it was 5.88%. The TVAS didn't provide the critical yields for a reduced pension and tax-free cash. The critical yields required to match the benefits provided through the PPF at age 65 were 4.85%

assuming Mr D took a full pension and 4.68% if he took tax free cash and a reduced pension. And at age 55 they were 5.9% and 5.73% respectively.

It's not entirely clear to me why D C Financial produced critical yield figures comparing the benefits Mr D would receive at age 55 when he'd indicated he wouldn't retire until at least 57. It strikes me that for D C Financial to have properly advised Mr D and to put him in a fully informed position, it ought to have compared the benefits available to him at age 57.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 4.6% per year for 26 years to retirement (to age 55 as per the TVAS report.) I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr D's 'moderate to aggressive' attitude to risk and also the term to retirement. In my view, and despite what D C Financial argues, 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.

Here, the critical yield assuming Mr D took a full pension through the BSPS2 at age 55 was 5.88%. So, if Mr D were to take the same benefits at age 57, I think the critical yield would've been somewhere between 5.88% and 5.13%, but most likely closer to 5.88%. This figure was higher than the discount rate and higher than the regulator's middle projection rate.

I can see that D C Financial classified Mr D as a 'moderate to aggressive' risk investor. But while I accept Mr D was relatively young and the term to retirement was reasonably long, Mr D lacked any real investment experience. In my view he was inexperienced, which is what the fact-find document recorded. Taking this into account together with the fact that Mr D's DB scheme pension represented the most significant part of his private pension provision at the time, I think a medium risk attitude, or moderate risk (a rating of 5 or 6) was appropriate here and more in line with the level of risk I think Mr D was prepared to take with his pension.

Given this, I think the opportunity to improve on the benefits provided by the BSPS2 was limited if Mr D transferred out of the scheme and invested in line with a 'moderate' attitude to risk. Achieving a growth rate of 5.88% was the rate to effectively stand still. To improve on the benefits available to Mr D in the BSPS2 required growth in excess of this every year until retirement. I think it's likely, at best, Mr D would end up receiving benefits of broadly the same overall value as a result of investing in line with a 'moderate' attitude to risk. In my view, to have come close to achieving the level of growth required to exceed the benefits provided by the BSPS2 if he transferred to a personal pension, would have required Mr D to take a higher level of investment risk than I think he was prepared to take. There of course still remained the real risk that Mr D might end up with benefits of a lower overall value than those provided by the BSPS2.

And given the critical yield required to match Mr D's benefits through the PPF, I don't think the situation was any different here - I think the opportunity to improve on the guaranteed benefits provided by the PPF was limited if Mr D transferred out of the BSPS.

So from a financial viability perspective, I don't think a transfer was in Mr D's best interests.

I can see that D C Financial says that the critical yield should not be a substantive consideration when looking at whether advice was suitable. It also says the critical yield is of

limited relevance because it is based on the growth required to produce a fund large enough to purchase an annuity and Mr D didn't want an annuity. But crucially the regulator required D C Financial to consider the rate of investment growth that would have to be achieved to replicate the benefits being given up. So, it needed to provide an analysis based on the critical yield and I do think it is a relevant consideration here, particularly as I don't think Mr D 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 over 25 years and perhaps longer. It's entirely possible that Mr D would want at least some guaranteed income in retirement (which he could achieve by taking benefits from the DB scheme).

D C Financial has said that in any event the past performance of the recommended fund and the performance between the transfer being completed and the complaint show the critical yield was achievable. And it says this shouldn't be discounted. I don't think this was the view of the adviser at the time – they acknowledged in the suitability report that they didn't believe the returns were achievable over the longer-term. In any event, as D C Financial knows, past performance is no guarantee for future performance. So I still consider the discount rate and the regulator's standard projection rates to be more realistic in this regard over the longer term rather than projecting historic returns forward, particularly over such a long period as in this case.

Overall, I'm not persuaded that even if the BPS2 hadn't gone ahead and Mr D's had moved with the scheme to the PPF and his benefits were reduced, he was likely to be able to improve on those benefits by transferring to a personal pension. In my view, by transferring his pension it was likely he'd end up, at best, with retirement benefits of broadly the same as those available to him from the DB scheme at his preferred retirement age. So based on this alone, I don't think a transfer was in Mr D's best interests.

But I accept that financial viability isn't the only consideration when giving transfer advice, as D C Financial has argued in this case. There might be other considerations, which mean a transfer is suitable, despite providing broadly the same benefits. I've considered below whether such other reasons applied here.

### *Flexibility and income needs*

One of the main reasons for the recommendation was to enable Mr D to access his pension flexibly from retirement age – Mr D wanted the ability to take benefits without penalty before 65 and he wanted the option of taking a lump sum without having to take an income at the same time.

But I don't think Mr D knew with any certainty whether he required flexibility in retirement. And in any event I don't think he needed to transfer his DB scheme benefits to achieve it.

Crucially here Mr D was only 28 at the time of the written advice. And based on what I've seen, he didn't have concrete retirement plans – in fact I don't think he had any real plans.

In my view Mr D's intended retirement age was simply driven by the earliest age legislation this would allow him to retire and draw his pension benefits. I think most people, if asked, would say they wanted to retire at the earliest opportunity – I don't think it was a specific objective of Mr D's. I think Mr D's retirement was so far in the future that he couldn't reasonably have had any firm plans. As Mr D still had the majority of his working life in front of him before he could think about accessing his pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr D to give up his guaranteed benefits now when he didn't reasonably know what his needs in retirement would be.

Mr D might have wanted to retire early, but he already had this option available to him - he didn't have to transfer out to achieve this. I accept that Mr D couldn't take his DB scheme benefits flexibly. Although he could choose to take a cash lump sum and a reduced annual pension, Mr D had to take those benefits at the same time. But again, nothing indicates that Mr D had a need to take a cash lump sum and defer taking his income, or to vary his income throughout retirement. It strikes me that 'flexibility' was simply a 'nice to have' or a feature or consequence of transferring to a personal arrangement rather than a genuine objective.

I can see D C Financial also recommended the transfer to allow Mr D to take his benefits early without being penalised for it. I think D C Financial was referring to the actuarial reduction that would take place to reflect the pension benefits being paid for longer. The starting monetary amount when compared with the full pension payable from age 65 – the normal scheme retirement age – would've been less. But by taking an income at age 55 or 57 Mr D would've been receiving his pension for longer. So it's a trade-off, rather than a penalty – in my view the word penalty implies the DB scheme was inferior, which I think was unfair. In simple terms, it meant that Mr D couldn't expect to have the same pension he was due at 65 at age 55 or 57 – he'd have to accept less because it would potentially be paid for longer. And I think if this had been made clearer to Mr D, he may well have been less concerned than D C Financial has suggested.

Mr D might still have been unhappy with the idea of accepting a reduction in his pension, but I don't think that means he needed to transfer when he did or that it was suitable for D C Financial to have recommended he do so.

Importantly here Mr D was contributing to his workplace Defined Contribution ('DC') pension scheme, as was his employer, meaning that a total of 16% of Mr D's salary was being invested here. It was also recorded that Mr D was considering increasing his contribution after his wedding to provide a combined contribution of 20%. Given Mr D had the potential for another 28 years or more of pension contributions ahead, this had the potential to be worth a not insignificant amount. At Mr D's current income, it had the potential to be worth in excess of £200,000 not accounting for any growth or increases in salary.

The nature of a DC scheme means this already provided Mr D with flexibility – he wasn't committed to take these benefits in a set way. Mr D could've taken lump sums as and when required and adjusted the income he took from it according to his needs. So, I think if Mr D retained his DB pension, this combined with his new workplace pension, would've given him the flexibility to retire early - if that's what he ultimately decided – and would likely meet his future retirement income needs.

So in any event, Mr D didn't need to transfer his DB scheme benefits at this stage to a personal pension arrangement in order to achieve flexibility in retirement. Of course, if Mr D did in fact have a greater need for flexibility beyond that which he already had, I think this could've been explored closer to his intended retirement age, which as I've said was still many years away.

And because Mr D had taken the decision to opt into the BSPS2, he would've retained the ability to transfer out nearer to retirement, if indeed it was required. This ought to have been explained by D C Financial.

Turning to Mr D's income need – it's clear that Mr D didn't know what his income need in retirement would be and there's no evidence that D C Financial carried out a detailed income and expenditure in retirement analysis to determine it. D C Financial appears to have concluded that a figure of two thirds of Mr D's pre-retirement income, or around £1,500 net would be sufficient. As I said above, there's nothing to indicate that Mr D needed variable income. And in my view, nothing to indicate that the income from the BSPS2 or the PPF (if

the new scheme didn't ultimately go ahead) wouldn't have provided Mr D with at least a solid income foundation upon which his other provision could supplement, to meet his overall need – not accounting for Mr D's partner's provision, which would go towards their household income need.

For example, at age 55 under the BSPS2, D C Financial's analysis shows that Mr D would receive an annual pension of £7,285 – so slightly higher at age 57. This rose to £12,001 at age 65. Given Mr D didn't have any known need for a cash lump sum (it appears Mr D's mortgage would have been repaid several years prior to his retirement age for example) I think Mr D could've likely met his income needs until his state pension became payable at age 68. The DB scheme income wouldn't have fully met his need – but I think any shortfall could've been met by accessing income and/or by taking cash lump sum from his DC scheme. As I indicated above, I think Mr D would've likely had a significant pension to draw on flexibly, as and when he needed, to top up his income or take additional lump sums. So, I think it's also the case that Mr D didn't have to sacrifice flexibility in retirement by opting into the BSPS2.

While Mr D had already decided to opt into the BSPS2, if it hadn't gone ahead, he would've moved with the scheme to the PPF. At age 55 Mr D would've been entitled to a pension of around £7,300 – so slightly higher than the pension he'd be entitled to under the BSPS2. It's likely the figure would be slightly less at age 57 when compared to the BSPS2. But I don't think any difference was substantial such that it should've made a difference to the recommendation. As I've said above, Mr D would've had his DC scheme to draw on until his state pension became payable and his partner also had provision to contribute to their joint household income. So, I still think Mr D could've met his needs in retirement even if the scheme moved to the PPF.

Overall, I think Mr D could've likely met his income needs in retirement through the BSPS2 or the PPF based on a retirement age of 57. So, I don't think it was in Mr D's best interests for him to transfer his pension just to have flexibility, that I'm not persuaded he really needed.

### *Death benefits*

The suitability report said that the flexible death benefits of a personal pension appealed to Mr D where he'd have peace of mind that the full pension fund is going to be utilised.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr D. But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his BSPS benefits 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 as a legacy provision tool. So I don't think the potential for greater or different death benefits should have been prioritised over this and Mr D's security in retirement. And I say potential, because the sum left on Mr D's death was dependent on investment returns – so if he lived a long life, and/or investment performance was lower than expected, there may not have been a large sum to pass on anyway.

D C Financial recorded that Mr D had generous death-in-service cover through his employer if he died before retirement. So he already had lump sum death benefits available, which he could nominate his future spouse to receive. And it also knew that Mr D was paying into the DC pension scheme and he would've been able to nominate his partner as beneficiary of



this plan too. So it's possible that Mr D already had sufficient lump sum death benefits to enable his family to be catered for as he intended in the event of his death.

I can see that D C Financial noted in the suitability report that the option of life assurance had been considered but discounted because Mr D wanted to ensure his pension benefits weren't lost rather than incur the added cost for an additional lump sum benefit. But D C Financial's role wasn't simply to transact what Mr D thought he wanted – as I said above a pension is primarily designed to provide income in retirement. So I think that if Mr D genuinely wanted to leave a legacy for his family over and above that which was already available, and which didn't depend on investment returns or how much of his pension fund remained on his death, D C Financial should've instead properly explored and ultimately recommended additional life cover. The starting point here ought to have been to ask Mr D how much he ideally would like to leave to his family, after taking into account the above existing means. And this could've been explored on a whole of life or term assurance basis, which was likely to be affordable, particularly as Mr D was young and despite recording a health condition he said he was in good health.

Notwithstanding the above, I can see that in the fact-find document from August 2017 under the financial category of providing protection for Mr D's family in the event of death and sickness, it was noted that Mr D's mortgage adviser was discussing this. So it's possible Mr D's needs in this area had been addressed or were in the process of being addressed. But I still think this was something D C Financial ought to have explored properly.

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. And I don't think D C Financial did enough to address the alternatives available to Mr D to meet this objective.

#### *Control and concerns about financial stability of BPS2*

The suitability report records that Mr D was concerned that the BPS2's implementation wasn't guaranteed and he didn't want to risk entering the PPF.

I have no doubt that Mr D was concerned about his pension. There was a sense of general uncertainty and there was also lots of negative sentiment about the PPF. I think this is likely the reason Mr D sought advice in the first place and it's possible that he was considering transferring because of these concerns about his employer and what might happen. But I think to a greater degree, this risk was already understood and accepted by Mr D because, he'd already chosen to opt in to the BPS2, knowing he would move to the PPF if the new scheme didn't go ahead.

In any event, it was D C Financial's duty to give Mr D an objective picture and recommend what was in his best interests. I accept that the new BPS2 scheme wasn't guaranteed to go ahead at the time of the advice. But at the time, the available information from the scheme trustees indicated that it would likely go ahead.

And I think this is what D C Financial should've been clear with Mr D to help alleviate his concerns.

In terms of Mr D's specific concerns about the scheme moving to the PPF, despite the 10% reduction in starting benefits and the fact the increases in payment in the PPF were lower, importantly the income was still guaranteed. And the income available to Mr D through the PPF would've still provided a strong foundation towards the income he would likely need at retirement and he was unlikely to be able to exceed this by transferring out. So I think D C Financial ought to have specifically reassured Mr D that, even if there was a chance the BPS2 wouldn't go ahead, moving to the PPF was not as concerning as he thought or was

led to believe. Mr D might not have been able to later transfer out of the PPF – but for the reasons I've set out earlier, I don't think Mr D would've needed to, to achieve his objectives.

Overall I don't think these concerns should've led to D C Financial recommending Mr D transfer out of the DB scheme altogether.

### *Summary*

I accept that Mr D was likely motivated to transfer out of the BSPS and that his concerns about his employer were real. And I don't doubt that the flexibility, control and potential for higher or different death benefits on offer through a personal pension would've sounded like attractive features to Mr D. But as I said earlier, D C Financial 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.

Ultimately, I don't think the advice given to Mr D was suitable. He was giving up a guaranteed, risk-free and increasing income, whether through the BSPS2 or the PPF. By transferring to a personal arrangement Mr D was, at best, likely to receive broadly the same overall retirement benefits at his preferred retirement age of 57. And I don't think there were any other particular or compelling reasons which would justify the transfer and outweigh this. So, I don't think it was in Mr D's best interests for him to transfer his DB scheme to a personal pension at this time when he'd taken the opportunity of opting into the BSPS2.

So, I think D C Financial should've advised Mr D that he should not transfer the benefits of his DB scheme to a personal pension arrangement and that his decision to opt into the BSPS2 was suitable for him in the circumstances.

I understand D C Financial thinks it is unreasonable for us to say that Mr D should've been advised to join the BSPS2 scheme because it wasn't certain to proceed so it wasn't a genuine option. But as I said earlier on, while I accept that the BSPS2 hadn't been confirmed when the advice was given, I think it was clear to all parties that it was likely to be going ahead. And the "Time to Choose" documentation confirmed that scheme members could opt into the BSPS2 but still change their mind and transfer prior to March 2018. So, contrary to what D C Financial has said, I think this was an option that it could've recommended at the time.

Of course, I have to consider whether Mr D would've gone ahead anyway, against D C Financial's advice, which is what D C Financial says. It argues that Mr D was set on transferring and would've insisted on going ahead.

I've considered this carefully - but I'm not persuaded that Mr D would've insisted on transferring out of the BSPS against D C Financial's advice.

I say this because, while I accept Mr D was motivated to transfer when he first approached D C Financial (and when he contacted them again later on) on balance, I still think Mr D would've listened to and followed D C Financial's advice if things had happened as they should have and he'd been advised that his decision to opt into the BSPS2 was the right one.

Mr D was an inexperienced investor who in my view neither possessed the necessary skill, knowledge nor confidence to go against the advice they were given, particularly in what is a complex pension matter. So, if D C Financial had provided him with clear advice against transferring out of the BSPS, explaining why it wasn't in his best interests, I think he would've accepted that advice.

I'm not persuaded that Mr D's concerns about his employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If D C Financial had explained that Mr D could meet his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr D would have insisted on transferring out of his scheme against D C Financial's advice.

In light of the above, I think D C Financial should compensate Mr D for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. And as per the above, it is the benefits available to him through the BPS2 that should be used for comparison purposes.

I can see the investigator also recommended an award of £250 for the distress and inconvenience the matter has caused Mr D.

So I've also thought about whether it's fair to award compensation for distress and inconvenience - this isn't intended to fine or punish D C Financial – which is the job of the regulator. But I think it's fair to recognise the emotional and practical impact this had on Mr D. Taking everything into account, including that I consider Mr D's retirement provision is of great importance to him, I think the unsuitable advice has caused him some distress. So I think an award of £250 is fair in all the circumstances.

Finally I can see that D C Financial says that it shouldn't be responsible for any losses as a result of any subsequent 'bad investment advice' – a reference to any losses stemming from those investments after it ceased managing Mr D's pension investment. But the investments would not have arisen at all were it not for D C Financial's unsuitable advice. So, I don't agree that its responsibility for loss stemming from its advice should be limited to when it ended its agreement with Mr D.

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

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

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 D C Financial's unsuitable advice. I consider if suitable advice had been given D C Financial would've confirmed Mr D's decision to opt into the BPS2 was suitable for him in the circumstances. So it is the benefits available to Mr D through the BPS2 that should be used for comparison purposes.

D C Financial must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

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

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

D C Financial may wish to contact the Department for Work and Pensions (DWP) to obtain Mr D's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr D's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr D's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr D as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr D within 90 days of the date D C Financial receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes D C Financial to pay Mr D.

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

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

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the 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.

D C Financial Limited should also pay Mr D £250 for the distress and inconvenience caused in this matter.

Where the compensation amount does not exceed £160,000, I would additionally require D C Financial Limited to pay Mr 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 22 February 2023.

Paul Featherstone

**Ombudsman**